

ARTICLE 40

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

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Article 4 of the CRC states as follows:

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention.”

Update on Port Nolloth One Stop Child Justice Centre

Florina Mouton, Provincial Co-ordinator: Social Crime Prevention of the Department of Social Services and Population Development in the Northern Cape Province, reports on the functioning of the One Stop Centre in that province.

INTRODUCTION

Port Nolloth is a small, rural, coastal town in the Richtersveld, approximately 150 km from Springbok, near the border of Namibia. Unemployment, poverty, HIV/Aids and the lack of recreational activities are some of the challenges that youth in Port Nolloth and elsewhere in the

Richtersveld are facing on a daily basis. Common offences committed by the youth in the area are economic in nature, namely shoplifting, housebreaking and theft.

A new One Stop Child Justice Centre was launched during October 2002 but has only been functional since January 2003.

PREPARATION FOR THE ESTABLISHMENT OF THE CENTRE

The first step in the successful establishment and functioning of the Centre was the involvement of all relevant role-players. This was achieved through individual information sessions conducted by officials from the Provincial Department of Social Services and Population Development, as well as community meetings involving local businesses, non-governmental organisations and civil society organisations.



SERVICES AVAILABLE AT THE CENTRE

Probation Services

These entail the provision of the following:

- Reception, assessment and referral.
- Diversion services.
- Youth programmes and information sessions presented at the Centre.
- Prevention programmes presented at schools (primary and secondary) as well as broader community meetings.
- Information sessions at parent meetings at schools.
- Aftercare services to children who have completed diversion programmes.
- Statutory services.
- Holiday programmes for children from the Richtersveld magisterial district: in the March school holidays, 20 secondary school learners participated, and in the June school holidays 21 grade 7 children from all schools in the Richtersveld district were targeted for these programmes.

In addition, the Department of Social Services and Population Development signed a service level agreement with the Richtersveld Diaconal Services to manage the provision of services at the Centre.

The staff complement is as follows:

- 1 senior probation officer.
- 2 social auxiliary workers (with one vacant post at the moment).
- 1 administrative clerk.

South African Police Service

Two police officers have been seconded to the Centre but are presently still stationed at the Port Nolloth police station, which is approximately 80 metres away from the Centre. They are a superintendent and an inspector.

The police are bringing children to the Centre for assessment and referral services. However, the appointment of permanent staff still needs to be arranged by the provincial SAPS office.

The Department of Justice

Services by the Department of Justice are rendered twice a week on a Monday and Tuesday by a magistrate and prosecutor who travel from Spring-bok, while the clerical services are administered at the Port Nolloth Magistrate's Court. The appointment of permanent staff at the Centre still needs to be ensured by the provincial Department of Justice.

LIAISON WITH OTHER DEPARTMENTS

The Department of Education is a major role-player, especially with regard to the rendering of effective prevention and early intervention services. Accordingly, regular information sessions are being held at the schools. Schools also refer children who have experienced either emotional and/or behavioural challenges to the Centre to undergo programmes in order to avoid expulsion from

school. In addition, as stated above, holiday programmes are offered to children from different schools in the Richtersveld.

The broader community is also involved in the marketing of services at the Centre, and this allows them to understand what child justice is all about.

Furthermore, the business sector is involved by way of making donations and providing sponsorship for programmes.

DIFFERENT LEVELS OF INTERVENTIONS AT THE CENTRE

Prevention

At present, services are more focused on this level and the benefits of these programmes are as follows:

- There has been a reduction in the arrest rate over the last 6-month period. From June to December 2002 a total of 59 children were arrested, whereas from January to June 2003 a total of 43 children were arrested.
- Children are aware of the consequences of getting into trouble with the law through the information sessions that are offered at the Centre.
- Probation officers can spend more time on professional services, i.e. investigations and reports that are needed at the court.

Early intervention

- Children are referred to programmes at the Centre directly from the local schools. These are mostly children who are facing expulsion from school on account of behavioural

EDITORIAL

This edition focuses on a number of developments in the child justice system with a particular focus on the planning for implementing the new Bill when it is enacted.

We continue with our focus on the development of One Stop Child Justice Centres by providing a report from Florina Mouton on the establishment of the Port Nolloth Centre. She reflects on the experiences and practices by staff at the centre on how they shaped the model to suit their unique situation. She also relates the progress made in the provision of services to the Richtersveld area, and highlights what still needs to be

achieved – especially as far as the appointment of personnel is concerned.

