SYNOPSIS 2003

Child Justice Bill

The Ratification of the UN Convention on the Rights of the Child by the South African government in 1995 set the scene for broad-reaching policy and legislative change. The new South African Constitution includes a section protecting children's rights, which includes the statement that children have the right not to be detained except as a measure of last resort and then for the shortest appropriate period of time, separate from adults and in conditions that take account of his her age. One of the earliest cases to come before the newly constituted Constitutional Court was S v Williams (1995) 3 SA 632 (CC) which dealt with the sentence of corporal punishment, until then a sentence commonly used for the punishment of children by the courts. The court struck down corporal punishment on the grounds that was cruel, inhuman and degrading treatment.

In 1994 the new government came to power, and President Nelson Mandela made a promise during his first address to parliament that the issue of children in prison would be dealt with and that in the future the criminal justice system would be the last resort when dealing with juvenile offenders. In the same year, a group of NGOs put forward a set of proposals, suggesting that legal reform was need with regard to children in trouble with the law. The government did act with urgency, as President Nelson Mandela had promised they would, on the issue of children in prison. In this regard, however, the country experienced that the practice of proceeding with too much haste can create problems of its own. An amendment to an existing law which was intended to entirely outlaw the imprisonment of children during the awaiting trial phase led to chaos when it was suddenly promulgated. Inadequate consultation between the relevant government departments as well as a lack of alternative residential facilities for children caused the application of the new law to be fraught with practical problems. So serious were the consequences of this that within a year the

government had to amend the law again, this time allowing children charged with certain offences to be detained in prison awaiting
trial. The debacle also had some positive results, however. It led directly to the setting up of a structure called the “Inter-Ministerial Committee on Young People at Risk” (IMC) which became an important agency for policy making in the field of child and youth care, including the management of children who come into conflict with the law. The IMC set up a number of pilot projects to try out new policy recommendations they had made, and some of these were important incubators for the development of new ways of dealing with children. Of particular relevance to children accused of crimes were projects that dealt with the management of children immediately following arrest.

The Law-making process

The law-making process began when the Minister of Justice requested the South African Law Commission to include an investigation into Juvenile Justice into its programme. The Juvenile Justice project committee of the South African Law Commission commenced its work in 1997 and a discussion paper with a draft Bill was published for comment in 1999. The project committee followed a consultative approach, holding workshops and receiving written submissions from a range of criminal justice role players. Children were also consulted on the Bill whilst it was in development. The final report of the Commission was completed, and handed to the Minister for Justice in August 2000. The Child Justice Bill was approved by Cabinet for introduction into Parliament in November 2001 and was introduced into Parliament in August 2002 as Bill no. B49 of 2002.

SYNOPSIS 2003

Child Justice system already in development

The system proposed by the Child Justice Bill is not a completely new system. It incorporates and builds on some sections in existing laws that have in the past provided sporadic, unco-ordinated protection for children accused of crimes. The new system has been in a process of organic development for a number of years. This development has grown through the introduction of reforms and pilot projects by non-governmental organisations and government departments, often working in partnership. The implementation of the new Child Justice legislation will be made easier by the fact that there is an existing infra-structure to build on.

A quick overview of the Bill

The Child Justice Bill aims to establish a criminal justice process for children accused of committing offences which protects the rights of children entrenched in the Constitution and provided for in international instruments. The objectives clause of the Bill focuses on the promotion of *ubuntu* in the child justice system through fostering of children's sense of dignity and worth and reinforcing children's respect for human rights of others. The clause also stresses the importance of restorative justice concepts such as accountability, reconciliation, and the involvement of victims, families and communities.

The Bill applies to any person under the age of 18 years who is alleged to have committed an offence. The minimum age of criminal capacity is raised from seven to 10 years. It is presumed that children between the age of 10 and 14 years lack criminal capacity, but the State may prove such capacity beyond reasonable doubt.

