

A New Child Justice System:

Two decades of research

**An annotated bibliography
collating documents used to inform the process of
child justice reform in South Africa**

2001

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In association with the
CHILD JUSTICE ALLIANCE

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INTRODUCTORY PAGES

Why create an annotated bibliography?

During the process of investigating and drafting the Child Justice Bill, there has been extensive consultation of both international and local information relating to child justice. This information comes in various formats: there are conventions, statutes, bills, papers, textbooks, articles, conference papers, to mention but a few. Furthermore, within these various formats, the sources of information differ in content: some are quite broad in nature, covering lots of issues under one title, whilst other sources are fairly specific, and deal with just one or two issues. At the same time, some sources of information are full of legal and technical language, whereas others contain information that is expressed in a way that is relatively easy to understand.

For anyone wishing to familiarise himself or herself with, or hoping to read more about, issues relating to child justice, the process of identifying and locating the most appropriate material for reading is often a daunting one. That is why we have created this annotated bibliography. Whether an individual is acquainted with child justice or not, this bibliography hopes to be of some assistance by drawing together a collection of profiles on some of the most relevant child justice information currently available.

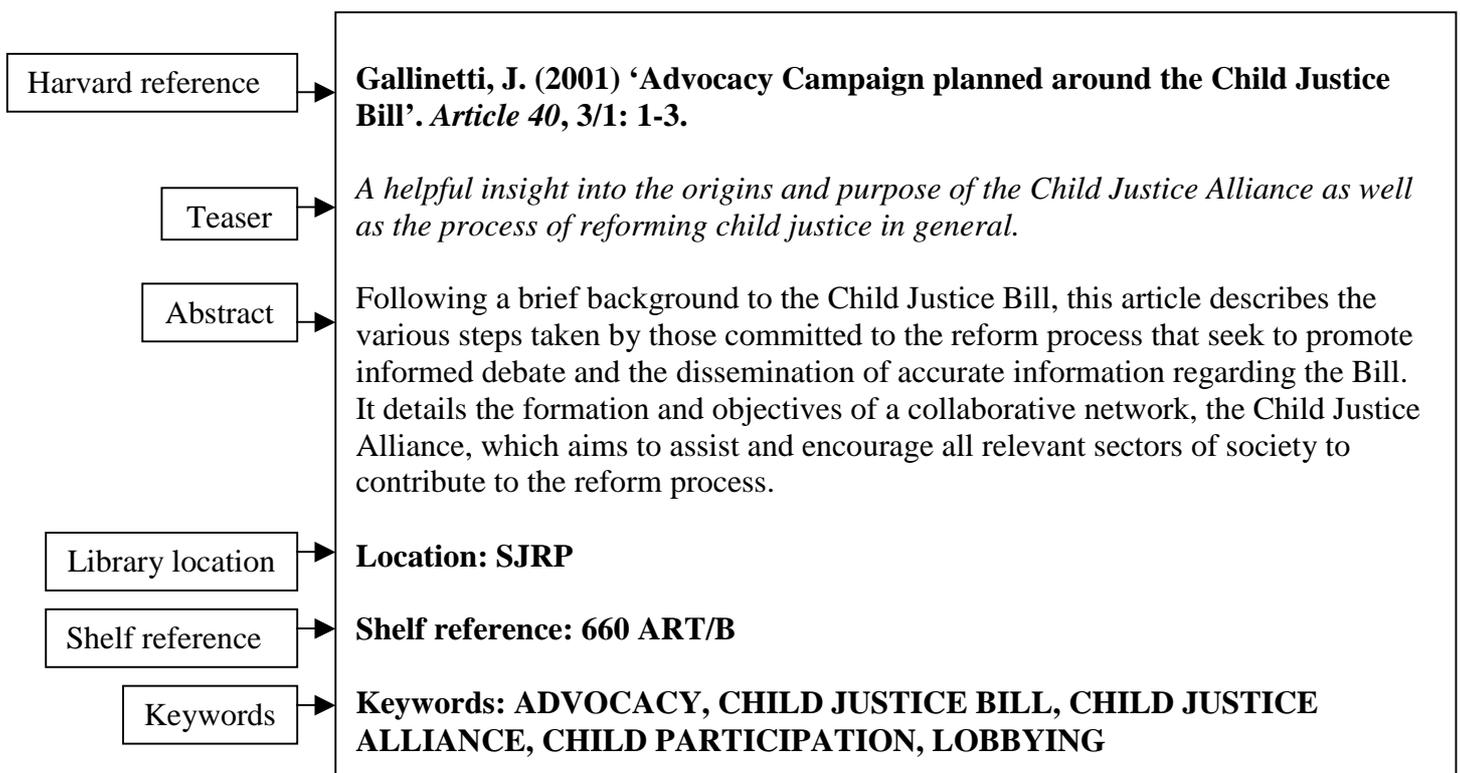
What information does this annotated bibliography include?

The literature that has been included in this bibliography represents much of that literature used during the process of investigating and drafting the Child Justice Bill. Hence, many of the sources that feature within are drawn from the bibliographies of the South African Law Commission's (SALC) Discussion Paper (released January 1999) and Report (released in July 2000) on juvenile justice. However, these bibliographies do not include sources to satisfy all inquirers into child justice issues. In order to balance these sources, many of which are quite legalistic, with information of a more accessible nature, several articles from 'Article 40', a publication produced by the Community Law Centre at the University of the Western Cape, have been included. References have also been selectively drawn from the vast array of information available at the University of Cape Town's libraries, namely the SJRP, the Law library and the Main library. Additional sources have been found on the Internet and in various bibliographies compiled by individuals, namely Ros Koch, Lashias Ncube and Prof. Julia Sloth-Nielsen.

This collection is by no means exhaustive nor does it attempt to elevate the importance of one topic above another through the inclusion of a greater number of sources under one title than might be found under another. Due to the lack of information and research available on certain topics, there will inevitably be gaps in the bibliography. However, in view of the changing nature of both policy and practice in the area of child justice, certain sections that currently offer scant information, have been included. As more literature becomes available on these topics, it is hoped that the bibliography can be revised to include new literature so that it provides as comprehensive a collection as possible.

How can it help you?

The collection of references has been sorted into various categories and sub-categories for ease of reference. These categories are based on the framework of the Child Justice Bill and are listed previously on the 'Contents' page. Within each category, references are listed alphabetically by author. Each reference is arranged according to 'Harvard style' referencing. Under each reference we have included a short 'teaser' that gives you a quick snapshot of the source, for example, to let you know how technical the information is or how long or short an article is. By offering a short description, or 'abstract', of each source, we also hope to give you, the user, the chance to decide whether or not the information provided by that source will suit your needs. The selection of 'keywords' at the end of each profile is there to help you identify the key issues covered by the source and to give you ideas of what words to use when searching for related documents. A more comprehensive list of 'keywords' can be found at the back of this publication. Here is an example of what information is provided in each profile:



If the information looks useful then you can retrieve it in full from the location that is listed. Unless otherwise indicated, copies of the information included in this bibliography are available at the SJRP (Social Justice Research Project) at the University of Cape Town (contact details for which are noted below). At the SJRP, there is also access to an electronic database for the purpose of tracing further sources of information available at the SJRP. The keywords included at the end of this publication are intended to help in this regard.

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WHY DO WE NEED A CHILD JUSTICE BILL?

GENERAL BACKGROUND

Process of reform: 1992-1998

Cantwell, N. (1998) 'Nothing more than Justice,' in UNICEF'S *Innocenti Digest 3 – Juvenile Justice*. pp. 16-17.

A brief article considering 'what counts most' for juvenile justice.

The author begins by identifying the 'real issues' involved in achieving justice for children in conflict with the law. He argues that issues such as the age of criminal responsibility are subordinate to issues relating to the rights of children. He maintains that prevention and detention are more crucial components of a juvenile justice policy. There is an important link drawn between the fact that efforts to prevent offending are, from a practical standpoint, virtually identical with the promotion and protection of the rights of the child contained in the CRC. The author also notes that the situation of children arrested and detained on pre-trial remand is of special concern. The article observes that there is a widespread belief that 'children in conflict with the law' has not been an issue that has been prioritised by governments. However, the author states that, more often than not, the issue *has* been on the priority list but it has simply not been dealt with correctly. He argues that governments tend to tackle this issue in terms of 'fighting juvenile crime' rather than promoting 'juvenile justice'.

Location: SJRP

Shelf Reference: 661 CAN/B

Keywords: CHILDREN'S RIGHTS, DETENTION, DIVERSION, PREVENTION, PRISON, PUBLIC OPINION, RESTORATIVE JUSTICE, SENTENCING, UN CONVENTION

Community Law Centre. (1992) *Justice for the Children: No child should be caged*. CLC: University of the Western Cape.

A situational analysis of children in trouble with the law in Cape Town.

The report documents the results of more than a year of research and advocacy by the authors and other contributing organisations concerned with the situation of children in trouble with the law in South Africa. Its purpose is to explain why children in South Africa are in prison and to demand that such children should be released and moved into more "suitable" places. Having introduced the background behind assisting children in the criminal justice system, the report then investigates the legal status of these children, focussing primarily on the law as it applies to those who are held in prisons or police cells whilst awaiting trial or placement. However, due to the link between the welfare and criminal justice systems under the law, it also mentions certain provisions of the welfare system. The report also provides statistical data on children awaiting trial, placement of sentenced youth in prisons and police cells for the period of time under review. It looks at the conditions in Places of Safety, their under-utilisation in some areas and overloading in others. It tries to understand why children are imprisoned and to establish which government department is responsible for these children. It concludes by making recommendations on how to solve the

problem, urging state departments to consult with organisations and groupings with experience and knowledge in this field.

Location: SJRP

Shelf Reference: 660 JUS/S

Keywords: CHILD CARE ACT, CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, LEGAL STATUS, POLICE CELLS, PRISON, REFORM, STATISTICS

Community Law Centre. (1993) *Letting in the light: seeking justice for the children of South Africa*. Cape Town: University of the Western Cape.

A workbook for children in trouble with the law, and their families, friends and advocates.

This workbook represents a collection of experiences and knowledge gained by youth advocates who have appeared regularly on behalf of children in five Cape Town juvenile courts. Each contributor offers a case study and an analysis of the issues highlighted by the case. Key issues include: how police should treat children; the possible diversions that could be used at the pre-trial stage; the ways in which children are treated in court; the importance of certain role players in assisting the child; the alternatives to punishment; and the rebuilding and preserving of the family. The workbook is designed to encourage child justice personnel to implement similar intervention projects in their respective regions. It highlights four important points for advocacy efforts in juvenile justice. Firstly, advocates must propose concrete solutions to the problems they address. They must use a variety of strategies and be flexible over a prolonged period of time to achieve their goals. They must find “partners” within the system and the community to achieve successful implementation of reforms in the short-term. They must also work towards empowering parents or children to make decisions about their own lives.

Location: SJRP

Shelf Reference: 660 CHI/B

Keywords: ARREST, ASSESSMENT, CHARGE, CHILDREN’S RIGHTS, COURT, DETENTION, DIVERSION, LEGAL REPRESENTATION, POLICE, PRISON, SENTENCING

Community Law Centre. (1995) *Report of the International Seminar on ‘Children in trouble with the law’*. Cape Town: University of the Western Cape.

A compact handbook covering an impressive array of child justice issues in a short, well-structured manner.

This report on the international seminar covers constitutional proposals, legislation and policy that ensures the protection of the legal and human rights of children in trouble with the law. It summarises in a clear and easy-to-read fashion many of the presentations that were given at the seminar and also records the suggestions and discussions put forward as part of each session.

Location: SJRP

Shelf reference: 660 REP/S

Keywords: CHILDREN AWAITING TRIAL, COURT, DETENTION, DIVERSION, JUVENILE JUSTICE, LEGAL REPRESENTATION, POLICE, PREVENTION

Glanz, L. and Schurink, E. (1993) *Background Document - Workshop on delinquency: Proposed National Strategy*. Pretoria:HSRC.

Analysis of delinquency and what forms it can take.

The paper attempts a definition of delinquency - "young people who run away from home, who drop out of the formal education system, who get caught up in a world of drug and alcohol abuse and who fail to enter the world of work." The document gives a checklist of delinquency that vary in seriousness from "failing to return extra change to attacking someone with the intention to seriously hurt or kill." The document summarises a self-report study conducted by Glanz (1990) among 700 young black offenders. Her study that found that 58% of the sample reported having committed at least one of the acts of delinquency in the checklist put to them. The same study indicated that 15 % of the males and 8 % of the females reported having committed in excess of 20 delinquent acts and that this group was in danger of becoming involved in an extended criminal career. The group also became the prime focus of delinquency prevention efforts.

Location: SJRP

Shelf Reference: 663 GLA/B

Keywords: DELINQUENCY, OFFENDER PROFILE, STATISTICS

Inter-Ministerial Committee on Young People at Risk. (1996) *Interim Policy Recommendations*. Pretoria: IMC.

Pagination: 1-107

An in-depth report setting out recommendations for the transformation of the child and youth care system.

This report begins by identifying the various reasons for the transformation of the child and youth care system. Chapter 2 outlines the aims behind the proposals and lays out a framework for services. Thereafter each chapter focuses on individual aspects of the system, namely prevention, early intervention, the statutory process and the continuum of care services. The final chapters consider quality assurance, including the issues of minimum standards and monitoring, and the actual process through which transformation ought to take place. The suggestions made are relevant to the reform of child justice since the scope of child and youth care system encompasses not only for children in need of care and protection but also children in conflict with the law.

Location: SJRP

Shelf reference: 667 IMC/S

Keywords: CARE, EARLY INTERVENTION, EVALUATION, IMC, MONITORING, POLICY, PREVENTION, RESOURCES, STATUTORY PROCESS, TRANSFORMATION

International Conference on the Rights of the Child. June 1992. (1992) *The search for Justice in a Juvenile System*. Morris, M. Cape Town: University of the Western Cape.

A paper setting out the form and terms of an alternative model of juvenile justice, that of "community-corporatism"

This paper explains how and why human rights have been ignored by the agents involved in juvenile justice in South Africa – including police, prosecutors, social workers, correctional officers and the judiciary. It re-examines the underlying theory of the juvenile system in order to conceptualise a new model that fits the needs of South Africa. The author argues that there are advantages to conceptualising the criminal process in terms of rights in general and human rights in particular. This approach, she continues, requires a complete restructuring of the existing system and an analysis of practical means of implementation and acceptance by all communities, the legal, policing, welfare and, most importantly, the familial and neighbourhood communities.

Location: SJRP

Shelf reference: 660 JUS/S

Keywords: ADVOCACY, CHILD CARE LEGISLATION, CHILDREN'S RIGHTS, COURT, DETENTION, DIVERSION, DUE PROCESS, JUVENILE JUSTICE, LEGAL REPRESENTATION, POLICE, SENTENCE, WELFARE

Juvenile Justice Drafting Consultancy. (1994) *Juvenile Justice for South Africa: Proposals for Policy and Legislative Change*. Cape Town: Allies Printers.

A ground-breaking publication that represents the first step towards the legislative creation of a juvenile justice system.

This well-designed publication puts forward several ideas for reforming the way in which young offenders are dealt with in South Africa. The proposals are set out in the form of a Bill, containing one section for definitions and one for principles. The remainder of the 14 sections sets out rules for the handling of any young person who comes into conflict with the criminal law. In the commentary, the 14 sections are referred to collectively as the 'text' or the 'draft'. By reading the commentary together with the text, one can understand the rationale behind the proposals of the Drafting Consultancy.

Location: SJRP

Shelf reference: 660 JUV/B

Keywords: AGE, ARREST, CRIMINAL CAPACITY, FAMILY GROUP CONFERENCE, JUVENILE JUSTICE, PROSECUTION, RECEPTION, REFERRAL, SECURE CARE, SENTENCE

Ministry of Justice and Community Peace Foundation. (1995) *Conference on Crime, Security and Human Rights Proceedings 24-26th February 1995*. Cape Town: Ministry of Justice.

Pagination: 1-213

A record of proceedings of the Conference on Crime, Security and Human Rights.

The book reflects a huge variety of issues discussed in response to the question of how South Africa is to tackle crime within the framework of an emerging human rights culture. The views and recommendations of a wide range of experts, victims and institutions involved in crime prevention and analysis are gathered and proposed solutions to crime are included.

Location: SJRP

Shelf reference: 160 MIN/S

Keywords: BAIL, BILL OF RIGHTS, CRIME PREVENTION, HUMAN RIGHTS, PAROLE, POPULAR JUSTICE, SENTENCING, TRADITIONAL COURTS, TRANSFORMATION

Palme, L. (1997) 'No age of innocence: Justice for children'. *Progress of Nations* 53.

Global analysis of children in conflict with the law.

This interesting paper looks at how a child's fundamental entitlement to due process of law has been neglected in many countries. The author argues that few countries take seriously a young person's right to fair treatment at the hands of the justice system, stressing that few adults even realise that young people have this right. When young people come into conflict with the law, instead of finding compassion and help, they often face harsh punishment, and without the legal protections that adults have. The author calls for fair treatment at the hands of juvenile justice systems that ought to be designed to aid youngsters' return to productive society as quickly as possible.

Location: SJRP

Shelf reference: 661 PAL/B

Available online: <http://www.unicef.org/pon97/protect1.htm>

Keywords: CONFLICT, CRIMINAL CAPACITY, DUE PROCESS, INTERNATIONAL, JUVENILE JUSTICE, PREVENTION, RESPONSIBILITY

Pinnock, D. (1997) *Gangs, Rituals and Rites of Passage*. Cape Town: African Sun Press.

This book includes suggestions for use of rites of passage as the basis for the design of youth justice programmes. The full profile for this reference can be found below under the section entitled "Diversion: purpose and principles".

Pinnock, D., Skelton, A. and Shapiro, R. (1994) 'New Juvenile Justice Legislation for South Africa – giving children a chance'. *SACJ*, 7/3:338.

Offers an overview of the considerations leading to reform and an examination of the proposed legislative changes.

This article provides the background that gave impetus to the drafting of juvenile justice proposals (see Juvenile Justice Drafting Consultancy. (1994) *Juvenile Justice for South Africa: Proposals for Policy and Legislative Change* above). It addresses the problems attendant on juvenile justice in South Africa, dysfunctional places of safety and prisons that served to sever ties between children and their families. The authors examine the proposals that see the movement of young offenders through the juvenile system in a number of stages, namely; Arrest, Reception and Referral, Family Conference, Juvenile Court, Sentencing, and Custodial care.

Location: SJRP

Shelf Reference: 660 PIN/B

Keywords: ARREST, CUSTODIAL CARE, FAMILY GROUP CONFERENCE, JUVENILE JUSTICE, PLACES OF SAFETY, RECEPTION, REFERRAL, REFORM, SENTENCING

SALC (1997) *Juvenile Justice*. Issue Paper 9, Project 106. Pretoria: SALC.

The Issue Paper was prepared to elicit responses and to serve as a basis for the SALC Juvenile Justice Project Committee's deliberations. It looks at the principles and framework that can be drawn on. It examines the 'current' South African Law regarding the criminal capacity of children, age determination, legal representation', police powers and duties, pre-trial detention and release policy, juvenile courts, sentencing and sentencing trends. The Issue Paper also looks at current South African practice regarding diversion.

Location: SJRP

Shelf Reference: 660 SOU/B

Keywords: AGE DETERMINATION, CHILDREN'S COURT, CRIMINAL CAPACITY, DIVERSION, LEGAL REPRESENTATION, POLICE POWER, PRE-TRIAL DETENTION, PROJECT 106, RELEASE, SALC, SENTENCING

Shapiro, R. and Morris, M. eds. (1992) *Towards Juvenile Justice: Advocacy for Youth in Trouble with the Law*. Cape Town: NICRO/Community Law Centre, University of the Western Cape.

A compilation of action taken to advocate for, and uphold children's rights, focussing on youth in trouble with the law and youth in distress.

The dossier is a compilation of action taken to advocate for, and uphold children's rights, focussing on youth in trouble with the law and youth in distress. It looks at youth and violence, the increase in the number of street children, youth in the criminal justice system, the movement towards alternative sentencing options and diversion from the juvenile justice system, and the shift towards

restorative justice. It includes proposals for a Police Liaison Officer for Juveniles, the Children's Charter of South Africa and NICRO mediation services, which would bring together victims and offenders in programmes aimed at restorative justice.

Location: SJRP

Shelf Reference: 660 SHA/S

Keywords: ADVOCACY, CHILDREN'S RIGHTS, DIVERSION, JUVENILE JUSTICE, RESTORATIVE JUSTICE

Singh, P. (1995) 'Juvenile Justice and Constitutionalism'. *THRHR*, 58: 297.

This note examines the impact of South Africa's Constitution on juvenile justice.

The article briefly analyses the implications of the Child Care Act 74 of 1983 and Criminal Procedure Act 51 of 1977 on juvenile justice. The author acknowledges that both pieces of legislation advocate that children should be treated with greater care but criticises them for failing to provide any special assistance in practice. The article then introduces the provisions of sections 30(2) and section 25 of the South African Constitution, emphasising their aim of eliminating the inequities that exist in South Africa's legal system and their importance in mapping out a new juvenile justice system. It documents the background of the abuse of children's rights by the apartheid regime and the harmful detention of young persons held in adult prisons. The latter half of the article explores the current policies in place in courts dealing with the sentencing of juvenile offenders. It concludes that South Africa's unique and tragic past demands that the socialised juvenile court must be tempered with constitutional principles to ensure due process of law and legal representation for the accused.

Location: SJRP

Shelf Reference: 660 SIN/B

Keywords: BILL OF RIGHTS, CHILD CARE ACT (1983), CHILDREN'S RIGHTS, CRIMINAL PROCEDURE ACT (1977), COURT, DETENTION, DUE PROCESS, LEGAL REPRESENTATION, PROBATION, SENTENCING

Skelton, A. (1993) *Raising ideas for the Creation of a Juvenile Justice System for South Africa*. Paper presented at conference on *Children in trouble with the law*, October 1993, Cape Town. UWC: Community Law Centre.

A thought-provoking paper on ideas for reform within juvenile justice.

The paper highlights the invisibility of children in the mainstream criminal justice system and the appalling conditions under which children awaiting trial were kept. The author makes specific proposals for possible legislative change, including what she believes the objectives of a juvenile justice system should be. Specifically suggested reforms include the setting up of structures such as places of safety, the transformation of the process of arrest, and the adoption of a new approach to child justice focussing on diverting children from formal court proceedings. Attention is also drawn

towards issues surrounding juvenile courts, legal representation, criminal records (falling away after a certain period), pre-sentence reports and sentencing options.

Location: SJRP

Shelf Reference: 660 SKE/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, CHILDREN'S COURT, DIVERSION, LEGAL REPRESENTATION, PRE-SENTENCE REPORT, REFORM, SENTENCING

Sloth-Nielsen, J. (1995) 'Juvenile Justice Review 1994 - 1995'. SACJ, 8/3:331-343.

A review of some of the developments in law, policy and practice relating to juvenile justice from October 1994 until September 1995.

This article opens with a review of arrest and pre-trial procedures, drawing in particular on s29 of the Correctional Services Amendment Act of 1994. It investigates the new practice of assessment by a probation officer preceding a child's first appearance in court. The concept of diversion is briefly discussed. Case law illustrates the court's consideration of the admissibility of pre-trial confessions. Limited statistics are provided on offences and convictions. Sentencing trends are examined, with particular focus being placed on the use of whipping and on imprisonment.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: ARREST, ASSESSMENT, DETENTION, DIVERSION, PRE-TRIAL, CORRECTIONAL SERVICES ACT, S29, SENTENCING, WHIPPING

Sloth-Nielsen, J. (1996) *Law, Practice and Policy: South African Juvenile Justice today*. Cape Town: University of the Western Cape.

A report including abbreviated summaries of the key research papers presented at the Juvenile Justice Conference, Karos Arthur's Seat Hotel, 5-6th October 1995.

This report begins by summarising the key proposals put forward at the conference on juvenile justice. These proposals included recommendations regarding police powers, diversion and programmes, courts and records and legislative policy. The research papers that are summarised in this report include: a survey of recent changes in juvenile justice; an overview of trends identified within juvenile justice statistics; a paper on the changing role of the South African police service in relation to juvenile justice; the identification of problems relating to age and criminal capacity; a presentation on assessment; and suggestions on new directions for the children's court. The report also includes an account of the material discussed during the workshops. The conclusions of each workshop appear together with a short description of the preceding debate.

Location: Community Law Centre, University of the Western Cape

Shelf reference: AFR/SOUTH AFRICA IV.99

Keywords: AGE, ASSESSMENT, CHILD JUSTICE, CHILDREN'S COURT, CRIMINAL CAPACITY, POLICE, STATISTICS,

Sloth-Nielsen, J. (1997) 'Juvenile Justice Review 1996'. SACJ, 9/3:342-353.

A review of some of the developments in law, policy and practice relating to juvenile justice from September 1995 until September 1996.

The principle focus of this article is on the matter of pre-detention of arrested juveniles. The practical results flowing from the Correctional Services Amendment Act 1994 are also discussed. It reviews the setting up of a monitoring project designed to include the monitoring of children in prisons, the examination of charge sheets at courts, and the inspection of police cells. The issue of availability of alternative care for juvenile offenders is raised. The review's regular feature on offences, convictions, numbers of sentenced children in prison and policy are also included.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: ALTERNATIVE CARE, ARREST, CHILDREN IN PRISON, CONSTITUTION, DETENTION, POLICY, PRE-TRIAL, CORRECTIONAL SERVICES ACT, s29, SENTENCING

Sloth-Nielsen, J. (1998) 'Juvenile Justice Review 1997'. SACJ, 11/1:97-107.

A review of some of the developments in law, policy and practice relating to juvenile justice from November 1996 until October 1997.

The most significant development during 1997 was the release of the Issue Paper on Juvenile Justice by the SALC (Issue Paper no.9, Project 106). This article also briefly reviews pilot projects initiated by the Inter Ministerial Committee on Young People at Risk. Recent cases are reviewed that address the issues of a child's rights to assistance, legal representation and proportionality of sentence. The final sections record statistics illustrating sharp increases in imprisonment of children, both pre-trial and for the purposes of serving sentences for the period of time under review.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: CASE LAW, CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, IMC, ISSUE PAPER, PILOT PROJECTS, PROJECT 106, SALC

Sloth-Nielsen, J. and Van Heerden, B. (1997) 'New Child Care Act and Protection Legislation for South Africa? Lessons from Africa'. *Stellenbosch Law Review*, 1:261-279.