Then we highlight two recent workshops that have made progress in designing plans to implement the Bill. The one relates to the development of a national monitoring structure for child justice and also takes a look at how monitoring is achieved in England and Wales. The second workshop was aimed at reform schools and schools of industry and has resulted in some constructive interdepartmental co-operation to resolve present difficulties in the system and provide for short-, medium- and long-term plans in

the future. Related to the theme of the second workshop, Charles Coetzee provides an update on the progress and achievements made by the Western Cape Department of Education in relation to children at risk.

Finally, there is also an article by a candidate attorney who regularly represents children in the magistrate's courts. She highlights the intricacies of representing children in trouble with the law and how each case provides new challenges that go beyond the mere application of substantive law.

• Cover photograph courtesy of the Department of Justice.

problems.

- Diversion services that are offered include the YES programme and behaviour management programme.
- Holiday programmes consist of HIV/Aids awareness, leadership programmes, substance abuse awareness and information on criminal justice procedures.

Statutory interventions

- Court hearings.
- Investigations.
- Pre-sentence and other reports.

CONTINUUM OF CARE

A place of safety for 12 young people is fully furnished but unfortunately not yet in operation, owing to a lack of human and financial resources. These services

will be phased in during the 2003/2004 financial cycle and it is anticipated that the facility will be fully operational during the 2004/2005 financial cycle. In the meantime the majority of children await trial in the custody of their parents/guardians, which is a positive feature of the management of young children in trouble with the law in our area.

However, the other children who are awaiting trial in detention are currently sent to the Marcus Mbetha Secure Care Centre in Upington, which is 550 km from Port Nolloth, or Kamnieskroon Children's Home, which is approximately 250 km from Port Nolloth.

CAPACITY BUILDING

Staff at the Centre, as well as local SAPS officials, were involved

in the following training programmes to ensure effective service delivery at the Centre:

- Developmental Assessment – February 2003.
- Restorative Justice Training – March 2003.
- A training programme at Stepping Stones One Stop Child Justice Centre in Port Elizabeth – May 2003.

CONCLUSION

The enthusiasm, creativity and resourcefulness of the staff at the Centre ensure that the young people from the rural Richtersveld area also experience an effective, streamlined child justice service that is empowering and in their best interest.

Monitoring the new child justice system - mapping the way forward

Photographs courtesy of Rosemary Shapiro.

In its report and Draft Child Justice Bill the South African Law Commission made extensive proposals for a monitoring structure to oversee the new child justice system. However, these proposals were not included in the Child Justice Bill that was introduced into Parliament in August 2002. Instead, Bill 49 of 2002 provides for monitoring provisions to be included in the regulations to the Child Justice Act when promulgated.

At the public hearings before the Justice and Constitutional Development Portfolio Committee in February 2003, many members of civil society advocated for the inclusion of monitoring provisions in the primary legislation and the deliberations of the Committee seem to indicate that a more comprehensive monitoring structure should be included in the legislation than exists at present.

Accordingly the Inter-Sectoral Committee on Child Justice convened a workshop to discuss national monitoring structures and this was followed up by a Consultative Seminar on a National Monitoring Structure for Child Justice in Pretoria on 8 July 2003.

At the seminar there was an information session on the United Kingdom Youth Justice Board, and ideas about monitoring already on the table were discussed. It ended with a general discussion on what is needed for a national monitoring structure to be taken to

the Inter-Sectoral Committee for further discussion.

The English and Welsh experience

Rob Allen, who is a Board member on the Youth Justice Board for England and Wales, gave a brief account of their monitoring structures. The Youth Justice Board monitors the operation of the youth justice system and the provision of youth justice services. It advises the British Home Secretary on youth justice and the content of national standards on community and custody and prevention. It also uses a large proportion of its budget to commission and purchase secure places for children.

The Board consists of ten regional structures in England and a structure in Wales. It has a chairperson with 11 Board members and a chief executive and 150 staff members. This then monitors the regions and the Youth Offending Teams in the regions.

