

# Article 40

The Dynamics of Youth Justice & the Convention on the Rights of the Child in South Africa

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## **Article 40 (1)**

*States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

# **Child Justice Bill**

**passed by National Assembly**

*On 25 June 2008, the National Assembly of the South African parliament passed the Child Justice Bill. Although this is not the final step in the enactment of the Bill, it signals the highest level of parliamentary acceptance of the principles, rights and procedures contained in the Bill. Before its final enactment in parliament and it being signed into law by the President, the Bill's content still needs to be examined by the National Council of Provinces, whereupon it will return to the Portfolio Committee on Justice and Constitutional Development. In any event, the Bill specifically*

*states that the date of commencement of the Child Justice Act is 1 April 2010, so while the passing of the Bill by the National Assembly was indeed a momentous occasion for child justice in South Africa, it will still take some time before we see a fully operational legislative framework for children in conflict with the law.*

*Continued on page 2*

# EDITORIAL

*On 25 June 2008 the first parliamentary process in finalising the Child Justice Bill was completed when the National Assembly passed the Bill. This was indeed an historic occasion as all the various political parties were unanimous in their approval of the Bill. Their affirmation of the principles and objectives of the Bill is evidence that South Africa recognises the need to treat children accused of crime in a manner that takes cognisance of their rights not only as children, but as persons being accused of committing crime. South Africa is now well on the way to having a legislative framework that incorporates due process rights together with the rights of children to be protected and treated in a manner appropriate to their age.*

*In the Portfolio Committee's Report on the Child Justice Bill, the Committee pays tribute to the stakeholders involved in the development of the Bill, ranging from the legislature and executive to civil society. This sentiment was echoed in the National Assembly debate, in particular by the chairperson of the Committee, Yunus Carrim. Article 40, too, would like to pay tribute to all who have contributed to this long journey: the politicians and departmental officials, magistrates, prosecutors, probation officers, police, correctional officials, diversion service providers, child and youth care workers, child rights activists, NGOs and academics, as well as children who have been involved through child consultation processes and other initiatives.*

*This edition of Article 40 gives a brief overview of the Bill, and also provides a summary of some of the issues raised in the Portfolio Committee's report on the Bill. Importantly, it also includes some case law developments that have occurred in the past 12 months. As implementation of the Bill will only commence on 1 April 2010, child justice law and practice still rely on judicial decisions to protect the rights of children in conflict with the law, and to develop our law in accordance with the Constitution and child rights contained in international treaties.*

*Continued from page 1*

## **The objectives of the Bill**

A number of objectives are listed in clause 2 of the Bill. These objectives set out what the Bill aims to achieve in relation to children who are accused of committing crime. The objectives are not only aimed at protecting the rights of children, but also those of society in general.

### **Crime prevention**

The Preamble to the Bill specifically refers to the need for primary crime prevention, where it states that the Bill aims to 'recognise the present realities of crime in the country and the need to be proactive in crime prevention by placing increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for reoffending'.

The acknowledgement of the key role that crime prevention can play in ensuring that South Africa reduces the incidence of crimes committed (not only by children but in general) is then echoed in clause 2(b)(ii), which specifically refers to the need for 'reinforcing children's respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safeguarding the interests of victims and the community'. Likewise, clause 2(c) states that one of the objects of the Bill is to 'provide for the special treatment of children in a child justice system designed to break the cycle of crime, which will contribute to safer communities, and encourage these children to become law-abiding and productive adults'.

These two clauses, read together with the Preamble, indicate a clear recognition by the legislature that there is a need to positively intervene in the lives of children who commit crime in order to prevent further reoffending. It shows that there is a greater understanding that preventing crime is of importance in protecting communities, and this hopefully signals a shift in policy from a purely 'law-enforcement' approach to a more preventative one when it comes to children accused of committing offences.

### **Protecting the rights of children**

Clause 2(a) states that the Bill aims to protect the rights of children contained in the Constitution. Section 28(1)(g) of the Constitution deals with children in conflict with the law and provides that they have the right not to be detained unless as a measure of last resort and for the shortest appropriate period of time; that they be kept separately from detained persons over the age of 18 years, and be treated in a manner and kept in conditions that take account of the child's age.

This particular objective is given substance through a range of different provisions in the Bill. For example, clause 21 sets out the approach that must be followed when considering the release or detention of a child immediately after arrest, or following a court appearance at the preliminary inquiry or in the child justice court.

Clause 21(1) states up front that, when considering the release or detention of a child after arrest, preference must be given to releasing the child.

