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From the Editors

The CRC country report affords us the opportunity to take stock of what we as practitioners, researchers, lobbyists and law reformers have achieved to date in terms of establishing a child justice system that is based on the articles of the Convention. Since the early 1990s a range of government departments, non-governmental organisations and community-based organisations have been working to change the way in which children are dealt with in the criminal justice system. A lot of energy and hard work has gone into reaching this goal, and a great deal has been achieved. The Minister of Justice will submit the Child Justice Bill to parliament in the near future. The SA Law Commission must be commended for the way in which it has gone about the mammoth task of drafting the Bill. The Bill is based on the standards laid down by the relevant international instruments, ie those mentioned by the UN Committee in response to South Africa's report on the Convention of the Rights of the Child. In the past five years we have also seen the establishment of assessment centres in most metropolitan areas, and this has contributed substantially to improving the situation of children in the criminal justice system. In 1999 more than 10 000 children benefited from diversion programmes operated by government and non-governmental organisations. Numerous research projects, workshops and conferences have also been undertaken in order to inform decision-making and policy formulation. The increased attention given to the role of probation officers in the criminal justice system and the additional posts created in this regard are also major steps in the right direction.

However, there is no use in denying that the number of children awaiting trial in prisons hangs like a dark cloud over the child justice debate. All efforts to reduce this number and to create alternatives seem to have failed. This figure had risen from less than 700 children in September 1996 to more than 2 600 by February this year. This fact has not escaped the Committee, and specific mention is made of the inability to use detention as a measure of last resort. It is crucial for the criminal justice system to be unblocked if we are to see the successful implementation of the Child Justice Bill.

Where does all this leave us? We know by now that we are moving in the right direction, and this has been confirmed by the committee. In broad terms, policies (and legislation) have been formulated that are in line with the national and international instruments pertaining to child justice. We also know that there are severe practical problems when it comes to implementing these policies. The challenge is therefore: Can we and, if so, when will we deliver on these policies?

SA Presentation to UN CRC - setting the agenda for transformation

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By Ooshara Sewpaul

On 16 June 1995, South Africa ratified the convention on the Rights of the Child, without reservations. This international convention provides a comprehensive framework for the protection of children's rights. By ratifying the Convention, South Africa is obliged, among other things, to "recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".

As secretariat of the National Programme of Action (NPA) Steering Committee, the Office of the President is responsible for co-ordinating the implementation of the National Programme of Action for Children, which was launched in May 1996. This is seen as the structure that will give life to the provisions of the Convention.

In terms of Article 44 of the Convention, "State Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights: Within two years of the entry into force of the Convention for the State Party concerned; Thereafter every five years".

The Convention on the Rights of the Child makes provision for a Committee on the Rights of the Child whose main purpose is to examine the progress made by State Parties in achieving the realisation of the obligations undertaken in the Convention.

South Africa submitted its Initial Country Report to the United Nations in November 1997. This report outlines the progress made by the government since ratification of the Convention in 1995. The Committee scheduled the report for consideration at its twenty-third session held in Geneva from 10 to 28 January 2000. Because of the time lapse between the initial country report (1997) and the oral presentation (2000), the Committee submitted 30 supplementary questions on the implementation of the Convention. A government delegation led by the Minister in the Office of the President, Minister Essop Pahad, presented South Africa's report on 25 and 26 January 2000. The delegation consisted of the Departments of Justice, Welfare, Health, SAPS, Labour, Education, as well as provincial representatives.

Summary of the Proceedings at the UN CRC

The UN Committee welcomed the submission of South Africa's initial report, which followed the established guidelines and provided a critical assessment of the situation of children. The Committee was also appreciative of the efforts of the State Party to ensure that its report was submitted on time and took note of the written replies by the government to its list of supplementary questions.

The UN Committee on the Rights of the Child released an initial UN Press Statement in which it stated that it was encouraged by the constructive, open and frank discussion it had with the State Party and welcomes the positive reactions to the suggestions and recommendations made during the discussion.

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The Minister in the Office of the President made an opening statement in which he outlined the situation of South Africa's children.