The Youth Justice Board's monitoring framework has evolved into four levels:

- Plans: what it intends to do and how. These plans are produced annually by the chief executive of the local authority with education and social services responsibilities. They provide information on resources and budgets and focus on targets set by the Youth Justice Board. They are monitored through assessment by the Youth Justice Board and if unacceptable, the support for a grant is withheld until the plan is acceptable.
- Outcomes: what is achieved. These include, for example, prevention and recidivism, education and training and use of secure facilities. These are monitored by obtaining quarterly, electronic data from the Youth Offending Teams and monthly data from the secure places. The data is assessed and placed on league tables for comparisons with other regions. In addition, if there is failure to provide data, then a grant can be withheld.
- Outputs: what is delivered. This includes key elements of effective practice and contract standards comprising service level agreements. The key elements of effective practice are monitored through quality assurance processes and the contractual compliance is evaluated through monitors.
- Process: what is done and by when. This includes national standards pertaining to standards of practice, quality of work and responses to non-compliance. This is monitored by independent inspections of Youth Offending Teams. However, the monitoring is infrequent and expensive and needs to be integrated with quality assurance.



From left to right: Adv. Ann Skelton, Director of the UNDP Child Justice Project; Ms Cheryl Gilwald, Deputy Minister of Justice and Constitutional Development; Mr Nickie Jacobs, IT Department, Department of Social Development; Mr Rob Allen, Director of Rethinking Crime and Punishment and member of the Youth Justice Board in the UK; Marlon Webster, IT Department, Department of Social Development. Front: Ms Angela Bester, Governance Advisor, UK Department for International Development.

Some of the achievements of the Youth Justice Board have been:

- A reduction of 22% in the predicted reoffending rate
- A reduction in the delays experienced in the criminal justice system – from 142 days to 68 days
- The development and application of a standardised assessment tool.

Despite this the Youth Justice Board has recognised that more work is needed to reduce the number of children in custody, remove girls from prisons, improve restorative justice practices and ensure children are held in detention closer to home.

The presentation highlighted many challenges that are similarly experienced in South Africa and presented the seminar with one option of how a child justice system can be monitored. The obvious problems that South Africa would encounter with such a system relate to financial resources and a lack of good statistical data, as well as electronic communication systems.

Current ideas in South Africa relating to a national monitoring structure

Ann Skelton then proceeded to brief the seminar on the development of an inter-sectoral national monitoring structure. The reasons for the development of such a structure were highlighted as being, inter alia, the following:

- Ensuring the safety of children
- Providing “alerts” to action that may be needed
- Identifying areas for increased resourcing
- Allowing for effective planning and budgeting.

It was noted that in order to set up a monitoring system the structure and systems have to be in place. For South Africa, ideas relating to structures include those at national, provincial and local levels but the questions remain as to who will staff them, what their powers will be and what resources they will have. The systems that are needed relate to data collection,

analysis and research and effective interventions to resolve problems in the system.

Certain qualitative indicators of performance were then mooted as being essential for the monitoring of the new child justice system. These included:

- The use of alternatives to arrest by the police
- Release from custody before the first appearance
- The situation of children in police custody
- A comparison of recommendations for diversion with the number of actual diversions and to which programmes
- The development of diversion and alternative sentencing options.

In addition, the tracking of children will be imperative to ensure the proper functioning of the implementation of the new legislation. Children that require monitoring include:

- Children awaiting trial in custody for long periods
- Children unlawfully detained
- Children sentenced to prison inappropriately.

The seminar participants were advised that the Inter-Sectoral Committee on Child Justice is looking at a proposal for a national monitoring structure that includes:

- A core team of five departmental representatives appointed by their Director-Generals and chaired by the Department of Justice, which will meet monthly
- This will be supported by a broader team, which comprises a representative from the Office on the Rights of the Child, the Human Rights Commission and three NGOs or experts.

Reform and reform schools: collaboration pays off

On 28 and 29 May, various stakeholders concerned with child justice attended a workshop on awaiting trial and sentenced learners. The main aim of this was to deal with the situation of children who had been sentenced to reform school and who were awaiting designation to a facility. Many of these children were being held in prisons pending their placement. Delegates from the Department of Social Development, South African Police Service, Correctional Services, the UN Office for Child Justice, universities, provincial education departments and teacher unions were all present.