SYNOPSIS 2003

Child Justice Bill

In order to keep children out of police cells and prisons, the Bill encourages the release of children into the care of their parents and entrenches the constitutional injunction that imprisonment should be a measure of last resort for a child. A probation officer will assess every child before the child appears at a preliminary inquiry. A preliminary inquiry is held in respect of every child within 48 hours of arrest and is presided over by a magistrate, referred to as the "inquiry magistrate". Decisions to divert the child away from the formal court procedure to a suitable programme may be taken at the preliminary inquiry stage, if the prosecutor indicates that the matter may be diverted.

If a child is not diverted, the matter will proceed to plea and trial. Any court before which a child appears for plea or trial is regarded as a child justice court. Provisions have also been proposed in the Bill for the establishment of One-Stop Child Justice Centres. The Bill provides a wide range of sentencing options for children as alternatives to prison sentences. Children who are 14 years or older may nevertheless be sentenced to imprisonment in certain specified circumstances.

The Bill also proposes monitoring mechanisms to ensure the effective operation of this legislation, and promotes co-operation between all government departments and other organisations and agencies involved in implementing an effective child justice system.

Probation work

Probation work consists of a body of occupation-specific knowledge and skill. Probation officers are currently all social workers that carry out work in the fields of crime prevention, treatment of offenders, care and treatment of victims of crime, working with families and communities.

Over the past decade in South Africa the importance of probation officers as role players in an integrated criminal justice system has grown. The department has accordingly strengthened probation services through increasing posts and through wide spread training. The University of Cape Town, Rand Afrikaans University, the University of Port Elizabeth, Fort Hare and Rhodes University are all now offering post-graduate degrees in probation practice. Probation practice is drawn from number of disciplines including social work, criminology, penology, criminal law, psychology, and sociology. The required educational standard for probation officers is set out in the personnel administration standard and in the CORE. A plan is underway to establish a professional board for probation work in the near future.

Probation work is currently carried out in terms of the Probation Services Act no. 116 of 1991 which provides for the establishment of and implementation of programmes to combat crime and for rendering assistance to and treatment of both victims and offenders. An amendment to the Act was finalised during 2002. This amendment inserted certain definitions for terms such as “diversion” and “restorative justice”. It also established home based supervision as an alternative to pre-trial detention. It further provides legal recognition for reception, assessment and referral centres.

Child Justice Bill

The Child Justice Bill provides for a central role for probation officers. They will carry out assessments of every child who comes into conflict with the law, make recommendations about the prospects for diversion, as well as about the release or placement of the child. They will also be required to attend the preliminary inquiry, render pre-sentence reports, and carry out supervision of children in the community. In addition, probation services must ensure that there are sufficient programmes in place to support diversion and alternative sentencing.

Assessment

The Department of Social Development has adopted a model of developmental, strengths-based assessment, and many probation officers have been trained in the use of this method. The assessment of children by probation officers during the first 48 hours after arrest and prior to first appearance is already the general practice in a number of urban centres. Pre-trial assessment of children has become part of statutory law with the amendment to the Probation Services Act in 2002.

The Child Justice Bill provides a more comprehensive framework for assessment, providing that police will assist in ensuring that a child is assessed before the preliminary inquiry. The Bill describes the purpose and process of assessment, and clearly sets out the powers and duties of the probation officer in this regard. According to the Bill each child must be assessed prior to the Preliminary Inquiry. The preliminary inquiry should take place within 48 hours of arrest, but there is provision for it to be postponed. The Bill also provides that the

inquiry magistrate can make a decision to dispense with the assessment if it would be in the best interests of the child to do so.

With regard to availability of probation officers to carry out assessments within 48 hours, the major urban areas are reasonably well served. There are some smaller towns and rural areas which may not have sufficient staff to undertake these assessments, or where the probation officer is required to cover a large geographical area. The purchasing of such services by contracting on a fee for service basis with trained personnel in the private or non government sector is part of the plan envisaged by the Department of Social Development to ensure the availability of probation services to meet the assessment requirements that the forthcoming legislation will set.

