

## Report on the second CUBAC Provincial Seminars in the Western Cape and Gauteng November 2006

The seminars were held in order for provincial stakeholders to explore ways in which they could integrate the CUBAC project within existing policy and practice and to indicate what they would require to sustain the project. Another purpose of the seminar was to give local stakeholders an opportunity to reflect on what had happened and challenges faced since the first seminar held in August 2006 and to continue this dialogue among all the relevant roleplayers involved in the implementation of the pilot projects in Mamelodi, Sunnyside /Hatfield and Mitchell's Plain.

Once again, all of the participants to the situation analysis and baseline research from the two provinces were invited to the seminars as well as all those who were present at the first seminar in August 2006.

Presentations were made by the provincial Departments of Social Development, SAPS and the Directorate of Public Prosecutions (DPP) offices of the Western Cape and Gauteng respectively. Presentations were also made by the local role players such as service providers, prosecutors, police and probation officers stationed in the pilot sites. The presentations made by the provincial roleplayers were focused on ways in which they could integrate the CUBAC project into existing policy and practice and steps they would take to roll out the CUBAC project within the entire province after the pilot programmes terminate in March 2007. The presentations made by the local stakeholders focused on the progress and developments in the pilot implementation, challenges and good practice and also the number and types of CUBAC cases they had encountered since the first seminar.

### 1. The Western Cape – 21 November 2006

The seminar in the Western Cape was facilitated by the pilot programme officer, Anthea Van Der Burg.

- 1.1 **Welcome, introductions and brief update on CUBAC** - The welcome and introductions of participants was facilitated by Anthea Van Der Burg. The brief update on the CUBAC pilot project was presented by Jacqui Gallinetti. The brief update was presented for the benefit of those participants that were present at the seminar for the first time and who had only recently become aware of CUBAC. This presentation focused primarily on what CUBAC entailed, the history concerning the previous research phases and the pilots that are currently in operation. The presentation also clearly set out the fact that after March 2007, when the period for implementing the pilots comes to an end, the work and contract of the consultants, namely Community Law Centre, would come to an end. However, Jacqui explained that part of the consultant's brief is to ensure that measures are put in place by the relevant government departments to roll-out the project to sites in the rest of the province and to integrate CUBAC into existing policy and practice beyond March 2007. The purpose of this seminar was thus to afford the provincial departments an opportunity

to explore ways in which the CUBAC project could be rolled out and integrated into existing policy and practice.

## 1.2 Presentations by provincial roleplayers:

- 1.2.1 Advocate Bronwyn Pithey from the Western Cape DPP's office presented their office's role around the CUBAC project and the way forward concerning its inclusion in policy and practice. She indicated that the NPA is currently undergoing a transformation process and one of their programmes involves detainees awaiting trial which includes detained children awaiting trial. In addition, the notion of CUBAC has been included in the newly drafted assessment form (the drafting process was undertaken in consultation with all members of the Western Cape Child Justice Forum) which has been accepted at national level and the intention is to implement this form throughout all provinces. Questions were raised as to whether the same form has been accepted by the Department of Social Development as well and whether it could be replicated in Gauteng. In response, Adv Pithey indicated that the process is being managed by Karen De Beer and she suggested that a meeting be held with her for further clarity.

As far as further roll-out of the CUBAC project in the Western Cape is concerned, she indicated that awareness and training among all the prosecutors in the province on this issue was crucial. Their offices were happy to raise such awareness and would include CUBAC within their training schedules for 2007. In addition, CUBAC would be included in a general minute (either in the general minute on diversion or the general minute on the management of children) for all prosecutors. She indicated that the CUBAC guidelines booklet would be used as a guide in the drafting of this general minute. However, she indicated that the collection of statistics on CUBAC (as is currently required in the pilot project) would be left out as this would be an onerous task for the prosecutors. She also suggested that for greater awareness and also for training purpose, a section on CUBAC be included in the Child Law Manual for prosecutors which is currently being revised and updated.

### Discussion

Immediately after she completed her presentation, the following questions were posed.

Jacqui, for purposes of clarity, questioned whether the assessment form that has been accepted by the NPA nationally, could be the same one that could be accepted by the Department of Social Development in Gauteng (as they too are in the process of revising their assessment form), and possibly other provinces, so that one form is used throughout the country? In response, Adv Pithey indicated that this form was drafted in consultation with the Department of Social Development at a provincial level and for the Western Cape there is agreement that this form would be used by the probation officers. There can never really be one form nationally but one could say to the other provinces, that as a minimum, certain factors and information concerning CUBAC should be included in the form. Adv Pithey indicated that she would be happy to avail herself for a meeting with the consultants and the Gauteng Department of Social Development to discuss the standardization of the assessment form for Gauteng.

