

# ARTICLE 40

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## From the Editor

The news that the Child Justice Bill was approved by Cabinet in November 2001 set the tone for 2002. It has promised the imminent introduction of the Bill to Parliament and the indication that the Bill will be introduced shortly and then debated in May or June 2002 is confirmation that the long process of child justice law reform is likely to be finalised during 2002.

We have therefore decided to dedicate this edition of Article 40 to the Child Justice Bill and the parliamentary process. Although the Bill and Juvenile Justice Report of the SA Law Commission was finalised as long ago as July 2002, much activity has been taking place in preparation for the passing of the Bill in Parliament. The willingness of the relevant government departments to engage with the Bill and plan for its implementation is highlighted in [Ann Skelton's article](#). Article 40 has also featured the work of the Child Justice Alliance in the past and the Alliance's latest update is available. In addition there is an article on [a study undertaken in rural areas on community justice](#). This article illustrates the inadequacies of the present criminal justice system and the potential for community reconciliation offered by the inclusion of diversion and restorative justice principles in the new Child Justice Bill.

One of the most important features of South Africa's democratic dispensation is the opportunity for all citizens to participate in the parliamentary process. We therefore include articles on [the effect of NGO participation](#) and [on public participation](#), and wish to exhort all our readers to make some form of submission on the Bill. You, our readers, are intimately engaged in the present system of child justice and are well placed to make a valuable contribution to Parliament in finalising the new child justice legislation. We do however, wish to remind everyone that, whereas the law reform process may be completed this year, a new era of child justice in South Africa will only be starting.

## Working towards implementation

***By Ann Skelton and Buyi Mbambo***

The Child Justice Project, a United Nations technical assistance project of the government of South Africa has been working behind the scenes to assist government departments and non governmental organisations to plan effectively for the passing and implementation of the Child Justice Bill.

**Bill worked on by the Directorate: Parliamentary Legislation**

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The Departments spent much of 2001 working on the Bill for introduction to Parliament. The Directorate: Parliamentary Legislation in Justice took the lead on this, but there was much participation from other role players, such as SAPS, Correctional Services and the Prosecuting Authority who all made comments on the Bill in its final stages. The Bill was submitted to Cabinet and was approved in November to be introduced into parliament during 2002.

## **Inter-Sectoral Committee on Child Justice**

The Inter-Sectoral Committee on Child Justice (I-SCCJ) was established which has representatives from the following departments: Justice and Constitutional Development, National Prosecuting Authority, Social Development, SAPS, Correctional Services, Education, Office on the Rights of the Child in the President's office. This Inter-sectoral Committee meets regularly and has achieved the following:

- Ongoing monitoring of statistics regarding children awaiting trial in prison
- Intervention in specific areas to reduce numbers of children in prison such as the setting up of an additional court to hear juvenile matters in Durban
- Receiving complaints regarding specific matters in the child justice system and the referral of these matters to the relevant department or body for investigation or solution
- Discussion of the building blocks of a monitoring structure and system, to be further developed during 2002
- Reporting regularly to the Director General Cluster on Justice, Crime Prevention and Security

The Child Justice Project currently acts as the secretariat of the I-SCCJ, but there are plans for a structured process to hand over all of these activities to the national monitoring structure that will be responsible for the Child Justice Bill in the future, which will be led the Directorate: Children and Youth Affairs in the Department of Justice.

## **Implementation planning and budgeting**

Perhaps the most important aspect of the inter-sectoral work that the Child Justice Project has been supporting is that relating to implementation planning and budgets.

When the Bill was placed before Cabinet it was accompanied by an implementation strategy framework. This document provided a gap analysis, and an indication of the what each of the relevant government departments will need to do between now and when the Bill is put into operation in order to allow for smooth implementation.

This planning process has now gone an exciting step further. Assisted by economist Conrad Barberton, whose services have been contracted by the Child Justice Project, the departments have embarked on a detailed implementation strategy and budget, linked to the Medium Term Expenditure Framework.

A spread sheet has been prepared that includes a look at current budgetary allocations relating to children being taken through the criminal justice process, and then at new activities required by the Child Justice Bill. Budgets to cover these new activities are then set out under the rubrics of "reprioritized funds" and

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"new funds" with columns reflecting the first three years of the life of the new system. This allows for a phased approach to allocations for new requirements, although there are obviously certain fundamentals that are required for the system to work, and these will need to be available from the initial date of implementation. Donor funds are also indicated in a separate column, so that it is clear where donor funding is already earmarked for use in relation to certain activities such as training and monitoring. Each of the departments will complete their own spread-sheet, all using an identical template, and for the two departments that are provincial competencies (Social Development and Education), this entails the involvement of all nine provincial departments. The end result will be a spread-sheet which can provide a complete picture at one glance of the implementation plan and budget for the entire child justice system, but that can also be broken down by stages of the system and by the different departments.