The workshop was convened by the Ministry of Education, who contextualised the subject within the framework of the Education White Paper Number 6 and Curriculum 2005. The key policy orientation of these documents relates to upholding human rights and to inclusivity – there should be no ceilings for learners, and the emphasis should be on support and addressing barriers to learning.

An important founding document for the workshop had been prepared by Themba Blose for the UN Office for Child Justice. This was a situational analysis of reform schools and schools of industry in South Africa. The research undertaken by Mr Blose revealed that there are 19 existing

facilities in South Africa, although these are not evenly spread around the country from a geographical point of view. Outside of the Western Cape, only one reform school exists (in Mpumalanga), resulting in seven provinces being without access to reform schools for sentenced learners. However, save for Limpopo and the Northern Cape, all provinces have industrial schools, many of which have adequate accommodation. In fact, despite appearing to be full on paper, the number of children physically present at these residential facilities is far less owing to (for example) children being placed out on leave.

The qualitative findings of the situational analysis confirmed that many learners in reform schools and schools of industry were suffering from educational neglect, and were illiterate or semi-literate. However, no standardised educational material or norms on programmes to deal with this are yet in place. As regards transformation issues, the study noted that although racial integration had taken place, Afrikaans was still the dominant medium of communication and instruction, and by far the majority of principals were white men. The main recommendation brought to the fore by the situational analysis was that multi-purpose facilities should be established, utilising existing facilities

and accommodation to create options for sentenced learners as well as children placed under the Child Care Act, No. 74 of 1983.

The Western Cape Department of Education presented interesting insight into the transformation of reform schools into youth care and education centres, which has been under way since the investigation of the Inter-Ministerial Committee on Young People at Risk in 1996. There are now four such centres in the province, each catering for 120 learners. Other provinces may only refer children to these residential facilities if the children are accompanied by a “care budget” from the home province’s coffers.

Central to the two days of deliberations was the need to establish what should be done about children currently sentenced to reform school in provinces outside the Western Cape. Of particular concern was the large number of children being detained in prisons in the Eastern Cape – some having spent more than two years in custody already. Delegates agreed to conduct provincial audits of children awaiting placement at reform schools, and to return with a planned course of action to be implemented within a certain period. A week later, representatives from the provincial Department of Social Development and Education

reassembled with the personal details of each and every child awaiting placement, including information on where he or she was being held, and for how long the child had been there. Owing to the fact that the reform school in Mpumalanga had sufficient vacancies, and because many children had in fact "served" their entire sentence, it was possible to devise a plan for each of the children whose names had been gathered at provincial level. As at the time of writing, therefore, 65 children have been released or moved from prison,

which is a dramatic improvement to the system.

What the experience shows undisputably is that intersectoral collaboration can produce the necessary results, and that there is no substitute for getting to grips with each child's individual circumstances in order to find solutions. In addition, the lesson has been clearly learnt that South Africa does not necessarily need more facilities be built, since existing residential centres can be transformed and rationalised to accommodate a wider variety of

learners. The question of equitable provincial access may have to be addressed, however, as it is in principle undesirable to place children far from their places of origin.

The workshop has resulted in a marked step towards a national process of transformation of reform schools. Apart from the question of physical facilities, the next step will be to articulate norms and standards for a revised curriculum, one which is in line with learner needs and which can contribute to sound youth development.

Continued from page 5

Monitoring the new child justice system - mapping the way forward



Mr Rob Allen, Director of Rethinking Crime and Punishment and member of the Youth Justice Board in the UK

Proposals discussed

The participants were then requested to divide into two groups (government and civil society) and attempt to come up with some suggestions relating to a national structure.

The government group suggested a structure that:

- is 3-tiered – national, provincial and local

- includes two consultants to guide the process of monitoring – one an expert in child justice and one who is experienced in data collection and statistical analysis.

The civil society group proposed the following:

- 3-tiered structure – national, provincial and local
- the establishment of an office to provide the co-ordination and management function for the national monitoring committee and to facilitate communication and information transfers between the tiers
- the role of civil society should be advisory to the national structure, while continuing to monitor externally.

It was interesting to note that both government and civil society were heading forward with the same thought process in relation to monitoring at a national level. Both identified the need for assistance to be provided to the national monitoring structure and for

strong ties between all three monitoring tiers.

The seminar will hopefully be followed by constructive discussions at the Inter-Sectoral Committee that will provide implementable proposals for the Portfolio Committee when the Child Justice Bill deliberations recommence.