Clause 21(2) deals with a child who has been arrested and who has not yet appeared in court. It directs that a police official must, in respect of an

offence referred to in Schedule 1, release a child on written notice into the care of a parent or an appropriate adult and that a prosecutor may, in respect of an offence referred to in Schedule 1 or 2, authorise the release of the child on bail.

Finally, clause 21(3) provides that a presiding officer may, at a child's first appearance at a preliminary inquiry or thereafter at a child justice court:

- in respect of any offence, release a child into the care of a parent or an appropriate adult;
- in respect of an offence referred to in Schedule 1 or 2, release a child on his or her own recognisance; or
- if a child is not released from detention in the above two ways, release the child on bail.

This approach is embodied in the provisions that follow clause 21, which set out how such release should be effected. No child may be released prior to a first appearance if charged with a Schedule 3 offence, i.e. the most serious offences such as murder and rape.

Likewise, the provisions relating to the detention of children awaiting trial are drafted in such a manner that the right to be detained as a last resort, as stipulated in section 28(1)(g) of the Constitution, is given substance. Clause 26 of the Bill sets out the approach to be followed when a decision is made to detain a child and placement of the child is being considered.

Clause 26(1) states that, if after due consideration of the options to release a child, a decision is made that the child is to be detained or is to remain in detention, a police official or presiding officer must give preference to the least restrictive option possible in the circumstances.

Clause 26(2) then deals with the approach to be followed after the arrest of the child but before his or her first appearance in court. It states that a police official must, depending on the age of and alleged offence committed by the child, consider the placement of the child in a suitable child and youth care centre or, if such placement is not appropriate or applicable, the police official must detain the child in a police cell or lock-up (but only until the first court appearance).

Finally, clause 26(3) deals with the approach taken to detention of a child after the first

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appearance. It provides that a presiding officer may, at a child's first or subsequent appearance at a preliminary inquiry or thereafter at a child justice court, order the detention of a child in a child and youth care centre or in a prison, subject to the limitations set out in clause 30.

The approach set out in clause 26 is given further substance through the provisions of clauses 27–30.

Disappointingly, given the right for children to be detained separately from persons older than 18 years, the prohibition on transporting children together with adults in clause 33(2)(c) is not absolute. Clause 33(2)(d) states that where it is not possible to comply with transporting children separate to adults, the police official must, within 48 hours (of transporting a child together with adults), submit a prescribed written report to the presiding officer, furnishing reasons for non-compliance. This effectively creates an 'escape clause' for the police not to transport children separately from adults; however, it is hoped that SAPS will issue standing orders and national instructions on this issue, making quite clear the strict circumstances in which this prohibition can be departed from.

#### ***Separate procedures and processes for children***

Clause 2(d) states that one of the objects of the Bill is to 'prevent children from being exposed to the adverse effects of the formal criminal justice system by using, where appropriate, processes, procedures, mechanisms, services or options more suitable to the needs of children and in accordance with the Constitution, including the use of diversion'.

This clause echoes the obligation created in Article 40 of the UN Convention on the Rights of the Child, requiring states to create separate procedures for children accused of or alleged to have committed a crime.

The clause is given effect through various mechanisms, including the assessment of children, the use of the preliminary inquiry procedure, and diversion. Concern was expressed in previous editions of *Article 40* that certain children would be excluded from these procedures and mechanisms

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based on their age or alleged offence committed. However, the Bill that was passed by the National Assembly ensures that all children will be assessed, appear at the preliminary inquiry, and be considered for diversion. There are some restrictions on the consideration of diversion for children charged with Schedule 3 offences, including that diversion shall only be allowed in exceptional circumstances and with the approval of the Director of Public Prosecutions.

#### **Inter-departmental co-operation**

In recognition of the fact that no single department can fully take responsibility for children who commit crime, and that each department has a specialised role to play in the justice system as it pertains to children, clause 2(e) states that one of the objects of the Bill is to promote co-operation between government departments, and between government departments and the non-governmental (NGO) sector and civil society, to ensure an integrated and holistic approach in the implementation of the Bill.

This objective is then operationalised through the provisions of clauses 93–97. These clauses, amongst others, provide for the development of a national policy framework on child justice and the establishment and functions of an Intersectoral Committee for Child Justice. Both of these require co-operation between government departments, and between government departments and NGOs and civil society.

