

ARTICLE 40

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From the editors

Increasingly over the last five years, the buzzword has become "implementation". And, as reports in previous issues have shown, at grass roots level, many of the ideas for the new child justice system are being taken forward. But the resource implications of implementing legislation for a separate child justice system are frequently uppermost in practitioner's minds. This issue of ARTICLE 40 focuses on fiscal debates in two contributions. In an interview with the Western Cape Minister of Education, the inter-provincial intricacies of the reform school dilemma is explored. More proactively, Conrad Barberton reports on the seminal costing study undertaken to examine the economic implications of the draft Child Justice Bill contained in the SA Law Commission's Discussion Paper 79. (His overview of the inter-governmental dimensions will appear in the next issue.) Our front page choice of phrase from the Convention on the Rights of the Child reflects this issue's theme.

Costing child justice

By Conrad Barberton, Research Associate of the Applied Fiscal Research Centre (AFReC), University of Cape Town.

The South African Law Commission's Project Committee on Juvenile Justice released Discussion Paper 79, with a Draft Bill, in December 1998. In essence, the Draft Bill seeks to place emphasis on effective action in the period immediately following arrest and before trial. Cases which do go to court will be prioritised, and an increased range of sentencing options, including many alternatives to imprisonment, are provided for.

But the Draft Bill is also unique in a different way: from all accounts, it is the first piece of draft legislation in South Africa for which the costs of implementation have been explored in detail prior to it being tabled in Parliament. This article looks at some of the findings of this costing exercise.

Innovations introduced by the Bill

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To place the costing in context, Figure One gives a schematic representation of some of the important innovations that the Draft Bill introduces. Key changes to the current system include:

- Stage 2: Compulsory assessment of all children by a probation officer.
- Stage 4: The introduction of a 'preliminary inquiry' to ensure that diversion is considered, and to seek ways of avoiding pre-trial detention where the matter cannot be diverted.
- Stage 5: The designation of 'child justice courts' geared to address the needs of children and presided over by designated 'child justice magistrates'.
- Diversion: The Draft Bill sets out various levels of diversion that range from writing an apology (level one) to a six months periodic residence / community service programme (level four). These diversion options are the key to channelling cases away from courts and prisons, while still holding children accountable.

Costing the draft Bill

First, the exercise involved establishing (on the basis of limited and sketchy data) a 'baseline' estimate of expenditure on the current juvenile justice system. This entailed modelling and costing programmes spanning five different sectors (police, welfare, justice, correctional services and education) across national and provincial spheres of government. Variables included such diverse items as salaries, court time, and police transport, not to mention residential care and the cost of imprisonment. All this had to be rendered meaningful without core baseline figures on the number of children under the age of 18 who are arrested each year. This had to be estimated on the basis of overall arrest figures, the proportion of children as a percentage of the total population and comparative international data on juvenile criminality. Further assumptions were developed such as the likely differential crime rates for metropolitan, urban and rural areas, and the average number of remands in court per case. All this information was used to establish the cost of the present system over an annual period.

The next step involved modelling the expected impact of the changes proposed by the Draft Bill. The 'full' scenario seeks to replicate the flow of children through the child justice system as set out in the Draft Bill. It is an ideal scenario. Wherever possible the greatest number of children are dealt with in the most efficient, child-friendly manner envisaged by the Draft Bill. By contrast the 'rollout' scenario seeks to replicate how the new child justice system is likely to function at about the halfway point in the process of implementation. In other words the basic elements of the new system are assumed to be in place, but they are not being uniformly applied or used.

Running these three scenarios ('baseline', 'rollout' and 'full') through the costing model produced a set of process and expenditure results. Analysis of these results suggest that the changes proposed by the Draft Bill will not only enable the government to realise substantial savings, but also to ensure that the remaining expenditure is spent more effectively.