The spread sheet will be very useful in demonstrating to parliament and the public as a whole that the implementation planning has been carefully integrated with the budgeting process - that government has a clear, detailed plan for implementation, and the necessary funds to do it.

This process is something of a first. For one thing, it is unusual because it is an inter-sectoral effort related to budgeting, and secondly because it is happening so early in the process of law making. All too often in the past legislation has been passed and only then does everyone start thinking about how to implement it and whether the money is available to do so.

## **Programmes to support the new Child Justice system**

Following on from a national indaba on "Programmes to support the support the Child Justice System" that was held in May 2001, the Project has continued to work very actively on this issue. The process of developing a data base of programmes is nearing completion. Buyi Mbambo has embarked on a series of provincial indabas, the main purpose of which is to ensure effective planning for proper service delivery regarding programmes. Provincial indabas have been held in 6 provinces, and the remaining three will be held in Limpopo, Western Cape and Free State during April and May 2002. The indaba in the Western Cape to be held in May 2002 will include a "shopping spree" of programmes and various service providers and children will participate.

The project aims to produce a resource manual which will include examples of a range of current programmes, tools for diversion such as guidelines and contracts, a comprehensive paper data base of programmes on offer, and other useful information relating to programmes.

## **Other activities**

Other activities that the Child Justice Project will undertake this year include the following:

- Support government and civil society in the development of a monitoring structures and procedures for the new Child Justice system
- Co-ordinate on the development of an inter-sectoral practice manual to guide practice under the new legislation
- Host a workshop on contractual agreements between government and civil society for service delivery in the Child Justice system, and assist in the

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development of tools to ensure children's rights and protections through such agreements

- Assist government departments to harmonise and further develop minimum standards in relation to children deprived of their liberty

The project will continue to raise awareness about the Child Justice Bill, both within government and civil society. The inter-sectoral work and co-operation between government and non governmental organizations that has already been established will be fostered and strengthened on an ongoing basis. The project will progressively integrate its work with that of the departments and NGOs, so that the work started by the project is carried forward after the project ends.

## **Public participation and the Portfolio Committee on Justice and Constitutional Development**

*By Collette Herzenberg, IDASA*

### **General**

The Portfolio Committee on Justice and Constitutional Development is one of the busiest committees in parliament and has passed over 90 pieces of legislation since 1994. A large amount of the legislation tends to be technical and legalistic by nature and the members have become familiar with such legal language. Many members on the committee have legal backgrounds, however, those that do not contribute to the debate by offering a more grounded and holistic view of the issues.

The committee generally acknowledges the important role civil society plays within the legislative process. In particular, the committee relies heavily on civil society for research and issue-awareness within submissions. Secondly, the committee also looks to civil society to articulate views about the problems and challenges emanating from legislation with regards to delivery and implementation at the ground level.

### **Role of legal drafters**

Legal Drafters are located in the legal branches of government departments and usually reside at 120 Plein Street, Parliament, Cape Town. While located at parliament they fall under the jurisdiction of their Minister who resides in Pretoria. They act as the legislative liaison between government and parliament.

All government departments have legal branches. However, the Department of Justice is unique with a specialised legislation branch. This particular department covers large amounts of law reform due to the nature of the legislation that passes through it and therefore requires more capacity.

### ***Investigation Component:***

Legal drafters deal with all legislative proposals and amendments that emanate from cabinet, ministries; stakeholders, South African Law Commission (SALC) and the public.

Costing and capacity exercise: they consider and investigate proposed legislation for desirability and feasibility. This includes:

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- a study of implementation prospects (such as affordability)
- a study of the impact on other existing and pipeline legislation (holistic view of legislation).

Legal Drafters will then advise their minister on the feasibility of proposed legislation.

## ***Policy Component:***

Legal Drafters are responsible for turning proposals into policy designs. The cabinet will require a policy and implementation report from legal drafters who write a draft bill.