#### **Conclusion**

The Child Justice Bill, after many years, has finally received approval from the legislature. The voting in the National Assembly revealed unanimous consent that the Bill be passed. This is a step towards the culmination of the process started by the late Adv. Dullah Omar, who first appointed a project committee of the South African Law Reform Commission to investigate child justice and who, more importantly, was committed to ensuring that the criminal justice system adopted a rights-based approach to the treatment of children in conflict with the law.

*'The Committee is excruciatingly aware of the high levels of crime in our country and the capacity of children in our country to commit crime.'*



# *The* **Child Justice Bill**

## *Comments from the Portfolio Committee on Justice and Constitutional Development*

*After the Portfolio Committee on Justice and Constitutional Development had finished considering the Child Justice Bill and voted on it, they released a report on their deliberations to the National Assembly, dated 24 June 2008. The report dealt with a range of issues such as high levels of crime, statistics on child justice, and diversion of children away from the criminal justice system.*

What follows is a summary of some of the issues addressed in the report.<sup>1</sup>

### ***The Committee's approach to dealing with the Bill***

'The approach of the Committee in processing the Bill this year was similar to that of the 2002 Committee, revolving around two principal considerations:

- The need to balance, on the one hand, the rights of the child established in the Constitution and our legal obligations in terms of international treaties and conventions with, on the other hand, the rights of the victims of crime and the need to fight crime and ensure the safety and security of the community.
- The need to ensure that the State has the necessary capacity to effectively implement the new criminal justice system for children.'

This approach is evidenced by the following aspects of the Child Justice Bill: the creation of a rights-based legislative framework for children accused of crime based on the Constitution and, to a large extent, South Africa's international obligations; the inclusion of victim participation in, for example, decisions to divert and the use of victim impact statements; and the extensive provisions requiring a national policy framework and the development of departmental directives on child justice.

### ***Crime prevention***

As noted in an earlier article in this edition, the Child Justice Bill specifically refers to the need for crime prevention and reducing reoffending by children. This is an issue that had not appeared in previous versions of the Bill, and its inclusion signals a recognition by the Portfolio Committee that there needs to be a multifaceted approach to dealing with crime, beyond mere crime-control measures. The Committee had the following to say on this issue:

'The Committee is excruciatingly aware of the high levels of crime in our country and the capacity of children in our country to commit crime. The Committee is also acutely aware of the public perception that the State is failing dismally to curb crime. It is precisely because of these concerns that the Committee effected changes to the Bill. Clearly, it is important to be tough on crime, including crime committed by children, but we also have to ensure that this is part of a process of preventing and reducing crime over time, and ensuring that children are not criminalised and constantly reoffend, becoming part of an endless cycle of crime. What future has the country otherwise? Clearly, there need to be short, medium and long-term programmes, measures and targets as part of an overall, sustainable long-term strategy to reduce crime by children as part of a broader approach to reduce crime generally in the country. This Bill has to be located in the context of the need of these considerations.'

### ***The State not being a substitute for parental and family care***

The Committee did not want to create the impression that parents do not have the first-and-foremost responsibility towards their children and that

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<sup>1</sup> Direct quotes from the report will be utilised; however, as the report is 10 pages long, it was not feasible to reproduce the entire document.

the State is assuming the role of preventing children from becoming involved in crime. The Committee therefore had the following to say on the issue of family responsibility towards children who offend or who are at risk of offending:

‘While the State has obvious obligations towards children it cannot substitute for the role of parents, who have the primary responsibility towards children. This principle has been given legislative definition through the inclusion of the concept of parental rights and responsibilities in the Children’s Act. Section 18 states that parents of children have both parental rights and responsibilities towards children, which include care of and contact with their children. Care is defined in the Act to include protecting the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical, emotional or moral harm or hazards and guiding the behaviour of the child in a humane manner. These are responsibilities best fulfilled by parents and the State should not be a substitute provider for this type of care unless circumstances require ... The Bill provides many opportunities and obligations to ensure the participation of parents, both in requiring their presence at formal justice processes, and involving them as far as possible in diversion and community-based sentences. This is one of the practical ways in which the aim of promoting ‘Ubuntu’ can be realised. Children do not live alone, they are members of families and communities. It is well understood that a sense of belonging, as well as caring about what one’s family and community think or feel about one, are powerful factors in preventing crime. The Committee feels that unless we can re-establish functional families, we cannot solve all the challenges associated with children coming into conflict with the law. We need to rebuild society through strong families, kinship groups and communities, which will further add towards crime prevention and the prevention of children reoffending.’