At the end of the twenty- third session, the UN Committee released its concluding observations on the steps taken by South Africa to implement the Convention on the Rights of the Child. Although the Committee made recommendations on all aspects of the Convention, however this article will focuson the area of child justice.

Regarding factors and difficulties impeding the implementation of the Convention, the UN Committee on the Rights of the Child acknowledged the challenges faced by the government of South Africa in overcoming the legacy of apartheid, which continues to have a negative impact on the situation of children and impedes the full implementation of the Convention. In particular, the Committee noted the vast economic and social disparities that continue to exist between various segments of society as well as the relatively high levels of unemployment and poverty. These factors all have an adverse effect on the full implementation of the Convention and remain challenges for South Africa.

While the Committeewelcomed South Africa's recent efforts to improve juvenile justice, it expressed itsconcern that the juvenile justice system does not cover all areas of the State Party.The Committee's concerns are regarding:

- the lack of an efficient andeffective administration of juvenile justice, and inparticular its failure to comply with the Convention, as well as other relevant United Nations standards;
- the absence of juvenile courts in some regions;
- the non-use of detention as a last resort;
- the situation of overcrowding in detention facilities;
- theholding of minors in adult detention and prison facilities, and the lack ofadequate facilities for children in conflict with the law,
- the limited number of trained staff to work with children in this regard;
- the lack of reliable statistical data on the number of children in the juvenile justice system;
- the inadequacy of regulations to ensure that children remain in contact with the families while in the juvenile justice system; and
- the lack of sufficient facilities and programmes for the physical andpsychological recovery and social integration of juveniles.

The Committee recommends that the State Party:

- take additional steps to implement a juvenile justice system in conformity with the Convention, inparticular Articles 37,40 and 39, and of other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for theProtection of Juveniles Deprived of their Liberty;
- use deprivation of liberty only as a measure of last resortand for the shortest possible period of time;
- protect the rights of children deprived of their liberty, including the right to privacy;
- ensure that children remain in contact with their families while in the juvenile justice system;

- introduce training programmes on relevantinternational standards for all those professionals involved with the system of juvenile justice; and
- consider seeking technical assistance from, amongst other, the Office of the High Commissioner for Human Rights, the Centre for International CrimePrevention, the International Network on Juvenile Justice and UNICEF, through the Co- ordination Panel on Technical Advice in Juvenile Justice.

The experience of appearing before the United Nations Committee on the Rights of the Child was on the one hand challenging and daunting, but on the other hand it was a wonderful and constructive experience. The South African delegation, led by Minister Essop Pahad, left Geneva with a deep sense of achievement by South Africa since the first democratic elections in promoting and protecting children's rights. And, perhaps more importantly, the delegation left with a very clear mandate from the UN Committee on the Rights of the Child on the steps that must be taken to ensure full compliance with the Convention on the Rights of the Child.

Reallocating Expenditure to implement the draft Child Justice Bill

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

Copies of Monograph 14: Costing the Implemen-tation of the Child Justice Bill by Conrad Barberton with John Stuart can be ordered from the Applied Fiscal Research Centre at tel. (021) 650-2719.

The previous issue of Article 40 examined some of the process benefits and cost savings of implementing the draft Child Justice Bill. It was noted that the government currently spends about R675 million per year on dealing with children in conflict with the law and 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 % per year (see Figure 1). This is a substantial saving in anyone's language. However, to realise these savings, expenditure must be reallocated both within government departments and between departments. This article examines the extent of some of these reallocations.

Background

The previous issue of Article 40 sets out the background to and contents of the draft Child Justice Bill. We summarise some of the key points here to place this discussion in context.

Essentially, the draft Child Justice Bill aims to move away from the current situation where the legal framework applicable to children does not differ materially from that applicable to adults. Figure 2 (see previous issue of ARTICLE 40) gives a schematic representation of the child justice system. Some of the important innovations the draft Bill introduces are:

Stage 2: Compulsory assessment of all children by a probation officer as soon after arrest as practically possible.