The full profile for this reference can be found below under the section entitled "International Case Studies: Africa".

Terblanche, S. and Van Vuuren, J. (1997) "Wat Gemaak met Kindermisdadigers?" *SACJ*, 10/2:170-185

Journal article dealing with juvenile offenders and their treatment by the law.

This article deals with juvenile offenders. It starts off by briefly tracing the history of juvenile offenders' treatment by the law and provides a definition of youth. It then discusses the proposal for a diversion system as introduced by the Juvenile Drafting Consultancy. The final section discusses the approach of the courts in dealing with juveniles in South Africa – that is the general acceptance that youth is a relevant factor in determining sentence.

Location: SJRP

Shelf reference: 660 TER/B

Keywords: CHILDREN'S COURT, CRIMINAL PROCEDURE ACT, DIVERSION, FAMILY GROUP CONFERENCE, JUVENILE JUSTICE, JUVENILE JUSTICE DRAFTING CONSULTANCY, PROBATION OFFICER, REFORM SCHOOL

Process of reform: 1998 onwards

Brey, F. (2000) 'NICRO's Diversion plan beyond 2000'. *Article 40, 2/4:5.*

Report on a workshop held by NICRO (Western Cape) to develop its strategic direction for the new millennium.

The article reviews the aims of the workshop and what was discussed by the participants.

Location: SJRP

Shelf reference: 670 BRE/B

Keywords: DIVERSION, IMPLEMENTATION, NICRO

Gallinetti, J. (2001) 'Advocacy Campaign planned around the Child Justice Bill'. *Article 40, 3/1:1-3.*

A helpful insight into the origins and purpose of the Child Justice Alliance as well as the process of reforming child justice in general.

Following a brief background to the Child Justice Bill, this article describes the various steps taken by an initiative of South African civil society, named the Child Justice Alliance, to promote informed debate and the dissemination of accurate information regarding the Bill. It details the formation and objectives of this collaborative network which aims to assist and encourage all relevant sectors of society to contribute to the reform process.

Location: SJRP

Shelf reference: 660 ART/B

Keywords: ADVOCACY, CHILD JUSTICE BILL, CHILD JUSTICE ALLIANCE, CHILD PARTICIPATION, LOBBYING

Inter-Ministerial Committee on Young People at Risk. (1998) *Report on the Pilot Projects.*
Pretoria: IMC.

Pagination: 1-68.

Contains summaries of reports on IMC projects that have set out to put the new policy of child and youth care into practice.

The pilot projects that form the focus of this combined report are as follows: Durban's Reception, Assessment and Referral Centre; the Family Preservation project; The Alternatives in Residential Care project; Professional Foster Care; One-Stop Youth Justice Centre; Family Group Conference; Hendrina Secure Care Programme; Durban Family Centre; and Phand'ulwazi Life Centre.

Location: SJRP

Shelf reference: 667 IMC/S

Keywords: ASSESSMENT CENTRE, FAMILY GROUP CONFERENCE, FAMILY PRESERVATION PROJECT, FOSTER CARE, IMC PILOT PROJECT, LIFE CENTRE, ONE STOP YOUTH JUSTICE CENTRE, REFERRAL, RESIDENTIAL CARE, SECURE CARE

Madotyeni, Z. (2000) 'Enforcing children's rights through litigation'. *Article 40, 2/3: 9-10.*

Highlights the power of litigation in advancing children's constitutional rights.

The article reviews two High Court cases in order to illustrate how litigation can be used to protect children's rights. It highlights both the advantages and disadvantages of this means of protection, explaining that litigation is not always a viable or wise option. The author advocates that litigation must be used in conjunction with other strategies used to enforce and promote children's rights.

Location: SJRP

Shelf reference: 662 MAD/B

Keywords: CHILDREN'S RIGHTS, LITIGATION

SALC (1999) *Juvenile Justice. Discussion Paper 79. Project 106. Pretoria: SALC.*

Pagination: i-xxxiii, 1-293

A discussion paper drawn up for the purpose of canvassing input for the reform of juvenile justice in South Africa.

This discussion paper starts from the recognition of a need for a child justice system which embodies a cohesive approach and vision, gives life to policy proposals and builds on successful practices identified by the various pilot projects, and endorses and enacts common law provisions developed by the courts. In essence, the paper envisages a child justice system which at all times strives to prevent children from entering deeper into the criminal justice process while holding them accountable for their actions. This system would aim to ensure that the majority of children would be diverted away from the criminal justice system, yet still held accountable. The paper, however, also includes provisions for the prosecution and sentencing of children who cannot be diverted and for the secure care of children who are accused or convicted of serious violent crimes and are assessed to be a danger to others. The first four chapters of the paper cover background material and chapters 5 to 14 include the recommendations. The report has included sufficient background information to enable individuals and organisations to place focussed submissions before the Commission. The proposed draft bill is reflected in Annexure A.

Location: SJRP

Shelf Reference: 660 SOU/B

Keywords: CONVICTIONS, CUSTODY, DISCUSSION PAPER 79, IMPRISONMENT, LEGISLATION, PROFILING, SENTENCING, STATISTICS.

SALC (2000) *Juvenile Justice Report*. Pretoria: SALC.

Pagination: i-xxxix, 1-316

This is the full report of the SALC on Juvenile Justice. It contains a final proposed draft of the Child Justice Bill.

The Child Justice Bill aims to protect the rights of children entrenched in the Constitution and provided for in international instruments. It also aims to promote the concept of *ubuntu* in the child justice system and to promote co-operation between the relevant government departments, other organisations and agencies involved in implementing an effective child justice system.

Specifically, the Bill proposes:

- Raising the minimum age of criminal capacity of children from seven to ten years. That means that any child under the age of 10, at the time of commission of an offence, will not be able to be prosecuted. If a child is at least 10, but not yet 14, at the time of commission of an offence, the child shall be presumed not to have had the capacity to appreciate the difference between right and wrong and act accordingly. But this presumption may be rebutted if it is subsequently proved beyond a reasonable doubt that he or she did have capacity at that time. With regard to the problems often encountered with age determination, the draft Bill proposes solutions by providing certain courses of action where a child's age is uncertain or is in dispute;
- Delineation of the powers and responsibilities of police and probation officers in relation to such children;
- The principle and conditions relating to the detention and release of such children;
- The purpose and practice of assessment and referral;
- The purposes of diversion and minimum standards, outlining some of the various diversion options, describing Family Group Conferencing and Victim-Offender Mediation;
- The introduction of a preliminary inquiry, its objectives and the manner of conduct of such inquiry;
- The designation and jurisdiction of child justice courts as well as proceedings by a court other than a child justice court;
- New provisions regarding sentencing, including the compiling of pre-sentence reports by a probation officer; and
- New requirements regarding the appropriate legal representation of children.

Location: SJRP

Shelf reference: 660 SAL/S

Available on line: www.law.wits.ac.za/salc/salc.html

Keywords: CHILDREN'S RIGHTS, CHILD JUSTICE BILL, CHILD PARTICIPATION, CHILDREN'S COURT, CRIMINAL CAPACITY, DETENTION, DIVERSION, PRELIMINARY INQUIRY, SENTENCING

Skelton, A. (1999) 'Children's rights and responsibilities versus crime control', in Davel, C. J. ed. *Children's rights in a Transitional Society*. Pretoria: Protea Book House.

An interesting debate emphasising the priority that children's rights and restorative justice must have over considerations of crime control.

This paper identifies and examines three major themes which have influenced the process of law reform; children's rights, restorative justice and political will. The paper then poses the question as to whether these fundamental influences still hold weight, or whether they are giving way to the political imperative of crime control.

Location: SJRP

Shelf reference: 663 SKE/B

Available on line: <http://www.lhr.org.za/child/juvenile.htm>

Keywords: CHILDREN'S RIGHTS, CRIME CONTROL, INTERNATIONAL HUMAN RIGHTS, JUVENILE JUSTICE, POLITICAL WILL, REFORM, RESTORATIVE JUSTICE

Skelton, A. (2000) 'The Child Justice Project...'. *Article 40*, 2/3:5.

A short report outlining the role of the UN Child Justice Project in South Africa.

Location: SJRP

Shelf reference: 660 SKE/B

Keywords: UN CHILD JUSTICE PROJECT

Sloth-Nielsen, J. (1999) 'Charting the development of a new juvenile justice statute in South Africa: an opportunity for innovation'. *Youth Justice Matters*, December:18-20.

Journal article summarising the development of the Child Justice Bill and other child justice-related projects in South Africa.

This article offers a concise summary of the chain of events that lead to the emergence of the Child Justice Bill. It highlights a number of social, economic, political and legislative shifts that have taken place since the advent of democracy in South Africa and identifies the implications of these shifts for a new juvenile justice system. The article also profiles a couple of projects, undertaken by the juvenile justice project committee of the SALC in order to support and supplement the law reform process, namely Community Law Centre's "What the Children Said" and the "AFREC Report". The former report explores children's perspectives on the shape of the new legislation, and the latter report seeks to establish the cost of the proposed juvenile justice system and to develop a strategy for implementation.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: AFREC, CHILD JUSTICE BILL, CHILD PARTICIPATION, COST, IMPLEMENTATION, SALC

Sloth-Nielsen, J. (1999) 'Rescue Remedy'. *Article 40, 1/3:1-2.*

Illustration that there are ways for social workers, correctional officials, staff of NICRO, and even members of the public to become activists in challenging the imprisonment of children where this is perceived to be unfair.

The article reports on the cases *S v S* and *S v Khuliliwe Precious Mtshali and Liniwe Mokgopadi* where, through the intervention of concerned individuals, a high court judge could step in to correct a sentencing injustice.

Location: SJRP

Shelf reference: 669 SLO/B

Keywords: LITIGATION, CHILDREN IN PRISON

Sloth-Nielsen, J. (1999) 'Towards a New Child Justice System'. *Article 40, 1/1:4-5.*

A good introduction to Discussion Paper 79 on Juvenile Justice.

This article summarises the contents and status of the Discussion Paper 79 (Juvenile Justice) that was released by SALC in December 1998. This article focuses on three central issues that characterise the proposed legislation: the framework of international children's rights principles that underpin the legislation; the concept of diversion; and the proposal for a preliminary inquiry. It emphasises that the thrust of the Discussion Paper is towards promoting the development of existing initiatives, rather than creating an entirely novel and expensive infrastructure.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: CHILDREN'S RIGHTS, DISCUSSION PAPER 79, DIVERSION, INTERNATIONAL RIGHTS, IMPLEMENTATION, JUVENILE JUSTICE, PRELIMINARY INQUIRY, SALC

Sloth-Nielsen, J. (1999) 'The Juvenile Justice Law Reform Process in South Africa: Can a children's rights approach carry the day?' *Quinnipiac Law Review, 18:469-489.*

An analysis on the process of reforming juvenile justice in South Africa.

This article is divided into three sections. The first gives a useful summary of the historical background to the South African law reform process up until 1999. The second section describes

the parallel process of developing a new juvenile justice statute for South Africa and deals in particular with specific questions on design, diversion, the proposed preliminary inquiry, compulsory assessment, the role of probation services, the Child Justice Court and the minimum age for criminal capacity. It concludes with a final section which outlines the challenge for children's rights advocates to ensure that the proposed system survives the cut and thrust of the political process more or less intact.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: ASSESSMENT, BACKGROUND HISTORY, CHILD JUSTICE COURT, CHILDREN'S RIGHTS, CRIMINAL CAPACITY, DIVERSION, PRELIMINARY INQUIRY, ROLE OF PROBATION SERVICES

Sloth-Nielsen, J. (2000) 'Child Justice and Law Reform' in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

A report on the background to and reform of child justice in South Africa.

This chapter begins with an introduction and historic overview of child justice. The influence of international children's rights is highlighted and the emergence of child justice reform initiatives within South Africa is reviewed. The author examines the history of legislative amendments regarding pre-trial detention and outlines the role of the South African Law Commission. The process of law reform is then described by referring to the various elements of child justice in turn. These include: age and criminal capacity; pre-trial detention; pre-trial assessment; diversion; preliminary inquiry; ordinary courts and children's courts; sentencing; and legal representation.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: AGE, CHILDREN'S COURTS, CHILDREN'S RIGHTS, COURT, CRIMINAL CAPACITY, DIVERSION, LEGAL REPRESENTATION, PRE-TRIAL ASSESSMENT, PRE-TRIAL DETENTION, PRELIMINARY INQUIRY, REFORM, SALC, SENTENCING

Sloth-Nielsen, J. and Muntingh, L. (1999) 'Juvenile Justice Review 1998'. *SACJ*, 12/1:65-80.

A review of some of the developments in law, policy and practice relating to juvenile justice from October 1997 until October 1998.

This article looks at developments in juvenile justice law and practice in South Africa from October 1997 until October 1998. It examines the SALC Project Committee on Juvenile Justice Project 106 Discussion Paper 79. This Discussion Paper contains proposals outlining a new structure to govern criminal proceedings involving children under the age of 18 accused of having committed an offence. The proposed system strives to entrench diversion as one of its central features. The review looks at pilot projects such as the Family Group Conferencing in Pretoria; Stepping Stones in Port Elizabeth; and the Assessment, Reception and Referral Centre in Durban. The review also looks at

some court cases for the period under review, the position of children awaiting trial in prisons and places of safety, sentenced children, and diversion cases.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: CASE LAW, CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, DISCUSSION PAPER 79, IMC, PILOT PROJECTS, PROJECT 106, SALC

Sloth-Nielsen, J. and Muntingh, L. (2001, in press) ‘Juvenile Justice Review 1999-2000’. SACJ.

A review of some of the developments in law, policy and practice relating to juvenile justice during the years 1999 and 2000.

This review looks at developments in juvenile justice law and practice in South Africa. It summarises the main features of the South African Law Commission’s Report on Juvenile Justice. It looks at the Child Care Amendment Act 13 of 1999 that develops the concept of secure care facilities. The authors draw together a collection of recent cases that deal with the following issues: pre-trial assessment, diversion, sentencing principles, reform school sentences and pre-sentence reports. The review also has an interesting section on profiles of the child population in prison, using graphs and tables to present the statistics in a user-friendly fashion. In the final section, the authors focus on diversion from the criminal justice system. The report includes observations on how much diversion is used, where it is available and in what forms, what types of young offenders are referred to diversion programmes and who refers them.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: CHILD CARE, CHILD JUSTICE BILL, CHILDREN IN PRISON, DIVERSION, PRE-SENTENCE REPORT, PRE-TRIAL ASSESSMENT, REFORM SCHOOL, SALC REPORT (JULY 2000), SECURE CARE FACILITY, SENTENCE

Sloth-Nielsen, J. and Van Heerden, B. (1999) ‘The political economy of child law reform: Pie in the sky?’ in Davel, C.J. ed. *Children’s Rights in a Transitional Society*, pp. 107-127. Pretoria: Protea Book House.

Understanding the reforming of child law in a political and economic context.

This article offers a useful summary of the background to the process of law reform on child care. It focuses on the scope of the new child care legislation and develops an understanding of the content and path of the consultative process that preceded the Bill. It also identifies a number of significant trends that are likely to characterise the development of the new children’s statute. It stresses that the process of law reform is not exclusively a legal endeavour and highlights the political and economic strategies that have had to be adopted during the drafting process.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: BUDGET, CONSULTATION, COST, REFORM, STATISTICS

Thipanyane, T. (1998) ‘Legal Procedure and Reform in South Africa’, in Petty, C. ed. *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa*. London: Save the Children.

A short article highlighting the constitutional and other legislative reforms that have taken place in South Africa regarding children’s rights.

Location: SJRP

Shelf reference: 660 THI/B

Keywords: CONSTITUTION, CHILDREN’S RIGHTS, INTERNATIONAL, JUVENILE JUSTICE, LEGISLATIVE REFORM

Van Oosten, F. F. W. and Louw, A. S. (1997) ‘Children, Young Persons and the Criminal Law’, in Robinson, J. A. ed. *The Law of Children and Young Persons in South Africa*. Durban: Butterworths.

Overview of how South African criminal law deals with children and young persons.

The full profile for this reference can be found below, under the section entitled “International and national influence: Other South African legislation and policy”.

Van Zyl Smit, D. (1999) ‘Criminological Ideas and the South African Transition’. *British Journal of Criminology*, 39/2:198-215.

An academic search for the primary intellectual themes in South African criminology.

This academic paper identifies three lines of thought regarding criminological issues – the “Afrikaner nationalist” approach, the “legal reformist” approach and the “progressive realism” approach. It traces the development of intellectual trends in the period leading up to the first democratic elections and then focuses on the role that they have played in the subsequent reformation of the South African criminal justice system.

Location: SJRP

Shelf reference: 185 VAN/B

Keywords: AFRIKANER NATIONALIST, CRIMINOLOGY, LEGAL REFORMIST, PAGAD, PROGRESSIVE REALISM, REFORM, TRANSFORMATION, TRUTH AND RECONCILIATION

SPECIFIC THEMES AND ISSUES

International and national influence

The UN Convention

Barrie, G.N. (1997) 'Legitimate Expectation and International Treaties'. *SALJ*, 114:474-480.

A highly-legalistic case report relating to the importance of international conventions on national administrative decisions.

The article reports on the case of *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 in which the Australian High Court decided that the concept of legitimate expectation requires administrative decision-makers to take into account ratified treaties. In this case the majority of the High Court decided that, even where an international convention remains 'unincorporated' into domestic law, a positive statement implying that the country in question will act in accordance with the convention, is enough to generate legitimate expectation of compliance with a convention.

Location: SJRP

Shelf reference: 661 BAR/S

Keywords: LEGITIMATE EXPECTATION, RATIFICATION, UN CONVENTION

De Villiers, S. (2001) *UN Convention on the Rights of the Child: These are your rights.*

The UN Convention written in a way that children can easily understand.

This little book offers a unique quality; it is written in such a way that even children can understand their rights as protected by the UN Convention. It explains what the UN is, why the UN set up a special convention on children's rights and how, by agreeing to the Convention through ratification, a country must uphold these rights. It encourages children to know each of the rights that is included in the UN Convention and to respect the rights of others. This book is the result of a joint project of the Department of Justice and Constitutional Development: Directorate Children and Youth Affairs and National Directorate of Public Prosecutions; and the Sexual Offences and Community Affairs Unit.

Location: SJRP

Shelf Reference: 661 DEV/B

Keywords: CHILDREN'S RIGHTS, UN CONVENTION

Detrick, S. ed. (1992) *The United Nations Convention on the Rights of the Child: a guide to the Travaux preparatoires*. Dordrecht; Boston: Martinus Nijhoff Publishers.

An overview of the drafting process of the United Nations Convention on the Rights of the Child.

This book offers a complete overview of the drafting process of the United Nations Convention on the Rights of the Child, which was unanimously adopted by the General Assembly of the United Nations on 20th November 1989. Chapter 1 by Nigel Cantwell gives the reader an introductory look at the drafting process of the Convention within the context of the United Nations. Chapter 2 is a compilation of the main United Nations documents concerning the drafting of the Convention. Part A deals with the further development of the Polish proposal at the thirty-fourth session of the Commission on Human Rights to conclude a convention on the rights of the child. Parts B and C consist, respectively, of an article-by-article compilation and of the general considerations made by the open-ended Working Group regarding the Convention during its eleven sessions (1979-1989). Chapter 3 by Jaap Doek concludes with observations concerning the ratification and – effective – implementation of the Convention which entered into force on 2nd September 1990. The Appendix contains an exhaustive listing of all relevant United Nations documents. This important book will aid all those concerned to achieve a better understanding of the provisions of the Convention.

Location: Community Law Centre, University of the Western Cape

Shelf reference: INT VII.30.01

Keywords: CHILDREN'S RIGHTS, DRAFTING, HUMAN RIGHTS, IMPLEMENTATION, RATIFICATION, UN CRC, UNITED NATIONS

Hammarberg, T. (1994) 'Justice for Children through the UN Convention', in *Justice for Children*, pp. 59-72. Dordrecht: Kluwer Academic Publishers.

Offers a potted history of the gradual recognition of children's rights with particular emphasis on the principles behind the UN Convention on the Rights of the Child.

A useful article outlining the origins of the movement towards protecting children's rights. It encourages us to see children's issues as political rather than simply objects of charity. In particular it offers a background to the UN Convention, its philosophy and principles, including specific emphasis on articles concerned with children's basic needs. The article finishes by taking a look at the reality behind the Convention, exploring if and how it can make a material difference to the lives of children.

Location: SJRP

Shelf reference: 661 HAM/S

Keywords: CHILDREN'S RIGHTS, UN CONVENTION

McCurdie, J. (1992) *Children's Rights. Developing Justice Series, 9.* Cape Town: Institute of Criminology, UCT.

Briefly summarises the background to the UN Convention on the Rights of the Child (pp.6-7) and outlines its content (pp.26-36).

The full profile for this reference can be found below in this section, under the subsection entitled "Other South African legislation and policy".

Mower, A. Glenn, Jr. (1997) *The Convention on the Rights of the Child: International Law Support for Children.* Westport, CT, London: Greenwood Press.

A book examining the background, text and potential significance of the Convention.

The book is divided into four sections and 17 chapters. Section 1 is on 'The Significance, Background, and Development of the Convention'. Here, Mower identifies four factors as contributing to the Convention's significance; its recognition of the child as a possessor of rights; its character as both a consolidator and innovator; its practical aspect because of 'what it could mean in terms of the present and future economic and social health of the world's community'; and finally, 'its potential for making a very real impact on the domestic life of its parties'. In Section 2 the author introduces and evaluates some of the key principles and human rights provisions of the Convention. Section Three is an examination of the implementary provisions of the Convention and the work of the Committee on the Rights of the Child, while the focus of Section 4 is on the factors likely to determine the extent to which the Convention's goals for children are realised. Mower identifies several factors, including: at the global level, the role of extra-conventional international agencies; at the domestic level, the policies and practices of national governments and the impact of key segments of the private sector such as the media, professionals and NGOs; and, finally, general conditions and issues that call for responsive action on both the global and domestic level, such as armed conflict, the presence of physical environment and economic factors such as poverty.

Location: Community Law Centre, University of the Western Cape

Keywords: IMPLEMENTATION, INTERNATIONAL AGENCIES, NATIONAL GOVERNMENT, NGOS, PARTICIPATION, POLICY, PRACTICE, UN CRC

Roy, N. (2000) 'PRI Ten Point Plan for Juvenile Justice'. *Article 40, 2/3: 6-7.*

Offers a basic summary of a submission from Penal Reform International to the UN Committee on the Rights of the Child regarding violence in juvenile justice systems.

The ten-point plan focuses on ways of reducing violence within juvenile justice systems around the world. This article summarises how this can be achieved at each stage of the criminal justice process, from arrest and interrogation through to custodial and non-custodial placements.

Location: SJRP

Shelf reference: 661 ROY/B

Keywords: JUVENILE JUSTICE, PENAL REFORM INTERNATIONAL, REFORM

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 1.1.

Sewpaul, O. (2000) ‘SA Presentation to UN CRC – setting the agenda for transformation’. *Article 40, 2/2:1-3*.

Insight into South Africa’s submission of its Initial Country Report to the UN.

Explains why, how and what South Africa, as a signatory of the UN Convention on the Rights of the Child, reported back to the UN regarding the measures that have been adopted since its ratification of the CRC.

Location: SJRP

Shelf reference: 661 SEW/B

Keywords: CHILDREN’S RIGHTS, IMPLEMENTATION, UN CONVENTION

Sloth-Nielsen, J. (1995) ‘Ratification of the UN Convention on the Rights of the Child: Some implications for South Africa’. *SAJHR, 11/3:401-420*.

A neat summary of significant aspects and implications of the UN Convention.

This article gives the reader a good overview of the UN Convention on the Rights of the Child. It looks at its background and picks out notable aspects, especially the new philosophy of children’s rights that it espouses. The author points out areas of concern surrounding the Convention before emphasising the rationale and underpinnings of the Convention. For readers unfamiliar with its content, there is a useful section offering a general overview of the scope of its application and the implications its implementation holds for South African law.

Location: SJRP

Shelf reference: 661 SLO/B

Keywords: CHILDREN’S RIGHTS, IMPLEMENTATION, INTERNATIONAL, POLICY, UN CONVENTION

Sloth-Nielsen, J. (2000) 'Child Justice and Law Reform' in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

In this report on the background to and reform of child justice in South Africa, the influence of international children's rights is discussed (see pp.385-389).

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

Sloth-Nielsen, J. (forthcoming) 'Children's Rights in the South African courts: an overview since ratification of the UN Convention on the Rights of the Child'. *IJCR*.

An examination of the impact that the UN Convention on the Rights of the Child has had on South African court practice.

This paper examines the impact that the UN Convention on the Rights of the Child and children's constitutional rights have had on the judicial decision-making since the Convention was ratified by South Africa on 16 June 1995. The article attempts to provide an overview of some trends in judicial approaches to children's rights over the last five years. The article is divided into three parts: the first part reviews the legal status of the Convention in South African law, focussing on aspects that link the Convention to the South African Constitution. The second part examines first private law dimensions, and thereafter the terrain which has traditionally fallen under public law. In this section, a survey of a few of the more significant cases is briefly set out. In the third part, some tentative conclusions are drawn about litigation and children's rights that may indicate trends that may be of relevance in the next half decade.

Location: SJRP

Shelf reference: 662 SLO/B

Keywords: CHILDREN'S RIGHTS, CONSTITUTION, COURT, JUDICIAL PRACTICE, LITIGATION, PRIVATE LAW, SOUTH AFRICAN LAW, UN CRC

Thipanyane, T. (1995) 'The Rights of Children in Natal', in Pollecutt, L., Motshekga, M. and Gardner, A. eds. *Legal Rights of Children in South Africa*, pp. 100-127. Pretoria: National Institute for Public Interest Law and Research.

The full profile for this reference can be found below, under the subsection entitled "The South African Constitution".

UN Convention on the Rights of the Child (1989).

Full text of the UN Convention on the Rights of the Child

In 1995, the South African government signed the UN Convention on the Rights of the Child. This important Convention deals with a broad range of children's rights and provides a comprehensive framework within which the issue of child justice must be understood. Article 40

has the most important impact on child justice. By ratifying the Convention, South Africa was then obliged, in terms of article 40(3) thereof, to establish laws, procedures, authorities and institutions specifically applicable to children in conflict with the law. In particular, the Convention requires, in article 40(1), that “State Parties 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 a result of the ratification, South Africa started the process of developing a comprehensive juvenile justice system to give effect to the Convention.