The workshop also marked the launch of a new child justice web site hosted by the Department of Social Development. The keynote address was delivered by the Deputy Minister of Justice, Cheryl Gilwald, who also took the opportunity to pay tribute to the UNDP Child Justice Project for all its efforts in working towards a new criminal justice system for children.

See notice-board for the web address.

Changes in the education system that cater for learners in distress in the Western Cape Education Department

A brief overview of changes in education regarding youth at risk is provided by Charles Coetzee, Directorate: Specialised Education Support Services Western Cape Education Department

In 1995 an inter-ministerial committee (IMC), drawn from the national departments of Social Development, Justice, Correctional Services, Health, Safety and Security, Education, RDP and various national NGOs, began a thorough investigation into the child and youth care system in South Africa, which was failing to provide effective services to vulner-

practices of these schools, which warranted the urgent transformation of the system. The committee's researchers formulated a new model for the child and youth care system contained in the policy document "Interim Policy Recommendations" (November 1996). All provinces had the chance to contribute to the new approach and the new national policy while these were being evolved and formulated.

As a result of the implementation of the recommendations of the IMC on young people at risk by the relevant departments, the enrolment figures at schools of

ELSEN schools unless the provincial Education Department concerned agrees to pay the WCED for services rendered.

The drop in enrolment has meant that our schools of industry and reform schools were heavily over-staffed and underpopulated by learners. As a result there were two reasons for changing the schools of industry and reform schools. Firstly, they were part of an outmoded and ineffective system, and secondly, they were grossly uneconomical to run. Transforming them, while at the same time rationalising them, had become an urgent necessity.

The new approach, which involves the Department of Justice, Social Services and Education, among others, envisages the child and youth care system as an integrated one that emphasises prevention and early intervention and minimises residential care. In educating young people at risk, a development and discipline approach replaces one of control and punishment. This developmental approach is aimed at enabling young people to experience themselves as whole and competent at any given time. In other words they are able to make the most effective decisions possible, for themselves and others, and thereby make progress towards responsible actions and a

"... they are able to make the most effective decisions possible, for themselves and others, and thereby make progress towards responsible actions and a greater sense of well-being and wholeness."

able children and youth and their families. This committee investigated South Africa's places of safety, schools of industry and reform schools and reported to Cabinet in September 1996 in "In whose best interest?" (a report on places of safety, schools of industry and reform schools) that there were defects in the management and

industry and reform schools have dropped markedly, as alternative placements or programmes have been found for learners who until then would have been sent to these schools. An additional reason for this drop in enrolments in the Western Cape is that the Western Cape no longer admits learners from other provinces to its

greater sense of well-being and wholeness. This means that young people at risk will be cared for in an environment and manner completely different that of the past.

The WCED's application of the new national policy provides five levels of support to young people needing it. The first three levels of support will be offered in ordinary "mainstream schools" and will use life-orientation programmes, guidance and emotional support to help learners with emotional and/or behavioural problems, especially where there is a risk that these problems may result in getting the learner expelled from school, placed away from home or charged with a crime. Other support services and resources are based at Education Management and Development Centres (EMDCs), relevant departments and in the community. In addition, youth development programmes will be delivered by skilled multifunctional teams. Mechanisms for inter-sectoral co-operation and effective communication will be ensured, as these are essential.

The fourth level of support will be offered at youth care and education centres (youth centres). Some of the learners involved here will need residential care based on different levels of restrictiveness; others may attend multidisciplinary therapeutic and educational programmes on a daily basis, after school hours or over weekends.

As regards the fifth level of support, special youth care and education centres (special youth centres) will provide compulsory residence for young people in severe emotional turmoil or in conflict with the law who may need intensive support and may need to be physically, emotionally and/or behaviourally contained. The

learning programmes at these centres will be determined by the needs of the learners and will be relevant to the needs of the community, and also aligned with the national curriculum policy.

These centres will work in collaboration with social workers, EMDCs and schools, and the developmental programmes they follow will focus not only on the needs of young people in distress but also on those of their families.