### **Capacity of the State to implement the Bill**

During their deliberations on the Bill, the Portfolio Committee engaged rigorously with the various departments responsible for implementing the different aspects of a child justice system in order to ensure that the legislative provisions were capable of being put into operation. The Committee took great care to satisfy themselves that government departments were able to provide the necessary infrastructure and financial and human resources necessary to implement the Bill.

The report states the following in relation to this issue:

‘The Committee is acutely aware of the capacity and other constraints of the State to implement the Bill, and the amendments to the Bill were effected with this constantly in our collective mind. There are also various provisions in the Bill that relate to the need to develop the capacity of the State. The Preamble also notes, in the ‘acknowledging’ section, that ‘there are capacity, resource and other constraints on the State which may require a pragmatic and incremental strategy to implement the new criminal justice system for children ... Overall, we feel that while the co-operation and co-ordination among the government departments responsible for the implementation of the Child Justice Bill has improved recently, there is still

some way to go. We would have preferred to have seen greater consensus among the departments on the use of terms and the accuracy of statistics and on other issues, but we are clear that the departments and other State structures certainly have the potential to implement the Bill effectively. Of course, it will be challenging – but it can be done. There has to be a pragmatic, phased, sensible implementation strategy.’

### **The National Assembly debate**

On 25 June 2008, at the debate on the Child Justice Bill, the Chairperson of the Portfolio Committee on Justice and Constitutional Development, Yunus Carrim, addressed the gathered Assembly, and noted in his speech:

‘The quality of a democracy and the prospects of its future are, in no small measure, reflected in the way it treats its children. And what better a test of this than the child justice system it opts for? So this Bill tells more about us as a country and a people and more about where we come from and where are going than we might acknowledge. Which is why it is so important to get this Bill right. And which is why, too, if it is important to pass Bills that are pragmatic, practicable and doable, it is also important not to abandon identity, principle, values and goals. And if this Bill is about many balances, it is fundamentally a balance between the real and the ideal, between capacity and fulfilment, between now and then. In short, the Bill is both pragmatic and aspirational, within the framework of an overall implementation strategy.’

He concluded his address with a statement that acknowledged the delays in finalising the Bill, but which fittingly also challenged all involved in child justice to look to the future:

‘While the Committee regrets the delay in finalising the Bill, we would like to think the delay served to, ultimately, produce a better Bill. Certainly, the Bill is the outcome of considerable negotiations among a range of stakeholders and there is now substantial consensus on its content between Parliament, the executive, NGOs and academic and other experts. The challenge now is for us all to work together to implement the Bill effectively. The Committee feels we owe this to the children of our country and we certainly need to do this to consolidate and advance our democracy.’

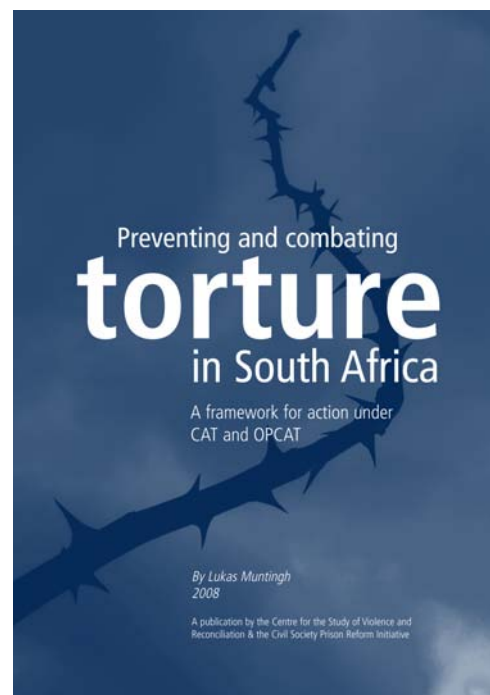
**NEW PUBLICATION:**

# ***Preventing and combating torture in South Africa***

*by Lukas Muntingh*

*In early April 2008 the Civil Society Prison Reform Initiative (CSPRI) and the Centre for the Study of Violence and Reconciliation (CSVR) launched a booklet entitled Preventing and combating torture in South Africa: A framework for action under CAT and OPCAT. The need for the booklet is partly based on the fact that in 1998 South Africa ratified the UN Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and in 2006 signed the Optional Protocol to CAT (OPCAT). These two actions have placed significant obligations on South Africa to take measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment.*

**T**his booklet aims to provide more information to decision-makers and stakeholders on the challenges relating to preventing and combating torture, and also outlines South Africa's obligations under CAT and OPCAT. These two instruments are valuable resources in the quest to prevent and combat torture. The style of the booklet is one of question-and-answer with the aim of making what are often complicated issues more understandable and accessible.