The process results

Figure One: The Child Justice System [Ed. Note: this diagram has not been included. Please consult the paper copy of this edition]

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Figure Two: Use of Diversion [Ed. Note: this diagram has not been included. Please consult the paper copy of this edition]

Figure Three: Total number of children held in police cells and prisons [Ed. Note: this graph has not been included. Please consult the paper copy of this edition]

Figure Two shows the important role that the different levels of diversion can play in channelling children out of the criminal justice system either prior to or during trial. This figure also shows the extent to which diversion programmes can be used as alternative sentencing options (compare the number alternative sentences to prison sentences in each scenario). The most illuminating aspect of Figure Two, however, is that it shows that the new child justice system is likely to be far more effective in actually dealing with children who commit offences. In the 'full' scenario nearly 72 000 children are either referred to some form of diversion or receive alternative or residential sentences. This represents more than half the total number of children that are arrested. By contrast, in the 'baseline scenario' only 27 600 children are diverted or sentenced. This is only about 20 percent of those currently being arrested.

As regards residential sentences, in the 'baseline' scenario over 14 100 children are sentenced to prison. The 'full' scenario suggests that the number of children sentenced to prison can be reduced by two-thirds, down to some 3 850 children per year. About 75 percent of the prison sentences in the 'full' scenario are for periods longer than two years, whereas in the 'baseline' scenario more than 80 percent are for sentences of less than two years. The implication is that in the new system, serious offenders will still be sent to prison, but those committing lesser offences will either be diverted prior to trial, or be given alternative sentences.

The impact that the Draft Bill is likely to have on the number of children being held in detention in police cells, prison or in alternative care facilities is equally dramatic. Figure Three shows that the study estimated that, collectively, children are detained for 604 000 days in police cells and 670 000 days in prison each year. It is difficult to calculate exactly how many children this affects. However a number of rough assumptions sketch a very bleak picture:

- Assuming the average detention period in a police cell is one week, then in the 'baseline' scenario over 86 000 children are held in police cells during the course of a year. This is only slightly less than the total number of children who are calculated to be arrested each year. Obviously many children will spend shorter periods in police custody, but many will be held for much longer.
- Assuming that the average period of detention in prison is 6 weeks, then some 16 000 children are held in prison during the course of a year. This is corroborated by data from the Department of Correctional Services which shows that some 15 900 unsentenced children were admitted to prisons during 1998.

Figure Three also shows that of the 670 000 days that children are detained in prison, nearly 75 percent of these are spent by children in the process of being tried. In other words, children spend about 1400 person-years in prison prior to there being any ruling on their innocence or guilt, and a further 420 person-years prior to sentencing. The social and economic implications of these extended detention periods are enormous.

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What is most encouraging is that the child justice system proposed by Draft Bill could change this situation drastically. Figure Three shows that in the full scenario children will be detained for only 22 000 days in police cells and just more than 10 000 days in prisons. This is a reduction of some 97 percent over the baseline scenario. This is achieved by:

- getting children out of the criminal justice system as early as possible through the use of diversion;
- substantially reducing the time of trials in the 'child justice court' (this is possible due to the smaller number of cases being brought to trial); and
- referring children to places of safety or holding them in secure care facilities.

Figure Four: Total number of days children held in places of safety and secure care [Ed. Note: this diagram has not been included. Please consult the paper copy of this edition]

Figure Five: Total annual cost of each scenario of the child justice system [Ed. Note: this diagram has not been included. Please consult the paper copy of this edition]

Table One: Expenditures according to the stages of the child justice system [Ed. Note: this diagram has not been included. Please consult the paper copy of this edition]

It is generally thought that to achieve the reduction in the number of children detained in police cells and in prison, many more places of safety and secure care facilities will need to be built. It is clear from Figure Four that this is not necessarily the case, because the total number of days children are held in places of safety and secure care facilities also declines between the 'baseline' and 'full' scenarios. This may seem somewhat surprising, but can be ascribed to the dramatic drop in the number of children being tried in court and the consequent reduction in the average length of trials. It must be emphasised, though, that the demand for accommodation in places of safety and secure care facilities is directly linked to the operational efficiency of the child justice system. The fewer the delays in processing children at each stage of the system, the lower the demand for places in such detention facilities will be.