Location: SJRP

Shelf reference: 651 UNI/B

Available on line: <http://heiwww.unige.ch/humanrts/instree/k2crc.htm>

Keywords: CHILDREN’S RIGHTS, YOUNG OFFENDERS, HUMAN RIGHTS, JUVENILE JUSTICE, UN CONVENTION

Van Bueren, G. (1995) *The International Law on the Rights of the Child*. Dordrecht: Kluwer Academic Publishers.

A study on the international status and rights of children.

The author draws upon her experience to highlight the complexities behind the global violations of children’s right. Analysis and description are interwoven to provide a coherent study on the international status of children and the rights which attach to this status. This book is suitable for both those familiar and those unfamiliar with international law. The author demonstrates the potential of international law in protecting the rights of children even in states which are restructuring their economies. The text seeks to place the rights of the child in their cultural and historical context.

Location: Community Law Centre, University of the Western Cape

Shelf Reference: INT U11.30

Keywords: CHILDREN’S RIGHTS, INTERNATIONAL, UN CONVENTION, UN RULES FOR JUVENILES DEPRIVED OF THEIR LIBERTY, VIOLATION

Van Bueren, G. (2000) ‘The United Nations Convention on the Rights of the Child: an Evolutionary Revolution’ in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

An examination of the implications of the UN Convention of the Rights of the Child for South Africa.

This chapter outlines the goals and objectives of the UN CRC, including an overview of two new protocols to the Convention introduced in May 2000. The author explains how the Convention has

the potential to achieve an evolutionary revolution by seeking to change child and adult cultures through the creation of a more accessible and child-centred culture. She adds that the Convention is also revolutionary because the essence of its economic and social, and to an extent cultural, rights is redistributory; it offers a concrete set of responses to specific facets of poverty. A short analysis of the implementation of the Convention highlights that there are certain shortcomings in the means available to access the remedies offered by the Convention. However, the chapter ends by emphasising the role of the Convention as ‘both a peaceful and powerful, evolutionary instrument of change’.

Location: SJRP

Shelf reference: 661 VAN/B

Keywords: BILL OF RIGHTS, CHILDREN’S RIGHTS, HUMAN RIGHTS, IMPLEMENTATION, INTERNATIONAL LAW, PARTICIPATION, PREVENTION, PROTECTION, PROTOCOLS, UN CRC

Other international instruments and policy

Barrie, G.N. (1997) 'Legitimate Expectation and International Treaties'. *SALJ*, 114:474-480.

The full profile for this reference can be found previously in this section, under the subsection entitled "UN Convention".

Bower, C. (2001) 'What did the 3rd substantive session of the preparatory committee for the special session on children achieve for Child Justice?'. *Article 40*, 3/3:6-7.

A short report on 3rd substantive session of the preparatory committee for the special session on children.

The report explains the origins of this session. It describes it as an important opportunity to look at whether the commitments made to children during the World Summit for Children (1990) were met and to reaffirm the intentions of the member states to achieve these goals. The roles of both government and non-government bodies present at the deliberations and the issues that were covered are summarised. The author records the political strategies of the most influential countries represented at the session, how each country interacted, and what issues were debated. Lobbying by the NGO representatives played a significant role in the final versions of international instruments. Furthermore, with about 30% of the review and follow-up issues still pending, the author believes that there will still be a role for NGOs in the process of creating a world fit for children.

Location: SJRP

Shelf reference: 661 BOW/B

Keywords: CHILD JUSTICE, CHILDREN'S RIGHTS, GOVERNMENT, IMPLEMENTATION, INTERNATIONAL, NGO, REFORM, REVIEW, RIGHTS-BASED APPROACH, UN CONVENTION, WORLD SUMMIT

Dugard, J. (1994) 'The Role of International Law in interpreting the Bill of Rights '. *SAJHR*, 10/2:208-215.

A short article exploring how the South African Bill of Rights links in with International law.

The full profile for this reference can be found below in this section, under the subsection entitled "South African Constitution"

Gardner, A. and Said, S. eds. (1996) *United Nations Instruments for Juvenile Justice: A simplified version*. Cape Town: NIPILAR/Community Law Centre.

A booklet summarising various UN instruments to help explain the basic human rights of children in conflict with the law.

This booklet provides a useful summary of various UN instruments that deal with the basic human rights of children in conflict with the law. These instruments include: The UN Standard Minimum

Rules for the Administration of Justice (commonly known as “The Beijing Rules”), the UN Guidelines for the Prevention of Juvenile Delinquency (commonly known as “The Riyadh Guidelines” and the UN Rules for the Protection of Juveniles Deprived of their Liberty. This booklet should be read and discussed by all persons involved with children in conflict with the law. This is so that all key role players in the juvenile justice system have a full understanding of the international protection for children in conflict with the law and how these international standards can be implemented in South Africa.

Location: SJRP

Shelf reference: 660 GAR/S

Keywords: CHILDREN’S RIGHTS, INTERNATIONAL LAW, UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY, UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY, UN STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUSTICE

McCurdie, J. (1992) *Children’s Rights*. Developing Justice Series, 9. Cape Town: Institute of Criminology, UCT.

Contains a brief summary of the content of the African Charter (see p.8)

The full profile for this reference can be found below in this section, under the subsection entitled “Other South African legislation and policy”.

Olivier, M. (2000) ‘The status of International Children’s Rights Instruments in South Africa’ in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

A short chapter mapping the historical background to the incorporation of international children’s rights instruments in South Africa.

This chapter begins with a historic overview of international children’s rights in South Africa and continues by summarising the international sources of children’s rights. It offers a brief list of South Africa’s position with regard to human rights treaties referring specifically to children and highlights the methods that have so far been adopted in implementing these rights in South Africa.

Location: SJRP

Shelf reference: 661 OLI/B

Keywords: BILL OF RIGHTS, CHILDREN’S RIGHTS, HUMAN RIGHTS, INTERNATIONAL LAW, UN CRC

Skelton, A. (1996) ‘Developing a Juvenile Justice system for South Africa: International Instruments and Restorative Justice’. *Acta Juridica*, 6:180-196.

Offers a useful breakdown of how international instruments impact on juvenile justice and looks at how restorative justice has been adopted as a new approach to juvenile justice in several countries.

This article examines the relevant international instruments, drawing out those aspects useful for developing a policy framework for a new juvenile justice system for South Africa. It discusses restorative justice, and describes experiments with this model in New Zealand, Australia, and Canada. The article concludes that the development of a restorative justice approach to the juvenile justice system could take South Africa beyond the standards set by the international instruments and set the country on a path to an effective and fair new system of juvenile justice for South Africa.

Location: SJRP

Shelf reference: 661 SKE/S

Keywords: AUSTRALIA, CANADA, INTERNATIONAL INSTRUMENTS, JUVENILE JUSTICE, NEW ZEALAND, RESTORATIVE JUSTICE, SOUTH AFRICA

Skelton, A. (1998) 'International trends in the re-emergence of traditional systems', in Petty, C. ed. *Justice for Children: Challenges for Policy and Practice in Sub-Saharan Africa*. London: Save the Children.

A short paper highlighting the developing trend towards using restorative justice as the underlying theory of juvenile justice internationally.

This paper gives the reader a brief introduction to restorative justice and then illustrates the theory 'in action' in several countries, including: family group conferences in New Zealand; victim-centred Wagga programmes in Australia; and community conferencing in Canada.

Location: SJRP

Shelf reference: 672 SKE/B

Keywords: AUSTRALIA, CANADA, FAMILY GROUP CONFERENCE, NEW ZEALAND, RESTORATIVE JUSTICE, VICTIMS

Strydom, H. A., Pretorius, J. L. and Klink, M. E. (1997) *International Human Rights Standards 1 The Administration of Justice*. Durban: Butterworths.

Pagination: i-xiv, 1-357

Offers general overview of the implications of international human rights standards.

This book groups together instruments that deal with different aspects of the administration of justice. Each of its three sections (A: courts, judicial officers and criminal proceedings; B: The treatment of prisoners and detainees; C: Law enforcement) follow the same organisational method. Each section provides background material and a brief comment contextualising the various instruments and to give some insight into the main issues involved.

Location: UCT Law Library

Shelf reference: DH 341.481 STRY

Keywords: ADMINISTRATION, CHILDREN'S RIGHTS, COURT, DETENTION, INTERNATIONAL RIGHTS, JUVENILE JUSTICE, LEGAL REPRESENTATION

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (1990).

Full text of the United Nations guidelines for the prevention of juvenile delinquency.

The fundamental principle behind these guidelines is that the prevention of juvenile delinquency is an essential part of crime prevention in society. The foundation of these guidelines is rooted in the belief that, by engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes. The guidelines emphasise that the successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of children and young persons, with respect for and promotion of their personality from early childhood. The guidelines encourage young persons to take an active role and partnership within society and urge others not to consider them as mere objects of socialisation or control. In the implementation of the present guidelines, it is stated that the well-being of young persons from their early childhood should be the focus of any preventive programme. Of particular interest is the idea that any such effort should avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others.

Location: SJRP

Shelf reference: 661 UNI/B

Available on line: <http://heiwww.unige.ch/humanrts/instree/j2ungpjd.htm>

Key words: GUIDELINES, JUVENILE JUSTICE, PREVENTION, UNITED NATIONS

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

Full text of United Nations Rules for the Protection of Juveniles Deprived of their Liberty

These rules have been established by the United Nations as minimum standards for the protection of both young offenders and children in the care system deprived of their liberty in all forms. They advocate that the way in which young offenders are dealt with must be consistent with human rights and fundamental freedoms. Consideration must be given to counteract the detrimental effects of all types of detention and to foster integration in society. Fundamental perspectives of these rules are that child justice systems around the world should uphold the rights and safety and promote the physical and mental wellbeing of young offenders. Imprisonment and any kind of deprivation of liberty should be the last resort, for the minimum necessary period and should be limited to exceptional cases.

Location: SJRP

Shelf reference: 661 UNI/B

Available on line: <http://heiwww.unice.ch/humanrts/instree/j1unrjdl.htm>

Keywords: CHILDREN'S RIGHTS, HUMAN RIGHTS, UN RULES

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985).

Full text of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice

The main thrust of these rules is that countries should seek, in conformity with their respective general interests, to further the wellbeing of the young offender and her or his family. They encourage the development of conditions that will ensure for the young offender a meaningful life in the community and contribute to a process of personal development and education that is as free from crime and delinquency as possible. They ask countries to implement positive measures that involve the full mobilisation of all possible resources, including the family, volunteers, community groups, schools and other community institutions. By doing so, the UN hopes to see a reduction in the need for intervention under the law, and of effectively, fairly and humanely dealing with young persons in conflict with the law. In summary, these rules hope to form the basis of child justice systems that are conceived as an integral part of the national development process within each country. They advocate for a comprehensive framework of social justice for all young people, thereby simultaneously contributing to the protection of children and the maintenance of peaceful order in society.

Location: SJRP

Shelf reference: 661 UNI/B

Available on line: <http://heiwww.unice.ch/humanrts/instree/j3unsmr.htm>

Key words: ADMINISTRATION, CHILD JUSTICE, CHILDREN'S RIGHTS, HUMAN RIGHTS, IMPLEMENTATION, UN STANDARD MINIMUM RULES

Van Bueren, G. ed. (1998) *International Documents on Children*. 2nd edition. Dordrecht: Kluwer Academic Publishers.

Comprehensive collection of international instruments and other documents on children.

This book provides, in an easily accessible form, documents on children which have either a regional or global significance. Private and public international law treaties are included as well as recommendations and resolutions adopted by global, regional and inter-governmental organisations. For ease of reference, the documents are organised according to subject headings.

Location: UCT Law Library

Shelf reference: DH 346.0135 INTE

Keywords: CHILD JUSTICE, CRIMINAL CAPACITY, HUMAN RIGHTS, INSTRUMENTS, INTERNATIONAL, UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY, UN RULES FOR JUVENILES DEPRIVED OF THEIR

LIBERTY, UN STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUSTICE

Van Bueren, G. (1995) *The International Law on the Rights of the Child*. Dordrecht: Kluwer Academic Publishers.

The full profile for this reference can be found previously in this section, under the subsection entitled "UN Convention".

Location: Community Law Centre, University of the Western Cape

Shelf Reference: INT U11.30

Keywords: CHILDREN'S RIGHTS, INTERNATIONAL, UN CONVENTION, UN RULES FOR JUVENILES DEPRIVED OF THEIR LIBERTY, VIOLATION

Viljoen, F. (2000) 'The African Charter on the Rights and Welfare of the Child' in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

An analysis of the provisions of the African Charter on the Rights and Welfare of the Child.

This chapter offers an exploration of the background to and motivation for the adoption of the African Children's Charter. Firstly the author examines the substantive provisions in the African Children's Charter. The author compares this Charter with the African Charter and also with the Convention on the Rights of the Child, highlighting tensions and polarities between the provisions relating to children. Secondly the author looks at the procedural provisions in the African Children's Charter, again, following on with brief comparative analyses with the African Charter and the Convention on the Rights of the Child. There is a short section on the establishment of the African Children's Committee. The chapter includes a status report on which countries have ratified the African Children's Charter. It concludes with a brief summary on the role of the African Children's Charter in South Africa.

Location: SJRP

Shelf reference: 660 VIL/B

Keywords: AFRICAN CHARTER, AFRICAN CHILDREN'S CHARTER, CHILDREN'S RIGHTS, UN CRC

The South African Constitution

Bekink, B. and Brand, D. (2000) 'Constitutional Protection of Children' in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

A chapter investigating and elaborating on the rights in the Bill of Rights as they apply to children specifically.

This chapter begins by providing first a general description of some basic constitutional principles and then an overview of the South African Bill of Rights and its operation. Against this backdrop the authors focus on the specific rights in the Bill of Rights specific to children. Section 9.4.2.4. contains a discussion on the right of every child to be protected from maltreatment, neglect and abuse and section 9.4.2.6. focuses specifically on rights related to detention. Also of relevant to the criminal justice sphere is section 9.4.2.7 on the right to legal assistance in civil proceedings and section 9.4.2.9. on the best interests of the child.

Location: SJRP

Shelf reference: 660 BEK/B

Keywords: BILL OF RIGHTS, BEST INTERESTS, CHILDREN'S RIGHTS, DETENTION, LEGAL AID

Chaskalson, M., Kentridge, J., Klaaren, J., Marcus, G., Spitz, D. and Woolman, S. eds. (1998) 'Criminal Procedure' in *Constitutional Law of South Africa*. Cape Town: Juta.

A framework for criminal procedure rights in South Africa.

This chapter offers a thorough account of each of the rights applicable to persons who are arrested, detained or accused within the criminal justice system of South Africa.

Location: SJRP

Shelf reference: 320 SNY/B

Keywords: ACCUSED, ARREST, CRIMINAL PROCEDURE, DETENTION, DUE PROCESS, TRIAL

Constitution of the Republic of South Africa Act 108 of 1996.

South Africa's Constitution aims to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights. Chapter 2 of the Constitution represents the Bill of Rights and is the cornerstone of democracy in South Africa. It enshrines the rights of all people in the country, highlighting special rules for children in s28, and affirms the democratic values of human dignity, equality and freedom. The Constitution was drafted in terms of Chapter 5 of the interim Constitution (Act 200 of 1993) and was first adopted by the Constitutional Assembly on 8 May 1996.

Location: SJRP

Shelf Reference: 360 CON/S

Available on line: <http://www.polity.org.za/govdocs/constitution/saconst02.html>

Keywords: CHILDREN'S RIGHTS, COMMUNITY PARTICIPATION, CONSTITUTION, DUE PROCESS, FAIR TRIAL, FREEDOM OF EXPRESSION

Dugard, J. (1994) 'The Role of International Law in Interpreting the Bill of Rights'. *SAJHR*, 10/2:208–215.

A short article exploring the links between the South African Bill of Rights and international law.

The article begins by outlining how little the South African courts have done to promote human rights. It then documents how the new Constitution is designed to allow international law to play a greater role in the South African justice system.

Location: SJRP

Shelf reference: 661 DUG/B

Keywords: BILL OF RIGHTS, CONSTITUTION, INTERNATIONAL INSTRUMENTS, INTERNATIONAL LAW

Jeffery, A. (1994) *Bill of Rights Report 1996/7*. Johannesburg: South African Institute of Race Relations.

Pagination: i-xvii, 1-158

Provides a synopsis of key changes prompted by the interim Bill of Rights in South Africa.

This publication provides a bird's eye view of changes in the law following the implementation of a South African Bill of Rights. The language used is kept as succinct and non-technical as possible, making the book accessible to individuals without a legal background. It also places important changes in the law in a wider political and social context.

Location: SJRP

Shelf reference: 360 JEF/S

Keywords: CHILD CARE AMENDMENT ACT, CHILDREN'S RIGHTS, CORRECTIONAL SERVICES ACT S29, DETENTION

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

See specifically Chapter 1.9.

Sloth-Nielsen, J. (1997) 'Juvenile Justice Review 1996'. *SACJ*, 9/1:342-353.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1992-1998".

See specifically p.349

Sloth-Nielsen, J. and Muntingh, L. (2001, in press) 'Juvenile Justice Review 1999-2000'. *SACJ*.

A review of some of the developments in law, policy and practice relating to juvenile justice during the years 1999 and 2000.

This review looks at developments in juvenile justice law and practice in South Africa. It summarises the main features of the South African Law Commission's Report on Juvenile Justice.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

Thipanyane, T. (1995) 'The Rights of Children in Natal', in Pollecutt, L., Motshekga, M. and Gardner, A. eds. *Legal Rights of Children in South Africa*, pp. 100-127. Pretoria: National Institute for Public Interest Law and Research.

One of the research papers presented at an International Conference on the Child and the Constitution in South Africa.

This research paper attempts to cover several issues pertaining to the rights of children in the Natal province. In particular it studies the existing legal status of children in South Africa who come into contact with the criminal justice system, and whether or not their legal status meets with the minimum standards set out in the UN Convention on the Rights of the Child.

Location: SJRP

Shelf reference: 660 THI/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, CHILDREN'S RIGHTS, COURT, DETENTION, JUVENILE JUSTICE, LEGAL REPRESENTATION, PRESUMPTION OF INNOCENCE

Other South African legislation and policy

Criminal Procedure Act 51 of 1977 (as amended).

This Act makes provision for procedure and related matters in criminal proceedings.

Location: SJRP

Shelf Reference: 320 CRI/B

Keywords: ACCUSED, ARREST, APPEAL, BAIL, COURT, CRIMINAL CAPACITY, DETENTION, LEGAL REPRESENTATION, PROSECUTION, RELEASE, RESTITUTION, REVIEW, SENTENCE, TRIAL, WITNESS

Child Care Act 74 of 1983 (as amended).

This Act provides for the establishment of children's courts and the appointment of commissioners of child welfare; for the protection and welfare of certain children; for the adoption of children; for the establishment of certain institutions for the reception of children and for the treatment of children after such reception; and for contribution by certain persons towards the maintenance of certain children; and to provide for incidental matters.

Location: SJRP

Shelf Reference: 655 GOV/B

Keywords: APPEAL, CHILDREN'S RIGHTS, COURT, CUSTODY, LEGAL REPRESENTATION, PLACES OF SAFETY

Correctional Services Act 111 of 1998.

This Act provides for a revised correctional system that recognises international principles on correctional matters.

It includes provisions for: the establishment, functions and control of the Department of Correctional Services; the custody of all prisoners under conditions of human dignity; the rights and obligations of sentenced and unsentenced prisoners; a system of community corrections; release from prison and placement under correctional supervision.

Location: SJRP

Shelf Reference: 204 GOV/B

Keywords: ASSESSMENT, CHILDREN'S RIGHTS, COMMUNITY CORRECTIONS, CORRECTIONAL SUPERVISION, DETENTION, JUDICIAL INSPECTORATE, INDEPENDENT PRISON VISITORS, PAROLE, PRISON, PROBATION OFFICER, RELEASE, SAFE CUSTODY

Correctional Services Act 8 of 1959 (as amended).

This Act consolidates and amends laws relating to correctional services. It is due to be replaced with the new Act.

Location: SJRP

Shelf Reference: 204 GOV/B

Keywords: COMMUNITY CORRECTIONS, CORRECTIONAL SUPERVISION, CORRECTIONAL SERVICES ACT S29, DETENTION, INSPECTING JUDGE, PAROLE, PRISON, PROBATION OFFICER, RELEASE

De Wet, J.C. and Swanepoel, H.L. (1985) *Strafreg.* 4th Edition. Butterworths: Durban.

A comprehensive Afrikaans textbook on the South African Criminal Law.

This book deals with the substantive law, discussing the principles of criminal law such as definition of crime, types of crimes, culpability right through to sentencing. In particular, it contains South African law relating to young persons before abolition of whipping which was a significant attribute of the law of sentencing.

Location: UCT Law Library

Shelf reference: DH 345 000968 DEWE

Keywords: CRIMINAL LAW, DOLI CAPAX, DOLI INCAPAX, WHIPPING, YOUTH

Du Toit, E., De Jager, F., Van der Merwe, S., Paizes, A. and St Q Skeen, A. (1991) *Commentary on the Criminal Procedure Act.* Cape Town: Juta.

Complete text and commentary on the Criminal Procedure Act 51 of 1977.

Location: UCT Law Library

Shelf reference: DH 345.050968 COMM

Keywords: ADMINISTRATION, ARREST, COURT, CRIMINAL PROCEDURE, DETENTION, JUVENILE JUSTICE, LEGAL REPRESENTATION

Geldenhuys, T. and Joubert, G. (1999) *Criminal Procedure Handbook.* 4th Edition. Cape Town: Juta.

This useful handbook explains the general principles of the law of criminal procedure and provides the reader with a clear understanding of each phase of the criminal justice procedure.

The book begins by outlining the general principles of the South African law of criminal procedure. It then guides the reader through each phase of the criminal procedure, starting with pre-trial

processes, followed by the trial and sentence, and finally post-verdict and post-sentence remedies. It covers legal developments (as far as case law and statutory amendments are concerned) up to 30th June 1999.

Location: LAW LIBRARY

Shelf reference: DH 345.050968 STRA

Keywords: ACCUSED, APPEAL, BAIL, CHARGE SHEET, COURT, CRIMINAL CAPACITY, CRIMINAL PROCEDURE, DETENTION, INDICTMENT, JOINDER, LEGAL PERSONALITY, LEGAL REPRESENTATION, PARENTAL RESPONSIBILITY, PLEA, PROSECUTION, PROTECTION, PUNISHMENT, REVIEW, SENTENCE, SEPARATION OF TRIAL, TRIAL, VERDICT, WITNESS

Hiemstra, V. G. (1967) *Suid Afrikaanse Strafproses*. Updated by Kriegler, J.C. and Stafford, E.H. (1993). Butterworths: Durban.

Commentary on the Criminal Procedure Act 51 of 1977.

The book deals with the whole Criminal Procedure Act and the sections currently relevant to juveniles are 290 to 295. A considerable amount of the youth sentencing focus deals with whipping which is no longer applicable in South Africa. The book links particular sections of the Act to court decisions.

Location: UCT Law Library

Shelf reference: DH 345 050968 HIEM

Keywords: JUVENILE JUSTICE, PROBATION OFFICER, REFORMATORY, WHIPPING

McCurdie, J. (1992) *Children's Rights*. Developing Justice Series, 9. Cape Town: Institute of Criminology, UCT.

A collection of children's rights as defined by the Children's Charter of South Africa, the UN Convention on the Rights of the Child and by the situation in South Africa prior to the enactment of the Bill of Rights.

This publication provides a summary of children's rights. It looks at children's rights as they are represented in various documents, conventions and charters. It highlights the limitations of South African legislation at the time of writing and suggests recommendations for the future.

Location: SJRP

Shelf reference: 651 MCC/B

Keywords: AFRICAN CHARTER, CHILDREN'S CHARTER OF SOUTH AFRICA, CHILDREN'S RIGHTS, UN CONVENTION

Probation Services Act 116 of 1991.

This Act provides for the establishment and implementation of programmes aimed at combating of crime; rendering assistance to and treatment of certain persons involved in crime; and for other related matters. An amendment to this Act is expected to be passed in 2001. This amendment will make further provision for crime prevention programmes; extend the powers and duties of probation officers; and provide for the mandatory assessment of arrested children and for the establishment of reception, assessment and referral services and centres.

Location: SJRP

Shelf reference: 251 GOV/B

Keywords: ARREST, ASSESSMENT, CORRECTIONAL SERVICES, PROBATION OFFICER, REFERRAL, REFORM SCHOOL, SUPERVISION

SALC. (1998) *The Review of the Child Care Act. Issue Paper 13, Project 110. Pretoria: SALC.*

This Issue Paper was prepared in order to disseminate information, both for educational purposes and to elicit comment and suggestions on law surrounding child care. It offers informative documentation on the factual position and special needs of various groups of children. It draws on relevant international instruments and the South African Constitution for its framework and gives an overview of policy statements proposed at the time of writing.

Location: SJRP

Shelf reference: 655 SOU/B

Available on line: <http://www.law.wits.ac.za/salc/issue/ip13.html>

Keywords: AFRICAN CHARTER, BILL OF RIGHTS, CARE FACILITIES, CHILDREN'S RIGHTS, COURT, CRIME PREVENTION, LEGAL REPRESENTATION, UN CONVENTION, WELFARE

Skelton, A. (1997) 'Children, Young Persons and the Criminal Procedure', in Robinson, J. A. ed. *The Law of Children and Young Persons in South Africa*. Durban: Butterworths.

A very useful chapter offering an overview of the current procedural aspects relating to children who come into contact with the criminal justice process either through themselves being arrested on criminal charge, or because they are eye witnesses to, or victims of, crimes committed by others.

Location: SJRP

Shelf reference: 660 SKE/B

Keywords: AGE DETERMINATION, ARREST, CHILDREN AWAITING TRIAL, CHILDREN'S COURT, CORRECTIONAL SERVICES AMENDMENT ACT 17 OF 1994, CORRECTIONAL SERVICES AMENDMENT ACT 17 OF 1996, COURT, DIVERSION,

LEGAL ASSISTANCE, PROBATION OFFICER, REFORM, REVIEW, ROLE OF PARENT/GUARDIAN, SENTENCE, TRIAL, VICTIMS, WITNESS

Skelton, A. ed. (1998) *Children and the Law*. Lawyers for Human Rights: Pietermaritzburg.