The first part of the booklet deals with torture and CAT, focusing on the definition of torture, the crime of torture, the obligations under CAT and the role of civil society in the work of the UN Committee against Torture. In CAT the emphasis is on the criminalisation, prosecution and punishment of perpetrators. OPCAT on the other hand, which is dealt with in the second part of the booklet, places emphasis on prevention. The importance of visits as a preventive measure, obligations under OPCAT and possible steps to take OPCAT forward are dealt with.

The relevance of this publication in relation to children in conflict with the law stems from the fact that people, including children, that are deprived of their liberty are extremely vulnerable and particularly at risk of human rights violations – especially torture and other forms of ill treatment. Importantly, the booklet points out that the deprivation of liberty should not only be thought of as arrest by the South Africa Police Service (SAPS) or imprisonment by the Department of Correctional Services. Other government departments and even the private sector, deprive people of their liberty. The publication provides some of the following examples, which indicate how children are also vulnerable to torture and ill treatment: the Department of Home Affairs detains and transports undocumented foreigners; the Department of Education is responsible for child and youth care centres (formerly reformatories); the Department of Social Development oversees secure-care facilities for unsentenced children; the Department of Health is responsible for a number of substance abuse treatment centres and psychiatric hospitals, and there are also privately operated substance abuse treatment centres and two privately operated prisons.

Copies of the booklet can be downloaded from the following web address:

<http://www.communitylawcentre.org.za/Civil-Society-Prison-Reform/publications/cspri-publications/cspri-publication/torture-booklet.pdf>

or hard copies can be obtained from Lukas Muntingh: [lmuntingh@uwc.ac.za](mailto:lmuntingh@uwc.ac.za)

# Update

## on case law developments



*It has been some time since Article 40 reviewed the latest cases and their relevance for juvenile offenders. This article examines some of the cases that have been reported on in the last 12 months.*

### **Sentencing of children**

In the matter of *S v Felix and Two Similar Cases* 2007 (2) SACR 129 (E), the accused was convicted at the age of 14 years on two accounts of housebreaking with intent to steal and theft and, in a separate trial, on one account of theft. In addition, he was convicted of escape, as he escaped from custody whilst awaiting trial. All three cases came before the same magistrate for sentencing and the accused was sentenced to a reformatory in terms of section 290(1)(d) of the Criminal Procedure Act. It was ordered that he be held in prison pending admission to the reformatory. However, after three years he had still not been admitted to a reformatory. In a special review, it was held that a considerable injustice had been done to the accused; the sentences that had been imposed on him could clearly not be implemented and for that reason had to be set aside.

Clearly, the effective implementation of a referral to a reformatory is an issue that has to be carefully considered before a court imposes such a sentence, and probation officers should also be mindful of this before recommending such a sentence. At the moment, it is acknowledged that there are problems with regard to the capacity of reform schools in the country, but it is hoped that this situation will be ameliorated once the Children's Act and the Child Justice Bill are implemented as, in addition to reformatories, some of the present secure-care facilities can be designated to accept sentenced children.<sup>1</sup>

In *S v Qwabe* 2007 (2) SACR 411 (T), a 16-year-old boy was convicted on a charge of assault with intent to do grievous bodily harm and sentenced to a period of correctional supervision. On review, the Court noted that the accused was already undergoing a period of 12 months' correctional supervision. The magistrate should have taken this fact into account when sentencing the child. The Court held that even though the offence had been a serious one, it was necessary to have regard for the rehabilitation of

the accused and the probable effect of a further period of correctional supervision. The sentence of correctional supervision that he was already serving might have the desired rehabilitative effect, and the imposition of a further similar sentence was inappropriate.

The Court held that the magistrate should rather have postponed the passing of sentence until the first period of correctional supervision had been completed.