Preliminary Inquiry

There is currently no procedure in the criminal justice system called the preliminary inquiry.

The preliminary inquiry is an innovation proposed by the Child Justice Bill. It is to be held in respect of every child within 48 hours of arrest and is presided over by a magistrate, referred to as the "inquiry magistrate". Decisions to divert the child away from the formal court procedure may be taken at the preliminary inquiry stage, if the prosecutor indicates that the matter may be diverted. The preliminary inquiry is also the place at which decisions about pre-trial detention or release

are made if the child is still in custody when he or she appears at the preliminary inquiry.

This insertion of a new step in the procedure that is usually followed in the criminal justice system means that police officials, probation officers, and court personnel will have to alter their conventional way of working to accommodate the preliminary inquiry. For example, on a busy Monday in an urban centre, the morning will probably not see the usual round of first appearances and pleas, as this time will be taken up with the preliminary inquiries which must be held before the matter goes to court. However, it is also likely that a significant number of cases will be able to be diverted immediately at the preliminary inquiry, meaning that court rolls will diminish. The experience at the One Stop Child Justice Centre in Bloemfontein, which started officially in June 2002 and has been following a procedure similar to the preliminary inquiry, shows that within a very short period of six weeks after the launch, the number of outstanding cases on the court roll had dropped from nearly 200 to just over 100.

Diversion

Diversion is the channelling of children away from the formal court system into reintegrative programmes. If a child acknowledges responsibility for the wrongdoing he or she can be “diverted” to such a programme, thereby avoiding the stigmatising and even brutalising effects of the criminal justice system. Diversion gives children a chance to avoid a criminal record, whilst at the same

time the programmes are aimed at teaching them to be responsible for their actions and how to avoid getting into trouble again.

Diversion is practised in South Africa. Although the current law does not specifically provide for diversion, experiments with diversion of young offenders were pioneered by NICRO (a non-governmental organisation partially subsidised by government) since 1992, with the co-operation of Public Prosecutors and probation officers.

Although Diversion is currently not mentioned in the statutes, it has recently been recognized and pronounced upon by the courts in S v D 1997(2) SACR 673 (C), S v Z 1999 (10) SACR 427 (E), and M v The Senior Public Prosecutor, Randburg and another (Case 3284/00 WLD, unreported). Diversion can thus be said to be officially recognised by South African law. In addition, the National Director of Public Prosecutions has published a Policy Directive on Diversion, setting out the circumstances in which diversion may take place.

In the year 2001 diversion services were provided to approximately 15 000 children, through agreements between the National Prosecuting Authority, the provincial departments of Social Development and non-government service providers. The most commonly used diversion programmes are: Youth Empowerment Scheme, Pre-trial Community Service, Victim-Offender mediation, Family Group Conferences and “The Journey”(an outdoor adventure programme). A programme for young sexual offenders, called SAYStOP, is also currently running in the Western Cape and the Eastern Cape and is being established in other parts of the country.

Child Justice Bill

The Child Justice Project (a UN technical assistance project to the government of South Africa, based in the National Department of Justice) has, since May 2000, been working on with provincial departments of Social Development, as well as with NGOs, on an action plan to enhance the capacity and use of programmes for diversion and community based sentencing. This work has included the identification of existing diversion programmes as well as programmes which have potential to be so used, facilitation of province to province learning, the holding of a national Indaba on programmes to support diversion and community based sentencing. The outcomes of this work are effective planning at provincial and local level for programmes to support diversion and community based sentencing, as well as a national data-base of programmes .

The Child Justice Bill indicates that it is the responsibility of the Cabinet member for Social Development to develop suitable diversion options, although the Bill also states that this should not be construed as precluding any other government department or any non-governmental organisations from developing suitable diversion options as well.

The Bill also proposes that an innovative approach will be taken in order to increase access to diversion, and the Bill therefore includes a number of new diversion options that could be inexpensively applied - even where no formal programmes were available.