Pagination: 1-250

A very accessible and pleasantly illustrated manual of all the various laws affecting children

This manual demystifies the law for individuals from various disciplines who work with children and families. It can be used as a resource in day-to-day activities. In addition, the manual has been written in such a way that older children themselves can use the book to access information about how they are protected by the law in their various life situations.

Location: SJRP

Shelf Reference: 660 SKE/S

Updates to the manual can be found on line at: <http://www.lhr.org.za>

Keywords: AGE, ARREST, CAPACITY, CHILDREN'S COURT, DETENTION, DIVERSION, LEGAL ASSISTANCE, PARENT/GUARDIAN, PRE-TRIAL RELEASE, REVIEW, SENTENCE

Sloth-Nielsen, J. (forthcoming) 'Children' in Davis, D., Cheadle, H. and Haysom, N. eds. *Fundamental Rights in the Constitution: Commentary and Cases*. Durban: Butterworths.

A chapter offering commentary on both international and constitutional rights applicable to children in South Africa.

The chapter opens with the rights contained in s28 of the 1996 Constitution of South Africa, rights specifically attributable to children. The commentary that follows begins by identifying the international law provisions that are relevant to children. Particular focus is given to the UN Convention on the Rights of the Child, the two optional protocols it has produced, and the African Charter. The application and interpretation of individual rights, some of which are possessed by all citizens and not just children, are reviewed. In relation to child justice, commentary is given on both constitutional provisions and non-binding international instruments pertaining to juvenile detention. The reform of legislation providing for juvenile detention is reviewed, as are several High Court cases that focus on detention as part of a sentence. The chapter also includes reference to the latest developments with regard to implementing the rights of children in conflict with the law.

Location: SJRP

Shelf reference: 660 SLO/B

Keywords: BILL OF RIGHTS, BEST INTERESTS, CHILDREN'S RIGHTS, CORRECTIONAL SERVICES ACT, s29, DETENTION, INTERNATIONAL LAW, LEGAL REPRESENTATION, SENTENCING, UN CRC

Sloth-Nielsen, J. and Van Heerden, B. (1996) 'The Child Care Amendment Act 1996: Does it improve children's rights in South Africa?'. *SAJHR*, 12/4:649-655.

Discussion of the contents of the Child Care Amendment Act 1996.

This article analyses the impact of this amendment to legislation in terms of its effect on children's legal representation, their adoption, places of safety and shelter for children, their removal and abuse of children. Such legislation affects children when they are transferred from the criminal justice system to the child care system.

Location: SJRP

Shelf reference: 652 SLO/B

Keywords: CHILD CARE, CHILDREN'S RIGHTS, COURT, LEGAL REPRESENTATION, PLACE OF SAFETY

Sloth-Nielsen, J. and Van Heerden, B. (1996) 'Proposed amendments to the Child Care Act and Regulations in the context of constitutional and international developments in South Africa'. *SAJHR*, 12/2:247-264.

Overview of the proposed amendments to the Child Care Act.

This article comments not only on the content of some of the key new proposals, but also on the drafting process. It focuses on children's court proceedings, adoptions procedures, the inspection of places of care and children's homes controlled by the state, the removal of children and child labour. This area of law affects children when they are transferred from the criminal justice system to the child care system.

Location: SJRP

Shelf reference: 652 SLO/B

Keywords: CHILD CARE, CHILDREN'S RIGHTS, COURT, LEGAL REPRESENTATION, PLACE OF SAFETY

Snyman, C. R. (1985) *Strafreg.* 4th Edition. Butterworths: Durban.

A comprehensive Afrikaans textbook on the South African Criminal Law.

This book deals with the substantive law, discussing the principles of criminal law such as definition of crime, types of crimes, culpability right through to sentencing. In particular, it contains South African law relating to the whipping of young persons. This has subsequently been abolished but previously was a significant attribute of the law of sentencing.

Location: UCT Law Library

Shelf reference: DH 345 00968 SNYM

Keywords: CRIMINAL LAW, DOLI CAPAX, DOLI INCAPAX, WHIPPING, YOUTH

Steytler, N. (1998) *Constitutional Criminal Procedure: A commentary on the Constitution of South Africa*. Durban: Butterworths.

Pagination: i-xxiii, 1-497

A practical guide for everyone involved in the practice and administration of criminal justice.

This handbook reflects and analyses the constitutional law that has emerged in the case law that follows both the interim Constitution and the 1996 Constitution. It also analyses and explores the possible content of those provisions of the Bill of Rights which have not yet received the attention of the South African courts.

Location: SJRP

Shelf reference: 360 STE/S

Keywords: CHILDREN'S RIGHTS, CONSTITUTION, COURT, CRIMINAL PROCEDURE, DUE PROCESS, LEGAL REPRESENTATION, RIGHT TO FAIR TRIAL

Van Oosten, F. F. W. and Louw, A. S. (1997) 'Children, Young Persons and the Criminal Law', in Robinson, J. A. ed. *The Law of Children and Young Persons in South Africa*. Durban: Butterworths.

Overview of how South African criminal law deals with children and young persons.

This chapter provides a general overview and critical evaluation of the case law and legislation that concerns children in two respects: firstly, children as criminal offenders and secondly, children as victims of crime.

Location: SJRP

Shelf reference: 664 VAN/B

Keywords: CONSENT AUTHORITY, CRIMINAL CAPACITY, FAULT, INTENTION, NEGLIGENCE, PUNISHMENT, VICTIM

Zaal, F.N. (1997) 'Children's Court: An underrated resource in a new constitutional era', in Robinson, J. A. ed. *The Law of Children and Young Persons in South Africa*. Durban: Butterworths.

A chapter explaining the status of children's courts in South Africa.

The author begins by describing what the children's courts are and who they serve. The duties of the children's courts include: to provide consent to marriage for minors; to undertake cases regarding children in need of care; to deal with adoption applications; and to conduct absconder

inquiries. The functions and responsibilities of professional persons who work in the children's courts are detailed. The author also describes the various methods of gaining access to the children's courts. The chapter closes with a section reviewing the limitations affecting the work of the children's court.

Location: SJRP

Shelf reference: 662 ZAA/B

Keywords: CHILD CARE, CHILDREN'S COURTS, JUDICIARY, PROSECUTOR, SOCIAL WORK

Zaal, F.N. (2000) 'How well are we protecting children in the new millenium: a critical evaluation of aspects of aspects of the Child Care Act 74/1983', presented at *The trend from parental rights to parental responsibilties and children's rights* Conference, 13-14 March, held at Breakwater Lodge, Cape Town.

A paper discussing some important parts of the Child Care Act and its regulations.

This paper looks at the definitions contained in the Child Care Act 74 of 1983, focussing particularly on the definitions of places of safety and secure care (see pp.7-10). It also examines provisions regarding the children's court, legal representation and direct child participation.

Location: SJRP

Shelf reference: 636 ZAA/B

Keywords: APPEAL, CARE, CHILDREN'S RIGHTS, CHILD PARTICIPATION, COURT, LEGAL REPRESENTATION, PLACE OF SAFETY, REFORM SCHOOL, SCHOOL OF INDUSTRY, SECURE CARE

Restorative justice

Adler, C. and Wunderstiz, J. eds. (1994) *Family conferencing and juvenile justice: the way forward or misplaced optimism?* Canberra: Australian Institute of Criminology.

An anthology of 11 previously unpublished papers assessing the use and dimensions of family group conferencing in Australia and New Zealand.

The contributors to this work share a concern about the possible effects of the criminal justice system on juvenile offenders. However, they have different views as to how justice should be administered. They consider whether family conferencing is the best alternative. While some suggest that it is an improvement over the present system of justice, others argue that the criminal justice administration should move cautiously in order to prevent net-widening and other potentially harmful effects. The most innovative and potentially positive aspects of family group conferencing are the involvement of the victim and the young offender's family in decision making. The papers address such issues as whether punishment without stigmatisation is possible, whether re-offending can be prevented, and if family conferencing represents the best alternative.

Location: UCT Law Library

Shelf reference: 364.360994 FAMI

Available on line: <http://www.aic.gov.au/publications/lcj/family/index.html>

Keywords: COMMUNITY PARTICIPATION, FAMILY GROUP CONFERENCING, NET-WIDENING, NEW ZEALAND, OFFENDER, RESTORATIVE JUSTICE, STIGMATISATION, VICTIM

Bazemore, G. and Walgrave, L. eds. (1999) *Restorative Juvenile Justice: Repairing the harm of youth crime.* New York: Criminal Justice Press.

A comprehensive collection of essays exploring the parameters and components of the restorative justice paradigm as an alternative response to youth crime.

The authors contributing to this book represent a diverse range of opinions, thereby presenting a critically reflective approach to the theory and research on restorative justice. The first section outlines the key principles necessary for systemic restorative reform. The second section focuses on processes, programmes and practices. Chapters in this section emphasise the need for meaningful community involvement in the effective administration of restorative sanctions and in the provision of public safety. The third section concentrates on issues of implementation, highlighting in particular how legislation can play both a facilitatory and an obstructive role in the advancement of a systemic reform of the youth justice system. Section four provides the reader with extensive reviews of the theoretical and empirical literature assessing the impact of restorative justice on the victim, the offender and the community. In the fifth and final section the editors pull together the discussions developed throughout the book. Specific criticisms raised in the book are revisited and future research needs and challenges necessary for the successful implementation of restorative justice are critically examined.

Location: SJRP

Shelf reference: 672 BAZ/S

Keywords: IMPACT, IMPLEMENTATION, OFFENDER, PRACTICE, PRINCIPLES, PROCESS, PROGRAMMES, RESEARCH, RESTORATIVE JUSTICE, SAFEGUARDS, THEORY, VICTIM

Braithwaite, J. (1998) *Linking Crime Prevention to Restorative Justice*. Paper presented at the First North American Conference on Conferencing, August 6-8, 1998, Minneapolis, Minnesota.

This paper discusses how research needs to show that restorative justice prevents crime in order to make it mainstream, and how restorative justice programs can improve their crime prevention capacity.

Available on line: http://www.realjustice.org/Pages/mn98papers/nacc_bra.html

Location: SJRP

Shelf Reference: 672 BRA/B

Keywords: COMMUNITY PARTICIPATION, CRIME PREVENTION, IMPLEMENTATION, RESTORATIVE JUSTICE

Braithwaite, J. (1996) *Restorative Justice and a Better Future*. Dalhousie University, 17th October, 1996. Dalhousie Law Review.

The author begins by rejecting retribution and rehabilitation as models for criminal justice systems and then introduces the reader to the concept of restorative justice. He clearly explains the recognition that this model gives to the needs of the victim of crime as well as the needs of the community and the offender. The article also identifies that all cultures have deep-seated restorative traditions and that these should be built upon to create a better system of justice.

Available on line: <http://www.realjustice.org/Pages/braithwaite.html>

Location: SJRP

Shelf Reference: 672 BRA/B

Keywords: COMMUNITY PARTICIPATION, IMPLEMENTATION, OFFENDER, RESTORATIVE JUSTICE, VICTIM

Consedine, J. (1995) *Restorative justice: healing the effects of crime*. Lyttelton, NZ: Ploughshares Publications.

An essay and review asserting that the current emphasis on retributive justice has had disastrous consequences for offenders and societies alike.

This paper argues that, instead of the retributive approach, the restorative model, as practised by Maoris and other New Zealand islanders, would provide greater benefits to victims, offenders and societies. With its positive philosophical basis emphasising reconciliation, healing for victims, community and wholeness, healing, forgiveness and mercy, restorative justice offers a way to better allocate resources and attack directly the fear of crime and violence. Section 1 reviews models of retributive justice used in New Zealand, Australia, Great Britain and the U.S. Section 2 describes models of restorative justice used in various cultures.

Location: UCT Main Library

Shelf reference: 364.601 CONS

Keywords: COMMUNITY PARTICIPATION, CRIMINAL JUSTICE SYSTEMS, INDIGENOUS PEOPLES, NEW ZEALAND, REHABILITATION, REPARATION, RESTORATIVE JUSTICE, RETRIBUTION, VICTIM

Consedine, J. and Bowen, H. (1999) *Restorative justice: Contemporary themes and practices.* Lyttelton, NZ: Ploughshares Publications.

An anthology of previously unpublished papers addressing the issue of restorative justice for young offenders in New Zealand.

In this book, leading New Zealand practitioners join Jim Consedine, Helen Bowen and others in promoting restorative justice. The contributors explain the theory and practice of restorative justice, its strengths and weaknesses, and how restorative justice can be developed in the future. Of particular interest to the South African reader is the emphasis on an integrated and multi-cultural approach to justice. The proceedings from seven community group conferences dealing with a variety of crimes are also summarised.

Location: UCT Law Library

Shelf reference: DH 364.993 REST

Keywords: COMMUNITY PARTICIPATION, CRIMINAL JUSTICE SYSTEMS, INDIGENOUS PEOPLES, NEW ZEALAND, REHABILITATION, REPARATION, RESTORATIVE JUSTICE, RETRIBUTION, VICTIM

Daly, K. and Hayes, H. (2001) *Restorative Justice and Conferencing in Australia. Trends and Issues in Crime and Criminal Justice.* No. 186. Canberra: Australian Institute of Criminology.

This paper outlines recent Australian developments in restorative justice and conferencing.

Restorative justice encompasses a variety of practices at different stages of the criminal process, including diversion from court prosecution, actions taken in parallel with court decisions, and meetings between victims and offenders at any stage of the criminal process. Apart from the Australian Capital Territory and Victoria, all Australian jurisdictions have introduced legislation incorporating conferencing in their responses to youth crime. All but one of the statutory-based schemes favour non-police-run conference models. Australia and New Zealand are world leaders in

the use of conferencing as a form of restorative justice. When used as a diversion from court prosecution, conferences involve a young person who has admitted to the offence, his or her supporters, the victim, his or her supporters, a police officer and a conference convenor coming together to discuss the offence and its impact. The conference then moves to a discussion of the outcome that the young offender is expected to complete. The sanctions or reparations may include an apology, paying some form of monetary compensation, undertaking work for the victim or the community and attending counselling sessions, among others. The outcome is legally binding. Research from around Australia is reported in this paper.

Location: SJRP

Shelf reference: 672 DAL/B

Keywords: AUSTRALIA, FAMILY GROUP CONFERENCING, NEW ZEALAND, OFFENDER, RESTORATIVE JUSTICE, VICTIM

Frank, C., Van Eden, K., Eliasov, N. and Duffy, J. (1997) *Restorative Justice*. Position Paper. Cape Town: Institute of Criminology.

A paper on restorative justice in South Africa.

The purpose of this paper is to consider theoretical and practical issues in relation to the notion of Restorative Justice with particular reference to the South African context. It analyses the term 'restorative justice' and then discusses the central themes that emerge in current literature on the term. The various interpretations of restorative justice in other countries are explored before it is focused on in a South African context. The paper raises issues for the implementation of restorative justice in South Africa and concludes with recommendations regarding possible ways forward for the concept to be developed further in South Africa.

Location: SJRP

Shelf reference: Institute publications.

Keywords: DIVERSION, FAMILY GROUP CONFERENCES, IMPLEMENTATION, INTERNATIONAL, REINTEGRATIVE SHAMING, REPARATION, RESTITUTION, RESTORATIVE JUSTICE, VICTIM-OFFENDER PROGRAMMES

Home Office. (2001) *An Exploratory Evaluation of Restorative Justice Schemes*. Crime Reduction Research Series Paper 9. London: Home Office.

This UK study produces some very interesting findings on the impacts and cost-effectiveness of restorative justice schemes.

This report presents the results of a 15-month study of the effectiveness of restorative justice schemes conducted between July 1999 and November 2000. The principal fieldwork was undertaken between December 1999 and June 2000 in seven restorative justice schemes across England, two of them dealing principally with adult offenders and the other five with juveniles. The research was commissioned under the Crime Reduction Programme (CRP), a major government-funded initiative aimed at discovering 'what works' in reducing crime and re-offending. The CRP is

also concerned to ensure that reductions are delivered efficiently, so a further focus of attention was upon cost-effectiveness in the achievement of the outputs, impacts and outcomes of the schemes examined. The aims of the research were: to identify which elements, or which combination of elements, in restorative justice schemes are most effective in reducing crime and at what cost; and to provide recommendations on the content of, and best practice for, schemes to be mainstreamed. In their conclusions, the authors do not shy away from reporting on the weaknesses, as well as the strengths, of the restorative approach. In particular, they note that the schemes evaluated in the research were diverse in their understandings of the notion of 'restorative justice', their degree of focus on victims and offenders, and their implementation of the interventions that they undertook. They find that, whatever its precise form, 'restorative justice' is a labour-intensive and time-consuming activity, beset by communication problems and delays. This situation raises some doubts about the future potential of mediation as a mainstream service capable of 'processing' large numbers of cases within (or outside) the criminal justice system.

Location: SJRP

Shelf reference: 672 HOM/S

Keywords: COMMUNITY PARTICIPATION, OFFENDER, RESTORATIVE JUSTICE, VICTIM

Ladikos, A. (1997) 'Experiential world of youthful victims: an appeal to restorative justice in the new South Africa'. *Acta Criminologica*, 10/2: 38-46.

The article looks at street children and ex-street children now housed in two assessment centres in Pretoria. It outlines the philosophy on which restorative justice is based and the paradigm's redefinition of crime in terms of an injury or wrong done to another person rather than explaining it in terms of breaking the law, or offending against the state. The study looks at the problem area of juveniles in prison. It also attempts a definition of street children, making the distinction between children on and children of the street.

Location: SJRP

Shelf Reference: 672 LAD/B

Keywords: ASSESSMENT, CHILDREN IN PRISON, RESTORATIVE JUSTICE, STREET CHILDREN

Makhathini, O. (1996) 'The law could learn a lot from "Ubuntu"'. *Child and Youth Care* 14/8:8-9.

An article proposing the incorporation of some traditional methods of dispute resolution in South Africa.

The author looks at the very complex, adversarial criminal justice system in South Africa and suggests the incorporation of some traditional methods of dispute resolution. The concept of 'ubuntu' is described and its complementary relationship with restorative justice is emphasised.

Location: SJRP

Shelf reference: 672 MAK/B

Keywords: CORRECTIONAL SERVICES ACT, s29, DISPUTE RESOLUTION, JUSTICE, UBUNTU, UN CRC

McCold, P. (1995) *Restorative Justice: the Role of the Community*. Paper presented to the Academy of Criminal Justice Sciences Annual Conference, Boston, March 1995.

This paper discusses the need for a new approach to justice, especially criminal justice. The broad principles of the restorative justice perspective are reviewed. Examples are provided of how these principles are applied in practice. The author then suggests that the role of the community in the victim-offender-community relationship needs to be more fully developed to complete the paradigm. After discussing the various levels of "community", the needs and responsibilities of communities are discussed. The author then considers the paradigmatic implications and suggests how these principles might be applied in a holistic restorative justice approach.

Available on line: <http://www.realjustice.org/Pages/community3.html>

Location: SJRP

Shelf Reference: 672 MCC/B

Keywords: COMMUNITY, COMMUNITY PARTICIPATION, FAMILY GROUP CONFERENCE, IMPLEMENTATION, VICTIM-OFFENDER MEDIATION, RESTORATIVE JUSTICE, VICTIM

McCold, P. (1999) *Restorative Justice Practice – the State of the Field 1999*. Paper presented at the Building Strong Partnerships for Restorative Practices Conference, August 5-7, 1999, Burlington, Vermont.

This paper presents a broad overview of restorative justice practice during the last 30 years. The historical evolution of the three primary restorative justice models—mediation, conferencing and circles—are summarised and differences between "youth justice" and "child welfare" conferences are highlighted. A chronology of significant restorative justice programs is presented and the general trends in practice are discussed.

Available on line: http://www.realjustice.org/Pages/vt99papers/vt_mccold.html

Location: SJRP

Shelf Reference: 672 MCC/B

Keywords: COMMUNITY PARTICIPATION, FAMILY GROUP CONFERENCE, IMPLEMENTATION, VICTIM-OFFENDER MEDIATION, RESTORATIVE JUSTICE

Miers, D. (2001) *An International Review of Restorative Justice*. Crime Reduction Research Series Paper 10. London: Home Office.

This review provides an overview of the position and use of restorative justice programmes in twelve European jurisdictions, together with summaries and examples of programmes in Australia, Canada, New Zealand and the United States of America.

This report reviews the development and provision of RJ in a number of other jurisdictions. In so doing, it allows us to compare and contrast the often diverse ways RJ has been deployed, while also indicating some of the common features that underpin the successful provision of RJ. In each case, the review summarises the provision of restorative justice under four thematic headings: legal base; scope; implementation; and evaluation. The review compares and contrasts the principal features of these themes across the different jurisdictions, identifying, particularly in the case of the European jurisdictions, the similarities and dissimilarities between their various restorative justice initiatives. In doing so, the review draws some lessons about good practice in restorative justice provision. Finally, the review places the work currently being undertaken within wider theoretical debates about the nature and scope of restorative justice, and highlights some of the strengths and weaknesses of evaluative research into its impact. The review will be of value to those who seek an understanding of restorative justice provision in European jurisdictions in particular, and more generally in a wider international context. Both the detailed accounts and the evaluative summary will enable readers to compare that provision with their own understanding of the theory and practice of restorative justice in England and Wales.

Location: SJRP

Shelf reference: 672 MIE/S

Keywords: AUSTRALIA, CANADA, COMMUNITY PARTICIPATION, ENGLAND, EUROPE, EVALUATION, IMPLEMENTATION, INTERNATIONAL, NEW ZEALAND, OFFENDER, RESTORATIVE JUSTICE, UNITED STATES, VICTIM, WALES

Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

A collection of papers describing restorative justice practices and highlighting critical issues in restorative justice.

The first chapter of this book introduces the concept of restorative justice as a new way of thinking. It describes the history of the concept, offers a definition of restorative justice and describes hallmark programmes of restorative justice. Victim Offender Mediation, Conferencing and Circles are profiled. The authors document the expansion of restorative justice within the intergovernmental sphere as well as between citizens. Other chapters describe restorative practices in various countries. Critical issues in restorative justice are covered in chapters 10-13 and chapter 14 offers an analysis of what works when implementing restorative justice.

Location: UCT Law Library

Shelf reference: DH 364.68083 REST

Keywords: CIRCLES, CONFERENCING, IMPLEMENTATION, INTERNATIONAL, RESTORATIVE JUSTICE, VICTIM OFFENDER MEDIATION

Pranis, K. (date unavailable) *Building Community Support for Restorative Justice: Principles and Strategies*. Paper by Restorative Justice Planner, Minnesota Department of Corrections.

This paper seeks to highlight the importance of building community support for restorative justice. This approach includes gaining community approval of new approaches within the criminal justice system and engaging the community as a key actor in the process of responding to crime. The author argues that the success of a restorative approach is dependent upon community support and involvement and requires specific attention and resources allocated to those efforts.

Available on line: <http://www.realjustice.org/Pages/building.html>

Location: SJRP

Shelf Reference: 672 PRA/B

Keywords: COMMUNITY PARTICIPATION, IMPLEMENTATION, RESTORATIVE JUSTICE, UNITED STATES

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

See specifically Chapter 1.11.

Skelton, A. (1999) 'Children's rights and responsibilities versus crime control', in Davel, C. J. ed. *Children's rights in a Transitional Society*. Pretoria: Protea Book House.

An interesting debate emphasising the priority that children's rights and restorative justice must have over considerations of crime control.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

Skelton, A. (2001) 'A Restorative Framework for Juvenile Justice Reform: Lessons from South Africa', in Mika, H. and McEvoy, K. eds. *International Perspectives on Restorative Justice*, Belfast: Queens University.

An examination of restorative traditions and trends, and how they have influenced juvenile justice reform in South Africa.

This chapter provides a brief overview of the history of restorative justice in South Africa, looking back at traditional African conflict resolution methods and other informal justice mechanisms. The paper then moves on to demonstrate that restorative justice ideas, both ancient and modern, have

influenced the development a new juvenile justice system. Some preliminary thoughts are offered about the need to develop a uniquely South African model of conferencing. In conclusion, the paper describes some of the challenges attaching to the promotion of a restorative justice approach in an atmosphere that is becoming increasingly dominated by a crime control approach.

Location: SJRP

Shelf reference: 672 SKE/B

Keywords: CHILD JUSTICE BILL, COMMUNITY COURTS, COMMUNITY PARTICIPATION, CRIME CONTROL, DIVERSION, FAMILY GROUP CONFERENCING, INFORMAL JUSTICE, RESTORATIVE JUSTICE. TRUTH AND RECONCILIATION, UBUNTU

Skelton, A. and Frank, C. (2001) 'Conferencing in South Africa: returning to our future', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing. pp. 103-119.

The full profile for this reference can be found below, under the subsection entitled "Child Justice Process: Family group conferences and victim-offender mediation".

Strang, H. (2001) 'Restorative Justice Programs in Australia: A Report to the Criminology Research Council'. *Australian Institute of Criminology website*. <<http://www.aic.gov.au/crc/oldreports/strang/index.html>> (accessed 9th October 2001)

A report on restorative justice programmes in Australia.

Although a variety of diversionary programs, including cautioning, Drug Courts and some initiatives in the Family court may be broadly labelled 'restorative', this paper restricts its coverage to programs involving meetings of victims, offenders and communities to discuss and resolve an offence. It deals primarily with developments in the use of these programs in 'justice', but there is also reference to the state of play with programs in these other settings. The report closes with a section on the problems and some solutions in devising and implementing programmes.

Location: SJRP

Shelf reference: 672 STR/B

Available on line: <http://www.aic.gov.au/crc/oldreports/strang/index.html>

Keywords: ADMINISTRATION, AUSTRALIA, CONFERENCING, IMPLEMENTATION, INDIGENOUS COMMUNITIES, JUSTICE, RESTORATIVE JUSTICE

Wachtel, T. (1999) *Restorative Justice in Everyday Life: Beyond the Formal Ritual*. Paper presented at the “Reshaping Australian Institutions Conference: Restorative Justice and Civil Society,” The Australian National University, Canberra, February 16-18, 1999.