Interestingly, the Court uttered some dissatisfaction with the manner in which the magistrate had completed the printed form for correctional supervision when sentencing the accused. De Villiers J stated that the form had been completed in a 'slovenly manner' and that '[i]t is of the utmost importance, of course, that such a form should be completed meticulously so that no doubt exists whatsoever about the contents of the court's order'. Likewise, the judge also commented on the quality of the pre-sentence report and how it ultimately resulted in the inappropriate sentence: '[u]nfortunately, the report compiled by the probation officer in this case was not a thorough one. In my view, it left the presiding officer with insufficient

<sup>1</sup> Under the Children's Amendment Act 41 of 2007, all children's institutions will be child and youth care facilities and will be designated to offer certain programmes for certain children. For example, what are now known as secure-care facilities can be designated to offer programmes for sentenced children.



information to decide what an appropriate sentence should be, and whether a further sentence of correctional supervision would be appropriate in the circumstances'. The Judge quoted from the case of *S v Omar* 1993 (2) SACR 5 (C) to outline what the objectives of correctional supervision should be and what information judicial officers should have to impose such a sentence. De Villiers J advised that '[p]robation officers preparing reports for the court in respect of corrective supervision should bear the above-mentioned remarks in mind; similarly presiding officers should give proper attention thereto.'

The remarks in this case should then serve as guidance for both probation officers and sentencing officers when considering the imposition of correctional supervision as a sentence.

In *S v N* 2007 (2) SACR 398 (E), a 15-year-old boy was convicted of the theft of a loaf of bread valued at R3,25 and was sentenced to eight months' imprisonment. It appeared that the accused had four relevant previous convictions at the time of sentencing. In setting aside the sentence Plasket J stated that the nature of the offence was an 'archetypal petty theft'. The judge went on to decide that, given the fact that the accused was a 15-year-old and the value of the item stolen was negligible '[i]t should have been obvious to the magistrate that in these circumstances direct imprisonment, even for a boy with the behavioural problems manifested by the accused, was entirely inappropriate and disproportional to the crime. His failure to impose a sentence that was proportional to the crime, brought about by his erroneous assessment of the seriousness of the offence, amounts to a misdirection.'

Finally, in *S v B* 2007 (2) SACR 489 (E), the accused, who was 17 years old at the time of the commission of the offences and had two previous convictions for economic offences, was convicted on two accounts of fraud and one of theft, and sentenced to 18 months' imprisonment, despite a correctional officer's report recommending that he was a suitable candidate for correctional supervision. In setting aside the sentence, Chetty J stated the following: '[t]he correctional official, cognisant that the appellant was a juvenile, recognised that the appellant would derive enormous benefit from psycho-social and specific life-skills

training programmes which a sentence of correctional supervision envisaged, and made such a recommendation. The obvious benefit of that sentencing option does not seem to have been considered by the trial court. It appears from the reasons for sentence that the seriousness of offences coupled to the appellant's previous convictions was regarded as aggravating, to the exclusion of any other viable sentencing option ... Serious as the offences were, it cannot be ignored that when the previous offences were committed, the appellant was a mere teenager with little or no insight into his actions. To regard then as so aggravating as to militate against the imposition of a non-custodial sentence is inconsistent with a balanced approach to sentencing and amounts to a misdirection warranting interference with the sentence imposed.'