As part of the new policy on learners at risk, the youth centres

"... there is an urgent need to look at behavioural difficulties as well as strategies for dealing with behavioural issues in a new light, particularly because the old system of punishment and control is ineffective."

and special youth centres have replaced, respectively, the previous schools of industry and reform schools. Since the beginning of 2000, the WCED has established four youth centres (in Wellington, Faure, George and Ottery) and two special youth centres for boys and a unit for girls (Rawsonville, Kraaifontein and Faure). Three of the youth centres accommodate boys and girls and one only accommodates boys. If needed, more centres will be opened. In addition, and as part of the continuum of services provided for learners with barriers to learning, four schools of skills have also been established (in Paarl, Oudtshoorn, Atlantis and Pacaltsdorp).

In view of the current situation in "mainstream" schools regarding learner behaviour, there is an urgent need to look at behavioural difficulties as well as strategies for dealing with behavioural issues in a new light, particularly

because the old system of punishment and control is ineffective. The WCED is currently considering new strategies aimed at building capacity in "mainstream" schools to provide learners at risk with the required support as indicated in the above-mentioned five-level support model, namely mechanisms for early identification, early intervention and school-based support programmes. The purpose of a new strategy would be:

- building appropriate capacity

of educators to ensure quality and effective services and education to children at risk,

- promoting restorative practices and reclaiming school environments for learners at risk within an inclusive education and training system, and
- minimising the economic implications of dealing with challenging learners.

The implementation of a reclaiming and restorative approach with a view to curbing the escalation of disciplinary problems in schools is dependent on a paradigm shift among educators. To this end, a co-ordinated management plan in the short, medium and long term is needed to bring about a new vision and approach, to secure adequate provision of resources, and to build the capacity of educators and support personnel in this respect.

QUALITY JUSTICE VS QUANTITY (IN)JUSTICE

A Personal reflection on 12 months spent representing children in Juvenile Court

Gadija Parker is a candidate attorney at the University of Cape Town's Legal Aid Clinic and appears at the Athlone Magistrate's Court on a regular basis.

The crime rate in South Africa increases daily. Worse still, the perpetrators seem to get younger with each court appearance. Because of their age and lack of capacity or understanding, juveniles must be treated differently from adult accused. The government has clearly understood the need for special treatment of juveniles, which resulted in the introduction, late last year, of the Child Justice Bill (B49 of 2002). A central theme of this progressive piece of legislation is that children should, as far as possible, be kept out of prison and, where possible, should be diverted out of the criminal justice system altogether.

INDEPENDENT LEGAL REPRESENTATION

Firstly, it is crucial that children receive independent legal representation. For ethical reasons, there must at all times be a clear division relating to representation of children and adults. Adult accused are well aware of the fact that children are treated differently, particularly with regard to punishment. For example, a child con-

victed of robbery will in all likelihood be given a suspended sentence, whereas an adult is unlikely to be sentenced to less than one year direct imprisonment. It is therefore very common for adults to involve children in the commission of crimes. If they are caught, the child is forced by the adult to accept responsibility for the crime,

"It is therefore very common for adults to involve children in the commission of crimes. If they are caught, the child is forced by the adult to accept responsibility for the crime ..."

and the State may accept the child's guilty plea and not proceed against the adult.

In one of my recent cases, N and two others, two of the three accused were juveniles. One of the juveniles was very streetwise. The other juvenile was very shy, scared and clearly intimidated. The third accused was a 21-year-old with a string of convictions. I

was sitting in H court during their first appearance, before I was appointed as representative, and I distinctly remember the words of the shy accused, as he repeated over and over again to the court in English "I am guilty, these other two were not with me". When the court asked him, through an interpreter, if he wanted an attorney

he refused point-blank, demanding to plead guilty immediately. I was then appointed to act for him. Later I went down to the cells to consult with him, but he refused to confide in me. He instructed me to draft his guilty plea straight away. I followed his instructions and drafted the guilty plea. I also requested further particulars about the charge. I then went to the prosecutor and read the further

particulars – my suspicions were confirmed in that the accused’s version of events and the complainant’s version of events were completely different. More importantly, the complainant could not identify my accused, but she could clearly identify the other two, whom she knew. The only reason the shy accused was arrested for the crime was because he was with the other two accused two days after the crime was committed, and the complainant had informed the police that three males had robbed her. Armed with this information, I persuaded my client to plead not guilty.