This paper offers a theoretical analysis of different approaches to social discipline. The author argues that if systems are not innately restorative then they cannot hope to affect change simply by providing an occasional restorative intervention. Restorative practices must be systemic not situational. The article concludes by saying that, to reduce the growing negative subculture among youth, to successfully prevent crime and to accomplish meaningful and lasting change, restorative justice must be perceived as a social movement dedicated to making restorative practices integral to everyday life.

Available on line: <http://www.realjustice.org/Pages/anu.html>

Location: SJRP

Shelf Reference: 672 WAC/B

Keywords: CONTROL, FAMILY GROUP CONFERENCE, IMPLEMENTATION, RESTORATIVE JUSTICE, SOCIAL DISCIPLINE

Walgrave, L. (2001) ‘On Restoration and Punishment: Favourable Similarities and Fortunate Differences’, in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

This chapter reviews the debate surrounding restorative justice and punishment.

This chapter begins with the statement that ‘restorative justice is not a soft option’. The author elaborates on this assertion by listing a variety of emotions may not only be experienced by an offender as part of a restorative justice process but also have an enduring impact on his or her future life. This has led some scholars to consider restorative justice as another version of punishment whilst others insist that punitive elements must not feature in restorative justice. The author goes on to analyse the roots of these differing standpoints – the burden of the restorative action and its implicit or explicit coerciveness – and concludes that these attributes are insufficient to call restorative actions punishments. He emphasises that such discussion is crucial in debates on the development of an adequate policy on how best to react to crime.

Location: SJRP

Shelf reference: 672 WAL/B

Keywords: BURDEN, COERCION, COMMUNITY, JUSTICE, OFFENCER, PUNISHMENT, RESTORATION, RESTORATIVE JUSTICE, VICTIM

Wood, C. (2000) *Unpacking Restorative Justice: Important Considerations for the Administration of Child Justice in South Africa*. Draft Paper, Institute of Criminology, University of Cape Town.

The paper looks at the differences and tensions that point to the struggle for definitional hegemony of the restorative justice paradigm. The author attempts a definition of restorative justice based on both the purist model of restorative justice and the maximalist model. The latter model proposes that restoration and doing justice should form the distinguishing elements of fully-fledged restorative justice. The emphasis on repairing the harm done differentiates between retributive and rehabilitative justice responses. The author looks at examples of Family Group Conferencing in New Zealand and the practice of Victim-Offender Mediation and Community Service in Belgium. The paper also discusses the Child Justice Bill, which entrenches the notion of restorative justice in South Africa and the proposed new justice system in South Africa whose central feature is to promote increased diversion of cases away from formal court procedures.

Location: SJRP

Shelf Reference: 672 WOO/B

Keywords: BELGIUM, CHILD JUSTICE BILL, DIVERSION, FAMILY GROUP CONFERENCE, NEW ZEALAND, REHABILITATION, RESTORATIVE JUSTICE, RETRIBUTION, VICTIM-OFFENDER MEDIATION

Zehr, H. (1990) *Changing lenses: a New Focus for Crime and Justice*. Scottsdale, Pennsylvania: Herald Press.

An essay examining common assumptions about crime and justice, which it terms a "retributive" lens or paradigm, and which proposes an alternative approach based on restorative justice.

The author asks society to reflect on the way in which it views and responds to crime. He then considers historical, biblical and practical alternatives. A "restorative" model is proposed that is based on the needs of victims and offenders, past ways of responding to crime, recent experiments and biblical principles. Topics include: the experience of crime; justice as paradigm; community justice; covenant justice; and the victim-offender reconciliation program and the role of the church.

Location: UCT Law Library

Shelf reference: DH 364.6 ZEHR

Keywords: CRIMINAL JUSTICE SYSTEMS, JUST DESERTS, JUSTICE, OFFENDER, PUNISHMENT, RELIGION, RESTORATIVE JUSTICE, RETRIBUTION, VICTIM

Sentenced and unsentenced children in prison

Community Law Centre. (1998) *Children in prison in South Africa: a situational analysis*. Cape Town: University of the Western Cape.

A very clear and thought-provoking report on the situation of children in prison in South Africa. The full profile for this reference can be found under the section entitled "Child Justice options: Prison".

Community Law Centre. (2001) 'The House Arrest Pilot Project – an alternative to children being held in custody awaiting trial', *Article 40, 3/2:6-7*.

A brief look at an initiative started in the Western Cape to alleviate the current situation of children in prison.

This report documents the origins and people behind the House Arrest Monitoring Service, which started with seven cases and one volunteer/family finder in 1997 and transformed into a pilot project in October 1998. The project essentially entails children being placed in the custody of their parents or guardians under house arrest pending the finalisation of their trial. The child is then monitored by the assistant probation officer, who must be present with the child and his or her parent or guardian at court appearances, and who must submit a sworn affidavit to court on the progress of the child's development. The article then lists how many and what type of children have been involved thus far with the project. Its future is discussed in relation to the provisions of the Child Justice Bill.

Location: SJRP

Shelf reference: 666 COM/B

Keywords: CHILD JUSTICE BILL, CHILDREN AWAITING TRIAL, HOUSE ARREST, IMPLEMENTATION, PARENT/GUARDIAN, PROBATION OFFICER

Community Law Centre. (2001) 'National Interim Protocol for the management of children awaiting trial', *Article 40, 3/2:4-5*.

Provides a short summary of the aims and objectives of the protocol. The full profile for this reference can be found under the section entitled "Implementing child justice in South Africa: Role players: Duties, responsibilities and opinions".

CRED (2000) *CRED Needs Assessment: Medium A section, Pollsmoor prison*. Unpublished paper.

Provides data on unsentenced youth in Pollsmoor prison, Medium A section. The full profile for this reference can be found under the section entitled "Child Justice options: Prison"

Department of Justice. (2001) *Interim National Protocol for the Management of Children Awaiting trial*. Pretoria: Child Justice Project and the Department of Justice.

This useful publication gives a potted history of the recent changes to the law regarding the detention of children awaiting trial. The full profile for this reference can be found under the section entitled “Implementing Child Justice in South Africa: Process”.

Eliasov, N. (1998) *The Transformation of the Child and Youth Care system and its impact on warders and youth awaiting trial in Section B5, Pollsmoor prison*. Honours dissertation, University of Cape Town.

The full profile for this reference can be found under the section entitled “Child Justice options: Prison”.

Gast, M. (2001) ‘Education and the South African Juvenile Justice system’. *Article 40*, 3/3:9-10.

A summary of the findings of an exploratory study of children in prison and reform schools.

The author reports that the provision of educational services to children in the South African juvenile justice system entails much more than just formal classes and curriculum. His study draws on data sourced from three youth centres, formerly named juvenile prisons, and one youth care and special education centre, formerly known as reformatories. In summary, the study highlights the vast limitations of correctional institutions for realising the goal of the CRC of “promoting a child’s reintegration and assuming a constructive role in society”.

Location: SJRP

Shelf reference: 666 MUN/B

Keywords: BRANDVLEI, CORRECTIONAL INSTITUTIONS, DRAKENSTEIN, EDUCATION, EUREKA, HAWAQUA, PRISON, REFORMATORY, UN CONVENTION, YOUTH CARE AND SPECIAL EDUCATION CENTRE, YOUTH CENTRE

Inter-ministerial Committee on Young People at Risk. (1996) *In whose best interests? Report on Places of Safety, Schools of Industry and Reform Schools*. Pretoria: IMC.

A report on the availability and suitability of Reform Schools, Schools of Industry and Places of Safety for the accommodation of youth during the awaiting trial period.

This interesting report found that whilst some of the existing facilities may be suitable for the holding of awaiting trial youth, there are others which are marked by serious human rights abuses and an inability to provide appropriate services to the children already in their care. The IMC found that they were unable to recommend that such facilities are suitable for the accommodation of awaiting trial children until they make some necessary changes. The report included various recommendations for immediate attention.

Location: SJRP

Shelf reference: 666 IMC/S

Keywords: CHILDREN AWAITING TRIAL, CHILDREN'S RIGHTS, IMC REPORT, REFORM SCHOOLS, PLACES OF SAFETY, SCHOOLS OF INDUSTRY

Morris, M. (1993) *Report on visits to Places of Safety and Prisons in the Western Cape currently housing awaiting-trial juveniles 17 years and under.* CLC: University of the Western Cape.

Pagination: 1-20

The paper is a review of the situation of detained youth under the age of 17 years who are awaiting trial in custodial settings.

The review profiles several places where children are held whilst they await trial, namely Pollsmoor prison, Siyakhathala place of safety, Faure school for girls and Bonnytoun place of safety. Each investigation looks at the conditions of admission, transfer or release; population and capacity; clothing, meals and health; education and recreation. It then offers a set of general and specific recommendations on each and recommendations for such places of detention in general.

Location: SJRP

Shelf Reference: 666 MOR/B

Keywords: ADMISSION, CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, CONDITIONS OF DETENTION, PLACES OF SAFETY

Muntingh, L. (1998) *Submission to the Parliamentary Portfolio Committee on Justice Regarding the Criminal Procedure Amendment Bill. (B 59-98)* Cape Town: NICRO.

Provides some statistical information as well as other insights and observations on the plight of arrested children.

This paper reports on information gathered from six prisons that illustrates the steady increase in children awaiting trial in these prisons. The paper analyses the various age categories of the children in prison and the reasons for which they are being held.

Location: SJRP

Shelf Reference: 666 MUN/B

Keywords: CONVICTION, PROSECUTION, SENTENCING, STATISTICS

Muntingh, L. (1999) 'Statistics: Children Awaiting Trial in Prison'. *Article 40*, 1/1:3.

A short, informative article highlighting the concern around the rising numbers of children awaiting trial in prison.

In spite of numerous efforts and mechanisms to prevent children from awaiting trial in prisons, their numbers continue to rise and this is illustrated with several useful charts. Figures sourced by NGOs and government departments in the early 1990s are compared with those made available more recently. The author summarises the various explanations put forward to explain the reasons for the increase and analyses the regional differences in numbers of children awaiting trial.

Location: SJRP

Shelf reference: 666 MUN/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, STATISTICS

Muntingh, L. (2000) 'Statistics: children sentenced to imprisonment'. *Article 40, 2/1:6.*

A short statistical overview of children serving sentences in prison.

This article provides useful statistics, set out in clear, simple tables, on children serving sentences in prison for the time period between 1998-1999.

Location: SJRP

Shelf reference: 666 MUN/B

Keywords: CHILDREN IN PRISON, SENTENCED, STATISTICS

Muntingh, L. (2001) 'Sentenced and diversion statistics, 1999-2000'. *Article 40, 3/3:8.*

An analysis of data on sentenced and diversion statistics between 1999-2000.

This article presents some key indicator statistics pertaining to child justice. Figures relating to the 1998/99 and 1999/00 financial years are presented for comparative purposes. The statistics show that more children are being sentenced to imprisonment and that they are receiving longer prison sentences. They also illustrate that the number of children being diverted annually is steadily increasing.

Location: SJRP

Shelf reference: 673 MUN/B

Keywords: CUSTODY, DIVERSION, IMPRISONMENT, NICRO, PRISON, PROFILING, SENTENCED, SENTENCING, STATISTICS

Muntingh, L. (2001) 'Update: Sentenced and unsentenced children in prisons', *Article 40, 3/1:6.*

A simple, one-page breakdown of statistical information on sentenced and unsentenced children in prisons from January 1995 until July 2000.

This article extracts selective information pertaining to children in prison from the Department of Correctional Services database. Trends are identified - some positive, some negative - in comparing the figures available in July 2000 with those available from previous studies as far back as January 1995.

Location: SJRP

Shelf reference: 666 MUN/B

Keywords: SENTENCED, STATISTICS, UNSENTENCED

Niehaus, C. (2000) 'A step-by-step approach to children awaiting trial in prisons'. *Article 40, 2/3:4-5.*

An extract from the address of the Executive Director of NICRO to the National Symposium on Correctional Services, 1st-2nd August 2000, Pretoria.

The Executive Director offers direction and vision to his audience, encouraging them to form a broader alliance with the government and other organisations in civil society and with the business community to facilitate true partnerships and collective responsibility to deal with the problem of children in prisons.

Location: SJRP

Shelf reference: 666 NIE/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, COMMUNITY PARTICIPATION

Nilsson, N. (2000) *Jeugdes in Botsing met die Gereg in die Wes-kaap Provinsie – 'n Drie Maandelikse Ontleeding van Jeugdes wat deur die Howe in die Wes-Kaap vir Verdere Aanhouding Verwys is na: Polisie, Gevangnisse, Plekke van Veiligheid.*

("Youth in Conflict with the Law in the Western Cape Province – a Third Monthly Report on Youth that are referred to further detention in: Police cells; Prisons; Places of Safety")

This article, reporting on the numbers of youth held in prison, was compiled by Superintendent Nilsson of the South African Police Services (SAPS). It was written in response to the Amendment to provisions of section 29 of the Correctional Services Act 14 of 1996.

Location: SJRP

Shelf Reference: 662 NIL/B

Keywords: CORRECTIONAL SERVICES ACT S29, DETENTION, PLACE OF SAFETY, POLICE CELLS, PRISONS, YOUTH OFFENDERS

Nilsson, N. (2000) *Young Persons in Detention*. Unpublished Statistics.

A statistical analysis of young persons in detention in the Western Cape in 2000.

Location: SJRP

Shelf Reference: 666 NIL/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN CUSTODY, CHILDREN IN PRISON, COURT, DETENTION, RECIDIVISM

Paschke, R. and Sherwin, H. (2000) *Quantitative research report on sentencing*. Pretoria: SALC.

An empirical quantitative study on sentencing practices in South African courts and an assessment of the impact of the Criminal Law Amendment Act No. 105 of 1997.

This report goes some way to creating a clearer picture of sentencing practices in South Africa. It looks at what sentences have been given for a sample of various crimes in various regions of South Africa. This sample comprises of every finalised case for specific crimes (violent and economic) committed both pre-implementation of the Act (crimes committed during 1997 and the first four months of 1998) and post-implementation (crimes committed from May 1998). It looks at what factors affected those sentences and what impact the Act has had on sentencing practices. The study also compares sentencing practice with the requirements of this Act, offering a brief pre-post comparison of sentencing severity for juvenile offenders. Most interestingly, the study finds that, contrary to popular belief, young offenders are not responsible for the majority of violent crimes; children under the age of 18 comprised only 8% of both economic and violent crimes and 9% of murder, rape and robbery with aggravating circumstance.

Location: SJRP

Shelf Reference: 330 SAL/S

Keywords: CONVICTIONS, CUSTODY, IMPRISONMENT, PROFILING, SENTENCING, STATISTICS

Sediti, D. (1995) 'The conditions experienced by children in prisons and police custody in the PWV area', in Pollecutt, L., Motshekga, M. and Gardner, A. eds. *Legal Rights of Children in South Africa*. Pretoria: National Institute for Public Interest Law and Research.

One of the research papers presented at an International Conference on the Child and the Constitution in South Africa.

This report, focusing on the Pretoria-Witwatersrand-Vereeniging area, is based on a survey conducted by social workers during October and November 1992. The researchers asked a total of 79 children about their experiences whilst in custody and the conditions under which they were imprisoned.

Location: SJRP

Shelf reference: 666 SED/B

Keywords: CUSTODY, INCARCERATION, PRISON, TRIAL

Skelton, A. (1996) 'Children back behind bars'. *Child and Youth Care*, 14/7:19-20.

A short analysis of amendments to section 29 of the Corrections Services Act.

This article looks at the promulgation of section 29 of the Corrections Services Act in May 1995, which made it impossible to hold young people in prisons or police cells for longer than 48 hours. The article argues that although it was motivated by good intentions, its promulgation was done without sufficient preparation. The link between the release of children and the increase in crime and the subsequent revisiting of the law by the government, curving to pressure, particularly with regard to the holding of young people charged with serious offences are examined. The author also looks at the aims of the new section 29 of Correctional Services Act published on 10 May 1996 and its important provisions with regard to the holding of children over 14 and under 18 charged with serious offences in prisons during the awaiting trial period. She points to the loophole in the section: that the possibility of being detained was not confined to cases involving the stated schedules.

Location: SJRP

Shelf Reference: 660 SKE/S

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, CORRECTIONAL SERVICES ACT S29

Skelton, A. (2000) 'Children Awaiting Trial in Prisons investigated'. *Article 40*, 2/3:1-3.

A summary of the formation, objectives and findings of an inter-sectoral team investigating children awaiting trial in prisons and police cells.

This article outlines the composition and objectives of the inter-sectoral task team. It summarises some of the major reasons found to explain the high number of children in prison and lists the various recommendations made by the task team as a result of their findings.

Location: SJRP

Shelf reference: 666 SKE/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON

Sloth-Nielsen, J. (1995) 'No child should be caged – closing the doors on the detention of children' *SACJ* 8/1:47-59

An article on the content and implications of s29 of the Correctional Services Amendment Act 1994.

The article begins by documenting the problems inherent in the original Correctional Services Act 8 of 1959. It chronicles the drafting process that aimed at redressing the shortcomings of the legislation and changing the practices regarding the imprisonment of awaiting-trial young offenders bearing in mind the limits of the available resources of the day. Significant aspects of the subsequent amendment are highlighted and then analysed in detail. The author provides commentary on the new position for children both under the age of 14 and those between the ages of 14 and 18. Particular focus is directed towards the 48-hour 'emergency period' where a child in the older age bracket may, in certain circumstances, be held temporarily in a prison, police cell or lock up. The author also discusses the new schedule of serious offences, the relevant terms relating to serious offenders and the new responsibilities of the magistrate.

Location: SJRP

Shelf reference: 666 SLO/B

Keywords: AWAITING TRIAL, ARREST, CHILD CARE, CORRECTIONAL SERVICES ACT, s29, DETENTION, LOCK UPS, PLACES OF SAFETY, POLICE CELLS, PRISON, REFORM, SENTENCE, SERIOUS OFFENDERS

Sloth-Nielsen, J. (1996) 'Pre-trial detention of children re-visited: amending s29 of the Correctional Services Act'. SACJ, 9/1: 60-72.

Analysis of issues arising during the drafting of s29, illustrating that comprehensive juvenile justice legislation is required urgently.

The article looks at Parliament's reconsideration of the detention of awaiting trial children in prisons and the further amendment to the Correctional Services Act 8 of 1959 to enable once again the detention of certain children alleged to have committed an offence in prisons and police cells. The Bill was introduced to reverse the effects of the Correctional Services Amendment Act 17 of 1994 which prohibited the detention of unconvicted juveniles in prisons or police cells beyond a limited period of 48 hours. The article looks at the initial construction of the revision, which was intended to be fairly limited in scope. It also looks at the participatory process of remodelling the initial Bill and other additions to it.

Location: SJRP

Shelf reference: 666 SLO/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, DETENTION, PRE-TRIAL, CORRECTIONAL SERVICES ACT s29

Sloth-Nielsen, J. (1997) 'Juvenile Justice Review 1996'. SACJ, 9/1:342-353.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1992-1998".

See specifically pp.348-352 for information on children awaiting trial and sentenced children in the time period covered by the review.

Sloth-Nielsen, J. (1998) ‘Juvenile Justice Review 1997’. *SACJ*, 11:97-107.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”.

See specifically pp.101-107 for information on children awaiting trial and sentenced children in the time period covered by the review.

Sloth-Nielsen, J. (2000) ‘Child Justice and Law Reform’ in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

In this report on the background to and reform of child justice in South Africa, the issues surrounding pre-trial detention are discussed (see pp.402-411). International and constitutional law provisions are highlighted and relevant proposals of the Child Justice Bill are reviewed.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Sloth-Nielsen, J. and Muntingh, L. (1999) ‘Juvenile Justice Review 1998’. *SACJ*, 12/1:65-80.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1998 onwards”.

See specifically pp.72-77 for information on children awaiting trial and sentenced children in the time period covered by the review.

Age and criminal capacity

ALRC (1997) *Seen and heard: priority for children in the legal process*. Report No.84. Canberra: Australian Law Reform Commission.

This report highlights children's involvement in criminal justice processes in Australia.

In chapter 18 of the report, the Commission focuses on the issue of age of criminal responsibility. It explains that the age of criminal responsibility is 10 under federal law in all jurisdictions except Tasmania and the ACT where the threshold is seven and eight respectively. It suggests that all Australian jurisdictions should agree on and legislate a uniform age of criminal responsibility. In addition to a statutory minimum age of criminal responsibility, the principle of *doli incapax* is considered and the Inquiry calls for its consistent application throughout Australia by giving it a legislative base. Similarly, the Inquiry considers that there should be national consistency on when a young person is dealt with in the juvenile justice or adult criminal system.

Available on line:

<http://www.austlii.edu.au/au/other/alrc/publications/reports/84/18.html#Head-4>

Keywords: AGE, AUSTRALIA, CRIMINAL CAPACITY, DOLI CAPAX, REFORM, UNIFORMITY

Boberg, P.Q.R. (1999) *Law of Persons and the Family*. 2nd Edition by van Heerden, B., Cockrell, A. and Keightly, R. with Heaton, J., Clark, B., Sinclair, J. and Mosikatsana, T. Cape Town: Juta.

This book satisfies the different demands of both students and practitioners, summarising relevant principles of law within the main body of the text whilst also adding detailed discussion on legal authorities and policy issues in the footnotes.

A comprehensive look at South African law regarding persons and the family. The penultimate chapter is entitled “capacity to be held accountable for wrong doing” and it covers, amongst other things, the criminal capacity of children, the punishment of children, procedures for the protection of children and parental responsibility. Whilst the ratio of ‘footnote-to-text’ seems daunting at first glance, this arrangement of material makes the book a useful point of reference for readers ranging from students to experienced practitioners.

Location: LAW LIBRARY

Shelf reference: DH 346.010968 BOBE

Keywords: CHILD CARE ACT, COURT, CRIMINAL CAPACITY, DETENTION, LEGAL PERSONALITY, PARENTAL RESPONSIBILITY, PROTECTION, PUNISHMENT, TRIAL, WITNESS

Burchell, E.M. (1997) *South African Criminal Law and Procedure*. Vol 1. 3rd Edition. Cape Town: Juta.

A textbook on South African criminal law and procedure.

This book contains a chapter entitled 'Youth' (Ch.19) which outlines the South African laws relating to the criminal capacity of children. The first section explains the situation of South African law regarding a child under the age of seven. The next section identifies the law relating to children between the ages of 7 and 14, including an investigation into the meaning of 'wrongful'. In section III the author explains that criminal capacity is to be assessed subjectively. For children from the age of 14 upward the law at the time of writing indicated that there is no presumption of lack of capacity. The presumption of coercion and the issue of consent are briefly considered.

Location: SJRP

Shelf reference: 664 BUR/B

Keywords: AGE, ASSESSMENT, COERCION, CONSENT, CRIMINAL CAPACITY, SOUTH AFRICAN LAW

Home Office. (1997) *Tackling Youth Crime*. London: Home Office.

This report is the first of three consultation papers setting out the UK Government's proposals for reforming the youth justice system in England and Wales.

In relation to the issue of age and criminal capacity, the report includes the following proposals:

1. To modernise the archaic rule of "doli incapax" which currently presumes - unless proved otherwise - that a child under 14 does not know the difference between right and wrong; and
2. To give courts power to impose a new reparation order, requiring young offenders to make some form of reparation to their victims or to the community at large.

It urges the parents of young offenders to recognise their responsibility for the actions of their children. They have an important role to play in preventing any further offending. The Government proposes a new parenting order to give courts powers to deal effectively with parents who wilfully neglect their responsibilities - or who need help and support in fulfilling them.

Location: SJRP

Shelf reference: 664 HOM/B

Available on line: <http://www.homeoffice.gov.uk/cpd/jou/tyc1.htm>

Keywords: AGE, BURDEN OF PROOF, CRIMINAL CAPACITY, DOLI CAPAX, DOLI INCAPAX, PRESUMPTION, REFORM

Labuschagne, J.M.T (1997) 'Subjektivering van die vermoede van ontoerekeningsvatbaarheid van kinders tussen 7 en 14 jaar'. *De Jure* 30/1: 184-87.

A short article examining law relating to the criminal capacity of children.

The article reviews the English case of *CC (A Minor) v Director of Public Prosecutions* [1996] 1 Cr App R 375 (QB) and assesses its implications in relation to other case law and legislation regarding the criminal capacity of children.

Location: SJRP

Shelf reference: 664 LAB/B

Keywords: AGE, CAPACITY, CRIMINAL RESPONSIBILITY, CRIMINAL LAW, CHILDREN, CASE DISCUSSIONS, DOLI INCAPAX, JUVENILES, LIABILITY, PRESUMPTIONS

Law Reform Commission of Hong Kong (2000) *Report on the Age of Criminal Responsibility in Hong Kong*. Hong Kong: LRC of Hong Kong.

Pagination: i – iii, 1 - 138

Legal report from the LRC of Hong Kong on the age of criminal responsibility.

This review, specifically centred on the law governing age of criminal responsibility in Hong Kong, also contains useful information on the minimum age of criminal responsibility in other jurisdictions (chapter 2) and outlines arguments for and against reform (chapter 3). Includes a chapter on the mechanisms currently available for dealing with young offenders and on the adequacy of alternative means to prosecution.

Available on line: <http://www.info.gov.hk/hkreform>

Location: UCT Law Library

Shelf reference: DH 364.36095125 LAW

Keywords: CRIMINAL CAPACITY, DOLI INCAPAX

NSW Attorney General's Department. (1999) *A Review of the law on age of criminal capacity*. Sydney: NSW Attorney General's Department.

This report summarises the law relating to age of criminal capacity in Australia and suggests areas for reform.

The purpose of this Paper is to guide the Criminal Law Review Division in its consideration of the reform of the law on the criminal responsibility of children in New South Wales, Australia. The paper asks the following questions: are today's children more able to distinguish right from wrong than their earlier counterparts? Should the common law on doli incapax be retained and enacted in the Children (Criminal Responsibility) Act 1987? Should the rebuttable presumption of doli incapax be altered to: (a) Shift the burden of proof to the accused? b) Lower the standard of proof to the balance of probabilities? Place an evidential burden on the accused? (d) Restrict the offences to which it applies to those which are dealt with according to law? e) Lower the age to which it applies to between 10 and 12 years?

Location: SJRP

Shelf reference: 664 NSW/B

Available on line: http://www.lawlink.nsw.gov.au/clrd1.nsf/pages/clrd_child#heading2

Keywords: AGE, BURDEN OF PROOF, CRIMINAL CAPACITY, DOLI CAPAX, PRESUMPTION, REFORM

SALC (1997) *Juvenile Justice*. Issue Paper 9, Project 106. Pretoria: SALC.