1.2.2 Dr Stan de Smidt from the Western Cape Department of Social Services then made a presentation on their offices intentions and plans for rolling out the CUBAC project. He indicated that there would be no problem for rolling out the project to other regions within the Western Cape. However, the problem they did foresee was the fact that children are reluctant to disclose their CUBAC status or the identity of the adult and this posed a problem for the probation officers as they would not be able to address this problem adequately or render proper and appropriate services for the child that is actually being used by an adult to commit crime. He said this is evident by the low number of CUBAC cases that have been reported by the children during the pilot project yet there appears to be a high number of CUBAC incidences. Also, he indicated that often children commit crime with a group of other people, including adults, and the probation officers then have some inclination that the particular child might have been used. During the assessment, the child then confesses being used by an adult but seldom reveals the identity of the adult. While the probation officer can then recommend diversion of the child, not much more can be done to assist the child. This then raises questions as to the success rates of the CUBAC programmes and whether the child has actually benefited from the process and whether the CUBAC issue has actually been addressed. Another challenge is that children do not believe in or trust the justice system and are thus reluctant to disclose information to the probation officer as they do not believe that the probation officer can actually help them or protect them should they reveal the identity of the adult.

As far as further roll-out is concerned, he indicated that their probation officers would require training on the CUBAC issue as well as in the delivery of the CUBAC diversion programme. However, he indicated that at present they have a limited number of probation officers and more probation officers and assistant probation officers would need to be appointed to render these programmes. For example, the assistant probation officers could be trained to deliver the CUBAC prevention programme. In addition, the need was also identified for monitoring and supporting the implementation of this programme once the consultants are no longer around. Therefore, supervisors within their offices would also require training. In conclusion, he indicated that training and awareness raising was crucial for further roll-out. Monitoring, more person power and improving co-operation between all role-players was also needed. Finally, buy-in from all the probation officers was also vital.

1.2.3 Superintendent Ntamo from Western Cape SAPS legal services division then made a presentation on behalf of SAPS. He reported on a meeting that was held between the consultants, the Western Cape provincial commissioner and the provincial management team on 8 November 2006 at which the provincial commissioner indicated that they had no objections to CUBAC being rolled-out to all the police stations within the province. However, he indicated that the following was required for such roll-out:

- Awareness raising and training at all police stations
- The Community Policing Forums also need to be brought on board as they are the closest to the public – awareness raising on CUBAC should be undertaken with them

- Other stakeholders, such as the Asset Forfeiture Unit as well as the Department of Education and Department of Social Development need to be incorporated within the project and need to work closely together on this issue

He also indicated the CUBAC will be integrated into their policies and an operational minute on this will be drafted for all police personnel.

He further indicated that at a provincial level, there is a commitment to sustain the CUBAC project and there is already a buy-in to ensure that CUBAC is addressed.

## Discussion

Various questions were then posed to the provincial departmental representatives of SAPS and the Department of Social Development:

- Would the Department of Social Development subsidise service providers to deliver the CUBAC diversion programme in light of the fact that there are not many probation officers available to deliver the programme? In response to this, Dr Stan De Smidt indicated that they would consider subsidizing service providers to deliver the CUBAC diversion programme but that this would depend on the costs involved and the quotation from the service provider. The Department would call for tenders and would consider these provided the costs are reasonable.
- Could the assistant probation officers, and the new ones that will be appointed, concentrate more on delivering the CUBAC prevention programme? In response to this, Dr De Smidt indicated that the assistant probation officer's tasks includes doing prevention work so they would be able to deliver the CUBAC prevention programme. Ms Pheliswa Siboto, also from the Department of Social Service, indicated that the assistant probation officers would be expected to do more prevention work as they are going to become permanent staff members of the department. A representative from the Department of Community Safety also indicated that they have a directorate on crime prevention who could also be drawn in to deliver the CUBAC prevention programme. SAPS also indicated that their Social Crime Prevention Unit would be willing to render the CUBAC prevention programme. SAPS also stated that the street children are most vulnerable and are drawn into all sorts of criminal activities. They have numerous programmes with these children but often these kids drop out – they called on all present to offer their assistance to help these children and assist them to reintegrate within their communities.

### 1.3 Presentations by local roleplayers

- 1.3.1 Merle Benwell, the Mitchell's Plain juvenile court prosecutor started her presentation by describing the Mitchell's Plain area and the community. She mentioned that there is a high unemployment rate, drug abuse and gangsterism is rife in the area. Older gang members often preyed on the vulnerability of children and make all sorts of promises to them in exchange for favours and gradually get them involved in criminal activities.

However, since the commencement of the CUBAC pilot, prosecutors are more aware of this notion and the possibility that child offenders might have been used by older children or adults to commit crime. They see as their roles and responsibilities the need to identify CUBAC but they realize that they cannot force a child to reveal his or her CUBAC status or reveal the identity of the adult. They are aware that they need to treat any information from the child with confidentiality. When a child discloses CUBAC and the identity of the adult, they need to inform the investigating officer to undertake further investigation and to charge such adult either for being an accomplice, for incitement or as a co-accused to the offence. As far as that child is concerned, the prosecutors must take steps to ensure that the child is diverted and attends the CUBAC diversion programme. Where the offence is of a serious nature and the child, who has been used by an adult, is convicted, their role is to assist the court in reaching an appropriate sentence and the fact that he is a CUBAC will serve as a mitigating factor. However, even where the child's case is completed, they need to take the necessary steps to ensure that the matter against the adult proceeds.