The expenditure results

The costing study concluded that the government currently spends about R675 million per year on the current juvenile justice system. Figure Five shows that the implementation of the draft Bill could reduce this to about R429 million per year. This implies a saving of about R247 million or 35 percent per year on current expenditure. This is substantial in anyone's language!

Table One gives a breakdown of expenditures according to the stages of the child justice system identified in Figure One. It also includes the costs of diversion, monitoring and training. The right hand column shows the difference between costs in the 'baseline' scenario and costs in the 'full' scenario, with negative numbers reflecting annual savings.

Table One shows that not only will the Draft Bill reduce overall expenditure, but there will be a significant reallocation of where money is spent. The expenditure

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on residential sentences versus expenditure on diversion is a case in point. Table One shows that expenditure on children serving residential sentences (Stage 8) falls by R123 million between the baseline and full scenarios, while expenditure on diversion increases by some R16 million. So, between these two processes there is a net saving of some R107 million. Furthermore, in the region of 10 000 fewer children are sentenced to prison while approximately 54 000 more children are dealt with using one or other diversion option. Money is saved, but more importantly, outcomes that have minimal restorative justice value are replaced by outputs that are positive both for the children concerned and for society more widely.

The greatest potential for savings is in the trial stages (namely Stages 5, 6, and 7). It is estimated that implementation of the Draft Bill could save R169 million in these stages alone. Much of this can be attributed to reduced detention costs. However, in order to realise these savings, greater expenditure is needed at the front end of the child justice system, most notably in Stage 2 (assessment) and Stage 4 (preliminary inquiry). The estimated increase of R28 million across Stages 2, 3 and 4 is relatively modest compared with the potential savings in the later stages. It cannot be emphasised enough that these initial stages will have to be adequately financed, as it is here that the overall success of the proposed changes will be determined. If children are not properly assessed, if the preliminary inquiry is not effective in diverting cases, and if diversion is not properly funded and organised, then the enormous inefficiencies which currently exist in the court system will persist.

Considering the different items of expenditure in relation to the overall cost of the child justice system, Table One confirms the dominance of expenditures associated with children serving prison sentences. In the baseline scenario about 58 percent of the overall expenditure on the child justice system goes towards paying for children serving sentences. A further 18 percent of expenditure in the baseline scenario goes to paying for detention. This means that over 75 percent of total expenditure on the current child justice system finances detention and residential sentences. The full scenario suggests that this can be reduced to about 63 percent, with detention costs being reduced to 6 percent of overall expenditure.

Conclusion

It needs to be emphasised that the savings quantified by this costing exercise are only a small part of the overall benefits that are likely to accrue from the implementation of the Draft Bill. The value of getting children out of prisons in order to break the cycle of crime cannot be overemphasised. Reducing the flow of cases involving children to the court system will significantly reduce pressure, enabling courts to deal with existing backlogs and ensure a more effective service generally. Thus, positive spin-off effects for the entire criminal justice system - and for society as whole - will be substantial. But in order to realise these benefits, a significant reprioritisation of spending both within government departments, between departments and between the national and provincial spheres of government needs to occur. The extent of this reprioritisation will be examined in the next issue of ARTICLE 40.

Copies of Monograph 14: Costing the Implementation of the Child Justice Bill by Conrad Barberton with John Stuart can be ordered from the Applied Fiscal Research Centre (AFReC) Tel (021) 650 2719

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The reform of reform schools: an interview with Minister Helen Zille

In vol 1 no 3 we reported on two cases in Gauteng where children who had been sentenced to reform school were in fact languishing in prison. The Western Cape (where many reform schools are situated) had refused to accept them, and the Gauteng education Department had declined to pay a subsidy to the Western Cape Department of Education for their accommodation. On 13 January 2000, Judge Horn in the Eastern Cape Provincial Division remitted 9 such cases of children detained in prison pending transfer to a reform school. Calling the situation of their continued incarceration "wholly unacceptable", the matters were returned to the lower courts for resentencing. ARTICLE 40 knocked on the door of the provincial Minister of Education in the Western Cape for some answers...