Stage 4: The "preliminary inquiry" to ensure that all efforts are made to deal with the child in an appropriate manner, to ensure there is sufficient evidence to proceed to trial, and to seek ways of avoiding pre-trial detention.

Stage 5: The "child justice court", which is geared to address the needs of children and is 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-month periodic residence /community service programme (level four). These diversion options are key to channelling cases away from courts and prisons, while still holding children accountable.

Compulsory legal representation for children

The draft Bill emphasises effective action in the period immediately following the arrest of a child and before proceeding to trial. It also increases the legal mechanisms to avoid detention and trial by diverting children to diversion programmes which have a restorative justice content. Furthermore, the draft Bill provides for an increased range of sentencing options, including many alternatives to imprisonment.

In order to work out the cost implications of the above innovations,a "baseline" estimate of annual expenditure on the current juvenile justice system was first established. The next step involved modelling the expected impact of the changes proposed by the draft Bill. To this end the "full" scenario seeks to replicate the flow of children through the child justice system as set out in the draft Bill, while the "roll-out" scenario seeks to replicate how the new child justice system is likely to function at about the halfway point in the implementation process. Running these three scenarios through the costing model produced a set of process and expenditure results.

As noted in the previous issue of Article 40, the costing exercise highlights the fact that implementation of the draft Bill will not only enable the government to realise the substantial savings shown in Figure 1, but will also ensure that the remaining expenditure is managed more effectively. However, in order to reap these benefits, expenditure must be reprioritised between different components or stages of the child justice system. In other words, expenditure must be reallocated between spheres of government and between departments involved in the child justice system.

Reallocating expenditure

The implementation of the draft Bill will inevitably impact on the expenditure responsibilities of at least four national departments and two departments in each of the nine provinces. It could thereforealso impact on the division of revenue between the national and provincial spheres of government.

Table 1 gives a breakdown of total annual expenditure on the child justice system by sphere of government and by department for each of the scenarios.

Table 1 shows that of the R247 million saved by government as a whole each year, about R238 million will accrue to national government and R8,5 million to the provincial sphere of government. In other words, 96% of the potential savings are likely to accrue to the national government. Since the provinces play

an important role in realising these savings, some reallocation of the benefits to them would probably be desirable. This could be done by giving provinces a greater share in the vertical division of nationally collected revenues or by putting in place a conditional grant aimed at ensuring the provinces meet their obligations regarding the child justice system.

Table 1 also suggests that implementation of the new child justice system may cause provincial expenditure to increase initially (see the roll-out scenario) before declining. This can be attributed to increased expenditure by the provincial education departments owing to increased numbers of children being sentenced to reform schools as an alternative to sending them to prison. The numbers decline in the full scenario as the overall number of children being sentenced declines.

The risk of unfunded mandates

Various national and provincial government officials interviewed during the course of costing the draft Bill expressed the fear that it would impose unfunded mandates on the provinces, more particularly on the provincial welfare departments. What Table 1 shows is that at an aggregate level the risk of unfunded mandates arising from the Bill appears to be minimal. However, individual provinces are likely to be affected differently (see discussion below).

Table 1: Total annual expenditure on the child justice system by sphere of government and by department [Ed. Note: table not included.Please check the paper version of this edition.]

Reallocating expenditure within and between departments

Department of Justice

The Department of Justice's role within the child justice system can be divided into three components: (a) the provision of the physical infrastructure required to administer justice; (b) the provision of prosecutors, magistrates, etc and (c) the provision of legal aid. Only costs arising from the use of prosecutors' and magistrates' time and from legal aid were considered. Other components were not costed as they are either not seen as a constraint in the current system or because they are a fixed cost of the overall system of justice.

It is estimated that implementing the draft Bill will save the Department of Justice about R12 million in salaries for magistrates and prosecutors currently involved in the child justice system. These savings are unlikely to translate into savings in the Department's budget. Magistrates' and prosecutors' time will instead be freed to deal with other matters before the courts, thus benefiting the entire justice system.