The full profile for this reference can be found under the section entitled "General Background: Process of reform: 1992-1998".

SALC (1999) *Juvenile Justice*. Discussion Paper 79. Project 106. Pretoria: SALC.

Chapter 6 (see pp.90-114) of the discussion paper focuses on age and criminal responsibility. Current South African law on age and criminal responsibility is reviewed. Recommendations for reform include the retention of the doli capax and doli incapax presumptions and the adoption of the minimum age of prosecution.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

See specifically Chapter 3 of Report.

Schönteich, M. (1999) 'The dangers of youth? Linking offenders, victims and age'. *NEDCOR ISS Crime Index 3/5: 22-28*

An article on the relationship between age and crime.

The article aims to offer some interesting statistics on offending, arrest and conviction rates throughout the world that show that juveniles and young adults commit crimes far in excess of their proportion of the general population. It also draws on figures to show that young people also stand a greater chance than average of falling victim to crime.

Location: SJRP

Shelf reference: 664 SCH/B

Keywords: AGE, CHILDREN AWAITING TRIAL, CONVICTION, CRIMINAL CAPACITY, PROFILING, STATISTICS, VICTIM

Scottish Parliament. (2001) *Children and the Scottish Criminal Justice System*. SM DA01-05. <http://www.scottish.parliament.uk/whats_happening/research/pdf_subj_maps/smda01-05.pdf> (accessed 12th October 2001)

This paper outlines the unique way in which children who commit offences are dealt with by the criminal justice system in Scotland.

In its section on age of criminal responsibility, it states that the age of criminal responsibility is the age below which a child is considered to lack the mental capacity to commit a crime. In Scotland this age is 8 as set down in the *Criminal Procedure (Scotland) Act 1995* (the 1995 Act).

Location: SJRP

Shelf reference: 664 SCO/B

Keywords: AGE, CAPACITY, CRIMINAL REPOSIBILITY, DOLI CAPAX, DOLI INCAPAX, SCOTLAND

Sloth-Nielsen, J. (1996) *Law, Practice and Policy: South African Juvenile Justice today*. Cape Town: University of the Western Cape.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1992-1998".

The report includes a summary of a key research paper identifying the problems relating to age and criminal capacity (see pp.23-26).

Sloth-Nielsen, J. (1999) 'Report on the SA Law Commission seminar on Age and Capacity'. *Article 40, 1/2:9*.

A brief outline of what was discussed at the SALC seminar on age and criminal capacity.

The article offers a short summary outlining who attended and what was discussed at the two-day SALC seminar on age and criminal capacity.

Location: SJRP

Shelf reference: 664 SLO/B

Keywords: AGE, CRIMINAL CAPACITY, SALC

Sloth-Nielsen, J. (2000) 'Child Justice and Law Reform' in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

In this report on the background to and reform of child justice in South Africa, the issue of age and criminal capacity is discussed (see pp.393-402). International law and comparative developments

relating to the criminal capacity of children are reviewed. Within this section proposals for law reform in South Africa are reviewed.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

UNICEF. (1997) ‘Old enough to be a criminal?’ Special Protections: Progress and disparity. *Progress of Nations*.

A useful article identifying the age of criminal responsibility in various countries.

The Progress of Nations charts the advances made since the 1990 World Summit for Children, at which governments pledged to take specific steps to improve the lives of their children. This particular report profiles the wide variation in age of criminal responsibility, reflecting a lack of international consensus. It closes with a table showing the minimum age at which children are subject to penal law in countries with 10 million or more children under 18 years old.

Location: SJRP

Shelf reference: 664 UNI/B

Available on line: <http://www.unicef.org/pon97/p56a.htm>

Keywords: AGE, CRIMINAL REONSIBILITY, MONITORING, UN CRC

Urbas, G. (2000) *The Age of Criminal Responsibility. Trends and Issues in Crime and Criminal Justice*. No. 181. Canberra: Australian Institute of Criminology.

An examination of the rules regarding the age of criminal responsibility, including criticisms and prospects for reform.

One of the most difficult areas of criminal justice policy lies in providing appropriate legal mechanisms to reflect the transition from the age of childhood innocence through to maturity and full responsibility under the criminal law. Along with specialised institutions such as Children’s Courts and juvenile detention centres, specific legal rules have been developed which differentiate the position of children and young people within the general criminal justice system. Considerable recent attention has been directed towards rules governing the minimum age of criminal responsibility, and the imposition of criminal responsibility above that age depending on a young offender’s appreciation of the wrongness of his or her act. This Trends and Issues paper examines the operation of these rules, along with criticisms and prospects for reform.

Location: SJRP

Shelf reference: 664 URB/B

Keywords: AGE, AUSTRALIA, CRIMINAL CAPACITY, CRIMINAL RESPONSIBILITY, DOLI INCAPAX, INTERNATIONAL, UN CRC

Van Oosten, F.F.W. (1993) 'Non-pathological criminal capacity versus pathological criminal capacity'. *SACJ*, 6/2:127-147.

An article discussing the influences on criminal capacity that affect criminal liability.

This article examines developments in the law regarding the various defences relating to criminal capacity. It looks at the loop-holes, problems, anomalies and inconsistencies that these laws have created. Finally the pros and cons, mainly from the point of view of the differences between the aforementioned defences.

Location: SJRP

Shelf reference: 664 VAN/B

Keywords: CRIMINAL CAPACITY, CRIMINAL LIABILITY, CULPAE INCAPAX, DEFENCE, DOLI INCAPAX

Van Oosten, F. F. W. and Louw, A. S. (1997) 'Children, Young Persons and the Criminal Law', in Robinson, J. A. ed. *The Law of Children and Young Persons in South Africa*. Durban: Butterworths.

This overview of how South African criminal law deals with children and young persons includes a section reviewing the law relating to criminal capacity (see pp.123-128).

The full profile for this reference can be found above, under the section entitled "International and national influence: Other South African legislation and policy".

Venables, L.I. (1951) 'The Juvenile Delinquent'. *Journal of Racial Affairs*, 3/2:12- 24.

A paper outlining the socio-economic theory of causation.

The author explains a few theories of deviance. He subscribes to the socio-economic theory of causation that acknowledge the role low family wages play in causing many crimes such as theft, gambling, playing truant from school, and youth gangs. He argues that the socio-economic conditions in which the 'Native' child was raised is often the cause of his deviance. He stresses the differences between the urban household and tribal society and argues that the added problems of the urban environment compromise correct parental control. He considers the disintegration of the extended family and the unstable "Johannesburg marriages" as spawning the delinquent youth. The author also subscribes to a contamination theory, namely that unhealthy influences pervading the neighbourhood - beer drinking, prostitution and other immoral activities - affect the impressionable young person.

Location: SJRP

Shelf Reference: 664 VEN/B

Keywords: CHILD PROFILE, DEVIANCE, PROFILING RESEARCH

WHAT IS THE SCOPE OF THE CHILD JUSTICE BILL?

CHILD JUSTICE PROCESS

Arrest

Community Law Centre. (1995) *Report of the International Seminar on 'Children in trouble with the law'*. Cape Town: University of the Western Cape.

The full profile for this reference can be found above, under the section entitled "General background: Process of reform: 1992-1998".

De Wet, J.C. and Swanepoel, H.L. (1985) *Strafreg*. 4th Edition. Butterworths: Durban.

A comprehensive Afrikaans textbook on the South African Criminal Law.

The full profile for this reference can be found above, under the section entitled "International and national influence: Other South African legislation and policy".

Department of Justice. (2001) *Interim National Protocol for the Management of Children Awaiting trial*. Pretoria: UN Child Justice Project and Department of Justice.

This useful publication summarises the roles and responsibilities of the departments and personnel involved in dealing with children awaiting trial, from the stage of arrest through to monitoring. The full profile for this reference can be found under the section entitled "Implementing Child Justice in South Africa: Process".

Hiemstra, V. G. (1967) *Suid Afrikaanse Strafproses*. Updated by Kriegler, J.C. and Stafford, E.H. (1993). Butterworths: Durban.

The full profile for this reference can be found above, under the section entitled "International and national influence: Other South African legislation and policy".

Inter-Ministerial Committee on Young People at Risk. (1996) *Interim Policy Recommendations*. Pretoria: IMC.

The full profile for this reference can be found above, under the section entitled "General background: Process of reform: 1992-1998".

International Conference on the Rights of the Child. June 1992. (1992) *The search for Justice in a Juvenile System*. Morris, M. Cape Town: University of the Western Cape.

The full profile for this reference can be found above, under the section entitled "General background: Process of reform: 1992-1998".

Nilsson, N. (2000) *Analysis of arrests of youth offenders in the Western Cape from 1995 to 1997*
Unpublished statistics. SAPS Western Cape.

A brief look at the statistics of arrest and detention of young offenders in the Western Cape.

Apart from offering some interesting statistical information, this short paper also tries to explain the reasons behind such high figures of youth crime and youth contact with the criminal justice system. Some emotive suggestions are made as to what might be done to improve the situation.

Location: SJRP

Shelf reference: 666 NIL/B

Keywords: ANALYSIS, ARREST, CHILDREN IN CUSTODY, CHILDREN IN PRISON, DETENTION, JUVENILE JUSTICE, PLACE OF SAFETY, STATISTICS

Sloth-Nielsen, J. (1995) ‘Juvenile Justice Review 1994 - 1995’. *SACJ*, 8:331-343.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”.

See specifically pp.332-333.

Detention*

CROSS REFER TO PREVIOUS SECTION ENTITLED “SPECIFIC THEMES AND ISSUES: SENTENCED AND UNSENTENCED CHILDREN IN PRISON” FOR MANY MORE SOURCES ON THE DETENTION OF YOUNG OFFENDERS

Boberg, P.Q.R. (1999) *Law of Persons and the Family*. 2nd Edition by van Heerden, B., Cockrell, A. and Keightly, R. with Heaton, J., Clark, B., Sinclair, J. and Mosikatsana, T. Cape Town: Juta.

The full profile for this reference can be found under the section entitled “Specific themes and issues: Age and Criminal Capacity”.

Department of Justice. (2001) *Interim National Protocol for the Management of Children Awaiting trial*. Pretoria: UN Child Justice Project and Department of Justice.

This useful publication summarises the roles and responsibilities of the departments and personnel involved in dealing with children awaiting trial, from the stage of arrest through to monitoring. The full profile for this reference can be found under the section entitled “Implementing Child Justice in South Africa: Process”.

Nilsson, N. (2000) *Young Persons in detention: the Role of SAPS*. Western Cape: SAPS Child and Youth Desk.

A short publication written by a police superintendent to guide police officers in their dealings with young offenders.

This paper provides some interesting statistics on the arrests and profiles of young offenders in the Western Cape in recent years. It then pinpoints the duties and responsibilities of each police officer involved with dealing with young offenders.

Location: SJRP

Shelf Reference: 104 SAP/B

Keywords: ARREST, ASSESSMENT, CHILDREN AWAITING TRIAL, COURT, DETENTION, INVESTIGATION, POLICE, PROBATION OFFICER, PROSECUTOR

SALC (1997) *Juvenile Justice*. Issue Paper 9, Project 106. Pretoria: SALC.

The full profile for this reference can be found under the section entitled “General Background: Process of reform: 1992-1998”.

SALC (1999) *Juvenile Justice. Discussion Paper 79. Project 106. Pretoria: SALC.*

The discussion paper introduces the idea of a new law on the detention of children awaiting trial (see pp.15-16). With reference to international law and the provisions of the Constitution (see pp.118-119) the project committee draws together comments from the Issue Paper and puts forward recommendations regarding alternatives to detention. It also recommends new legislative provisions for where detention is necessary, suggesting guidelines for both pre- and post-trial detention (see pp.133-4, 242-248).

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

SALC (2000) *Juvenile Justice Report. Project 106. Pretoria: SALC.*

The Report grapples with detention question in three main ways. First, in its bid to provide for a comprehensive approach to detention, judicial decisions on release and detention are explicitly linked to assessment and to the likelihood of diversion. Also, the Report intends regulating the entire range of possibilities concerning first, the release of the child, then bail, then possible referral of a child to a secure facility, and then only, if none of these is possible, providing for the possibility of detention in a prison. Secondly, the intention was to create a presumption that the release of the child into appropriate adult care should be the first option considered. The third main thrust of the proposals lies in the extension of legislative mechanisms to structure the exercise of judicial discretion. See specifically Chapter 5 of Report

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Sloth-Nielsen, J. (2000) ‘Child Justice and Law Reform’ in Davel, C. J. ed. *Introduction to child law in South Africa. Lansdowne: Juta Law.*

In this report on the background to and reform of child justice in South Africa, pre-trial detention is discussed (see pp.402-411). Relevant international and constitutional law provisions are highlighted and proposals for law reform in this area are reviewed.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Assessment

Inter-ministerial Committee on Young People at Risk. (1997) *Report of the Durban Pilot Assessment, Reception and Referral Centre*. Pretoria: IMC.

Pagination: 1-135.

A report on the operation and results of a one-year pilot project aiming at providing early intervention services to arrested children.

This report looks at both the direct and indirect effects of the Durban Pilot Assessment, Reception and Referral Centre. Project records provide the basis of a detailed statistical survey of elements of the process, as well as a detailed profile of juvenile justice, which together can be used as a basis for planning juvenile justice reform. The report also evaluates the level of inter-sectoral collaboration within the project, the design and administration of the data system and makes suggestions around future improvements.

Location: SJRP

Shelf reference: 658 SLO/S

Keywords: ASSESSMENT, EARLY INTERVENTION, IMC, IMPLEMENTATION, MAGISTRATE, PILOT PROJECT, PROBATION OFFICER, PROFILE RESEARCH, PROSECUTOR, RECEPTION, REFERRAL, SOCIAL WORKER

Inter-Ministerial Committee on Young People at Risk. (1998) *Report on the Pilot Projects*. Pretoria: IMC on Young People at Risk.

The full profile for this reference can be found above, under the subsection entitled “Why do we need a Child Justice Bill? Process of reform: 1998 onwards”.

Meyer, K. (1996) *Assessment Centres: Towards a more child-friendly Justice System*. *Child and Youth Care* 14/1:8-9.

An article on the use of assessment centres in South Africa.

The article opens with a brief explanation as to the origins of assessment centres. The attributes of assessment centres are described and the methods employed by those that run the centres are recorded. Certain developments at the Cape Town Court are profiled in the hope that these could serve as recommendations to other centres. The article also highlights some of the problem areas of assessment that remain unresolved.

Location: SJRP

Shelf reference: 658 MEY/B

Keywords: ASSESSMENT, DIVERSION, LEGAL REPRESENTATION, PLACES OF SAFETY, POLICE, RECIDIVISM, STREET CHILDREN

Probation Services Amendment Bill 1999.

This Bill amends the Probation Services Act, 1991, so as to include and amend certain definitions; to make further provision for programmes aimed at the prevention and combating of crime; to extend the powers and duties of probation officers; to provide for the mandatory assessment of arrested children; and to provide for the establishment of reception, assessment and referral services and centres.

Location: SJRP

Shelf reference: 251 GOV/B

Keywords: ARREST, ASSESSMENT, CORRECTIONAL SERVICES, PROBATION OFFICER, REFERRAL, REFORM SCHOOL, SUPERVISION

SALC (1999) *Juvenile Justice*. Discussion Paper 79. Project 106. Pretoria: SALC.

Chapter 8 of the discussion paper focuses on assessment and referral (see pp. 136-164). The current South African practice of assessment is reviewed, as is the decision to refer to diversion or restorative justice programmes. Comment relating to assessment as set out in Issue Paper 9 is summarised and the chapter concludes with an evaluation and recommendations on assessment and referral, with particular focus on the roles of justice personnel and the various levels of diversion.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The Report asserts that 'without assessment, the benefits of diversion and of the preliminary inquiry cannot be achieved'. Thus, the proposal that assessment should be mandatory for all arrested children prior to their appearance at a preliminary inquiry, forms the essence of this chapter of the Report (see specifically Chapter 6).

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

Sloth-Nielsen, J. (1995) 'Juvenile Justice Review 1994 - 1995'. *SACJ*, 8:331-343.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1992-1998".

This review covers the introduction of assessment centres in the Western Cape as a prelude to a young offender's first appearance in court. The initial goals of the assessment are outlined and its innovative features are described. The difficulties presented to assessment centres by the introduction of s29 of the Correctional Services Amendment Act are briefly summarised but emphasis is placed on three notable benefits of assessment centres that remain.

See specifically pp.333-337.

Sloth-Nielsen, J. (1996) *Law, Practice and Policy: South African Juvenile Justice today*. Cape Town: University of the Western Cape.

The report includes a summary of a key research paper on the assessment centre initiative (see pp.27-28). The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1992-1998”.

Sloth-Nielsen, J. (2000) ‘Child Justice and Law Reform’ in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

In this report on the background to and reform of child justice in South Africa, the introduction of pre-trial assessment is discussed (see pp.411-417). Relevant international law provisions are highlighted and proposals for law reform in this area are reviewed.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Sloth-Nielsen, J. and Muntingh, L. (1999) ‘Juvenile Justice Review 1998’. *SACJ*, 12/1:65-80.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1998 onwards”.

Preliminary inquiry

SALC (1999) *Juvenile Justice. Discussion Paper 79. Project 106. Pretoria: SALC.*

Chapter 9 (see pp.165-192) of the discussion paper focuses on the idea of the preliminary inquiry. The features characterising the proposed preliminary inquiry are discussed and the functions of the inquiry magistrate are outlined. The role of the inquiry procedure in promoting diversion is emphasised. The chapter concludes with an evaluation and recommendations for the holding of the proposed preliminary inquiry.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

SALC (2000) *Juvenile Justice Report. Project 106. Pretoria: SALC.*

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 8 of Report.

Sloth-Nielsen, J. (1999) ‘The Juvenile Justice Law Reform Process in South Africa: Can a children’s rights approach carry the day?’ *Quinnipiac Law Review*, 18:469-489.

The second section of this paper describes the parallel process of developing a new juvenile justice statute for South Africa and deals in particular with specific questions on the proposed preliminary inquiry.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Sloth-Nielsen, J. (2000) ‘Child Justice and Law Reform’ in Davel, C. J. ed. *Introduction to child law in South Africa. Lansdowne: Juta Law.*

In this report on the background to and reform of child justice in South Africa, the concept of the preliminary inquiry is introduced (see pp.429-435). The rationale for such a procedure is identified and its objectives are summarised. The author highlights the responsibility that the preliminary inquiry places on the roles of existing personnel.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Diversion: Purpose and principles

Brey, F. (2000) 'NICRO's diversion plan beyond 2000'. *Article 40, 2/4:5.*

The full profile for this reference can be found below under the section entitled "How can a Child Justice Bill be implemented: Roleplayers: Duties, responsibilities and opinions".

Klauberg, T. (1996) *Constitutional Implications of Diversionary Practices for Juvenile Offenders*. Unpublished LLM thesis. Cape Town: University of the Western Cape.

Explanation of the constitutional implications of diversion.

This paper explains the concept and describes the various different forms of diversion. It also illustrates the inherent dangers and problems created through diversion. The author warns that any legal system dealing with the diversion of juvenile offenders (and diversion in general for that matter) must take the risks of diversion into account. The central focus of the paper is on the constitutional right of a child to have his or her due process rights protected.

Location: Community Law Centre, University of the Western Cape

Keywords: CHILDREN'S RIGHTS, DIVERSION, DUE PROCESS, FAIR TRIAL, PRESUMPTION OF INNOCENCE, RIGHT TO REMAIN SILENT

Koch, R. (2001) *Diversion: the right solution for juvenile justice in South Africa?* Unpublished LLM thesis. University of Cape Town.

An easy-to-read study that assesses the pro's and con's of diversion as a central feature of the new child justice system in South Africa.

This dissertation explores the recent history, development, implementation and results of diversion as it has been used in South Africa, with particular focus on its use in the Western Cape. By examining the existing diversion options and by analysing its theoretical basis, the author hopes to present a fair case for diversion to become a central feature of juvenile justice. The paper also recommends the use of alternative intervention strategies and calls particularly on the harnessing of restorative traditions that are already in operation and the building of community support.

Location: SJRP

Shelf Reference: 670 KOC/S

Keywords: COST, DIVERSION, DUE PROCESS, IMPLEMENTATION, NET-WIDENING, PROFILING RESEARCH, RESTORATIVE JUSTICE

Kupper-Wedepohl, L. (1980) *Alternatives to traditional incarceration with special reference to juveniles*. University of Cape Town: Institute of Criminology.

Pagination: i-ix, 1-46.

A study resulting from a survey of international literature proposing alternatives to traditional criminal justice system processing for juveniles.

This study questions the effectiveness of traditional methods, in particular institutionalisation, in achieving the aim of rehabilitating young offenders. The main body of the study discusses various alternatives to incarceration including volunteerism, diversion, prevention, restitution, community service orders and several varieties of community-based corrections.

Location: SJRP

Shelf reference: 661 KUP/B

Keywords: ALTERNATIVES TO INCARCERATION, COMMUNITY SERVICE ORDERS, COMMUNITY-BASED CORRECTIONS, DIVERSION, INCARCERATION, INSTITUTIONS, PREVENTION, RECIDIVISM, RESTITUTION, STATISTICS

Mbambo, B. (2000) 'Emerging trends in diversion'. *Article 40, 2/4:10-11.*

Summary of the latest findings of the UN Child Justice Project's audit of nation-wide capacity for diversion.

The article sets the scene by detailing the requirements for diversion as laid out in the draft Child Justice Bill. It then asks whether or not South Africa is ready to respond sufficiently to these expectations and proceeds to summarise the latest findings of the audit compiled by UN Child Justice Project on these issues.

Location: SJRP

Shelf reference: 670 MBA/B

Keywords: AUDIT, DIVERSION, UN CHILD JUSTICE PROJECT

Muntingh, L. ed. (1995) *Perspectives on Diversion*. Cape Town: NICRO.

A small booklet that offers a useful summary of the main practical and legal considerations regarding diversion.

This small booklet consists of three articles which, when read together, give an insight into the major issues surrounding diversion. The first article provides a quantitative evaluation of two diversion programmes run by NICRO in Cape Town. The second article looks at the legal implications of diversion, especially its impact on procedural rights. The third article provides a critical perspective on diversion, highlighting some of the major problems associated with diversion programmes both in South Africa and abroad.

Location: SJRP

Shelf reference: 670 MUN/S

Keywords: DIVERSION, DUE PROCESS, LEGAL REPRESENTATION, NET-WIDENING, POLICE, PRESUMPTION OF INNOCENCE, PRE-TRIAL COMMUNITY SERVICE PROGRAMME, PROBATION, YOUTH OFFENDER PROGRAMME

Muntingh, L. (1997) 'The Development of Diversion Options for Young Offenders' in Shaw, M. *Policing the Transformation*. ISS Monograph. No.12. Pretoria: Institute for Security Studies.

A useful summary of the legal and practical implications of diversion.

This article looks at the historical development of diversion options, highlighting that at the time of writing there was no comprehensive piece of legislation espousing the values and principles of diversion. The article outlines the principles for a future juvenile justice dispensation as laid down in the "Juvenile justice for South Africa - proposal for policy and legislative change." The author clarifies the concept of diversion and tries to account for the limiting definition of the concept. He gives a critical view of diversion, highlighting some of its problems namely, the net-widening phenomenon, the discretionary powers of role players in the diversion process, issues of human rights and due process. The article also gives an overview of current services: pre-trial community service, the youth empowerment scheme, victim-offender mediation, family group conferencing and 'The Journey' programme.

Location: SJRP

Shelf Reference: 670 MUN/B

Keywords: DIVERSION, DUE PROCESS, HUMAN RIGHTS, NET-WIDENING, NICRO, PRE-TRIAL COMMUNITY SERVICE, VICTIM PARTICIPATION, RESTORATIVE JUSTICE, VICTIM-OFFENDER MEDIATION, YOUNG OFFENDER PROGRAMME

Muntingh, L. (1998) *The effectiveness of diversion programmes – a longitudinal evaluation of cases*. Cape Town: NICRO.

The first-ever investigative study into participants in NICRO's diversion programmes.

This study provides research data and analysis drawn from an evaluation of a sample of NICRO's diversion programme participants. It provides accurate information on the participants, collects feedback from the participants, assesses the impact of the programmes on the participants and creates a profile of recidivists. The research was able to build a detailed profile of programme participants from across the country and across different diversion programmes. It found that compliance rates for all the programmes was very high and only a very small percentage of participants (6.7%) re-offended in the first 12 months after participating in a diversion programme.

Location: SJRP

Shelf Reference: 670 MUN/B

Keywords: COMPLIANCE, DIVERSION, FAMILY GROUP CONFERENCE, OFFENDER PROFILE, PRE-TRIAL COMMUNITY SERVICE, PRE-TRIAL REFERRAL, RE-

OFFENDING, THE JOURNEY, VICTIM-OFFENDER MEDIATION, YOUTH EMPOEWRMENT SCHEME

Muntingh, L. (1999) 'Does diversion work?' *Article 40, 1/3: 8-9.*

A summary of NICRO's 1998 national survey of diversion participants.

This article briefly summarises the methodology and findings of NICRO's longitudinal evaluation of the 640 child participants in its diversion programmes in an attempt to answer the questions of both sceptics and advocates as to whether or not diversion works. The research was able to build a detailed profile of programme participants from across the country and across different diversion programmes. It found that compliance rates for all the programmes was very high and only a very small percentage of participants (6.7%) reoffended in the first 12 months after participating in a diversion programme.

Location: SJRP

Shelf reference: 670 MUN/B

Keywords: DIVERSION, NICRO, YES

Muntingh, L. (1999) 'Does Diversion Work?' *Child and Youth Care, 1/3:8-9.*

A summary of NICRO's internal survey of diversion participants 1997/8.

This article looks at the development of formal diversion programmes in South Africa, from a few hundred cases per year in the early 1990s to an excess of 10 000 in the 1999/2000 financial year. NICRO's 1998 survey looks at the situation of the 640 children who had participated in its five diversion programmes in the 12 months preceding the survey. Results of the study show that the typical diversion programme participant is a 15-17 old male first offender charged with a property crime, residing with his parents and in his second to third year of secondary schooling. Avoiding re-arrest and conviction was found to be the single most important reason for complying with the conditions of diversion.