### **Restorative Justice**

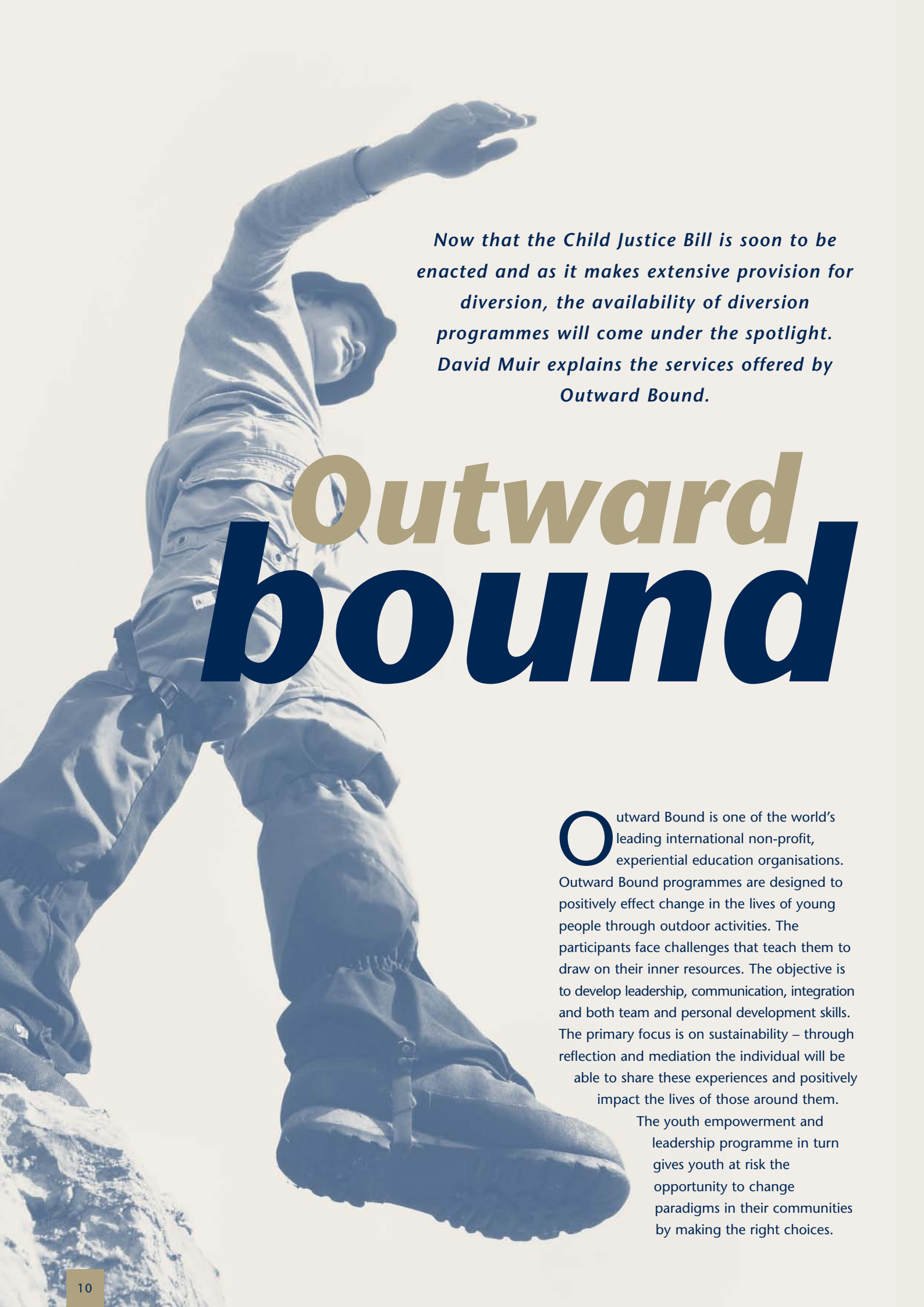
Although the following cases did not involve a child accused, they are of great importance as they indicate the level of acceptance that principles of restorative justice has reached in our jurisprudence.

In *S v Maluleke* 2008 (1) SACR 49 (T), Bertelsmann J stated, among other things, the following: 'restorative justice, properly considered and applied, may make a significant contribution in combating recidivism by encouraging offenders to take responsibility for their actions and assist the process of their ultimate reintegration into society thereby. In addition, restorative justice, seen in the context of an innovative approach to sentencing, may become an important tool in reconciling the victim and offender, and the community and the offender. It may provide a whole range of alternatives to imprisonment. This would ease the burden on our overcrowded correctional institutions.'

Similarly, restorative justice was a theme in the matter of *S v Shilubane* 2008 (1) SACR 295 (T), where a 35-year-old first offender convicted of the theft of seven fowls was sentenced to nine months' imprisonment. The Court on review and in the judgment of Bosielo J, set aside the sentence and stated: 'unless presiding officers become innovative and proactive in opting for other alternative sentences to direct imprisonment, we will not be able to solve the problem of overcrowding in our prisons. Inasmuch as it is critical for the maintenance of law and order that criminals be punished for their crimes, it is important that presiding officers impose sentences that are humane and balanced. There is abundant empirical evidence that retributive justice has failed to stem the ever-increasing wave of crime. It is furthermore counter-productive, if not self-defeating, in my view, to expose an accused like the one *in casu* to the corrosive and brutalising effect of prison life for such a trifling offence. The price which civil society stands to pay in the end by having him emerge out of prison a hardened criminal far outweighs the advantages to be gained by sending him to jail.'

### **Conclusion**

These cases develop further the increasing jurisprudence on factors to be taken into account when sentencing children and expand judicial approbation of restorative justice. The judgments also provide clear guidelines for presiding officers, and to a lesser extent for probation or correctional officers who prepare reports and make recommendations on sentencing. The usefulness of well-reasoned judicial precedents is particularly advantageous in the child justice sector, pending the implementation of the Child Justice Bill.