INTERVIEWER: "The newspapers have reported that reform schools in the Western Cape will close shortly. What will happen to sentenced children now and in the future?"

MINISTER: "The reform schools are closing, but new institutions will re-open simultaneously. The Department plans to open two secure care centres for the province, in which most of the sentenced children will be accommodated. One will be in the Cape Town metropolitan area, the other closer to a rural area. At the next level, we will initially have four Youth Care Centres and four Schools of Skills. These will be both residential and have day attendance. The industrial schools, as we know them, will also be transformed, and replaced by Youth Care Centre (YCC's) and Schools of Skills. The Youth Care Centres will cater for young people with behavioural problems who have not been referred by courts. They will offer vocational programmes and support in lifeskills. The Schools of Skills will cater specifically for young people who are at risk of dropping out of schools because the conventional academic programmes do not suit them. Students will also be offered a range of vocational options. This approach seeks to implement the policy of the Inter- Ministerial Committee on Young People at Risk, to move away from a punitive model towards one based on educative principles and reintegration. At the important primary prevention level, we also have an integrated programme, in which the school clinics will play key role."

INTERVIEWER: "What about schools for girls?"

MINISTER: "The current girls schools are very under-utilised, and therefore very expensive: spending on a girl in Constantia School for Girls amounts to R 300 000 per girl per year. By comparison, the subsidy amount for a child in a normal school system is about R3500. We are planning a small, but separate, unit for girls within either a youth care facility or a secure care facility."

INTERVIEWER: "Do you see a place for all of these new WCED schools in the juvenile system?"

MINISTER: "Yes, I think it will be up to the courts to use our new secure care facilities as sentence options, while professionals will determine admission to the other two levels. But there is no reason why the Schools of Skills cannot form part of a sentence option, as long as one remembers that they will be massively focused on rehabilitation, development and education."

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INTERVIEWER: "Bearing in mind the recent judgements in Gauteng and the Eastern Cape, is it not unacceptable, from a children's rights perspective, that children from these provinces have been languishing in prison all these months because the WCED would not admit them to reform schools here?"

MINISTER: "I was horrified to learn of those cases. This should not happen under any circumstances, and the IMC's recommendations clearly envisage the opposite. The Western Cape is the only province that is implementing these recommendations. It is, frankly, disingenuous to blame the Western Cape if other provinces are not. If they do not have the capacity to implement the recommendations, these provinces should be prepared to transfer the applicable subsidy to the Western Cape so that the children in need can be supported adequately here. However, even this would be inappropriate in terms of the IMC's intention which is that children be accommodated as close to their homes as possible in order to facilitate the process of re-integration and rehabilitation."

INTERVIEWER: "Since the core issue seems to revolve around subsidies, would the WCED take sentenced children from other provinces if the "home" province bore the financial costs?"

MINISTER: "The subsidy is one of the issues. Funding is based on provincial allocations. The Western Cape has already faced a massive subsidy cut, which is one of the factors driving the rationalisation plan in reform schools. Apart from this, subsidy cuts have resulted in the loss of 8000 teachers in the ordinary public school system in the Western Cape. In these circumstances, it is appropriate to ask other provinces to transfer the appropriate subsidy together with the learners they are asking us to accommodate. The new system will bring costs down, and maximise the value of capital assets, to the benefit of all the other children in the education system. This approach will also - and crucially - release funds for the all important task of preventive intervention for children at risk."

Editor's Note:

Interview conducted on 2 February 2000

Statistics: children sentenced to imprisonment

L.M. Muntingh - Director: Research & Programme Development NICRO

From October 1998 to September 1999, a total of 4360 children under the age of 18 were admitted to prisons to serve sentences, at an average rate of 218 per month. The age profile of these children is presented in the accompanying Table 1. Table 2 shows the length of sentences being served by children as at end November 1999. 41% of children were serving sentences of 24 months or less. 239 children were serving sentences of 5 years or longer, and 58 were serving sentences of 10 years or longer.