Since her involvement in the CUBAC pilot project, she had encountered 9 CUBAC related cases where one case resulted in a successful prosecution of the adult. There were 3 cases in June 2006, 1 in July 2006, 1 in August 2006 and 4 in September 2006. These cases involved:

- A 15 year old male charged with theft and assault. He disclosed CUBAC but refused to disclose the identity of the adult. He was referred to the CUBAC diversion programme.
- A male under the age of 17 years (exact age unknown) was charged with possession of dagga. He appeared with an adult co-accused and there was a likelihood of the child being influenced or used by the adult. However, this case was withdrawn against both the child and the adult due to a lack of sufficient evidence.
- A 14 year old male co-accused with a 21 year old adult for housebreaking. The child disclosed that he was used by the adult. A decision was taken not to proceed with the case against the child but to only proceed with the matter against the adult. The matter was successfully prosecuted against the adult co-accused.
- A 12 year old male charged for theft. He is what the prosecutors refer to as their "regular customer" as he is often in trouble. He lives on the street and the prosecutors think that he is a member of the "Town Centre Kids" who are often breaking into houses or shoplifting. Even though this child has not disclosed he is a CUBAC, the prosecutors are of the opinion that he is being used by the older gang members, possibly to climb through windows, as he is of small build. He comes from an unstable family background. The prosecutors regarded him as a child in need of care and converted his matter into a Children's Court Inquiry. He

was placed in a place of safety but has since absconded and is probably back on the streets as this is the only life he knows.

- A 17 year old male charged with possession of dagga. He disclosed he was a CUBAC but refused to disclose the identity of the adult. He was referred to NICRO to undergo the CUBAC diversion programme.
- A 17 year old male charged with theft. He disclosed he was a CUBAC but refused to disclose the identity of the adult. He was referred to NICRO to undergo the CUBAC diversion programme.
- A 16 year old male charged with theft and appearing with a 20 year old co-accused. This case is still pending.
- A 17 year old male charged with possession of dagga. He disclosed he was a CUBAC but refused to disclose the identity of the adult. He was referred to NICRO to undergo the CUBAC diversion programme.
- A 17 year old male charged with theft of a motor vehicle and appearing with an adult co-accused. The child might be a CUBAC but this case is still pending as it was postponed for further investigation.

She indicated that in her experience, children and their guardians have a better relationship with the probation officers and therefore the likelihood of a child disclosing CUBAC to a probation officer is greater as opposed to disclosing to a prosecutor.

She informed the participants that the following are the ways in which they identify whether a child is a CUBAC:

- When there is direct disclosure to the prosecutor by the child
- If the child is co-accused with an adult, the prosecutors consult the child and if such child is a first offender, he or she is diverted providing all the requirements for diversion are present.
- When the child's defence attorney makes representations to the prosecutor and informs the prosecutor that the child was used by an adult but the child refuses to reveal the identity of the adult.

She raised the point that the reluctance by the children to disclose the identity of the adult is a major challenge which hampers them from taking any action against these adults. However, it appears that reasons for their reluctance are that they are afraid of reprisals or that they want to protect the adults. This raises the question as to whether the CUBAC project can be successful in the absence of any procedures to ensure the safety of the children once they disclose the identity of the adults. She once again highlighted that the druglords and gang members are aware of court procedures and they convince children to take responsibility for their actions so that they can be diverted. They convince the children that nothing will happen to them, that they will not go to jail and promise them all sorts of material things to either ensure that they do not tell on them or to ensure that the children will continue to assist them in their criminal activities. Children look to these gang members and druglords as role-models and therefore seek to protect the adult's identity. She reiterated that the child's safety is of utmost importance and therefore the consequences of them disclosing the identity of the adult should be explained to the child

and his or her guardian. In conclusion, she indicated that the awareness on CUBAC and the CUBAC project has made many prosecutors realize that this phenomenon does indeed exist – in the past they thought that children were merely making excuses for their actions- and all necessary steps must be taken to ensure that the adults responsible for using children in crime, also seen as a worst form of child labour, are brought to book.

- 1.3.2 Letitia Philander, the probation officer responsible for Mitchell's Plain court indicated that since the commencement of the CUBAC pilot project until October 2006, 50 children have disclosed CUBAC and most of these children have been referred to NICRO to undergo the CUBAC diversion programme. She also indicated that there have been 2 arrests of adults and these adults have been convicted.

She indicated that when a child discloses CUBAC, this information is given to the prosecutor who then decides what to do in the circumstances, namely, whether to divert the matter or continue with the trial. She stressed the need for the police to contact the parents of the child as soon as possible as often the druglords come to court and stand in as the child's guardian. She also indicated that the police, when contacting the parents, must inform them to bring the identity document or birth certificate of the child to assist the probation officer in determining the age of the child.

She advised that their assessment form allows for information relating to CUBAC to be recorded and therefore this makes it easier to identify CUBAC during the assessment process. If information relating to CUBAC is obtained during the assessment, this information is relayed to the investigating officer or prosecutor who then decides how the matter should proceed. She noted that a concern was that while children reveal their CUBAC status, they are reluctant to disclose the identity of the adult.