However, Figure 3 shows that in order to successfully implement the new child justice system the Department of Justice will have to reallocate substantial resources (primarily magistrates' and prosecutors' time) from the trial stage of the system (Stage 5) to the preliminary inquiry (Stage 4). If this reallocation does not occur, or only occurs partially, the trial process will continue to incur the high costs shown in the baseline scenario. Other departments will also continue to incur high costs as a result, notably transport, detention and imprisonment costs.

The importance of the Department of Justice's commitment to the preliminary inquiry process cannot be overemphasised. It is the key to ensuring children are diverted from the court system and are kept out of detention in prison.

Savings by the Department of Correctional Services

The Department of Correctional Services' role in the child justice system is limited to providing detention and sentencing services. Given that a key aim of the draft Bill is to steer children away from the prisons, the Department is likely to realise substantial savings from its successful implementation. In 1998/99 the Department spent just over R3 billion on detention and imprisonment. It is estimated that about R398 million or 13% of this was spent on incarcerating children. It is envisaged that the implementation of the new child justice system could reduce this by some R234 million or by almost 60%. A substantial proportion of these savings would come from very nearly eliminating the use of prisons for detaining children awaiting trial and sentence. Unlike savings in most other departments, we expect it to be possible to translate a substantial proportion of these savings into real cuts to the Department's budget. This would release resources for reallocation, say in the form of conditional grants to provincial welfare departments to pay for diversion.

Improving the efficiency of the Department of Safety and Security

The Department of Safety and Security - or rather the South African Polices Service (SAPS) - is the front line of the child justice system. In the current context, efforts to improve policing would simply result in larger court backlogs, longer delays in trials and more children being detained in police cells and prison. It is therefore essential to get the child justice system working so that it can complement efforts to improve policing.

The SAPS interface with the child justice system falls into at least four categories, namely crime prevention, detention, detective services and transport/escort services. The costing model concentrates on the detention and transport/escort services, as these are an integral part of the functioning of the child justice system. The other two are just as important to the overall success of the system, but are regarded as part of SAPS's broader policing responsibilities.

It is estimated that the new child justice system will cut expenditure on detaining children in police cells from about R27 million in the baseline scenario to just R1 million in the full scenario. It is envisaged that this will be achieved by enabling the police to take arrested children to assessment as soon after arrest as possible, if not immediately. From there they would be released into the custody of a responsible adult(usually a parent), or placed in an appropriate holding facility or referred immediately to a preliminary inquiry.

It is also expected that the Department of Safety and Security will realise substantial cost savings owing to a decrease in the demand for police transport/escort services between courts and places of detention. Estimates show that transport costs fall from R76 million in the baseline scenario to about R44 million in the full scenario. This represents a saving of about 40%.

National Department of Welfare has a key monitoring role

Unlike other national departments, the Department of Welfare's role is restricted to policy development, implementation co-ordination and monitoring. It is expected that the Department will need to spend about R1 million annually on the envisaged Office of Child Justice which will be responsible for monitoring the functioning of the new child justice system. The Department of Justice would contribute a similar amount.

Reallocating provincial welfare expenditures to diversion

The nine provincial welfare departments are responsible for the welfare sector's day-to-day operational activities related to the child justice system. They provide the probation officers or social workers that carry out assessments and pre-sentence reports, and the youth care workers who look after children's physical needs at the assessment centres. They are also responsible for places of safety and the provision of secure care facilities. In addition, the provincial welfare departments provide much of the funding for organisations that do diversion, such as NICRO.

The provincial welfare departments are estimated to spend about R60 million in total on the child justice system. This is about 10 %of total annual expenditure by the provinces on social welfare services. As noted above, the implementation of the draft Bill may enable provincial welfare departments to realise some savings on aggregate (see Table 1). However, this is dependent on the successful functioning of assessment, the preliminary inquiry and a substantial reduction in the number of children appearing in court and the length of trials.