*Now that the Child Justice Bill is soon to be enacted and as it makes extensive provision for diversion, the availability of diversion programmes will come under the spotlight. David Muir explains the services offered by Outward Bound.*

# **Outward bound**

**O**utward Bound is one of the world's leading international non-profit, experiential education organisations. Outward Bound programmes are designed to positively effect change in the lives of young people through outdoor activities. The participants face challenges that teach them to draw on their inner resources. The objective is to develop leadership, communication, integration and both team and personal development skills. The primary focus is on sustainability – through reflection and mediation the individual will be able to share these experiences and positively impact the lives of those around them.

The youth empowerment and leadership programme in turn gives youth at risk the opportunity to change paradigms in their communities by making the right choices.

## **Mission Statement**

“To empower young South Africans with the character, will, values and self-belief to live their lives to the full and to consistently make the right choices.”

Outward Bound South Africa (OBSA) is part of a global network of more than 50 Outward Bound schools in 35 different countries with access to cutting-edge research and methodologies.

Outward Bound South Africa (OBSA) was founded 1992, in the aftermath of apartheid. Today, OBSA’s central focus is to impact on the lives of young people in South Africa who have been marginalised and disadvantaged by various factors. It helps people develop life skills, compassion and a determined, positive attitude toward life and its many challenges.

## **Outward Bound activities**

Safety is the backbone of Outward Bound’s operation and is ingrained in its culture. It ensures world-class safety standards with regular international audits. On an Outward Bound course participants may find themselves facing a number of outdoor challenges. Time is allowed for discussion and reflection, monitoring and evaluation so that participants can process their experiences and internalise their learning.

Combining challenging activities with skilled facilitation maximises the learning experience. Outward Bound creates learning opportunities and helps participants to seize these.

## **Programme overview**

Outward Bound offers holistic, sustainable programmes that focus on empowering youth at risk with constructive alternatives. It aims to transform communities through the influence of transformed individuals.

Marginalised youth may find themselves trapped in a perpetuating cycle of unacceptable behaviour that negatively impacts society. Through intervention and reflection, Outward Bound provides the tools to break these cycles and heal the root causes of crime.

- **Leadership Courses**

These courses focus on experiencing different leadership styles and situations, developing confidence and trust, time management, decision-making and teamwork.

- **Personal Development Courses**

These courses encompass such skills as learning how to learn, confidence, developing strengths, understanding others, self-awareness, self-management and interpersonal relations.

- **Youth and Schools Programme**

The outcomes-based outdoor training education programmes are designed to meet the contemporary needs of young people and the requirements of the curriculum. A specialist education advisor is available to design programmes that meet schools’ differing requirements.

- **Adult Challenge Programmes**

A variety of Adult Challenge programmes focus on self-development and relationship development. They provide an opportunity to participate in exciting and challenging outdoor activities aimed at discovering true potential, facing fears and defying limits!

## **Challenge by Choice Campaign**

This campaign was launched on Youth Day 2008 to draw attention to and to address the issues facing young people today. Outward Bound is committed to effecting positive change and facilitating interventions that will reduce crime, as well as engender respect for self, community and environment. Some of the components of this campaign include the following:

- **Father and Son Programme**

This intervention tackles the disintegration of the family structure and the lack of role models and mentors by improving communication and building trust through outdoor activities. Participants can rebuild relationships based on integrity and honesty, and bond through shared experiences.

- **Pride of Africa Nationbuilding Programme**

This community service based programme endeavours to redefine false perceptions and prejudice through developing mutual trust and respect. Participants are drawn from different socio-economic backgrounds and are encouraged to integrate, manage diversity and handle change.

- **Lion Heart Corporate Mentorship Initiative**

Breaking with traditional training techniques, team-building initiatives are paired with community and social responsibility. Employees partner with youth at risk while participating in adventure initiatives. The youth have the opportunity of interacting with mentors and role models whilst observing the accomplishment of anticipated outcomes. The aim is to develop continuity with youth at risk through evaluation and intervention.

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# NOTICE-BOARD



## UPCOMING CONFERENCE

### III IJJO INTERNATIONAL CONFERENCE

The International Juvenile Justice Observatory (IJJO) together with the County Council of Justice and Public Administrations of the Generalitat Valenciana (Spain) are organising the III International IJJO Conference. It will be titled "Juvenile Justice Systems in Europe: current situation, trends in applicable models and good practices".

This international conference will examine the two following themes:

- I. Comparative analysis of juvenile justice systems in Europe: current situation and trends in applicable models.
- II. Good practices and recommendations applicable on juvenile justice systems.

#### Date

21 & 22 October 2008

#### Conference Venue

La Ciutat de la Justicia  
Avenida del Saler, 14, 46013  
Valencia - Spain

#### For more information

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