Location: SJRP

Shelf Reference: 670 MUN/B

Keywords: DIVERSION, NICRO, PRE-TRIAL COMMUNITY SERVICE, PROFILING RESEARCH, REFERRAL, STATISTICS, VICTIM PARTICIPATION, RESTORATIVE JUSTICE, VICTIM-OFFENDER MEDIATION, YOUNG OFFENDER PROGRAMME, YES

Muntingh, L. (2001) *The effectiveness of diversion programmes – a longitudinal evaluation of cases.* Cape Town: NICRO.

NICRO's second investigative study into participants in their diversion programmes.

This study provides follow-up research, 12 months later, on the same sample of NICRO's diversion programme participants that were involved in the 1998 study. It provides further accurate information on the participants, collects feedback from them, assesses the impact of the programmes on them and creates a profile of recidivists. The findings of the research were similar to those uncovered by the previous longitudinal study in that compliance rates for all the programmes continued to be very high and only a very small percentage of participants (9.8%) reoffended during the two years after participating in a diversion programme.

Location: SJRP

Shelf Reference: 670 MUN/B

Keywords: COMPLIANCE, DIVERSION, FAMILY GROUP CONFERENCE, OFFENDER PROFILE, PRE-TRIAL COMMUNITY SERVICE, PRE-TRIAL REFERRAL, RE-OFFENDING, THE JOURNEY, VICTIM-OFFENDER MEDIATION, YOUTH EMPOWERMENT SCHEME

Muntingh, L. and Shapiro, R. eds. (1994) *Diversions: an introduction to diversion from the Criminal Justice System*. Cape Town: NICRO.

Introduction to the diversion programmes available through NICRO.

The booklet introduces and describes diversionary options available to the criminal justice system through NICRO, namely the Victim-Offender Mediation, Pre-trial Community Service, and the Youth Offender Programme. All three of these diversion options are rooted in the restorative justice paradigm. The booklet spells out the aims of diversion, among them to make offenders responsible and accountable for their actions and to provide an opportunity for reparation. The NICRO programmes are put forward as the answer to an overloaded criminal justice system, the shortage of holding facilities for juveniles awaiting trial, and a step towards recognising the rights and needs of children.

Location: SJRP

Shelf Reference: 670 MUN/B

Keywords: CHILDREN'S RIGHTS, DIVERSION, NICRO, PRE-TRIAL COMMUNITY SERVICE, REFERRAL, VICTIM PARTICIPATION, RESTORATIVE JUSTICE, VICTIM-OFFENDER MEDIATION, YOUNG OFFENDER PROGRAMME

Pinnock, D. (1997) *Gangs, Rituals and Rites of Passage*. Cape Town: African Sun Press.

A study on rites of passage, gangsterism and how these structures can influence the reform of juvenile justice in South Africa.

This book, researched for the Inter-ministerial Committee on Youth at Risk, looks into gangsterism, what it represents to adolescents and how an understanding what it means to young people can actually impact on the design of a new youth justice system. In the first part of the book, the author encourages the reader to understand the ritual behind the growth of young people into adults. Specifically he focuses on traditional rites of passage and how Western education and values have

reduced the presence of these rituals, leading young people in urban environments to invent their own rituals to fill the gap, such as gangsterism. In order to link the significance of this phenomenon with the construction of a youth justice system, the author looks at the various interpretations of the purpose of punishment. The notion of restorative justice is introduced and the rites of passage sought by gangsters are suggested as the basis for the design of youth justice programmes. Specific elements include the building up of young people, the creation of a support system and the design and content of such programmes.

Location: SJRP

Shelf reference: 615 PIN/S

Keywords: GANGSTERISM, LABELLING, LIMINALITY, PUNISHMENT, REINTEGRATION, RESTORATIVE JUSTICE, RITES OF PASSAGE, SEPARATION, STIGMATISATION, TERRITORIALITY, YOUTH AT RISK

Skelton, A. (1995) 'Diversion and Due Process', in Muntingh, L. ed. *Perspectives on Diversion*. pp.31-37. Cape Town: NICRO.

A short article examining the legal technical aspects of diversion, focussing on the 'due process debate'.

This compact article addresses the important issue as to whether diverting a young person out of the mainstream criminal justice system, and therefore out of the arena where due process reigns supreme, is justifiable or whether it presents an unacceptable risk of the young person's rights.

Location: SJRP

Shelf reference: 670 SKE/S

Keywords: ACKNOWLEDGEMENT OF RESPONSIBILITY, CHILDREN'S RIGHTS, DISCRETION, DIVERSION, DUE PROCESS, LEGAL REPRESENTATION, POLICE, PROBATION, PROSECUTION, SOCIAL WORKER

Skelton, A. (2001) 'Setting standards for diversion'. *Article 40, 3/1: 8 – 9.*

A 2-page article identifying why and how the draft Child Justice Bill sets certain standards for the use of diversion.

This article explains how diversion gives the community a role to play in the justice process but also warns that the result of this involvement does not automatically guarantee restorative outcomes. The article outlines provisions of the draft Child Justice Bill that aim to ensure that any possible risks to the rights of children who have committed offences are managed and contained.

Location: SJRP

Shelf reference: 670 SKE/B

Keywords: CHILDREN’S RIGHTS, COMMUNITY, COMMUNITY PARTICIPATION, DIVERSION, REGISTRATION, RESTORATIVE JUSTICE

Sloth-Nielsen, J. (1995) ‘Juvenile Justice Review 1994 - 1995’. *SACJ*, 8:331-343.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”.

See specifically pp.337-338.

Sloth-Nielsen, J. (2000) ‘Challenging the decision not to divert’. *Article 40*, 2/4:1-2.

Case review on an application challenging the exercise of prosecutorial discretion in deciding to prosecute.

The article reviews the rationale and implications of the High Court decision in *M v The Senior Public Prosecutor, Ranburg and Another* (Case 3284/00 WLD) which, amongst other things, represents a step towards formalising the diversion process as a legitimate facet of the child justice process.

Location: SJRP

Shelf reference: 670 SLO/B

Keywords: DIVERSION, PROSECUTORIAL DISCRETION

Sloth-Nielsen, J. and Muntingh, L. (1999) ‘Juvenile Justice Review 1998’. *SACJ*, 12/1:65-80.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1998 onwards”.

SALC (1997) *Juvenile Justice*. Issue Paper 9, Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1992-1998”

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”. See specifically Chapter 7 of Report.

Court

Boberg, P.Q.R. (1999) *Law of Persons and the Family*. 2nd Edition by van Heerden, B., Cockrell, A. and Keightly, R. with Heaton, J., Clark, B., Sinclair, J. and Mosikatsana, T. Cape Town: Juta.

The full profile for this reference can be found under the section entitled “Specific themes and issues: Age and Criminal Capacity”.

Inter-Ministerial Committee on Young People at Risk. (1998) *Report on the Pilot Projects*. Pretoria: IMC.

Pagination: 1-68.

The full profile for this reference can be found above, under the subsection entitled “Why do we need a Child Justice Bill? Process of reform: 1998 onwards”.

SALC (1999) *Juvenile Justice. Discussion Paper 79. Project 106*. Pretoria: SALC.

Chapter 10 of the discussion paper focuses on court procedures (see pp.193-213). Current South African law relating to the juvenile court and to the children’s court is reviewed. Comments received about related suggestions in Issue Paper 9 are summarised. The chapter concludes with recommendations including a new child justice court, a new system of referral for serious cases, clearer roles for lay assessors and probation officers and the creation of the Family Court and the Children’s Court Inquiry.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

SALC (2000) *Juvenile Justice Report. Project 106*. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 9 of Report.

Sloth-Nielsen, J. (1996) *Law, Practice and Policy: South African Juvenile Justice today*. Cape Town: University of the Western Cape.

The report includes a summary of two key research papers on the transferring of cases from the juvenile court to the children’s court (see pp.29-31) and on new directions for the children’s court (see pp.32-34). It also contains details of workshops on issues pertaining to the reform of juvenile courts through change in court procedures and conduct (see pp.51-57) and on children’s courts as diversion options (see pp.58-60).

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1992-1998”.

Sloth-Nielsen, J. (2000) ‘Child Justice and Law Reform’ in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

In this report on the background to and reform of child justice in South Africa, the author explains the current situation of courts in South Africa (see pp.436-446). She draws on provisions within international law relating to standardising the operation of judicial institutions but adds that there are practical constraints that hinder the development of specialised courts. Proposals for a new court structure are examined, including the One-Stop Youth Justice Centres, and the role of the children’s court in child justice is also considered.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Sloth-Nielsen, J. (forthcoming) ‘Children's Rights in the South African courts: an overview since ratification of the UN Convention on the Rights of the Child’. *IJCR*.

This paper examines the impact that the UN Convention on the Rights of the Child and constitutional rights have had on South African court practice.

The full profile for this reference can be found previously under the section entitled “General Background: International and national influence: UN Convention”.

Sloth-Nielsen, J. and Van Heerden, B. (1996) 'The Child Care Amendment Act 1996: Does it improve children’s rights in South Africa?'. *SAJHR*, 12/4:649-655.

This article examines the provisions of the Child Care Amendment Act relating to children’s court procedures. The full profile for this reference can be found above, under the section entitled “International and national influence: Other South African legislation and policy”.

Sloth-Nielsen, J. and Van Heerden, B. (1996) 'Proposed amendments to the Child Care Act and Regulations in the context of constitutional and international developments in South Africa'. *SAJHR*, 12/2:247-264.

This article examines the Child Care legislation and amendments relating to children’s court procedures. The full profile for this reference can be found above, under the section entitled “International and national influence: Other South African legislation and policy”.

Legal representation

SALC (1999) *Juvenile Justice. Discussion Paper 79. Project 106. Pretoria: SALC.*

Chapter 13 of the discussion paper discusses the issue of legal representation (see pp.266 - 281). Current South African law on legal representation is reviewed and the comments received about related suggestions in Issue Paper 9 are summarised. The chapter concludes with an evaluation and recommendations on legal representation.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

SALC (2000) *Juvenile Justice Report. Project 106. Pretoria: SALC.*

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 11 of Report.

Sloth-Nielsen, J. (1998) ‘Juvenile Justice Review 1997’. *SACJ*, 11:97-107.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”.

Sloth-Nielsen, J. (2000) ‘Child Justice and Law Reform’ in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

In this report on the background to and reform of child justice in South Africa, the author reviews the international law standards, the constitutional framework and the local practice regarding legal representation and (see pp.456- 461). Proposals for law reform in this area are also summarised.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

Sloth-Nielsen, J. and Van Heerden, B. (1996) 'The Child Care Amendment Act 1996: Does it improve children’s rights in South Africa?'. *SAJHR*, 12/4:649-655.

This article examines the provisions of the Child Care Amendment Act relating to legal representation (pp.649-651). The full profile for this reference can be found above, under the section entitled “International and national influence: Other South African legislation and policy”.

Zaal, F.N. (1997) 'When should children be legally represented in care proceedings? An application of section 28(1)(h) of the 1996 Constitution'. *SALJ* 114:334-345.

An article dealing with when children should be provided with legal representation in care proceedings.

Research carried out by the author in the period April-November 1996 showed that children rarely receive the benefit of legal representation. Although the legislature supported the provision of a greater degree of representation at the time research was conducted, considerations of criteria and cost delayed actual amendments to legislation. With the advent of the new Constitution, there was renewed interest in the representation of children in all kinds of civil proceedings and the legislature promptly approved of an amendment to the Child Care Act 1983. The author offers a critical analysis of this amendment and a survey of opinions of child-welfare commissioners. Zaal concludes that, assuming legal representation at every single child-care inquiry would be financially untenable, it is necessary to adopt a selective approach to representation.

Location: SJRP

Shelf reference: 662 ZAA/B

Keywords: CHILD CARE ACT, s8A, CHILD WELFARE, CHILDREN'S RIGHTS, CONSTITUTION, s28, GUIDELINES, IMPARTIALITY, IMPLEMENTATION, LEGAL REPRESENTATION, PROTECTION

Zaal, F.N. and Skelton, A. (1998) 'Providing effective representation for children in a new constitutional era: lawyers in the criminal and children's courts'. *SAJHR*, 14/4:539-559.

Discussion of legislative and other developments that strengthen children's rights to legal representation

This article begins by looking at the legislative provisions for legal representation. It then explores the practical implications of providing legal representation. The authors stress the importance that legal representation ought to be carried out by lawyers who specialise in child advocacy. They then investigate some basic considerations, including representation of children when they appear in the criminal court, when they are awaiting trial in custody, when diversion is being considered, and when transferring cases from the criminal court to the children's court. Particular attention is given to the provision of legal representation at the children's court and during the preliminary inquiry.

Location: SJRP

Shelf reference: 662 ZAA/B

Keywords: CHILDREN'S COURT, CHILDREN'S RIGHTS, COURT, LEGAL REPRESENTATION, PRELIMINARY INQUIRY, TRIAL

Pre-sentence report

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 10.47-51.

Sloth-Nielsen, J. (2000) ‘Juveniles may be sentenced only after a full background report’. *Article 40, 2/4:4*.

One-page review of a Supreme Court of Appeal judgment saying that juveniles may be sentenced only after a full background report has been given to the court.

Location: SJRP

Shelf reference: 673 SLO/B

Keywords: BACKGROUND REPORT, SENTENCED, SENTENCING

Sloth-Nielsen, J. (2000) ‘The importance of pre-sentence reports in juvenile cases’. *Article 40, 2/3:10-11*.

Case study of a court assessment on the importance of pre-sentence reports. Contains some criminal procedural language.

This report emphasises how the use of pre-sentence reports is indispensable for ensuring the adoption and promotion of an individualised approach to sentencing. Both local and international law are cited to support this view as well as an overview of the findings of the court of review.

Location: SJRP

Shelf reference: 673 SLO/B

Keywords: PRE-SENTENCE REPORT

Sentencing: Purpose and principles

De Wet, J.C. and Swanepoel, H.L. (1985) *Strafreg.* 4th Edition. Butterworths: Durban.

A comprehensive Afrikaans textbook on the South African Criminal Law.

The full profile for this reference can be found above, under the section entitled “International and national influence: Other South African legislation and policy”.

Department of Justice. (2001) *Interim National Protocol for the Management of Children Awaiting trial.* Pretoria: UN Child Justice Project and Department of Justice.

This useful publication summarises the roles and responsibilities of the departments and personnel involved in dealing with children awaiting trial, from the stage of arrest through to monitoring. The full profile for this reference can be found under the section entitled “Implementing Child Justice in South Africa: Process”.

Hiemstra, V. G. (1967) *Suid Afrikaanse Straffroses.* Updated by Kriegler, J.C. and Stafford, E.H. (1993). Butterworths: Durban.

The full profile for this reference can be found above, under the section entitled “International and national influence: Other South African legislation and policy”.

Hutton, N. (1997) ‘Sentencing in the New South Africa: the prospects for reform’. *International Journal of the Sociology of Law*, 25: 315-335.

This paper maps out the current state of sentencing in South Africa and considers prospects of reform.

This essay begins with some comments about public punitiveness in South Africa before describing the current state of sentencing in South Africa. It shows where just deserts, community and managerialism have appeared and finishes by considering the prospects for reform.

Location: SJRP

Shelf reference: 330 HUT/B

Keywords: CRIME CONTROL, JUST DESERTS, MANAGERIALIST, PROPORTIONALITY, PUBLIC PUNITIVENESS, PUNISHMENT, REFORM, SENTENCING

Kelk, C., Koffman, L. and Silvis, J. (1995) 'Sentencing Practice, Policy and Discretion', in Harding, C., Fennel, P., Jörg, N. and Swart, B. eds. *Criminal Justice in Europe: a Comparative Study*. pp. 319-339. Oxford: Clarendon Press.

The full profile for this reference can be found below, under the section entitled "International Case Studies".

Madotyeni, Z. (1999) 'Setting sentencing standards'. *Article 40, 1/ 2:1-2*.

A review of the innovative approach advocated by Judge Erasmus in S v Z in the arena of the sentencing of child offenders.

This article reports on the content and rationale behind the judgment of Judge Erasmus in S v Z and four other cases that set new standards for the administration of child justice in the Eastern Cape. His decision is placed in the context of current practice and the seminal nature of the judgment is emphasised.

Location: SJRP

Shelf reference: 673 MAD/B

Keywords: SENTENCING

Muntingh, L. (1995) *Conviction of Juvenile Offenders 1977/8-1993/94: An overview of statistics*. Occasional Paper No. 5. Cape Town: NICRO.

The paper is a review of statistics of conviction rates of juvenile offenders from 1977/8 up to 1993/4.

The review sheds light on a number of issues important to the juvenile justice debate: the number of juveniles convicted per year; the types of crimes the juvenile offenders were convicted for; the gender distribution of the offenders; the age profile of the juvenile offenders; and juvenile convictions as a proportion of all convictions. The offences are grouped in six classes, state security, communal life, life or body of a person, property, economic affairs and social affairs. The review shows that for age group 7-17 the trend shows a considerable drop in the rate of convictions for the seventeen-year period under review. Property offences account for the highest proportion of convictions while there is a significant drop in violent offences from above 21% to just 13%. Males constitute nearly 90% of the convictions. The review also shows that the proportion of 7-17 year olds of all convictions dropped steadily since 1977/8 from near 14% to below 10.5%. For age group 18-20, the trend shows a consistent drop in convictions for the period under review, while the proportion of property offences increased steadily and violent crimes decreased. The review shows a decrease on the number of juvenile offenders entering the system. It shows that although approximately 50% of the South African population are below the age of 21, only 40 000 were convicted per year, and that between 50% and 75% of these convictions were for property crimes and that this proportion was on the increase. The proportion of convictions for violent offences is shown to be on the decrease. The author argues that diversion programmes are not responsible for the decrease in conviction rates as there were not many cases deviated at that stage, but rather explains this phenomenon in terms of the problems attendant on law enforcement.

Location: SJRP

Shelf Reference: 330 MUN/B

Keywords: CONVICTION, PROFILING RESEARCH, SENTENCE, STATISTICS

Muntingh, L. (1996) *Sentencing Trends 1977/8 to 1995/6. Occasional Paper No. 15. Cape Town: NICRO.*

This short paper reports on the convictions and prosecutions from 1977/8 up to 1995/6.

This paper reports on some of the more significant aspects of prosecutions and convictions. These include: overall trends for the 18 year period; trends with regard to children (7-17 years); trends with regard to juveniles (18-20 years); the use of sentencing options; the use of imprisonment as a sentencing option.

Location: SJRP

Shelf Reference: 673 MUN/B

Keywords: CONVICTION, PROSECUTION, SENTENCING, STATISTICS

Muntingh, L. (1999) 'Statistics: Youth convictions'. *Article 40, 1/2: 4 – 5.*

An analysis of data on youth convictions.

This article asks two basic questions, namely: How many children are convicted in South Africa? And what are they convicted for? Figures from Central Statistical Services (CSS) are presented, showing a significant decline in the number of children convicted. It is also shown what types of offences are committed by those who are convicted.

Location: SJRP

Shelf reference: 673 MUN/B

Keywords: CONVICTION, SENTENCE, STATISTICS

Nordier, J.P. and King, B.J. (1998) *Sentencing: the Role of the Probation Officer in regard to sentencing and referral to a Treatment Centre. Pretoria: Justice College.*

A document outlining the role of probation officers in regard to sentencing.

This paper pulls together various laws, policies and writings on probation practice in order to flesh out the roles and responsibilities of probation officers at the stage of sentencing. However, it is not focussed only on young offenders and hence is of limited use in the child justice arena.

Location: SJRP

Shelf Reference: 673 NOR/B

Keywords: COURT, EXPERT WITNESS, PROBATION OFFICER, PROBATION SERVICES ACT 1991, REPORT, SENTENCE

SALC (1997) *Juvenile Justice*. Issue Paper 9, Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1992-1998".

SALC (1999) *Juvenile Justice*. Discussion Paper 79. Project 106. Pretoria: SALC.

Chapter 11 of the discussion paper discusses sentencing (see pp.214-255). Current South African law on sentencing is reviewed with specific reference to residential care, minimum sentences and alternative dispute resolution. Comment on Issue Paper 9 is summarised and the chapter concludes with an evaluation and recommendations on sentencing guidelines and options.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

See specifically Chapter 10 of Report.

SALC (2000) *Sentencing: a new sentencing framework*. Discussion Paper 91, Project 82. Pretoria: SALC.

A discussion paper drawn up for the purpose of canvassing input for the reform of sentencing in South Africa.

This discussion paper (which reflects information gathered up to the end of March 2000) was prepared by Professor D Van Zyl Smit on behalf of the sentencing project committee to elicit responses and to serve as a basis for the Commission's deliberations on a new sentencing framework. The reform of this area of the law was prompted by the identification of a number of shortcomings in the way that sentences are imposed in South Africa. The key recommendation of the Commission is that the different arms of government enter into a new partnership on sentencing. To limit sentencing disparities it recommends that there must be more guidance for the courts on sentencing. The proposed sentencing framework also requires a new partnership between the State and the public in general and victims of crime in particular. The key to this partnership will be improved provision for victim involvement in the sentencing process and recognition of victim concerns in the type of substantive sentences that are handed down. The research conducted on restorative justice revealed that there was near universal support for giving victims an increased, although still not dominant, role in the sentencing process. It also found a significant sentiment favouring the use of restorative justice initiatives in less serious cases. In addition, the paper shows that there was no doubt that respondents felt that current measures for the compensation of victims

of crime could be improved. The various changes that are proposed will be combined in a new piece of legislation, the Sentencing Framework Act.

Location: SJRP

Shelf reference: 330 SAL/S

Available on line: <http://wwwserver.law.wits.ac.za/salc/discussn/dp91.pdf>

Keywords: CRIMINAL LAW AMENDMENT ACT, GUIDELINES, MANDATORY MINIMUM SENTENCES, REFORM, RESTITUTION, RESTORATIVE JUSTICE, SALC, SENTENCING, SENTENCING COUNCIL, VICTIM

Skelton, A. (1997) ‘Children, Young Persons and the Criminal Procedure’, in Robinson, J. A. ed. *The Law of Children and Young Persons in South Africa*. Durban: Butterworths.

A very useful chapter offering an overview of the current procedural aspects relating to children who come into contact with the criminal justice process either through themselves being arrested on criminal charge, or because they are eye witnesses to, or victims of, crimes committed by others. (See pp.173-176 for detail on sentencing and review).

The full profile for this reference can be found above, under the section entitled “International and national influence: Other South African legislation and policy”.

Sloth-Nielsen, J. (1995) ‘Juvenile Justice Review 1994 - 1995’. *SACJ*, 8:331-343.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”.

See specifically pp.339-342.

Sloth-Nielsen, J. (1997) ‘Juvenile Justice Review 1996’. *SACJ*, 9/1:342-353.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”

See specifically p.349-352.

Sloth-Nielsen, J. (1998) ‘Juvenile Justice Review 1997’. *SACJ*, 11:97-107.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”.

Sloth-Nielsen, J. (2000) 'Child Justice and Law Reform' in Davel, C. J. ed. *Introduction to child law in South Africa*. Lansdowne: Juta Law.

In this report on the background to and reform of child justice in South Africa, both international and domestic law regarding sentencing policy is discussed (see pp.446- 456). Current South African practice is reviewed with the inclusion of some interesting statistics. The law reform proposals regarding sentencing options are summarised and the new trend of using pre-sentence reports is documented.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

Sloth-Nielsen, J. (2001) 'Case reviews on minimum sentences for children', *Article 40, 3/2:1-3*.

A short report on the use and status of minimum sentences in South Africa.

This article begins by briefly outlining the origin of mandatory minimum sentencing and then places this practice in the context of both international and South African criminal law. It describes the judgments of various cases that serve to illustrate that statutory developments, legislation and regulation are not the only means by which the principles and norms of international law can be used to shape legal developments in municipal law. It emphasises that judgments of the courts can also play a vital role in interpreting the legislation, setting standards, and laying down guidelines for those involved in the administration of justice.

Location: SJRP

Shelf reference: 673 SLO/B

Keywords: BILL OF RIGHTS, CHILDREN'S RIGHTS, COURT, CRIMINAL LAW AMENDMENT ACT, No. 195 of 1997, INTERNATIONAL LAW, JUDGMENT, MINIMUM SENTENCING, SENTENCE

Sloth-Nielsen, J. and Said, S. (1996) *Statistical Research on Juvenile Justice: Examining Court Records of Juvenile Offenders*. Unpublished Paper. Cape Town: Community Law Centre.

This paper describes the purpose of the research initiative which involves developing an understanding of how cases involving juveniles progress through the legal system. The research was intended to equip policy and lawmakers with the information needed to gain better understanding of juvenile offending. The research gives the outcome of cases involving juveniles, their age and gender, the link between gender and offence, and the race of juveniles. It also gives an analysis of the findings and confirms that children under the age of 10 constitute a small minority of accused in juvenile cases. It also shows the predominance of boy juvenile accused and concludes that arrest and detention in custody is the primary means of securing the attendance of the juvenile accused in court.

Location: SJRP

Shelf Reference: 671 SLO/B

Keywords: FAMILY GROUP CONFERENCING, PROFILING RESEARCH, REFORM, RESTORATIVE JUSTICE, WYNBERG

Van Oosten, F. F. W. and Louw, A. S. (1997) ‘Children, Young Persons and the Criminal Law’, in Robinson, J. A. ed. *The Law of Children and Young Persons in South Africa*. Durban: Butterworths.

This overview of how South African criminal law deals with children and young persons includes a section on punishment (see p.130)

The full profile for this reference can be found above, under the section entitled “International and national influence: Other South African legislation and policy”.

Monitoring child justice

Department of Justice. (2001) *Interim National Protocol for the Management of Children Awaiting trial*. Pretoria: UN Child Justice Project and Department of Justice.

This useful publication summarises the roles and responsibilities of the departments and personnel involved in dealing with children awaiting trial, from the stage of arrest through to monitoring. The full profile for this reference can be found under the section entitled "Implementing Child Justice in South Africa: Process".

Funk, T.M. (1996) 'A mere youthful indiscretion? Re-examining the policy of expunging juvenile delinquency records'. *University of Michigan Journal of Law Reform*, 29: Ref. 885.

An interesting study into US statutory provisions that allow states to 'wipe the slate clean' by destroying the criminal file of a convicted juvenile offender once he/she reaches a certain age.