Figure 4 [Ed. Note: this has not been included] shows the breakdown of expenditure by the welfare sector in each of the scenarios. Four things stand out:

Firstly, personnel costs associated with the child justice system increase threefold: from about R2million in the baseline scenario to R6 million in the full scenario. This is directly related to the increased demand for the assessment services of probation officers, as they will be expected to assess nearly all cases involving children. They will also be expected to participate in the preliminary inquiry and play a role in developing diversion opportunities and monitoring such programmes.

Secondly, the demand for the services of places of safety and secure care facilities arising from the child justice system is expected to drop significantly. Even though the demand for such services increases in the earlier stages of the child justice system, this is more than offset by lower demand in the trial and pre-sentencing stages. It is estimated that expenditure on these services could fall by 55%: from R54 million in the baseline scenario to R24 million in the full scenario.

Thirdly, expenditure on diversion will have to increase sixfold from R3 million in the baseline scenario to over R18 million in the full scenario. This is essential if the aims of the draft Bill are to be achieved. Within the system as a whole R15 million is not a substantial amount, especially when compared with the savings it leverages. The problem will be to phase in this increased expenditure. Conditional grants from the national Department of Welfare to the provincial welfare departments may facilitate this process.

Fourthly, it is expected that the provincial welfare departments will have to actively contribute to the monitoring of the child justice system. This will entail

setting up systems at the provincial level to gather and feed information to the Office of Child Justice. Each province is likely to have to allocate R2 million for this purpose.

Table 2 gives a provincial breakdown of the estimated annual expenditure by the welfare departments. Current patterns of expenditure by these departments may well deviate from those shown. The point of the table is to set a baseline against which the expenditure across the provinces can be measured. What is notable is that provinces with predominantly urban populations can be expected to spend far more on the child justice system. For instance Gauteng, which has only 13 % of children between 7 and 18 years, will need to spend some R15 million. This is 25 % of the combined expenditure of the provincial welfare departments. On the other hand, the Northern Province is home to 15 % of the country's children between 7 and 18 years, but will only need to spend R2,6 million or just over 4 % of the R60 million. This clear urban bias in expenditures reflects the urban bias in criminality generally, but particularly among children.

A further point to note is that provinces with predominantly rural populations may experience a temporary increase in expenditure during the implementation phases of the draft Bill. Such an increaseshould be expected as the rural areas generally receive very low levels of services at present. Implementing the Child Justice Bill would lead to improved levels of service which would cost more and which would only be offset by savings in other areas later on in the implementation process.

Conclusion

In order to implement the draft Child Justice Bill and realise the benefits it offers there must be a substantial reallocation of resources from existing activities to assessment services, the preliminary inquiry process and the provision of diversion and alternative sentencing options. The Department of Justice's role in this is critical. Sufficient magisterial time must be made available for the preliminary inquiry to ensure that it succeeds in diverting the maximum number of children from the court system while at the same time ensuring that both the interests of society and the interests of children are served. The provincial welfare departments also have a critical role to play to ensure adequate funding is made available for the provision of diversion.

To a large extent, the success of the draft Child Justice Bill depends on the extent of political and managerial buy-in. The Cabinet should give the draft Bill its full support, and the respective ministers must make it clear to their departments that successful implementation is a government priority. However, most importantly, this support must be reflected in the reallocation of resources between the different components of the system, particularly between departments.

Table 2: Breakdown of annual expenditure on welfare by province [Ed. Note: table not included] Figure One: Total annual cost of each scenario of the child justice system [Ed. Note: table not included]

Figure Two: The Child Justice System (See previous issue of ARTICLE 40)

Figure Three: Annual expenditure by the Department of Justice in each scenario [Ed. Note: table not included]

Figure Four: Total annual expenditure by the provincial welfare departments on the child justice system in each scenario [Ed. Note: table not included]

CRED: a case for creative education

In countless communities all over South Africa, there is a growing sense of apathy among the youth, which contributes to the threat of social disintegration.CRED (creative education with children and youth at risk) has been working with potential role players to the establish partnerships that will ultimately offer constructive alternatives to gang affiliation and drug use among children and youth at risk.