## ***Consultation Component:***

Consultation occurs with stakeholders before the introduction of the draft bill in parliament. Legal drafters do this consultation process at this early stage in order to gain an insight of the sentiments of relevant stakeholders to the proposed legislation. Depending on the feedback, the draft bill can change considerably. This is the first opportunity for meaningful participation in the legislative process, which occurs directly between stakeholders and department officials, such as legal drafters.

Legal drafters often publish the initial bill on the department's website and contact their compiled list of stakeholders. To be notified at this stage it is important to contact the relevant legal drafters in the department to be included on the list. Telephone the Justice Department to find out who the legal drafter is for a bill: 021-465 2317 or 012-315 1500.

## **Introduction of bills to Parliament**

The Department of Justice directs the legislation to parliament where it is introduced formally and given a number: Example [B12 - 2002]. This bill is the 12th bill to be introduced in parliament in the year 2002.

A Legal Drafter will take responsibility for a bill and will ensure the introduction process is adhered to correctly as set out in the Rules of Parliament. The Joint Tagging Mechanism (JTM) in parliament will then refer the bill to the relevant committee.

The first draft bill will be sent to the committee Chairperson, Adv. Johnny de Lange, by the legal drafters in the Justice Department. The Chairperson will be kept updated on developments on the drafting of the bill until it is formally introduced. After introduction, the Department and legal drafters brief the committee about policy and budget implications and the committee uses this opportunity to scrutinize these aspects of the bill.

## **Press releases**

The committee secretary is responsible for contacting the relevant stakeholders via fax with a Press Release to notify them of deadline dates for submissions on a particular bill.

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Civil society organizations that want to participate in submissions and public hearings should contact the committee secretary to ensure that their contact details are listed for press releases on bills.

The committee usually allows for one month to submit a written submission on the bill. During this month the committee secretary will begin to organise Public Hearings.

## **Written and Oral Submissions**

Any party interested in making a written contribution to the bill must submit a written submission before the deadline date to the committee secretary's office:

Ms. Zodwa Velleman, 9th floor, Parliament Towers, 103-107 Plein Street, Cape Town. Tel: 021 403 3660/9.

Fax: 021 462 2142.

Email: [ivelleman@parliament.gov.za](mailto:ivelleman@parliament.gov.za)

Organizations must also make requests to present oral submissions to the Chairperson or his Committee Secretary. It is advisable to do so as early as possible, even before submitting the written submission to ensure a place at the public hearings.

It is important that submissions are clearly typed and written in a certain style, as follows:

- Written submissions should begin by stating the overall stance of the organization on the particular bill.
- The body should consist of a clause-by-clause layout indicating what the problems are within particular chapters and clauses, as well as outlining possible alternatives. This method allows for members to understand clearly what the organization proposes. It is important to remember that a general dismissal or critique of the bill as a whole, without substantive inputs referring to particular clauses, is not viewed favorably by the committee.

## **Public Hearings**

Participants will receive a Public Hearing program. Public Hearings usually cover two days, depending on the number of participants. Participants are expected to make their own travel and accommodation arrangements.

Due to the time constraints of the committee the Chairperson allows between 45 minutes and one hour for each oral submission. The Chairperson, however, also believes that it is important that participants highlight the main issues. Therefore, he believes that these time spans should suffice.

Participants are not recommended to simply replicate their written submission orally, since the committee has usually read the submission beforehand. Public Hearings provide the opportunity for the committee to ask participants about issues that need clarification from their written and oral submission. Secondly, the oral submissions should concentrate on specifics in the legislation that are disputed and offer alternatives to those particular clauses or policy choices.

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The committee is able to grasp the general sentiments from your written submission, so utilize the opportunity of oral submissions to make particular observations and recommendations. This will prove to be more useful and tangible when it comes to debate within the committee itself at a later stage.

Whilst it should be the case that members have received and read your written submission prior to a public hearing, this is not always the case for many reasons. Therefore, it is highly recommended that your organization do a lobbying exercise to the main committee members, especially those who are permanent members, as these are the people who make up the decision-making body of the committee. Ensure that they receive a copy of your submission as early as possible so that they are familiar with your issues and can interact with your organisation in a meaningful manner once you do your oral submission. Secondly, by familiarizing members with your organization they are able to distinguish your input quickly from others.

