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To: Ms Tabane-Shai

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

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**EQUAL EDUCATION LAW CENTRE'S SUBMISSION ON THE AMENDED NATIONAL
POLICY FRAMEWORK ON CHILD JUSTICE, 2018**

A. INTRODUCTION

1. On 27 July 2018, the National Department of Justice and Constitutional Development published and invited comments on The Amended National Policy Framework on Child Justice (**"the Amended NPF"**) which was tabled in Parliament on 28 May 2018.
2. In terms of Section 93(1)(a) to (d) of the Child Justice Act¹ the Minister of Justice and Correctional Services must, after consultation with those Cabinet members responsible for Safety and Security, Correctional Services, Social Development, Education and Health, adopt a National Policy Framework (**"NPF"**).
3. The NPF is an overarching framework for the implementation of the Act with the aim to ensure a uniform, coordinated and co-operative approach by relevant Government Departments and Institutions.
4. The Amended NPF has been published after consultation with role players in the Child Justice Sector; and as such seeks to review and amend the first Child Justice NPF which was adopted in August 2010.
5. The Equal Education Law Centre (the **"EELC"**) is a public interest law centre specialising in education law and is located in Khayelitsha (Cape Town). The EELC utilises a broad range of activities in pursuit of an equal education system and quality education for all.
6. The EELC's input into the Amended NPF, as set out in this submission, relate to the provision of education to children in conflict with the law. The submissions made draw on the EELC's research into the topic of child justice within the Western Cape which has included site visits to various secure centres, and interviews with various departmental stakeholders, which was done in an effort to understand the practical status and provision of education in these centres.

SUBMISSION

B. PROVISION OF EDUCATION

7. There are a number of points contained in the Amended NPF to note regarding the provision of education to children in conflict with the law.

¹ Act 75 of 2008.

8. The intention throughout the Amended NPF is clearly to comply with the requirements of international and domestic law. Importantly, as a result of this, it must be noted that in terms of the Amended NPF, the provision education to children in conflict with the law and housed in child and youth care centres is identified as a "Key Priority Area" as contained in Annexure A- Key Priority Area No. 9. It must however be noted, that the provision of children incarcerated in correctional facilities is not included within the Key Priority Area and is not included as an objective indicator. Education for children incarcerated in correctional facilities is important in developing and empowering the child which ultimately assists in the rehabilitation and reintegration of the child.
9. Despite the obvious intention to comply with international and domestic law, the provisions of the Amended NPF are generalised and non-specific, particularly in respect of implementation and reporting requirements. Provisions in a framework which are overly broad, fail to properly guide, and coordinate provinces in their approach. It furthermore results in provinces having too much leeway and provincial policies varying drastically from each other.
10. As detailed in the Amended NPF, the responsibility for children's education falls to different bodies, depending on where the child is held. In correctional facilities it is the responsibility of the Department of Correctional Services to provide and report on education programmes, while in the Child and Youth Care Centres this responsibility falls to the Department of Social Development, and the Department of Education. However, what is not clear and what has been experienced by the EELC, is that upon release from these correctional facilities and centres, learners face challenges and difficulties in getting in to schools. This may be as a result of stigma attached to children who have been in conflict with the law, or as a result of the child falling outside of the compulsory school going age and the provincial education departments thus not assisting with school admissions and placements. The importance of education both within centres and upon release cannot be empathised enough. Education, coupled with other therapeutic services, is fundamental in preventing reoffence.
11. Although the responsibility falls to different departments, throughout the NPF the emphasis is on inter-departmental co-operation and coordination. Whilst the roles and responsibilities of each department must be fulfilled individually, importance is placed on a collective approach taken with one another and with other stakeholders, including civil society.

12. During site visits and interviews conducted by the EELC while researching the provision of education to children in conflict with the law, one of the biggest challenges observed was the lack of intergovernmental cooperation, resulting in uncertainty and unnecessary bureaucracy. Furthermore, in the review of the 2010 NPF, it was identified that intergovernmental relations, particularly provincial competencies, for example different Social Development Policies, posed a challenge which resulted in children receiving differing treatment in each province. It also meant that the coordination of functions – including allocation of resources to NGOs and Child and Youth Care Centres – was negatively impacted. As such the formalising of the Director-General Intersectoral Committee for Child Justice (the “**DG ISCCJ**”) and associated provincial Child Justice Fora are welcomed.
13. Provision 5.3.1 (a) – (d) which details the DG ISCCJ is however too vague in its’ formulation. The provisions merely state that the DG ISCCJ will be responsible for providing “a vehicle for communication on, and the coordination of, services to children in conflict with the law”. This body may also commission research studies to ensure the effective implementation of the Act. The DG ISCCJ is furthermore expected to report to the Minister of Justice and Correctional Services. Nothing is said regarding oversight and accountability of the National Technical Intersectoral Committee for Child Justice or over the provincial fora.
14. The Amended NPF, although including civil society, does not speak to public participation in the formulation of any of the required reports; and furthermore, does not speak to transparency in any form and specifically to the release of any reports to interested stakeholders or to the public in general. These reports should be available to the public not only to keep the public and stakeholders informed, but to allow for an external form of accountability.
15. As mentioned above, the provision of education to children in conflict with the law is vitally important to the mental, emotional and psychological growth of the children; and is a tool to prevent reoffence. As such in terms of the management of infrastructure for the implementation of the Act as encompassed in paragraph 5.1.9, the management of infrastructure needed and utilised for the provision of education should be acknowledged as fundamental and receive priority attention by all relevant departments.
16. In terms of the Amended NPF, the Department of Basic Education is responsible for “providing education programmes to children sentenced to compulsory residence in Child and Youth Care Centres; and for assisting the Department of Social Development, with

the monitoring of compulsory school attendance orders, which can be imposed by a child justice court either as diversion option or non-custodial sanction.” The Department of Correctional Services is responsible for providing “educational programmes for remand detainees and sentenced children in line with section 19 of the Correctional Services Act”. In practice, and what has been observed by the EELC within the Western Cape, the responsibility around the provision of education within Child and Youth Care Centres falls within the ambit and duties of the Department of Social Development with some support and assistance from the Department of Education; with these departments operating under the authority of a Memorandum of Understanding. The roles and responsibilities need to be more clearly defined in order for there to be consistency across the country, which would avoid confusion and promote cooperation and understanding. This is especially necessary in harnessing inter-departmental relations – as has been emphasised in the amended NPF.

17. The movement of a case from one department to another involves a risk that there will be a gap in service during transition which could negatively impact the appropriate handling of the child's case. Section 6 of the Amended NPF aims to improve inter-departmental coordination in order to improve the transition of the child's case between departments. This is particular pertinent to the continuation of education, given that different departments are responsible for education for different stages of the justice process. This section is however silent on the continuation of education which could result in unnecessary and detrimental gaps in education of children in conflict with the law.

C. CONCLUSION

18. The EELC welcomes the changes that the amended NPF seeks to implement especially regarding the formalisation of intersectoral relations. The vagueness of some provisions however undermines the progress which this framework seeks to implement and could result in detrimental practices being introduced by provincial departments.