She further advised that statistics on CUBAC are collected on a monthly basis and to date, their offices had encountered 50 CUBAC related cases. Most of these children had been diverted to NICRO and 1 case was converted into a Children's Court Inquiry. She indicated that a child usually discloses his or her CUBAC status to the probation officer during the assessment process and this information is given to the prosecutor. She stressed that the safety of the child is of utmost importance and a child should not be forced to reveal the identity of the adult. In this respect, there were numerous challenges as there are no structures in place to secure the safety of the child when they reveal CUBAC and/or the identity of the adult. Often, it is the gang member that shows up at court and stands in as the guardian/parent of the child and also intimidates the child. In some instances it is the parent that sends the druglord or gang member to court to stand in as the guardian of the child. Children see these gang members and druglords as role models as they provide the child with food, clothing, electricity, shelter and are therefore reluctant to reveal the adult's identity in order to protect them and themselves.

With regard to the way forward, she highlighted the need to get more roleplayers, such as the departments of health, education and correctional services involved in order to address CUBAC and parents also need to be made aware of CUBAC. There is also a need for support systems to be put in place for children who are victims of CUBAC.

- 1.3.3 Captain Vinesh Lutchman from SAPS Mitchell's Plain indicated that all the police officials at the Mitchell's Plain police station are aware of the CUBAC pilot programme and when a child is arrested, such child is questioned as to whether or not there was any adult involvement in the commission of the alleged offence. The police officer will ask the child to describe the circumstances under which the offence was committed and allows the child to relate his or her story in his or her own words. If there is any indication of CUBAC, an effort is made to establish of CUBAC and this information is noted in the docket. If an adult co-accused is involved in the matter, the matter against the adult is investigated even when the child admits guilt.

It is usually during the questioning process that a child reveals his or her CUBAC status. However, he noted that some of the obstacles and challenges are that often the children are reluctant to disclose the identity of the adult either because they are afraid or they do not trust the police. Their safety is not guaranteed and there is no victim protection programme in place for these children. He indicated that it is a known fact that in most cases where children are arrested for drug offences, they are involved in gangsterism or with druglords.

He advised that for the period 1 July 2006- 31 October 2006 a total of 521 children were arrested. None of these children indicated to the police that they were CUBAC.

## Discussion

The following questions were posed:

- What type of information is recorded on the assessment form? Dr Stan De Smidt indicated that this form was designed by the Western Cape Child Justice Forum and is completed by the probation officer. It has various sections on it to record information concerning the child's personal details, his or her family background, the circumstances surrounding the commission of the offence and also has sections for other roleplayers, such as the police and prosecutor to complete. Pheliswa Siboto indicated that disclosure of CUBAC can also happen at a later stage when the child is placed in a place of safety. A representative from a place of safety advised that they have their own internal assessment process when the child arrives at the institution and if the child discloses CUBAC this information is recorded. However, she indicated that often they do not know who to give this information to. She was advised to give it to the supervisors of the probation officers and a list of names would be forwarded to her.
- What processes are there to address serious crime within the CUBAC project? In response to this, Jacqui advised that the pilot programme was designed based on information that was received from a range of different roleplayers. The pilot also needed to be designed to fit within a particular framework and action steps identified in the Child Labour Programme of Action. Interventions that were designed also needed to fit into current practice and policy. As far as serious crime is concerned, it is the policy of the NPA not to divert serious crime.



However, if a child was used to commit a serious crime, this could serve as a mitigating factor for sentencing purposes.

- The fact that a child cannot be forced to disclose the identity of the child – does this not present a loophole? It is the right of every accused person to remain silent and therefore a child cannot be forced to disclose the identity of the adult. However, it must also be borne in mind that sometimes children falsely disclose CUBAC and this could lead to evidentiary problems.
- Whose duty is it to follow up on the child after he or she discloses CUBAC? Currently, in South Africa, there is only one non governmental organization that renders mentoring and follow-up services. For purposes of the pilot, CRED has been contracted to render follow-up services for CUBAC children in the Western Cape.
- Does the pilot provide for community restoration- i.e programmes for the despondent adults within the communities? The pilot programme does not but it will be a recommendation arising from the pilot that a wholistic prevention programme is needed to address all the factors that contribute to crime, including addressing and presenting programmes for the adults.
- Is this pilot programme being implemented in other areas? Only in Mitchell's Plain in the Western Cape and Mamelodi and Hatfield in Gauteng. The pilot programme ends in March 2007 and while the entire pilot will not be replicated to other sites within the province, the consultants will ensure that awareness raising and training on the issue occurs beyond the pilot sites.
- What is the link, if any, to the COAV project? COAV is a sub-category of CUBAC and the consultants have attended most of their workshops. However, there are 2 problems, namely, COAV concerns the commission of serious offences by children and the Prevention of Organised Crime Act is often used to convict these children. Therefore, child justice policy needs to be sorted out concerning COAV.