The Bill also provides a set of principles and minimum standards relating to the content of diversion options. Many of these are clearly aimed at promoting the protection of children's rights in the diversion process. The Department of Social

Development must develop a system for registration of programmes in terms of minimum standards.

The Bill sets out diversion at three "levels", dependent upon the severity or intensity of the expected outcome. Decisions as to when diversion is appropriate are to be based on the individual circumstances of the case and the child concerned, as determined during assessment and the preliminary inquiry. The Bill also introduces (for the first time in South Africa) a legislative framework for restorative justice practices, and in particular family group conferences.

What is an Assessment Centre?

Over the past decade, service arrangements have been developing on the ground in an attempt to streamline pre-trial services to children. Some of these are called Assessment Centres, others are named Arrest, Reception and Referral Centres. These centres, usually based at the Magistrates Court, are staffed by probation officers. They are service hubs, designed to streamline the process of children who have been arrested by police being transferred as swiftly as possible to a probation officer for assessment prior to first appearance.

What is a One Stop Child Justice Centre?

A One Stop Child Justice Centre is a service centre which has a range of services involving several departments, housed under one roof. A very successful pilot project of this model has been operating at "Stepping Stones" in

Port Elizabeth since 1996 (IMC 1998). The project has now been accepted as part of the normal line function, with staff having been permanently appointed. A second One Stop Child Justice Centre has been established in Bloemfontein. Although initially these centres have been co-ordinated by the Department of Social Development, there are recent moves for the Department of Justice to take a more active lead in the promotion of such centres.

The Child Justice Bill empowers the Minister of Justice and Constitutional Development, in consultation with Ministers of other relevant departments, to establish One Stop Child Justice Centres. Such centers are very useful as service hubs which enhance efficient service delivery. Their establishment is to be encouraged. However, it is not essential that such centres be universally in place for the implementation of the Child Justice Bill. Rather, such centres can be progressively realized and promoted, in an organic manner which suits the specific needs of that particular district or region. In their report on costing and implementation of the Child Justice Bill, Barberton and Stuart recommend that the distribution of One Stop Child Justice Centres should seek to maximize impact by being established across metropolitan and certain large urban areas. They propose that the establishment of 19 such centres would serve at least 30% of the country's arrested children, or possibly more given the metropolitan and urban bias in child crime rates. The Department of Justice has budgeted 31 Million between 2003 and 2005 to be spent on infrastructural costs for One Stop Child Justice Centres (Inter-Sectoral Committee on Child Justice, 2002).

Children awaiting trial in detention

The South African Constitution, at section 28(1)(g) gives every child the right not to be detained except as a measure of last resort, in which case, he or she may be detained only for the shortest period of time. Despite this provision and numerous ad hoc efforts on the part of the legislature to limit pre-trial detention of children, the problem of too many children being detained in prison has continued.

On the last day of September 1996 there were 698 children awaiting trial, 12 months later this had increased to 1173 and by September 1998, it was 1276. From October 1998 to November 1999, the number of children awaiting trial in prisons increased even further (by 60%) to 2306. By March 2000 the highest ever number was recorded at 2828. An interesting comparison can be provided for the same period with the number of 18 year olds was tracked for the period April to October 1999. During this period the numbers of 18 year olds awaiting trial in prisons declined by 11% (Sloth Nielsen & Muntingh 2001)

From April 2000 to September 2000 the number of children awaiting trial started to decline significantly and by September 2000 had gone down to 1862. The number has risen slightly since then, the most recent verified statistics being for June 2002, when there were 2162 children awaiting trial in prison.

In addition to the children detained in prison, there are also children awaiting trial in facilities run by the provincial departments of Social Development. The number so accommodated has risen over recent years, and in June 2002 it was 1914 (Department of Social Development 2002). In 1998 the Department of Social Development commenced a programme to support the establishment of secure care facilities and made available conditional grants to all provinces, to the value

of R33 million. In 2000/2001, the Department allocated the last amounts to the North West Province, and Mpumalanga.