Although the number of children in prison declined from 1997 to 1998, it increased again rapidly from 1998 to 1999, and by September 1999 there were 32.7% more sentenced children in prison than at the end of October of the previous year. The age group 17 years showed the most substantial increase (25.7%), whilst the only decrease was in the 7 - 13 age group (-27.3%). There were 11 children in this age group serving prison sentences at the end of September 1999.

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Table 3 shows that children are primarily sentenced to imprisonment for property offences (50.5%). A further 30.8% were imprisoned for aggressive offences, 14.5% for sexual offences, 0.7% for narcotic offences and the remaining 3.4% fell in the category "other offences".

Table 1: Age profile of Sentenced Children Admitted to Prisons [Ed. Note: not included]

Table 2: Sentence profile of children [Ed. Note: not included]

Table 3: Offence profile of children serving prison sentences, November 1999 [Ed. Note: not included]

The impact of the training workshop on probation practice

Ruwayda Carloo (PAWC) reports on the impact of the Training Workshop on Probation Practice held in November 1999.

"The workshop was a huge success and was attended by about 88 delegates, including probation officers from all the 9 provinces, representatives from the National Department of Welfare, officials from the Department of Justice and academics from different tertiary institutions.

One of the highlights of the workshop was the introduction on the first day. Mr and Mrs Biehl, who had reconciled with the two young people, Ntobeko Peni and Eazy Nofemela, who murdered their daughter, Amy Biehl, gave their perspectives on the theme "Restorative Justice." The Biehls, Peni and Nofemela were all invited to share their personal experiences with the group. Nofemela and Peni had been convicted and sentenced to long jail terms for their role in the murder of the Biehl's daughter, before being given amnesty by the Truth and Reconciliation Commission on the basis of their full confession and the remorse they displayed. Full confession, taking responsibility for one's actions, remorse and forgiveness are the essential elements of the Restorative Justice process.

The Biehl's story, coupled with their practical experience as victims, inspired the probation officers who were present at the workshop to redouble their efforts at making restorative justice a living reality. The Biehl's also shared a practical outcome of their journey through the reconciliation process: the establishment of the Amy Biehl Foundation, which funds South African community projects that help those still burdened by the lingering effects of apartheid, and focuses especially on youth at risk. The two young men - once prisoners - are now involved in ploughing skills and development programmes back into their communities. At the end of the session, important practical linkages between the Amy Biehl Foundation and our probation officers at the coalface were discussed."

Hard cases...

State v AD attracted much media attention. The victim, well-known community activist and photographer John Rubithon, was fatally stabbed in his home by a would-be burglar. The accused, a child of 14, pleaded guilty to murder in the regional court. Prosecutor Thersia Du Toit reports that the small, frail boy was considered street-wise according to social worker reports.

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"He has never really had a childhood, he still has some contact with his mother but she told the court that she does not have control over him. The child was sentenced to 15 years imprisonment, of which 3 years were suspended for 5 years. Parole may also be considered after 9 years. I believe the sentence was a strict one, maybe too strict for a child of this age, but can this boy really be considered a child if he has decided to live an adult's life?"

African focus: The state of juvenile justice in Malawi

By Adam Stapleton, Barrister and Consultant to Penal Reform International

Malawi shares with South Africa a rising crime rate. This has been attributed to the advent of multi-party rule one month after South Africa's own elections in 1994. However, it is as likely to have something to do with the forcible removal of the Malawi Young Pioneers by the army. The 5000-strong police force, poorly trained and ill - equipped must now fill the void in respect of the country's 11 million inhabitants.

Another disturbing trend has been the dramatic increase of the prison population, up to 55 % from 4550 in 1994 to 7000 this year. The prisons are congested, dilapidated, unhygienic colonial structures. The extent of deterioration was highlighted in 1998 when Amnesty International made the plight of 180 young prisoners held in the juvenile section of Zomba Central Prison the subject of an international 'schools' action. Young men and children suffered from acute scabies, caused by overcrowding, poor hygiene and inadequate health care. This was exacerbated by an inadequate diet, and photographs showed scarred legs, emaciated bodies and young faces gazing vacantly at the camera.