By this stage, the other two accused wanted legal representation. The case was postponed three times so they could get legal aid. Eventually the other accused became tired of the delay in obtaining legal assistance and decided to represent themselves. At the trial the complainant informed the court that she had never seen my client and that he did not rob her. I successfully applied for a S174 acquittal. My client told me he was very scared because if he had been sent to Pollsmoor Prison later that day, the adult accused would certainly have assaulted him. After my client was acquitted, the trial against the other two proceeded. During the remainder of the trial, the streetwise child confessed that he, the adult and another person robbed the complainant and the adult influenced him to help force my client to take the fall for them. They knew my client was an easy target.

All the state prosecutor was interested in was one guilty plea for robbery, regardless of the facts. Had statistics been my primary motivation, I could easily have complied. My statistics would have reflected one guilty plea and two state withdrawals for that day.

A month later I would have had a probation officer’s report and sentencing for the shy child. Instead, I opted for a trial and lost the two state withdrawals. In the end I

“Assistance from the final-year students was certainly welcome and as a result a more comprehensive service was provided to the accused.”

was happy with my decision because justice (which had almost eluded the shy accused) was eventually done.

Innovative assistance in the courts

For the first time, in 2002, students registered for the Legal Aid and Legal Practice course in final year LLB were required to assist me with a trial. The final-year students (working in pairs) and I would read the charge sheet and further particulars, and then consult with our client. Following that, we would brainstorm all possible options, conduct complete research relating to all our options, prepare examination in chief and cross-examination and a draft argument. Assistance from the final-year students was certainly welcome and as a result a more comprehensive service was provided to the accused. A good example is the case of S and two others. As an adult, S was represented by another attorney. UCT Legal Aid represented the two juvenile accused. The charge was robbery with aggravated circumstances. Our accused clients told us that they had stolen R40 000. After our consultation and research, we agreed with the accused that they were guilty of theft, but not of robbery with aggravated circumstances. They gave us instructions not to plead guilty to the charge, but to negoti-

ate for a plea on theft. We (the two students and I) proceeded to plea-bargain with the prosecutor. We were strong on the law and had the facts at our fingertips. We

made it clear to the prosecutor that on the basis of their further particulars they would not be able to prove the elements of the crime, and that we would show reasonable doubt by successfully challenging the credibility of their witness. We said that once we accomplished this, we would apply for a section 174 acquittal. Alternatively, we would plead guilty to theft. The prosecutor realised that our points were valid, and was prepared to accept a plea on housebreaking. The other attorney agreed on behalf of his client. We, however, flatly refused, and after four hours of plea-bargaining, the prosecutor accepted our plea of guilty for the crime of theft. The same deal was then offered to the other attorney.

CONCLUSION

My view of the world has certainly changed since representing children at Athlone Court. Poverty plays a role in most of the crimes committed – theft, robbery and housebreaking. Children are children, and many of them make mistakes or are reckless. Such a mistake may mean that they spend a week in Pollsmoor Prison, where they will be robbed of their innocence forever, if not eventually turned into hard-core criminals. It is for this reason that I have made it my goal to do everything possible to keep each and every one of my clients out of prison.



NEWS

UPCOMING EVENTS

- **National Association of Counsel for Children 26th National Children's Law Conference**

16 to 19 August 2003
Location: New Orleans, Louisiana, USA
E-mail: advocate@NACCchildlaw.org

- **5th Annual Workshop on Procedures of the African Regional Human Rights System**

Date: Effective on Monday 11 August 2003 to Wednesday 20 August 2003
Location: Gambia

The workshop will give participants practical knowledge of how to use African human rights treaties & enforcement mechanisms in their work. Each participant in his/her application will describe specifically & concretely how the skills & knowledge gained through the workshop will be applied to a particular project or programme of his/her organisation.

For more information:

Host: Institute for Human Rights & Development in Africa
Go to www.africaninstitute.org

USEFUL WEB SITE ADDRESSES:

- **Penal Reform International**

E-mail: headofsecretariat@pri.org.uk
Web site: www.pri.org.uk

- **African Network for the Prevention and Protection Against Child Abuse and Neglect - Regional Office**

E-mail: anppcan@arcc.org.ke
Web site: www.anppcan.org

- **The Youth Justice Board for England and Wales**

Web site: www.youth-justice-board.gov.uk

- **New child justice web site for South Africa:**

www.childjustice.gov.za BUT don't forget about www.childjustice.org.za



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