A national workshop on Secure Care was held in March 2001 in Bloemfontein to consider the development of a protocol for secure care, uniformity of secure care practice, development of a programme for DQA, establish a forum for secure care, consult on the regulations for secure care, finalise an audit of all facilities accommodating children awaiting trial. During the 2001, a total of 1500 personnel of secure care centres were trained and obtained a basic qualification in secure care.

The government issued a document called the National Interim Protocol for the Management of Children Awaiting Trial in June 2001. This is an inter-sectoral document which clearly sets out procedures that are to be followed after the arrest of a child, and places emphasis on measures to get children released into the care of a parent or guardian, failing which, to have them placed into the least restrictive residential option available.

The Child Justice Bill, whilst continuing to allow older children charged with serious offences to be held in prison to await trial, does aim to limit the number by removing the discretionary clause, and incorporates as part of the law the principle that imprisonment should always be used as a measure of last resort. It is predicted therefore that the total number of children awaiting trial in prison will not rise and is likely, in fact, to be reduced. The current statistics indicate that just over 50% of children in pre-trial custody are in prison. The aim should be to reduce this percentage to less than 30% of all children in custody. At the other end of the spectrum, no children should await trial in police cells.

Child Justice Bill

A further consideration is the fact that due to crowded court rolls in the current system trials are taking longer to complete, and this backlog tends to keep detention figures high. The Child Justice Bill encourages the completion of trials within a six month period from the taking of the plea, as children will not be able to be detained for longer than this (unless they are charged with murder, rape, car high-jacking or aggravated robbery). This provision is aimed at speeding up trials involving child accused.

Home-based supervision as an alternative to pre-trial imprisonment

In addition to increasing the number of beds available in residential facilities, the Department of Social Development is committed to providing community based alternatives to pre-trial detention. The Department, in partnership with the Western Cape Provincial Department, started a home based supervision project during September 1998. The arrested child is placed in the care of his or her parents under the supervision of a probation officer. The child is then monitored by an assistant probation officer. It is recorded that from September 1998 till February 2002 a total of 379 children were in this program. An interesting observation is that out of 379 cases of children in this program 188 cases were eventually withdrawn in court. This means that at least 188 children could have been in prison awaiting trial for up to a year or longer, their young lives totally

disrupted and their schooling interrupted, only to have the charges ultimately withdrawn. It is also noted that such programmes are highly cost effective when compared with the expensive option of residential care. The department plans to replicate this program throughout the country (Department of Social Development 2002).

Pre-sentence reports

Although current statutory law in South Africa does not make pre-sentence reports by a probation officer compulsory, a series of recent High Court judgements have created precedents for the requirement of pre-sentence reports, at least in cases where children are likely to be sent to Reform School or prison. The relevant cases are S v D 1999 (1) SACR 122 (NC), S v J and other 2000 (2) SACR 384 (C) and S v Kwelase 2000(2) SACR 143 (C).

The Child Justice Bill provides that pre-sentence reports should be requested in every case, and that this may only be dispensed with if the matter is a petty offence or if the pre-sentence report would cause a delay that would prejudice the child. However, no sentence involving “a residential element” can be imposed unless a pre-sentence report has been presented to and considered by the court. It seems likely that the new system may require the provision of more pre-sentence reports than are required in the current system, and the Bill also requires that a report be completed with one calendar month from the date on which it is requested. However, the fact that a probation officer will have already completed a pre-trial assessment will shorten the process of the preparation of the pre-sentence report. Probation officers are already dealing with pre-sentence reports in the majority of serious matters.