Secondly, all committees differ and it is important to remember a couple of useful points about the Justice committee:

- The chairperson is extremely knowledgeable about the legislation that he deals with and will probably have an opinion about most of the contentious issues surrounding the legislation. It is important to converse intelligently with sections of the legislation and offer alternatives, as this will ensure he is able to interact with tangible input.
- The number of political parties represented within its membership and the contentious nature of the legislation has meant that the committee seeks a great deal of consensus. Therefore it is unlikely that the ANC-led committee will pursue with legislation without a level of support from DP, NNP, IFP, UDP and ACDP members whose opinions are valued by the Chairperson.
- As with all committees, there are key members who attend all meetings and will contribute meaningfully to the final legislation. It is important to find out what the sentiments are of these key legislators towards areas of the bill that your organisation wants to effect. Remember that debate continues outside meetings and it is within your right to converse with any Member of Parliament on pieces of legislation that affects you.
- The listening audience differs within the committee and due to the mixture of members some will be more intensely involved than others. It is important to have a full grasp of the entire legislation and specifics in order to deal with any questions posed by the members.

## **After Public Hearings**

The committee begins a process of deliberation to take account of submissions and examine the bill. The legal drafter will attend these meetings to take notes and do further amendments and research depending on input from the committee and public hearings.

The legal drafter provides redrafts of the bill with updated information as the meetings continue. The drafter also keeps the Justice Minister advised on the progress of the bill throughout the parliamentary process. The committee will then pass the final bill in a committee meeting and will send it to the National Assembly for debate.

## **Contact Details**

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Chairperson: Adv. JH de Lange, MP  
Parliament  
PO Box 15  
Cape Town 8000

Private Secretary: Ms. Chenille Jales  
Tel: 021-403 2723  
Fax: 021-403 2522

Committee Secretary: Mrs Zodwa Velleman  
9th floor, Parliament Towers,  
103-107 Plein Street,  
Cape Town.  
Tel: 021 403 3660/9.  
Fax: 021 462 2142.  
Email: ivelleman@parliament.gov.za

## **Consultation with children on the Child Justice Bill**

***By Louise Ehlers***

On 16 June 1995, South Africa ratified the 1989 United Nations Convention on the Rights of the Child (hereafter referred to as the CRC). This has implications for South Africa not only in terms of the obligation to enact legislation dealing specifically with child justice as outlined in Articles 37 and 40 of CRC but also in terms of the rights of children to be heard enshrined in Article 12.

The South African Law Commission (SALC) established a Juvenile Justice Project Committee to research and draft legislation aimed at establishing a comprehensive child justice process for the management of children accused of committing offences. During the initial drafting process, the view was taken by the SALC and the Project Committee on Juvenile Justice that public consultation would be critical to the development of appropriate and relevant legislation. It was therefore decided that those people directly affected by the proposed new laws should be afforded the opportunity to comment on the draft Bill. Children (and particularly children in contact with the criminal justice system) were recognised as being important constituents whose opinions could play a vital role in the development of the Child Justice Bill. In 1999 NICRO was commissioned by the SALC's Project Committee on Juvenile Justice to consult with children on the draft legislative proposals that preceded the Child Justice Bill, outlined in Discussion Paper 79<sup>1</sup>.

Consultation with children around legal issues is a relatively new experience in this country, but proved to be an extremely valuable exercise for those involved in the drafting of the Bill. The observations of the children not only breathed life into the tenets of the Convention and but also emphasised the very real discrepancies between what is proposed in the international instruments and what is happening in our police cells and prisons on a daily basis. The human rights abuses and procedural failures in our judicial system as identified by the children emphasised the need for urgent and far-reaching law reform.

The information gathered through the 1999 consultation with children helped to inform what would eventually become the draft Child Justice Bill and Report, which was published by the Project Committee in July 2000. In 2002, the Child



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Justice Bill will be presented to Parliament with a view to its enactment before the end of the year.

Given the success of the previous round of consultation and the insightful responses of the children involved in this process, it was decided that children should once again be asked to provide their opinions with regard to the Bill in its current form, prior to its submission to Parliament. The purpose of this exercise was not to influence the content of the Bill itself but rather to inform parliamentarians and policy makers of the specific experience of children at the hands of the criminal justice system, and to illustrate how the Bill will remedy the problems in the system. A report has been produced as a result of these consultations and this will be used to inform the discussion when members of the parliamentary portfolio committee debate the Bill. The information will help to bring the voices of children to the discussions and debates.