A number of human rights NGO's in Malawi initiated a review of legality of the detention of juveniles currently in prison. They examined the juvenile section of three prisons and interviewed 383 inmates. The initial findings revealed that 50 % of the inmates were not juveniles (i.e. persons under 18), but young adults. Further findings are set out in the fact sheet.

What the table reveals is a common situation: legal systems unable to cope with case-loads and prison systems that lack the resources to keep prisoners in their care at even the minimum standards demanded by international law.

There has been little exposure to the groundbreaking work in the field of juveniles justice from countries like South Africa and Namibia. Thus, in November 1999, an international seminar was organised by PRI, and hosted by the Ministry of Justice, to review policy and practice in the juvenile system in Malawi, and to come up with concrete plans.

The seminar was a huge success: not only did consensus emerge for the need for transformation of juvenile justice in Malawi, but in short three days, a draft model for juvenile justice in Malawi was produced. Commitments from various stakeholders were secured: politicians pledged to bring the draft model to the attention of the Committee on Women and Children and Parliament, and to conduct frequent visits to the institutions for young offenders. Magistrates promised to relax the bail conditions for young offenders and monitor all juvenile cases from the first remand until completion. NGO's undertook to intensify their training programmes, to make the conventions relating to children's rights widely

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known, and to continue assisting the government in the reform process. Foreign participants promised to lend technical support whenever needed. Stake-holders undertook to form a multidisciplinary body - the Justice Forum - to coordinate effective implementation of the recommendations, identify the resources required and the implications for various agencies.

Conclusion

The seminar has served as a launching pad for Malawi as she starts the bumpy road of reform. The international solidarity displayed by the eminent people who attended the seminar and generously offered their service will serve as a pillar of strength and guiding light in the long and tortuous reform process.

Editor's Note: a number of South African experts attended this seminar, which was facilitated by Rosemary Shapiro of NICRO

Award for innovation: Stepping stones

Stepping Stones, the one stop youth justice centre profiled in vol 1 no 3 ARTICLE 40, recently won the first prize in the prestigious Impumelelo Innovations Awards. This programme, sponsored by the Ford Foundation, recognises and rewards innovative government poverty alleviation and delivery projects. It is modelled on a similar initiative that has existed for a number of years in the US, Brazil and Philippines. Out of the 22 contestants that were shortlisted for the criminal justice category, Stepping Stones was placed first with a unanimous vote, after presentation of the Centre's achievements to an independent National Selection Committee. Of special mention was that the multidisciplinary services offered bear the hallmarks of praiseworthy co-operative governance.

Stepping Stones also acts as a National Learning Centre and resource for criminal justice workers in the outlying areas who consult staff for advice. Proud Ursula Scheepers, a manager at the Centre, says that the endeavour has the full support of the local communities, the corporate sector and community based organisations. She feels the publicity generated by winning the 'Impumelelo Award' will enhance the standing of the Centre, and set the stage for the replication of the project in other parts of the country.

Book review: Children's rights in a transitional society

Soras Jagwanth - Faculty of Law, University of Cape Town

This book is an interesting collection of papers dealing with various aspects of children's rights and juvenile justice. The past 5 years have seen major developments, especially the enactment of the interim Constitution and the ratification of the UN Convention on the Rights of the Child. Many of the contributors highlight these and other developments in this area, and show the extent to which they can have a positive effect on the lives of children.

However, there are also limits to the ability of the law to effect meaningful change: so Lilian Edwards describes the experiences of the Scottish legal system in implementing the Convention, and some of the legal, judicial and social barriers to giving effect to its principles. In her contribution, June Sinclair points out the dangers of overlegislating and the limits of the law. She shows how the debates relating to children have in the past lacked a constitution dimension and

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she argues for this to be taken into account when dealing with the rules for children born out of wedlock and custody on divorce. In her contribution, Ann Skelton points out the influence of human rights documents, restorative justice theory and political will in juvenile justice law reform, but cautions against moving from a children's rights to a crime control model. Finally in a joint paper, Julia Sloth-Nielsen and Belinda Van Heerden deal with the background and challenges to the development of a comprehensive Children's Statute.

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