#### 1.4 Presentations by service providers

- 1.4.1 The progress on the delivery of the CUBAC prevention programme was discussed by Valda Lukas of CRED. She indicated that they were experiencing problems in getting access to the various schools to deliver the prevention programme. Also, CRED would like the life skills orientation educator to facilitate the programme with them but often they find that it is the class teacher that is also the life skills orientation teacher. There is no level of confidentiality between the child and the teacher and for CRED it is difficult to build a relationship of trust with the children as they only come there on one occasion to deliver the programme and time is limited. In some schools, CRED is expected to deliver the programme to a group of learners from different classes and this affects the way in which the children interact with each other.

She also advised that there are 2 forms that need to be completed. One form includes questions about the sexual activities of the child. In some schools there were objections from the principal to asking this question. The second form is an eleven page form and therefore CRED requests that the parents come in to assist the children in completing this

form but often they are at work so CRED needs to assist with this and it becomes a time consuming task.

With regard to the mentoring of children, she indicated that they were also experiencing problems as the court order is for the child to attend the diversion programme at NICRO. The court does not order the child to undergo mentoring and therefore it has been a problem to get children to come for mentoring as they see this as a form of punishment. She questioned whether it would not be possible to get the court to order that the child also attend the mentoring. A suggestion was made that perhaps the mentoring run as a parallel process while the child is undergoing the diversion programme so that the case need not have to be postponed for more than 3 months.

In conclusion she raised the question as to whether the issue of CUBAC is really being addressed in light of the fact that the child cannot be forced to disclose the identity of the adult. She questioned whether CUBAC would not just become another trend in the criminal justice system for gang members to use children in the commission of crime knowing that such children will "get off" for being victims of a worst form of child labour.

- 1.4.2 Rene Van Staden from NICRO presented on the progress concerning the CUBAC diversion programme. She indicated that since it is difficult to advise a child on how to get out of a CUBAC situation, their focus is on how not to get involved. A major challenge has been the difficulty in getting children to attend the mentoring after they have completed the diversion programme as they see it as an added burden. Even though the NICRO programme does have a session which focuses on the life ahead and during this session they highlight the benefits of undergoing the mentoring, the child is still not interested in going. However, the prosecutors at Mitchell's Plain has agreed that they will order mentoring for the child which must be run as a parallel process to the diversion programme, and it is hoped that at the end of March 2007, they will be in a position to report on how many children underwent the mentoring programme.

### Questions and discussion

- Is there provision for drug-testing? Letitia responded that on the assessment form there is a space to record whether the child uses drugs. If there is a likelihood that the child uses drugs, the child is encouraged to undertake a drug test or the parents are asked to take the child for a drug test.
- Does the child, when he attends the diversion programme, get any reassurance that it is not his fault or that he has another chance? Rene responded that they explain to the child that diversion provides them with an opportunity to change their lives and should not be seen as punishment. On the other hand, there are some children that feel that by being diverted they have beat the system
- A comment was made by a representative of the office of the Inspecting Judge that in order to advise children on gangs, we need to understand how the gang system operates. We also need to involve parents and all other relevant government departments. We also need to render programmes for the parents and the communities at large.

- 1.5 At the end of the seminar, Jacqui Gallinetti highlighted some of the most important developments that have already occurred during the pilot to address CUBAC. For example, the standardized assessment form which includes CUBAC information was seen as a great achievement. She highlighted that all the departments were calling for awareness raising activities and training on CUBAC to ensure further roll-out. She advised that she would consult with the contractors and explore the possibility of the consultants rendering these services. She commended the NPA and SAPS for intending to draft a general minute on CUBAC to ensure further roll-out. She indicated that the issues raised concerning child safety, the need to prosecute adults and to put systems in place to protect the children and the fact that gang members stand in for children at court – were issues that she would place before the Inter Sectoral Committee on Child Justice so that they could be addressed.

## 2. Gauteng – 27 November 2006

The seminar in Gauteng was facilitated by the pilot programme officer, Buyi Mbambo. Apologies were received from Mr Fourie (control prosecutor at Mamelodi court), Ms Thandi Thelede (Hatfield court prosecutor) and Adv Retha Meintjes (DPP).

**2.1 Welcome, introductions and brief update on CUBAC** - The welcome and introductions of participants was facilitated by Buyi Mbambo. A brief update on the CUBAC pilot project was again presented by Jacqui Gallinetti. The brief update was presented for the benefit of those participants that were present at the seminar for the first time and who had only recently become aware of CUBAC. This presentation focused primarily on what CUBAC entailed, the history concerning the previous research phases and the pilots that are currently in operation. The presentation also clearly set out the fact that after March 2007, when the period for implementing the pilots comes to an end, the work and contract of the consultants, namely Community Law Centre, would come to an end. However, Jacqui explained that part of the consultant's brief is to ensure that measures are put in place by the relevant government departments to roll-out the project to sites in the rest of the province and to integrate CUBAC into existing policy and practice beyond March 2007. The purpose of this seminar was thus to afford the provincial departments an opportunity to explore ways in which the CUBAC project could be rolled out and integrated into existing policy and practice.