For the purposes of the 2001/2002 study, it was decided to consult with children at various stages in the criminal justice process. They ranged from those who had not had any contact with the formal legal system to those that had been convicted and were already serving residential sentences. The children were selected from a range of institutions (such as prisons) and schools situated in four provinces in South Africa, namely Western Cape, Eastern Cape, North West Province and Northern Province (now Limpopo). These provinces were selected because they provided a balance between well-developed criminal justice infrastructure, staff capacity, procedures and systems (Western Cape and Stepping-Stones in the Eastern Cape) and under-developed infrastructure (Northern Province and North West Province).

During the consultation process there were a number of significant observations made by the participants with regard to the Bill. Of particular interest are the observations which the children made with regard to age and criminal capacity, their experiences at the hands of the police, their experience of detention both in police cells and in prison, and their comments on the usefulness of diversion.

## **Age and capacity**

As regards age and criminal capacity, it is interesting to note that the majority of the children in this study were in favour of raising the age of criminal capacity. This view correlates strongly with that of the children interviewed in 1999. In the previous study there was almost unanimous agreement that children below the age of ten were incapable of planning and carrying out a crime with a full understanding of the moral issues involved. Some of the comments from the recent study included:

*"His mind is not matured to do such crime unless he has seen someone at home or a neighbour do a criminal offence." William, 17 years old.*

## **Police practice**

The South African community has long viewed the South African Police Service with suspicion and fear. The findings of the 2002 report indicate that while there are police personnel who operate within the law, there are many who disregard the basic human rights of children in their custody and operate with brutality and undue force. Some of the most shocking examples of police abuses during the arrest process included placing a child in a plastic bag and pushing him under

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water, a child who was given electric shocks and two children who were assaulted and then placed in the boot of a car.

*"They put you in the van after finish to hit you and police phone the dog unit and take the dog, put in the van with you." Andile, 18 years old.*

*"I was beaten up and forced to admit some other things which I don't know. I had no chance to tell my side of the story." Lubalo, 17 years old.*

## **Deprivation of liberty**

With regard to arrest and detention it is very clear from what the children have said that the holding of children in police cells, particularly when they are not separated from adults, places them in physical danger and that it deprives them of their basic rights as outlined in the Constitution and the CRC. The new legislation as outlined in the Bill will severely curtail this practice thus protecting children held in custody awaiting trial.

*"I was so afraid and we were bad influenced by the three adults making us their channel of dagga when we were visited." Ayanda, 17 years old.*

*"They were beating the new people. The boss of the cell take your meat and clothes. And some they want wives and make us wives." Alfred, 18 years old.*

*"That two men told me they want to sleep with me. When I say no he told the police they close the door and there's none can help you." Omar, 16 years old.*

The responses of the children with regard to all forms of detention, be it in police cells, places of safety or in prison, clearly endorse the position of the Bill that children should be incarcerated as a measure of last resort. The children in this study reported human rights abuses at all stages of the criminal justice process in situations where they were detained. These ranged from physical assault at the hands of adults as well as of other children, deprivation of their basic needs, psychological trauma and even death - there have been twelve deaths of children in detention in the past three years.<sup>2</sup>

*"Prison is a place where you try and get through the day alive. Your heart dies in this place. You get hard and learn not to trust." Adriaan, 19 years old.*

*"There is kids that is 15 and 16 and every day I see them. I see the hurt in their eyes. Not I nor them can cope with this place, only bricks and steel survive in this place." Adenaan, 18 years.*

## **Restorative Justice and diversion**

Restorative Justice is one of the underlying principles informing the development of the Bill and diversion forms a major part of the proposed new legislation. As could be expected, the responses of the children with regard to diversion were positive. More importantly, it is clear from the responses of the participants that many children are not being assessed prior to being asked to plead and thus the option of diversion is not being considered for them. The preliminary inquiry has been included in the Bill in part to address this issue and to ensure that all children are assessed. It is important to note that a lot of work needs to be done to improve the current situation with regard to assessment and diversion in order to ensure a smooth transition once the Bill is implemented.

*"Diversion is to talk about life skills and how you must change your life away from crime. Like a social worker programme to solve problems." Lance, 17 years old.*

*"Diversion is good because some children do things before thinking and after, when they arrested they think back." Jonathan, 18 years old.*

## **Court proceedings**

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Children's perceptions of the criminal justice system are clearly illustrated in their descriptions of court proceedings. It is evident from what the children said that the formality of the courtroom situation often inhibits their ability to speak freely. Their poor understanding of proceedings results in a situation where they are left with a sense of disempowerment and of not being heard. The adversarial nature of adult court proceedings appears to have the effect of putting the child on the defensive, the truth being used only as a measure of last resort. Suggestions made by the children around the development of a dedicated child justice court are useful in that they provide insight into the type of environment in which children would feel most comfortable, thus allowing the prosecution to make informed decisions regarding diversion, conviction and sentencing. Comments include:

*"I was afraid to speak because of the clothes. They are adults all of them." Sipho, 17 years old.*

*"They were speaking big words that I don't understand I was very frightened. It was a very cold atmosphere." Terence, 15 years old*

In conclusion, people often question whether consultation with children is useful around a subject as complex as law reform. The quote below is extracted from the last round of consultations done in 1999 and refers to the publication that resulted from this study. It has been included in this article because its significance has not faded and the message is still as relevant as it was three years ago.

"There is much that the human rights community in South Africa can learn from children's participation, which goes far beyond the bland formality of giving effect to Article 12 of the CRC. The views expressed here bring us face to face with the despair, terror, and loneliness experienced by children in conflict with the law. They make us realise where we have failed - as parents, lawyers and citizens. But they also make us understand that, if their thoughts and opinions are genuinely consulted, if their thoughts are treated with dignity and respect, children will respond in a way that is rational, sensitive and imaginative. We must allow our children to speak. We must teach ourselves to listen <sup>3</sup>."

Notes:

1. NICRO (1999), *The Draft Child Justice Bill: What the Children Said*. University of the Western Cape: Community Law Centre.

2. Skelton, A (2002): Personal correspondence. *Child Justice Project, United Nations Technical Assistance Project to the South African Government*.

3. NICRO (1999) *The Draft child Justice Bill: What the Children Said*. University of the Western Cape: Community Law Centre

## **The Role of NGOs in the Parliamentary Process**

***By Samatha Fleming***

### **Introduction**

As the Child Justice Bill comes to Parliament, it is important to understand the parliamentary process of passing legislation, and also the crucial role that NGOs and civil society in general can play in the passing of a new piece of legislation. As concerned citizens and members of organised civil society, we have specific channels through which we can and should make our voices heard. It is within our capacity to ensure that the children of our nation are afforded fair treatment in the hands of the law.

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This article will deal with a survey of NGOs that has shown trends in successful engagement with parliament and that can be used to guide and advise NGOs about the best way to assist with the Child Justice Bill's passage through Parliament.

## What is Parliament?

Parliament is the part of government often called the legislature, because it is concerned with making the laws of our land. The South African Constitution allows for three different arms of Government, viz. the Executive, the Legislature, and the Judiciary. A simplistic diagram to indicate the different responsibilities of the different areas of government can be set out as follows:

	<b>Executive</b>	<b>Legislature (Parliament)</b>	<b>Judiciary</b>
National	Makes Policy; and implements Policy	Makes new Laws and amends existing Laws (guided by Policy)	Enforces Laws and Policies
Provincial			
Local			

Crucial to the changing of old laws, or the making of new laws to govern our lives, is the parliamentary process. An important part of building a new democracy, such as we are in South Africa, is to ensure that civil society has an adequate voice in these processes of democracy and governance.

## Why should NGOs get involved in the parliamentary process?

The South African Constitution guarantees the right to public participation in the processes of democracy. While it is the responsibility of government to create policies and laws that respond to the needs of the citizenry, it is the responsibility of civil society to ensure that they participate in dialogue and discussion that forms such policy and legislation. When asked about the role of civil society in democratic governance, NGOs that participated in the survey had the following to say:

"One of the most basic signposts of a democracy is citizen participation in government ? [which] builds a better democracy"

Civil society has "the obligation of communicating their constituencies' concerns to legislators and MPs" and has "to ensure that people in power have accurate information in order to make the best decisions"

The role of civil society is as "watchdogs, lobbying, sharing expertise and experience?" "Civil society organisations have specialist knowledge and experience in fields that government does not necessarily have. Together, practical useful solutions to problems can be developed."

In summary, as one organisation put it: Civil Society's role is

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"to provide critical and constructive feedback to government on 5 problem areas and what works well, so that legislation could be changed and developed to promote democratic governance"

As has been highlighted in the above comments, the participation and input of civil society is crucial to democracy, to ensure that the laws that govern our activities cater for our needs as citizens.

## **What are examples of useful interventions in the parliamentary process?**

NGOs who participated in our research used several different and overlapping strategies to further their campaigns. Some of these included building international solidarity; social mobilisation through marches, demonstrations and petitions; letters to various government officials; use of the courts and others. Several of the most important ones that could be applied in the upcoming parliamentary phase of the Child Justice Bill include the following strategies.