The aim is to promote art and culture as an alternative to crime,to reduce the stigma-tisation of youth coming out of prison and to convey more positive and empowering messages to the broader communities.It has become imperative to challenge the present situation in which crime has become one of the most attractive options facing our youth.We believe that through the constructive and creative engagement of these children and youth, a substantial difference can be made in their rehabilitation and ultimately their active participation in building a safer society.

CRED is a Cape Town-based section 21 non-profit company that started as a collaboration between community-based artists and youth workers committed to the development of integrated, creative and educational programmes for children and youth at risk.CRED has grown out of the experience gained during the B4 pilot project which was conducted between March and May 1998 among 180 boys and girls between the ages of 14 and 18 who were awaiting trial at Pollsmoor Prison at the time.The pilot project aimed to test creative education as a means of engaging and relating to youth at risk.

During the pilot project it became clear that creative education is only one aspect of what should be an holistic approach.To this end, CRED is presently strategising with several other stakeholders to implement an Holistic Youth Development Programme (HYDP). This will be launched as soon as funding and infrastructure are readily available.This centre will serve as a catalyst and referral point where youth released from prison and institutions can receive a variety of services including counselling, rehabilitation programmes, vocational training, rites of passage, life skills, art therapy and other relevant modules.Negotiations are under way with the Cape Town City Council for the allocation of premises for such a vital project.The centre has the potential to serve as a model and could be duplicated in other provinces around the country.

Current CRED activities include:

- outreach creative programmes in two correctional institutions with sentenced and awaiting trial juveniles;
- public roadshows in communities engaging out-of-school children and youth in art-related workshops and events;
- crime prevention campaigns co-ordinating the design and distributionof educational materials such as a series of educational video programmes, three radio dramas, a poster campaign, a youth magazine and a manual promoting creative education with children and youth a risk;
- development of diversion programmes.

CRED motivates for the participation of youth leaders, mentors and role models in initiating creative crime prevention initiatives.We believe that a strong emphasis must be placed on the development and imple-mentation of effective restorative justice, alternative sentencing and rehabilitation programmes, particularly for young people.

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NICRO voted a world leader in fighting crime

At a ceremony in London on 27 January 2000, NICRO (The National Institute for Crime Prevention and Reintegration of Offenders) received international acclaim for its work with young offenders when it was voted winner of the International Community Justice Awards for Work With Young People. Waleed George and Khanya Mpuang from NICRO's National Office received the award on the organisation's behalf from HRH the Princess Royal (Princess Anne) at the International Probation 2000 conference in Westminster.

The Community Justice Awards are designed to attract international recognition for community-based solutions to crime that have been particularly successful or innovative in reducing reoffending. NICRO's programmes Journey to a Safer South Africa through Diversion of Young Offenders, and Journey to a Safer South Africa Through Economic Empowerment were judged the winners of the "Work with Young People" category by an international panel of criminal justice specialists drawn from Denmark, the UK, the US and South Africa and led by Lord Hurd of Westwell, former UK Home Secretary and Foreign Secretary.

NICRO's Journey Programme is aimed at high-risk children and juveniles, usually school drop-outs with one or more previous convictions. Over a period of three to 12 months they are put through an intensive programme of life skills training, adventure education and vocational skills training, designed to make them take responsibility for their actions and become constructive citizens.

Rosemary Shapiro of NICRO had this to say: "We are thrilled and honoured to receive this prestigious award. The competition from around the world was tough. However, NICRO's Journey Programmes have been extremely successful in offering young offenders with alternatives to crime and helping them become fully contributing members of society. We are proud of the international recognition."

The Importance of pre-sentence reports in juvenile cases

In an automatic review in terms of sections 302 and 304 of the Criminal Procedure Act No 51 of 1977 (the Act), the court assessed the importance of considering pre-sentence reports before sentencing young offenders. It appeared that K, a young and unrepresented offender was sentenced, on a guilty plea, to three years imprisonment. Eighteen months of the sentence was suspended for three years on condition that the accused was not convicted of housebreaking, attempted robbery or robbery committed during the period of suspen-sion. The record showed that K was convicted some 12 months after the arrest for the

matter under review, and was sentenced 15 months later. The court found this delay attributable to K's failure to appear before court on his next date of appearance, despite being warned to do so.