## 2.2 Presentations by provincial roleplayers:

2.2.1 Adv Retha Meintjes from the NPA was not able to attend due to other commitments. However she had sent through a written report indicating the following:

- With regard to training prosecutors on the issue, she has taken steps to include a section on CUBAC in the Child Law Training for prosecutors undertaken by Justice College. She suggested that a section on CUBAC be included in the Child Law Training manual.
- She indicated that continued awareness raising is necessary and in order to ensure that awareness raising is widespread, it was suggested that an article on CUBAC be published in the national NPS newsletter, *Legal Updater*.
- As far as roll-out to other sites is concerned, she advised that a general minute/policy directive on CUBAC, has been drafted at the provincial level but still awaits approval. She suggests that something similar be considered at a national level.

2.2.2 Ms Nobulali Mfengu made a presentation on behalf of the Gauteng Department of Social Development. She advised that for the further roll-out of CUBAC, awareness raising and training were crucial. She pointed out that probation officers and assistant probation officers should be trained on CUBAC – they will be trained on how to deal with children who are potential CUBACs and to make appropriate referrals. The probation officers and assistant probation officers will also need to be trained on the CUBAC diversion and prevention programmes respectively. She also indicated that caregivers in secure care facilities, places of safety and even NGO's working with children should be made aware of

CUBAC. As far as NGOs and service providers are concerned, her offices would invite business plans to render the CUBAC programmes. They would like to target all the regions in Gauteng and would like to have a service providers located or doing work on CUBAC in each of the regions.

With regard ensuring that every probation officer is aware of CUBAC and how to deal with a CUBAC, addendums will be added to existing probation policy and practice guidelines to incorporate CUBAC. Further, amendments will be made to the assessment form to allow space for recording information concerning CUBAC. A circular on the implementation of CUBAC will also be drafted and circulated to all probation officers in the province.

She advised that CUBAC will be incorporated in all 4 levels of service delivery, namely, prevention (awareness and prevention programmes), early intervention (assessments, pre-trial reports and diversion programmes), statutory intervention (pre-sentence investigations and pre-sentence reports) and within the continuity of care process (after care and community services). She then explained the role of the probation officer and what would be expected of the probation officer and relevant role-players during each of these stages.

She also noted that CUBAC would be incorporated into home based supervision as it is an alternative for high risk children in the community and it is an alternative to detention. At the statutory level, probation officers would be advised that upon conviction, the presence of CUBAC can be used as a mitigating factor during sentencing.

She indicated that it would be much more useful if the consultants could provide the training materials or once off training. She advised that training could be arranged for the next financial year and plans for such training could start at the beginning of 2007 if funds are available.

- 2.2.3 Captain Leballo from the SAPS Gauteng Provincial Department indicated that their offices will be training all of their social crime police officials on CUBAC and that they are planning to have a door to door awareness campaign on CUBAC. The purpose of this would be to inform children of their rights and also inform them about the dangers of being used by adults to commit crime. They will make available a toll free number for children to call should they wish to report anything related to crime. Their office also plans to have marches within the communities to raise awareness on CUBAC.

## Discussion and questions

The following questions were posed:

- The service providers raised a concern was raised that 2 CUBAC cases were reported to the police but no follow up was done. What do SAPS intend doing when information concerning CUBAC and the identity of the adult is given to them? Who is the person that one needs to give this information to? SAPS acknowledge that their processes are slow but indicated that they cannot take any action unless they have sufficient evidence. They indicated that they had received 2 cases and gave the information to the prosecutor to lay a charge and also to use

the child's testimony. It was suggested that all CUBAC cases be reported to the Station Commissioner who will in turn allocate the case to the appropriate police official.

- Will the SAPS awareness-raising include all the station commissioners? Yes, the training will include all Station Commissioners and the intention is to have the training by January/February 2007.
- A concern was raised by the service providers that cases are withdrawn due to the fact that the collection of evidence takes too long. The question was raised as to whether there was any way to address the issue of "case flow management" to prevent a case being withdrawn due to the fact that the collection of evidence take too long? It appears that the policy is that a case cannot be remanded for more than 4 months. – it was suggested that this issue be raised with Adv Retha Meintjes.
- The need for training was identified by all the role-players. Questions were raised as to what would be more useful – training per department or intersectoral training on CUBAC? Most participants felt that inter-sectoral training on how to manage CUBAC would be more useful as this would allow for engagement between all the relevant role-players. It was suggested that the consultants run a once-off training session whereby key role-players from each department is trained and they in turn will provide the training to their colleagues. Jacqui indicated that she will raise this issue with the funders as this is not part of the current brief. On the other hand, only interested service providers, places of safety and certain officials from the department of social development and SAPS crime prevention will be trained on the diversion and prevention programme. Maggie Tserere from the NPA indicated that she will be including CUBAC in the training on child justice that she renders for prosecutors. Jacqui advised that any training rendered by the consultants would need to happen by March 2007.

## 2.3 Presentation by service providers

### 2.3.1 A joint presentation was made by YDO and RJC.

Rene Botha from YDO indicated that since the commencement of the pilot in April 2006 until September 2006, YDO had 110 children in diversion programme and RJC had 59 children in their Life Skills using art diversion programme. Both of these programmes have incorporated the CUBAC programme content. All of these children received mentoring services. She reported that the CUBAC steering committee (consisting of RJC, YDO, SAPS, Department of Justice and Education) have met on a monthly basis to discuss progress on the pilot and obstacles and challenges. YDO also serves on the Mamelodi Service Provider Forum so all the information concerning the CUBAC pilot is also transferred to this Forum to make them aware of CUBAC.