Community-based sentences

A range of non-custodial sentences are available to the courts for the sentencing of convicted children. It is possible to postpone the passing of sentence conditionally or unconditionally. In the case of unconditional postponement the court does not pass sentence but warns that the offender may have to appear again before the court if called upon to do so. The postponement may be made conditional to compensation, rendering of a benefit or service to the victim, community service, instruction or treatment, supervision or attendance at a centre for a specified purpose. Postponement of sentence is used regularly by the courts, particularly for non-violent offences. Also available under the current law is the option of correctional supervision. This provides for an offender to be placed under correctional supervision which takes the form of house arrest, combined with a set period of community service and attendance at a course. This can either be done totally as a community based sentence, or a person can spend a portion of the sentence in prison, and then be released to carry out the rest of the sentence under correctional supervision. Correctional supervision is not designed for child offenders specifically, and is not used as frequently as it could be. In March 2002 there were 1486 children under the age of 18 years serving sentences of Correctional Supervision, 1219 of whom are 16-17 years old, 224 are 14-16 years old and 43 are under the age 14 years.

Whilst the courts have for many years had the power to use community-based sentences, they have often opted for less imaginative options from the list available to them, such as postponed sentences.

The Child Justice Bill offers a comprehensive range of options for diversion, and then in the community-based sentencing section, refers back to the options for diversion, indicating that any of these can also be used a sentence or be linked to a sentence through postponement or suspension.

Probation services will play an important role in ensuring and brokering the availability of programmes for sentences (which in most cases will be the same programmes used for diversion). They will be trained in this work.
With regard to Correctional Supervision, the content of this sentencing option will be reconsidered to ensure that it is suitable for the needs of child offenders, and it will then be promoted as a sentencing option. The availability of correctional officials to supervise these sentences is also planned for.

Reform School

In the current system, children may be sentenced to Reform Schools (managed by the Department of Education) which are compulsory residential facilities offering academic and technical education. In 1996, when there was a cabinet requested investigation into the availability and suitability of such facilities there were nine Reform Schools in South Africa, seven for boys and two for girls. Since then however, the Western Cape facilities have been “rationalised” and a reform school in Kwa Zulu Natal has been closed.

Currently there are only 4 facilities receiving sentenced children, namely, Ethokomala Reform School for boys in Mpumalanga , Faure Youth Centre (for boys and girls), Ottery Youth Center (for boys only), and Denovo in the Western Cape, which is still in development. The total number of beds for sentenced

children in these facilities is 300, and it will be increased to 420 when the Denovo facility in the Western Cape is complete (Inter-sectoral Committee on Child Justice 2002). The shortage of beds, and the fact that these facilities are not evenly spread through the country is causing numerous children who have already been sentenced to Reform School, to await designation in prison. The situation has been commented upon with concern by the High Court in the unreported case of S v Mtshali and Mokgopadi, case A863/99 WLD.

The Child Justice Bill moves away from the terminology of "Reform School" and instead allows for children to be sentenced to a "residential facility" and the definition of this is broad enough to include facilities run by either the departments of Education or Social Development. This will mean that the Department of Education will be able to consider utilising Schools of Industry for the accommodation of sentenced children and also that currently existing and planned secure care facilities will be able to be utilised for sentenced children and not just for awaiting trial children as is currently the case.

Prison sentences

Children can be sentenced to imprisonment. Under the current law there is no limit regarding a minimum age for imprisonment of sentenced children. In practice children under the age of 14 are not often sentenced to imprisonment – from the period Oct 1998 to September 1999 a total of 66 cases of children under 14 sentenced to terms of imprisonment, compared with 4564 who were aged from 14 to 17 years (Sloth Nielsen & Muntingh 2001: 400).

During 1999, 2000 and 2001 an average of 427 sentenced children were admitted to South African prisons per month. When averages are calculated for each year they are 390.8 for 1999, 438.5 for 2000 and 451.6 for 2001. This reflects an increase of nearly 16% in the monthly average number of sentenced children admitted to prison from 1999 to 2001 (Muntingh 2002).

Most children serving sentences are sentenced to less than 5 years in prison. According to Correctional Services Statistics on 11 September 1999 there were 1375 children serving prison sentences, and of these 239 or 17% were serving terms of longer than 5 years. More recent statistics show that 46% of children admitted during 2001 had been sentenced to 12 months or less.