While on the run, K committed another robbery, for which he was sentenced to a three-month term of imprisonment. When the matter under review finally came up for trial, K was convicted of contravening section 72(2)(a) of the Act, for failing to appear before court on his next date of appearance despite being warned by the court to do so. For this he was sentenced to a fine of R200.00 or, in default of payment, one month's imprisonment. He was unable to pay the fine and was serving this second term of imprisonment when he was convicted in the matter now under review by the court.

At the time of committing the offence, K was 15 years and 11 months old.At the time he had one previous conviction for housebreaking with the intent to steal and theft, for which the imposition of the sentence was postponed, in terms of sections 297(1)(a) (i)(cc) and 297(1A) of the Act, for a period of three years on condition that he perform 120 hours of community service. It appeared from the record that the only information concerning K's personal circumstances was his brief statement in mitigation of sentence. Although K had indicated in his mitigation that he left school in 1979 while in Std 3, it was not clear from the statement whether he had, at the time, passed Std 3 or not. In his statement he expressed a wish to return to school to continue with his studies in order for him to be able to ultimately support his mother. The review judge decried the magistrate's failure to consider obtaining a pre-sentence report prior to sentencing. The review judge observed that the use of pre-sentence reports is indispensable for ensuring the adoption and promotion of an individualized approach to sentencing.The use and importance of pre-sentence reports before imposing an appropriate sentence on a juvenile offender has been a long-standing feature of our justice system. To illustrate this, the review judge referred to a long line of High Court judgements (including S v Z en Vier ander 1999(1) SACR 427 (E) which emphasised the importance of the pre-sentence reports. International law (including, inter alia, the United Nations Convention on the Rights of the Child and Beijing Rules) also stresses the importance of pre-sentence reports.

The review judge referred to the recommendations contained in the draft report of the South African Law Commission Project Committee on Juvenile Justice and observed that the recommendations of the Committee regarding the mandatory pre-sentence reports and sentences involving a custodial element were widely supported.

The review judge called for the reappraisal and development of judicial approach towards the sentencing of juvenile offenders. The purpose of this was to promote an individualised response which was not only proportional to the gravity and nature of the offence and the needs of the society, but was also appropriate to the needs and the interests of the young offender.

The magistrate was found to have failed to use the mechanisms at her disposal to elicit sufficient information concerning K's personal circumstances before imposing the sentence, thereby under-emphasising one of the elementary criteria for punishment. The review judge observed that the record, save for a brief statement in mitigation, did not reveal a clear picture of K's personal circumstances, which were important when considering an appropriate sentence. For instance, it was not known whether K was or had been employed, or where

and with whom he was living at the time ofcommitting the offence in question and thereafter. The review judge stressed the importance of the pre-sentence report from either the probation or the correctional officer in the process of sentencing young offenders. Accordingly, the finding by the magistrate that K was no longer living as a juvenile, and was thus a candidate for directimprisonment, could not be justified in the absence of the pre-sentence report. The review judge reasoned that the sentence imposed on K was too severe in view of his youth (he was 17 years and 4 months old at the time of sentencing), the fact that he pleaded guilty and the fact that the police had recovered the stolen goods shortly after his arrest.

While the review judge regards robbery as a serious offence deserving of severe punishment, she held that she had a duty to guard against an overeager imposition of 'exemplary' sentences. It must also not overemphasise the importance of the seriousness of the offence and the interests of the community at the expense of a particular accused.

The review judge reversed the sentence imposed by the magistrate and replaced it with a 12-month prison sentence in terms of section 276(1)(i). This sentence provided prison authorities with an opportunity to convert the remainder of K's prison sentence to correctional supervision if it appears that he can benefit from this and that he should have the opportunity of avoiding incarceration. The review judge regarded the possibility of placing K under correctional supervision as fulfilling a dual purpose of monitoring and supervision in respect of young offenders and that this would hopefully help his reintegration into his community.