YDO is also responsible for delivering the CUBAC prevention programme and to date 60 children have undergone the prevention programme.

Rene then proceeded to talk about some of the CUBAC cases that they had encountered. In total, there were 9 such cases, these being:

- A young male was arrested for robbery for stealing a cell-phone from the victim. It appears that he is not in school and lives with his aunt. His mother only comes home on weekends as she is a live-in domestic worker. The aunt's boyfriend sells drugs and alcohol and gets the young male to sell this for him at school. After negotiations, the service providers and social worker managed to remove the child from his aunt and he has been placed with his grandmother. At the CUBAC steering committee meeting, a suggestion was made that SAPS raid the aunt's house for the drugs but this had not happened.
- A young male was arrested for theft of a cell-phone. He is not in school and has learning difficulties. It appears that he sells stolen stuff which his uncle steals from GAME where he is employed. The uncle gives the child money and sometimes alcohol as a form of payment. The child also breaks into cars. The prosecutor was informed of this and was requested to lay a charge against the uncle. However, due to case flow management issues, this case was withdrawn for reasons that cases on the roll for more than 3 months create a backlog and the court ends up withdrawing these matters. The child, however, has since been sent to live with his brother in Swaziland.
- A 16 year old girl was arrested for assault but the case against her was withdrawn. She does not go to school and is currently pregnant. She lives with her granny who is known to be a drug dealer. Unfortunately no action has been taken against the granny as it is not certain as to whether the granny uses the 16 year old to sell drugs.
- A 15 year old boy is being used by a 21 year old to sell cigarettes at school. In turn, he gets some money and cigarettes as payment. It is not clear what has happened in this matter.
- A young male is buying and selling drugs for an adult that lives with him in his grandmother's house. He is afraid and is scared to attend the diversion programme.
- A 17 year old boy went to town with an older friend and under his influence, stole a trouser and was arrested. The 17 year old does not know what happened to his older friend as he did not see him in court.
- A 17 year old boy was arrested for stealing a cell-phone from a counter in a perfume store. He was with a 20 year old friend who distracted the cashier while the 17 year old stole the phone. The 17 year old child is currently attending drumming therapy while the 20 year old is in detention.
- A young male was sent by a friend of his father's to buy mealie meal with a counterfeit R100 bill. The child was arrested for possession of counterfeit money and claimed not to know that it was counterfeit. The child is currently attending a diversion programme and it was suggested that the CUBAC sessions be used to raise awareness concerning the possession of counterfeit money.
- A 14 year old boy was arrested for theft. He is suspected of using drugs and is always seen in the company of older men. It is suspected that the older men may be using him to commit crime. A house in the area was broken into and it is

suspected that the child stole the key to where the money is kept. This case is still pending.

Delia Nation from RJC then proceeded with the presentation by highlighting some of the achievements. She noted the achievements as follows:

- Regular stakeholder meetings since the commencement of the pilot ( CUBAC steering committee) to discuss progress, developments and challenges
- Great interaction between the service providers
- Regular management meetings between RJC and YDO
- A productive meeting with the ILO offices to address the administrative challenges
- Increasing awareness on CUBAC – it has been placed on various agendas and even the court personnel are aware of CUBAC

She noted the challenges as follows:

- The impact of the remand date and case flow management issues on diversion and the collection of evidence to charge adults
- The seriousness of the offence thereby excluding such child from the prospects of diversion
- Slow processes of SAPS – either leads to case being withdrawn or there is no follow up once the child discloses the identity of the adult
- Administrative burden – some of the ILO reporting systems and the completion of numerous forms is becoming an administrative burden
- Implementation at other courts – what steps are going to be taken to implement this program at other courts so that other children also have access to the CUBAC interventions.

With regard to sustaining the project, she advised that other service providers needed to be trained in delivering the CUBAC programmes and that there needs to be buy-in from all the relevant departments such as the departments of Social Development, Justice and SAPS.

## Discussion

- Is the seriousness of the offence curtailing referrals to the diversion programme and do you have an idea on the number of cases that are not being referred? Yes, serious offences are not diverted. No, we do not have the number of CUBAC cases that were not diverted because of the seriousness of the offence. Mr Fourie from Mamelodi court will have this information.
- What can be done to ensure the safety of the child once he or she discloses the identity of the adult? SAPS indicated that they will seek to improve their image so that children will feel free to come to them and talk to them and begin to trust them. Other avenues is to use the Child Care Act and remove the child from a dangerous situation or convert the matter into a children's court inquiry. However, we need to come up with a solution on how to protect children from the gangs



within their communities. We do have the witness protection programme but it has stringent criteria and is not a viable option. The national departments need to address this issue and come up with solutions. What is important, at a local level, is for all the relevant role-players to continue talking to each other so that we can come up with ways in which to address CUBAC and protect the children. The CUBAC steering committee is a good example of how this assists in protecting children and ensuring that services are being provided to them.