The majority of people under the age of 18 serve prison sentences of less than 5 years, but the number of children being sentenced to longer sentences is increasing (Sloth Nielsen & Muntingh 2001 401).

The fact that any children under the age of 14 years are being sentenced to imprisonment is cause for concern, and the proposed new legislation seeks to remove the possibility of sentences to imprisonment for children under 14 years of age, although other forms of secure residential care will remain available.

With regard to children of 14 years and older it is not predicted that the Child Justice Bill will bring about any rise in the number of children sentenced to imprisonment. In fact, there should be a reduction in the number of children sentenced to imprisonment, especially those categories of children sentenced to less than 2 years imprisonment, as community based alternatives may be appropriately used in these matters as the programmes to support such alternatives are developed and promoted.

The Child Justice Bill proposes that life imprisonment for children will no longer be an option. This is in line with South Africa's international obligations to bring legislation in line with international instruments.

Legal representation

Children have a right to legal assistance in South Africa in cases where a substantial injustice would otherwise occur, and where a child or his or her family cannot afford to pay for the services of a lawyer, State funded legal representation can be obtained through the legal aid board. Although the percentage of children being legally represented has increased in recent years, it is still estimated to be below 50% of all cases appearing in court (Inter-sectoral Committee on Child Justice 2002). A large number of children who are offered state funded legal aid decline these services, which indicates a need for education of children who have come into contact with the criminal justice system. There has previously been little or no specialisation amongst lawyers regarding legal representation of children.

In May 2001 the Department of Justice and Constitutional Development embarked on a process in partnership with the Legal Aid Board of training legal representatives employed at Justice Centres around the country in the legal representation of children.

Child Justice Bill

The Child Justice Bill provides for access to state funded legal representation when the child is remanded in detention, when there is a likelihood that a sentence involving a residential requirement is to be imposed, and when the child is at least 10 years old but not yet 14 and the matter is to be tried in court. The children in these categories may not waive legal representation.

The idea of non-waiver may appear to be a provision that will cause a large increase in the number of cases that will have to be taken on by the Legal Aid Board. The Legal Aid Board agrees, however, that these categories correspond with the constitutional test of where a substantial injustice would otherwise occur. It is also likely that the Child Justice Bill, with its focus on diversion of cases, will result in fewer cases going to trial overall, although the number of serious cases going to trial will probably remain much the same. These serious cases tend to be the ones in which children do have legal representation in the current system.

Planning for legal representation will be done primarily through making the Legal Aid officers as well as (Legal Aid) Justice Centre managers and staff aware of the requirements of the Bill, and through training of relevant Justice Centre staff and support for efforts to provide some specialization in legal representation of children.

Monitoring

Some effort has been made to set up structures and systems to monitor the situation of children in the criminal justice system, although these have focused mainly on pre-trial detention. There have been ad hoc monitoring of awaiting trial

children in prison through an interdisciplinary project led by the Department of Social Development which was known as “Project Go”, but this project is no longer fully operational. Some non-governmental organisations also monitor the situation of children in prison, but this is sporadic and geographically limited.

There is a general monitoring system for all prisoners, the “Prison Visitors” model which provides for each prison to have a paid prison visitor, and this nation-wide structure is overseen by a judicial inspectorate of prisons. Children have benefited from this system although the quality of the services does differ from prison to prison.

Data collection has been poor, but the recent budget and implementation strategy issued by the Inter-sectoral Committee for Child Justice provides the beginnings of a coherent set of numbers, particularly with regard to arrests and children in custody. And the further development of monitoring systems is planned.

The process of automatic appeal in certain cases is also a useful part of the monitoring process. A number of High Court judgements have picked up irregularities and injustices in relation to cases involving children in the criminal justice system. This helps to monitor what is happening in the courts, and also contributes to law reform and improvements in practice.

The Child Justice Bill includes a section on monitoring that provides for monitoring of the system through an inter-sectoral process. The detailed provisions will appear in the regulations to the Act.


Child Justice Bill

SYNOPSIS 2003