Well-researched and co-ordinated submissions: The Child Justice Alliance has been conducting research to ensure that the proposed new legislation reflects a comprehensive child justice system to deal with children and communities affected by the justice system. NGOs who participated in our research said the following about the importance of research, and also of working together:

"Our campaign was successful because of good and sound research; we knew the facts; and had good packaging of the message"

"We were able to influence the formation of legislation through the dissemination of documents that had well documented arguments backed by quality research"

"Each of these organisations also made submissions which critiqued ?[the issue] ?

Therefore we worked together to align our submissions, establish core issues and carry the process of advocacy and lobbying forward"

**Networks:** The importance of working with others cannot be understated. In a survey of 52 NGOs who had engaged with parliament, 85% of organisations had worked with a network of organisations or as part of an alliance. NGOs had the following to say:

"Networking and making submissions in conjunction with other organisations played a major role in the success of our advocacy"

"We put all our resources and energy together and we have managed to all speak with one voice"

"It's not a good idea to organise a campaign of any kind on your own as one individual organisation; more successful when organised in networks"

"Building partnerships was a key strategy"

And NGOs indicated that co-ordinating around submissions is mutually beneficial: "In addition, our building a coalition allowed us to receive support in areas where we are not as strong as other organisations ? we believe that our voice alone would not be heard nearly as strongly as our collective of 6 key stakeholders"

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**Cross-sectoral collaboration:** Campaigns that affected several groups or interested parties found strength in cross-sectoral collaboration, and found that this was influential in the parliamentary process, as shown in the following NGO statements:

"Others can learn from our campaign about the importance of having cross sector agreement on the response"

"Because there were various submissions instead of just one, there were radical and more modest proposals which created space for decision makers to move on making a decision? Having various submissions created the opportunity for organisations out of other sectors to support one another. This created the awareness that various sectors were supporting the specific opinion stated in the submission? Submissions made by our sector were shared with the whole coalition, to inform the others and co-ordinate the content of it."

"One has to recognise that making an impact on parliament takes a tremendous amount of effort and one is seldom able to do so alone; one has to try to work in partnership with other organisations"

"Make submissions: not together, but individual. Because having people saying the same thing more times impresses more than making a statement together once? Even though we might be making the same point, each one has their own unique perspective"

**Tell Your Story:** Members of Parliament on the Parliamentary Committees need to hear real life stories from communities and practitioners in the field, so sending in a written submission or making an oral submission to the Committee is the best way to ensure that MPs on the Committee hear your story. NGOs had the following to say:

"Unless MPS and Government departments are lobbied they are not aware of community needs"

"In our submission, real life stories moved members of parliament"

"The 'personal stories' of children were always a powerful way of demonstrating the points we were making"

*Samantha Fleming*  
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[www.advocacy.org.za](http://www.advocacy.org.za)

## **Retributive Community Justice Research: report by the Restorative Justice Centre**

**By Mike Batley**

### **Introduction**

Over the past several years, there have been a number of media reports about communities taking the law into their own hands. Recently, several of these have involved children. Given that the proposed Child Justice Bill aims to give families and communities a greater stake in justice processes, the Restorative Justice Centre was commissioned by the UN Child Justice Project to do investigative research in this regard. There should be no underestimating the seriousness of

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the dilemma: on the one hand there appears to be a growing trend of communities to be taking the law into their own hands and to be increasingly vindictive in doing so. On the other hand, proponents of the Child Justice Bill are convinced that involvement by families and communities, within clear parameters and with the support of professionals, can make a significant impact in helping children understand the consequences of their behaviour. Is this viable in the light of the developments in communities? The research was aimed at understanding this phenomenon better and making recommendations to relevant sectors on how to promote more restorative community justice responses. However, we wish to note that the scope of the research project was limited and exploratory.

## **Methodology and findings**

The researchers conducted a literature study and worked with three case studies, all of which involved children. The first case was that of Lorraine N, a 14-year girl who lives in one of the villages on the outskirts of Louis Trichardt. Lorraine entered PEP stores to buy some groceries. Before she got to the till to pay for the goods that she intended to buy, she was accosted and accused of shoplifting. Following this, her upper torso was stripped of clothing and painted white by a manageress and two other employees of PEP Stores. In the process Lorraine lost the money her mother had given her. She laid a charge against the three PEP Stores employees with the help of a security guard from a neighbouring store.