- Is there an intention to roll-out the case review task team meetings nationally?  
Yes, Adv Carin De Beerr is in charge of this initiative.

## 2.4 Presentations by local role-players

2.4.1 Mr Fourie, the control prosecutor at Mamelodi court, was unable to attend due to other commitments. However, he sent a written report indicating the following:

Implementation by the Prosecutorial section at Mamdodl Branch Court:

All new cases received for placement on the court roll are screened by me as the Control Prosecutor, before they are entered in the court books. The policy of "no case, no enrollment" is being practically applied in this way. All cases where juveniles are involved are also checked for the presence of CUBAC elements. Should such a case be picked up, it is reported to the local Social Worker for follow up during the diversion process, that is if the case is sent for diversion.

The **criteria** set down at Mameiodt for the Prosecutors to follow when deciding whether to refer a juvenile accused for diversion are:

- \* The juvenile offender must be positively linked to the offence,
- \* The offence must be of a petty nature.
- \* The juvenile offender must be a first offender,.
- \* The juvenile offender must admit his /her guilt and must show remorse.

The Prosecutor will then, based on the above detail, make the decision as to whether to divert the juvenile offender or to prosecute the case. Once a juvenile offender has been granted the opportunity to attend a diversion course and he / she does not cooperate or fails to attend the diversion course due to his / her own fault, prosecution will proceed and the juvenile offender will not be "re-diverted".

A juvenile offender's case will only be considered for postponement for the attendance of a second diversion course upon receipt of a motivation from YDO or the applicable institution or the Social worker stipulates the reasons therefore, to the satisfaction of the Prosecutor or court.

For the previous reporting period, namely January to July 2006, there was a total of 127 cases placed on roll with a total of 150 juveniles appearing in these cases. For the current reporting period, from August 2006 to 23 November 2006, there was in total 74 cases placed on roll with a total of 87 juveniles appearing in these cases. The total for the year stands on 201 juvenile cases registered up to and until 23 November 2006, with a total of 237 juveniles appearing in these cases. One possible CUBAC case was identified during the initial screening of the new cases by the prosecution, but due to a lack of evidence to prove intentional misuse of the juvenile involved, no adult could be prosecuted. The exact origin of the fake note could also not be determined.

Case detail: A 15 year old juvenile was given money by his father's friend to go and buy groceries and the shopkeeper found a fake R100 note amongst the money and he was arrested,

There were no CUBAC cases positively identified or any adult prosecuted for the said reporting period.

The established local steering committee at Mamelodi meets on a regular monthly basis to discuss new cases / scenarios and to provide feedback on cases discussed previously. Inputs are obtained from the various role players in order to decide on a prudent course of action.

As slated previously, the prosecution of any adult will be considered in light of the availability of evidence to present in court, which in most instances will be based on the testimony of the juvenile involved. The available evidence, willingness to cooperate and the continued safety of the said juvenile is a matter that will have to be properly addresses by the local steering committees.

- 2.5 At the end of the seminar, Jacqui Gallinetti highlighted that all the departments were calling for awareness raising activities and training on CUBAC to ensure further roll-out. She advised that she would consult with the contractors and explore the possibility of the consultants rendering these services. She commended the NPA and the Department of Social Development for intending to draft a general minute on CUBAC to ensure further roll-out. She commended the Department of Social Development for recognizing that service providers in each of the regions are needed to deliver the CUBAC programmes.

She also indicated that the issues raised concerning child safety, the need to prosecute adults and to put systems in place to protect the children – were issues that she would place before the Inter Sectoral Committee on Child Justice so that they could be addressed.

She further indicated that in order to eliminate this worst form of child labour, one would need to eliminate crime, therefore we need to focus more and use our energies to make it difficult for adults to use children to commit crime.

### 3. Conclusion

Similar concerns raised at the first 2 seminars were once again raised at these seminars, namely:

- Safety of children
- Children coming to court with druglords and gang members as guardians
- Insufficient evidence to prosecute the adults
- False disclosure by children
- Distrust of the police by the children
- Slow follow- up processes by SAPS once information concerning CUBAC is given to them

These are certainly challenges that must be addressed. However there have also been some encouraging achievements. For example, there have been some successful prosecutions and convictions of the adults; CUBAC cases are being brought to light and being given the necessary attention; there is good co-operation and engagement between the role-players at the pilot sites; regular meetings are held to discuss CUBAC issues and there is an increasing awareness on the issues concerning CUBAC.

In order to ensure further awareness and roll-out of CUBAC, all the departments identified the following:

- All the relevant officials within the department of Social Development, SAPS and NPA need to be trained on the management of CUBAC;
- Probation officers, caregivers in places of safety and in secure care facilities and assistant probation officers including SAPS Crime Prevention officers needs to trained in the delivery of the CUBAC prevention programme;
- Probation officers and service providers need training to deliver the CUBAC diversion programme;
- To ensure awareness on the management of CUBAC, the relevant departments would need to issue policy directives/instructions or circulars.
- To further ensure awareness, suggestions were made to publish articles on CUBAC in various newsletters and to include it in the Child Law Training Manuals of the Justice College for purposes of training.