At the police station she was photographed and helped to a shower to wash the paint off. After she had laid the charge, the police escorted her home. On the way the police met a bus that was going towards the village and Lorraine was put on the bus in her half-washed traumatised state.

The second case was that of an incident in Ratjephane. Mr S owns a shop there. He stays about 20 km away from the village in a township. His shop has been broken into several times and this happened again on the night of 20 September 2000. The following morning Mr S and Mr M, a relative, collected five boys from two nearby schools during school hours, amongst them two brothers from the M family. The older brother's name was Kagiso. These boys were suspected of involvement in the break-in. The boys were all aged between 12 years and 14 years.

The boys were locked into the back room of the stop and interrogated by Mr S. They were later doused with petrol and set alight as an interrogation technique to get them to confess. While the interrogation was continuing a group of parents from the community was outside the shop and was aware of the proceedings inside the shop. Kagiso's grandmother was amongst them. Kagiso sustained serious burns and later died at the Jubilee Hospital. At the time of writing this report the case of murder against Mr S was in progress.

Kagiso is from a semi-rural community, where there is a headman and community meetings are held on a regular basis. The traditional courts system seems to have little credibility in the community. The nearest police station is approximately 40 km away from the village. There are no other services in the area except for the schools, churches and other community structures. There is a large unemployment rate among the youth.

At the time of the incident Kagiso and his two brothers were staying with their grandmother. Their mother is an adopted child of the M family. The community in

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this village is divided along ethnic lines. The parents that were outside the shop were mostly from the Tswana ethnic group and although they were aware that Mr S was interrogating children in the backroom in an unacceptable way, they did not interfere because they thought all the boys were from the Shangaan1 ethnic group. When a burning child (Kagiso) ran out of the room where Mr S was interrogating them, the parents observed him and did not run forward to help him.

Mr S transported Kagiso together with his grandmother to Jubilee Hospital. After Kagiso's death was announced Mr S came to apologize to the M family and offered to cover all funeral expenses. The incident was reported to the police, and they came to the scene a day later.

The third case study involved three incidents in Pimville Zone 3 where the Evangelical Missionary Society Church was broken into and a number of chairs were stolen. A church elder reported the incidents to the police and it appears that they did not take any action.

On 20 February 2001 the community of held a meeting to discuss the recent spate of break-ins in the area. The police were invited to the meeting but failed to attend. After the community meeting, the community went out to look for the suspected offenders. Four teenage boys were arrested by the community and interrogated. Some of the stolen property was found in their possession. None of the four boys were from Pimville, but from the neighbouring township.

The community proceeded to attack the boys with blunt objects. Three died on the scene and one was taken to the Chris Hani-Baragwanath Hospital. The police arrested some of the community members. The community raised the necessary bail for their counterparts. At the time of investigating the incident most community members were wary to talk to the research team.

A community meeting was held afterwards to discuss the incident and to reconcile the community and the police.

The researchers conducted interviews with a range of people, who had been involved in these cases.

The dynamics that were identified include:

- the particular contexts of the communities in which the incidents occurred, and the specific dynamics of poverty, dependency and power that exist in these areas;
- the functioning of traditional or local community structures;
- the functioning of the criminal justice system in the areas concerned, and the frustration people experience, as well as the distrust and misunderstanding they have of the system;
- the role the media played in reporting the incident.
- African concepts on child rearing
- The role that children play in discipline issues

The researchers conclude by making a number of recommendations based on the implications of the dynamics identified for the following sectors:

- communities and their structures



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- the police
- the criminal justice system
- social service professions
- policy makers and planners

## **Conclusion and Recommendations**

The recommendations of the study focus on the following :

- The need to continue to address poverty (in all its forms) and the lack of services,
- Increased awareness of the needs of communities, victims, and offenders,
- Multi-sectoral education, training and co-operation on a range of matters.

The need to be creative in actively implementing restorative justice approaches, as outlined in the Child Justice Bill and otherwise, emerges as a key recommendation. The research raises issues about evaluation and monitoring of services to children.

The research report is also aimed at generating more research interest in this area. One of the outcomes has been that the RJC has received funding to develop a diversion model that can be implemented in the rural and semi rural areas. This is particularly important as the Child Justice Bill will soon become a reality. There is a need that diversion programmes that can effectively deal with situation such as these be available to allow for effective implementation of the legislation.

The research report can be found on the Restorative Justice Centre Website:  
[www.rjc.co.za](http://www.rjc.co.za)