The author conducts an exhaustive analysis and critique of the policy of expunging juvenile delinquency records, examining its philosophical origins, the "rehabilitative ideal" on which it is premised, and its theoretical and practical impact. He argues that even if one accepts the notion that those who have committed a juvenile indiscretion will outgrow their reckless behaviour, it remains necessary to differentiate between those who in fact can be rehabilitated and those whose rehabilitative potential is negligible.

Location: SJRP

Shelf reference: 670 FUN/B

Available on line: <http://users.ox.ac.uk/~newc0723/juvjust/markjuv.html>

Keywords: CRIMINAL RECORD, EXPUNGEMENT OF RECORDS, RECORD KEEPING, REHABILITATION, SENTENCE, SENTENCING, UNITED STATES

Inter-Ministerial Committee on Young People at Risk. (1998) *Report on the Pilot Projects*. Pretoria: IMC.

The full profile for this reference can be found above, under the subsection entitled "Why do we need a Child Justice Bill? Process of reform: 1998 onwards".

SALC (1999) *Juvenile Justice*. Discussion Paper 79. Project 106. Pretoria: SALC.

Chapter 12 of the discussion paper discusses review, appeal and monitoring mechanisms (see pp.256-265). The current position regarding appeal and review are assessed. Suggestions are offered regarding local, provincial and national monitoring. Comment on Issue Paper 9 is reported and the chapter closes with an evaluation and recommendations for future reform.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 12 of Report.

Sloth-Nielsen, J. (1997) ‘Juvenile Justice Review 1996’. *SACJ*, 9/1:342-353.

The full profile for this reference can be found previously under the section entitled “General Background: Process of Reform: 1992-1998”.

See specifically pp. 343-348.

CHILD JUSTICE OPTIONS

Diversion and restorative justice options

Community Law Centre. (2001) 'INDABA – Programmes to support the child justice system', Article 40, 3/2:10-11.

A short report on the proceedings of the Indaba on diversion held on 20-21st June 2001 in Gauteng.

The report briefly outlines the parties involved with the Indaba and its underlying purpose. It goes onto to detail the contributions of the meeting's host, the UN Child Justice Project, which, amongst other projects, is conducting an audit of programmes that are presently available, including a database of those that have potential to be used in the new child justice system in the future. The Indaba was also an opportunity to showcase innovative approaches to the development and use of programmes. Finally the Indaba provided an opportunity for service providers and NGOs to be informed about the current legal framework as well as the new position under the Child Justice Bill.

Location: SJRP

Shelf reference: 674 COM/B

Keywords: ALTERNATIVE SENTENCING, CHILD JUSTICE BILL, DIVERSION, IMPLEMENTATION, REFORM, RESTORATIVE JUSTICE

Frank, C., Van Eden, K., Eliasov, N. and Duffy, J. (1997) *Restorative Justice. Position Paper.* Cape Town: Institute of Criminology.

A review of restorative procedures and programmes currently being used in South Africa. The full profile for this reference can be found above, under the section entitled "Why do we need a Child Justice Bill? Restorative Justice".

Inter-Ministerial Committee on Young People at Risk. (1998) *Report on the Pilot Projects.* Pretoria: IMC.

The full profile for this reference can be found above, under the subsection entitled "Why do we need a Child Justice Bill? Process of reform: 1998 onwards".

Kok, J. *An Evaluation of the Youth Offender Programme at NICRO (Cape Town).* Occasional Paper No. 6. Cape Town: NICRO.

Evaluation of NICRO's Youth Offender Programme.

The author evaluates the Youth Offender Programme (YOP), a diversion programme established in 1991 as a joint initiative between NICRO, the Department of Health and Welfare and the Office of the Attorney General, to divert young offenders from formal court proceedings. The paper gives the results of a qualitative follow-up study of YOP participants, based on interviews with 45 youths, who participated in YOPs. It discusses the YOP programme content, including crime awareness,

self- concept, assertive behaviour, decision making, norms and laws, and parent and child relationships. The evaluation shows that 64.4% of the offences the respondents had committed were for shoplifting and that all but one female respondent were sent to the YOP for shoplifting

Location: SJRP

Shelf Reference: 670 KOK/B

Keywords: DIVERSION, NICRO, PROFILING RESEARCH, RECIDIVISM, STATISTICS, YOUNG OFFENDER PROGRAMME

Meys, U. (1999) 'Young sexual offender treatment programme'. *Article 40, 1/3:3-4.*

An introduction to SAYStOP, an early intervention programme aimed at assessing and intervening with children who have committed sex offences.

This article explains why SAYStOP emerged and how it aims to provide an appropriate response to the gaps in the current justice system where child sex offenders often escape punishment or are returned to their families without being afforded any kind of intervention to deal with underlying causes of the sex-offending behaviour. It outlines the content and results of the programme and concludes by commenting on the challenges and future prospects of the programme.

Location: SJRP

Shelf reference: 670 MEY/B

Keywords: SAYStOP, YOUNG SEX OFFENDERS

Muntingh, L. (1998) *The effectiveness of diversion programmes – a longitudinal evaluation of cases.* Cape Town: NICRO.

The full profile for this reference can be found previously under the section entitled "Child Justice Process: Diversion: purposes and principles".

Muntingh, L. (2000) 'Statistics: How is NICRO's diversion project going?'. *Article 40, 2/4:6-7.*

Takes a closer look at the performance of diversion programmes run by NICRO.

In this report, graphs and tables are used to illustrate clearly and simply the number of diversion cases in each province; profiles of participants and their offences; what proportion of cases are directed to each diversion programme; and indicates the origins of the referrals.

Location: SJRP

Shelf reference: 670 MUN/B

Keywords: DIVERSION, NICRO, STATISTICS

Muntingh, L. (2001) *The effectiveness of diversion programmes – a longitudinal evaluation of cases*. Cape Town: NICRO.

The full profile for this reference can be found previously under the section entitled “Child Justice Process: Diversion: purposes and principles”.

Muntingh, L. and Shapiro, R. eds. (1994) *Diversions: an introduction to diversion from the Criminal Justice System*. Cape Town: NICRO.

This booklet describes NICRO’s various established diversionary options available to the criminal justice system including the Victim-Offender Mediation, Pre-trial Community Service, and the Youth Offender Programme (now known as ‘Youth Empowerment Scheme’), all three rooted in the restorative justice paradigm.

The full profile for this reference can be found previously under the section entitled “Child Justice Process: Diversion: Purposes and Principles”.

Pinnock, D. (1997) *Gangs, Rituals and Rites of Passage*. Cape Town: African Sun Press.

This book includes suggestions for use of rites of passage as the basis for the design of youth justice programmes. The full profile for this reference can be found previously under the section entitled “Diversion: purpose and principles”.

Roberts, C. (2000) ‘Diversion initiatives in Noupoot’. *Article 40, 2/4:3*.

Magistrate Roberts of the Noupoot Magisterial District shares his experience on the establishment of diversion initiatives in Noupoot.

Location: SJRP

Shelf reference: 670 ROB/B

Keywords: DIVERSION, NOUPOORT, RURAL AREA

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 7.12.

Skelton, A. (2001) 'A Restorative Framework for Juvenile Justice Reform: Lessons from South Africa', in Mika, H. and McEvoy, K. eds. *International Perspectives on Restorative Justice*, Belfast: Queens University.

This essay offers an examination of restorative traditions and trends, and how they have influenced juvenile justice reform in South Africa. The full profile for this reference can be found previously under the section entitled "Why do we need a Child Justice Bill? Restorative Justice".

Skelton, A. and Frank, C. (2001) 'Conferencing in South Africa: returning to our future', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing. pp. 103-119.

The full profile for this reference can be found below, under the subsection entitled "Child Justice Process: Family group conferences and victim-offender mediation".

Sloth-Nielsen, J. and Muntingh, L. (1999) 'Juvenile Justice Review 1998'. *SACJ*, 12/1:65-80.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1998 onwards".

Van der Sandt, T. and Wessels, N. (1993) *Youth Offender Programme - A diversionary option for Juveniles in trouble with the law*. Cape Town: NICRO.

The publication gives a historical overview of the youth offender programme, the selection criteria and the referral procedures. It looks at pre-trial referral, postponed and suspended sentences and sentencing packages namely community service, Victim-Offender Mediation and correctional supervision. It gives the programme content, the guidelines for the facilitation of the group process. The sessions look at crime awareness, self-concept, assertive behaviour, decision-making, norms and laws and child-parent relationships.

Location: SJRP

Shelf Reference: 670 VAN/B

Keywords: COMMUNITY SERVICE, DIVERSION, REFERRAL, SENTENCING, VICTIM-OFFENDER MEDIATION, YOUNG OFFENDER PROGRAMME

Van Eden, K. (1997) 'Rites of Passage Programmes as an Alternative to Sentencing for Young People At-Risk in South Africa'. *Circles on the Mountain*, Summer: 25-28.

This paper looks at NICRO's Journey Programme for males between the ages of 15 and 18 years. This client group have mostly dropped out of school, have no previous record of recidivism and/or sexual and/or violent offences. The author traces the three phases of the programme namely, the separation, the transition and the reintegration. She argues that ritual allows for metaphorical experience that symbolically marks transition in the life of the young person and is intended to motivate real transformation.

Location: SJRP

Shelf Reference: 670 VAN/B

Keywords: DIVERSION, JOURNEY, NICRO, REINTEGRATION, RITE OF PASSAGE, SEPARATION, TRANSFORMATION, TRANSITION

Van Eden, K. (1995) *Traditional ways and Juvenile Justice: synergy for a new system in South Africa; the way of Inkundia.*

<[http://www.uct.ac.za/depts/criminology/articles/trad3.htm#Reintegrative shaming](http://www.uct.ac.za/depts/criminology/articles/trad3.htm#Reintegrative%20shaming)>

The article looks at the process of Inkundla - the indigenous court system presided over by chiefs and headmen for both civil and petty criminal offences. It refers to a court case in Engcobo, in the Eastern Cape, in 1995, where a young man, having impregnated a schoolgirl, denied responsibility and appealed to the Chiefs court in the hope of avoiding payment of fine. The article illustrates how the case became a matter between the two families rather than just between the young couple. Judgement was granted in favour of the young girl's family. The young man's father was required to pay a fine of six cows, five to the family of the young girl and one to the court. The way of the Inkundla is depicted as having restorative merit, as the son would eventually be required to pay back the cows, an act of asymmetrical reciprocity. The article also looks at the process of re-integrative shaming, an approach intended to make the young offender take responsibility for his/her actions. It explores the value of tradition in maintaining a healthy society.

Location: SJRP

Shelf Reference: 670 VAN/B

Available on line: [http://www.uct.ac.za/depts/criminology/articles/trad3.htm#Reintegrative shaming](http://www.uct.ac.za/depts/criminology/articles/trad3.htm#Reintegrative%20shaming)

Keywords: DIVERSION, JOURNEY, NICRO, REINTEGRATION, RITE OF PASSAGE, SEPARATION, TRANSFORMATION, TRANSITION

Wood, C. and Ehlers, L. (2001) *Towards a viable diversion programme for young sex offenders in South Africa.* Working Paper. Institute of Criminology, University of Cape Town.

Outlines the process involved in developing and implementing an appropriate diversion programme for young sex offenders.

This paper looks at the process involved in the development of an appropriate diversion programme and the implementation strategy adopted to ensure the long-term viability of the programme. The focus is on the content and structure of the programme and emphasis is placed on the uniqueness of the South African context and the challenges faced when dealing with issues such as poverty, rural/urban disparity, cultural differences, language barriers and varying levels of literacy.

Location: SJRP publications

Keywords: DIVERSION, IMPLEMENTATION, SAYStOP, SEX OFFENDERS

Family group conferences and victim-offender mediation

Frank, C., Van Eden, K., Eliasov, N. and Duffy, J. (1997) *Restorative Justice. Position Paper.* Cape Town: Institute of Criminology.

This booklet offers a review of restorative procedures and programmes currently being used abroad and in South Africa. The publication briefly outlines the use of victim-offender reparation programmes (see pp.13-14) and family group conferences (see pp.14-15). The full profile for this reference can be found above, under the section entitled “Why do we need a Child Justice Bill? Restorative Justice”.

Hudson, J., Morris, A., Maxwell, G.M. and Galloway, B. (1996) *Family Group Conferences – Perspectives on Policy and Practice.* Australia: The Federation Press.

A small book assessing the principles and practices of family group conferences.

This publication offers a concise summary of the origins and development of FGCs and gives the reader several examples of FGCs in diverse settings. It reports on current research from New Zealand, Australia, Canada, the United States and England. It emphasises the values that distinguish FGCs from conventional mechanisms for making decisions regarding young people who are in need of care and protection or who commit offences.

Location: Community Law Centre

Shelf reference: 97 005C INT V.30

Keywords: AUSTRALIA, CANADA, COMMUNITY PARTICIPATION, ENGLAND, FAMILY GROUP CONFERENCE, NEW ZEALAND, RESTORATIVE JUSTICE, UNITED STATES

Inter-Ministerial Committee on Young People at Risk. (1997) *Report on the Family Group Conference Pilot Project.* Pretoria: IMC.

Pagination: 1-21

Contains good overview of the Family Group Conference Pilot Project in Pretoria.

This report provides background information on FGCs and outlines what their objectives. It looks at the functioning of each phase of operation and as well as the processes involved in selection of participants. A simple profile and analysis of participants in the pilot project is given and the report culminates with a short summary of the costing of FGCs.

Location: SJRP

Shelf reference: 667 INT/B

Keywords: FAMILY GROUP CONFERENCE, FACILITATION, IMC PILOT PROJECT, PROFILING RESEARCH, RATIONALE, REFERRAL

Inter-Ministerial Committee on Young People at Risk. (1998) *Report on the Pilot Projects*. Pretoria: IMC.

The full profile for this reference can be found above, under the subsection entitled "Why do we need a Child Justice Bill? Process of reform: 1998 onwards".

McCold, P. (2001) 'Primary Restorative Justice Practices', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

This chapter describes the specific practices of some key examples of restorative justice processes.

The author summarises the concepts and procedures involved in mediation. He draws on Community Mediation, Victim Offender Reconciliation Programmes and Victim Offender Mediation as illustrations of this process. The idea of Conferencing is also presented in a similar way, examples being drawn from Youth Justice Family Group Conferences in New Zealand, and Wagga Wagga and Real Justice forums in Australia. The less well-known practice of 'circles' is discussed with reference being made to three North American circle processes.

Location: SJRP

Shelf reference: 672 MCC/B

Keywords: AUSTRALIA, CIRCLES, COMMUNITY, FAMILY GROUP CONFERENCING, HEALING, MEDIATION, NEW ZEALAND, NORTH AMERICA, OFFENDER, SENTENCING, VICTIM

Muntingh, L. (1993) *The Development of a Victim-Offender Mediation Programme*. Pretoria: Human Sciences Research Council.

Useful description of victim-offender mediation - a generic term for a variety of programmes involving, direct and indirect communication between victims and offenders.

The report gives a historical overview as well as an international distribution of Victim-Offender Mediation programmes. The philosophy behind restorative justice is also discussed and explained in terms of its differences from the retributive paradigm. The benefits of the programme for victims, offenders, communities and the criminal justice system are detailed. The report also looks at the operation and design of a pilot project - intake screening and assignment to facilitator, preliminary meetings with the victims and offenders, the reconciliation meeting between the victim and offender. It discusses the two points at which referrals can be made in the criminal justice process, namely pre-trial and pre-sentence. The report also looks at the future of Victim-Offender Mediation in South Africa arguing for the evolving of a situation of "judicial pluralism", thereby giving individuals more than one recourse to justice in order to ensure that their specific needs are addressed.

Location: SJRP

Shelf Reference: 670 MUN/B

Keywords: CHILD PARTICIPATION, DIVERSION, REFERRAL, SCREENING, VICTIM PARTICIPATION, RESTORATIVE JUSTICE, VICTIM-OFFENDER MEDIATION

Muntingh, L. and Shapiro, R. eds. (1994) *Diversions: an introduction to diversion from the Criminal Justice System*. Cape Town: NICRO.

This booklet describes NICRO's various established diversionary options available to the criminal justice system, including the Victim-Offender Mediation programme.

The full profile for this reference can be found previously under the section entitled "Child Justice Process: Diversion: Purposes and Principles".

Skelton, A. and Frank, C. (2001) 'Conferecing in South Africa: returning to our future', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing. pp. 103-119.

An interesting essay on the roots and practice of family group conferencing in South Africa.

This chapter traces the source of restorative justice in traditional conflict resolution, making the point that the concepts underpinning family group conferencing are not new to South Africa, and have in fact been at the core of African society for hundreds of years. The chapter explores the community courts, which sprung up during the Apartheid era, the alternative dispute resolution movement and the Truth and Reconciliation Commission and suggests that these processes have demonstrated an acceptance of community involvement in the administration of justice. Having shown how South Africa's history created a fertile environment for discussions about family group conferences during the 1990s, the chapter goes on to describe how family group conferences have emerged through policy, pilot projects and law reform. In conclusion, a number of ideas are raised about the development of a unique model of conferencing for South Africa.

Location: SJRP

Shelf reference: 671 SKE/B

Keywords: ALTERNATIVE DISPUTE RESOLUTION, COMMUNITY COURTS, COMMUNITY PARTICIPATION, DIVERSION, FAMILY GROUP CONFERENCING, INFORMAL JUSTICE, MEDIATION, PEACE-BUILDING, REFORM, RESTORATIVE JUSTICE, TRUTH AND RECONCILIATION, UBUNTU

Sloth Nielsen, J. (n.d.) *Theory and Practice of Family Group Conferencing in South Africa. An Overview of General Principles, and a Report on the Pioneering Wynberg Pilot Project*. Unpublished draft paper.

The paper looks at family group conferencing as one of the answers to the problems besetting the juvenile justice system.

The paper looks at family group conferencing as one of the answers to the problems besetting the juvenile justice system, and as an alternative sanction following the constitutional ruling that

WHAT IS THE SCOPE OF THE CHILD JUSTICE BILL?

removed whipping as a sanction available to magistrates. The paper looks at the philosophical basis for family group conferencing, namely it is anchored in the principles of restorative justice. The paper also discusses the principles underlying the FGC system. It looks at some key problems around FGC's in South Africa deriving from linking theory with practice. The paper shows that most cases selected for the Pilot Project were for shoplifting and petty theft cases and provides three case studies of FGC'S.

Location: SJRP

Shelf Reference: 671 SLO/B

Keywords: FAMILY GROUP CONFERENCING, PROFILING RESEARCH, REFORM, RESTORATIVE JUSTICE, WYNBERG

Sloth-Nielsen, J. and Muntingh, L. (1999) 'Juvenile Justice Review 1998'. SACJ, 12/1:65-80.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1998 onwards".

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

See specifically Chapter 7.35.

The full profile for this reference can be found under the section entitled "General Background: Process of reform".

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SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 10.11 and 10.40-41

Correctional services

Paschke, R. (1997) *Report on the Mitchells Plain Pre-Trial Services Project*. Cape Town: Bureau for Justice Assistance.

Pagination: 1-22.

Offers a profile of awaiting-trial prisoners in Pollsmoor and a study of first appearance decisions in Mitchells Plain Magistrate Court.

An easy-to-read report on the operation of Pre-Trial Services (PTS). The PTS is a unique approach aiming to reduce the number of petty, first-time offenders awaiting trial in custody; to ensure that the more serious and dangerous repeat-offenders are held in custody; and to reduce the amount of witness intimidation.

Location: SJRP

Shelf reference: 658 PAS/B

Keywords: BAIL OFFICER, CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, PRE-TRIAL ASSESSMENT, PROBATION OFFICER, PROFILING RESEARCH, WITNESS

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

See specifically Chapter 10.16 and 10.42.

Residential

Sloth-Nielsen, J. (1997) 'Juvenile Justice Review 1996'. *SACJ*, 9/1:342-353.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1992-1998".

See specifically pp. 348-349.

Sloth-Nielsen, J. and Muntingh, L. (1999) 'Juvenile Justice Review 1998'. *SACJ*, 12/1:65-80.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1998 onwards".

Sloth-Nielsen, J. and Van Heerden, B. (1996) 'The Child Care Amendment Act 1996: Does it improve children's rights in South Africa?'. *SAJHR*, 12/4:649-655.

Examines the provisions of the Child Care Amendment Act relating to places of care and safety (see pp.652-653). The full profile for this reference can be found above, under the section entitled "International and national influence: Other South African legislation and policy".

See specifically pp. 652-3.

Sloth-Nielsen, J. and Van Heerden, B. (1996) 'Proposed amendments to the Child Care Act and Regulations in the context of constitutional and international developments in South Africa'. *SAJHR*, 12/2:247-264

Examines the Child Care legislation and amendments relating to places of safety (pp.257-8). The full profile for this reference can be found above, under the section entitled "International and national influence: Other South African legislation and policy".

See specifically pp. 257-8.

SALC (2000) *Juvenile Justice Report. Project 106. Pretoria: SALC.*

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

See specifically Chapter 10.8 and 10.35-39.

Viviers, A. (2001) 'National Workshop on Secure Care'. *Article 40, 3/1:5.*

A very short report on the National Secure Care Workshop.

This brief article provides a condensed overview of the aims of the National workshop for Secure Care, the various topics of discussion and a select number of the resolutions that formed part of the "Agenda for Action".

Location: SJRP

Shelf reference: 660 VIV/B

Keywords: SECURE CARE

Zille, H. (2000) 'The Reform of Reform Schools: an interview with Minister Helen Zille'. *Article 40, 2/1:4-5.*

An interview with the provincial Minister of Education in the Western Cape, Helen Zille, regarding the effect of reforming Reform schools on sentenced children .

The article records Helen Zille's answers to questions surrounding the proposed closure of reform schools and the impact that this might have on children sentenced to reform school. The provincial minister describes the transformation of these institutions and how it reflects the move away from a punitive model towards one based on educative principles and reintegration.

Location: SJRP

Shelf reference: 670 ZIL/B

Keywords: EDUCATION, INDUSTRIAL SCHOOLS, REFORM SCHOOLS, REFORMATORIES, SCHOOL FOR SKILLS, SECURE CARE CENTRE, YOUTH CARE CENTRE

Prison

Community Law Centre. (1998) *Children in prison in South Africa: a situational analysis.* Cape Town: University of the Western Cape.

A very clear and thought-provoking report on the situation of children in prison in South Africa.

This publication attempts to shed light on the often desperate situation of children in South African prisons. Researchers visited prisons all over the country and prepared reports on the conditions they found. The information was compiled mainly through interviews with children. Included are details of the physical conditions in which the children live, the care provided, the violence they are exposed to, and the people who work in prisons. The framework for the report is provided by key human rights principles and documents, violations of which can be found throughout the prison system. Many of the children conveyed to the researchers feelings of terror and vulnerability. Although some of the information relies on individual accounts, its value is that it presents, through the eyes of the children, the often shocking conditions in which they are kept.

Location: SJRP

Shelf reference: 666 COM/S

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, CHILDREN'S RIGHTS, SOUTH AFRICA

CRED (2000) *CRED Needs Assessment: Medium A section, Pollsmoor prison.* Unpublished paper.

Provides data on unsentenced youth in Pollsmoor prison, Medium A section

This paper reports on a needs assessment of 174 youths currently held in Pollsmoor prison in the Western Cape. It covers biographical data, offence and medium A history, and provides some programme information.

Location: SJRP

Shelf Reference: 666 CRE/B

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, DETENTION, OFFENCE PROFILING, RESEARCH, STATISTICS

Eliasov, N. (1998) *The Transformation of the Child and Youth Care system and its impact on warders and youth awaiting trial in Section B5, Pollsmoor prison.* Honours dissertation, University of Cape Town.

Provides a critical analysis of the transformation of the Child and Youth Care system and its impact on warders and youth awaiting trial in Section B5, Pollsmoor prison.

This paper qualitatively traces the experiences of the youth from the point of arrest to detention with the emphasis on their experience within the prison. The information provided by warders is

WHAT IS THE SCOPE OF THE CHILD JUSTICE BILL?

used to present a more holistic analysis of systemic issues and a deeper understanding of prison life. An analysis of Project Go is included to highlight current efforts to translate policy into practice.

Location: SJRP

Shelf Reference: 655 ELI/S

Keywords: CHILDREN AWAITING TRIAL, CHILDREN IN PRISON, CHILDREN'S RIGHTS, DETENTION, OFFENCE PROFILING, PROJECT GO, RESEARCH, STATISTICS

Sloth-Nielsen, J. (1995) 'Juvenile Justice Review 1994 - 1995'. *SACJ*, 8:331-343.

The full profile for this reference can be found previously under the section entitled "General Background: Process of Reform: 1992-1998".

See specifically pp.342.

SALC (2000) *Juvenile Justice Report. Project 106. Pretoria: SALC.*

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1998 onwards".

See specifically Chapter 10.7 and 10.27-34.

Postponement or suspension

SALC (2000) *Juvenile Justice Report*. Project 106. Pretoria: SALC.

The full profile for this reference can be found previously under the section entitled “General Background: Process of reform: 1998 onwards”.

See specifically Chapter 10.45-46.

HOW CAN A CHILD JUSTICE BILL BE IMPLEMENTED?

INTERNATIONAL CASE STUDIES

Africa

Allot, A.N. (1977) 'The people as law makers: Custom, practice and public opinion as sources of law in Africa and England'. *Journal of African Law*, 21:1-23.

An intellectual examination and comparison of people's participation in law-making in both Africa and in England.

This essay investigates, assesses and compares the role of the "people" as makers of law in a variety of customary societies in Africa on the one hand, and in England on the other. Although procedures and mechanisms of the law may fundamentally differ if one compares a highly developed, industrialised, literate society such as England with a simpler subsistence pre-literate society such as those of Ashanti and the Sotho, the author shows how the people of both types of society participate constantly and in a variety of ways in a continuing process of law-making.

Location: SJRP

Shelf reference: 661 ALL/S

Keywords: AFRICAN FOCUS, COMMUNITY PARTICIPATION, CUSTOMARY LAW, JUDICIAL ADMINISTRATION

Nyambo, T. J. (1999) 'African Focus: Juvenile Justice in Cameroon'. *Article 40*, 1/3:11.

A one-page summary of Cameroon's juvenile justice system.

This short article describes how Cameroon's juvenile justice system has been based on two foreign legal systems which, to date, have not been successfully harmonised. The author briefly outlines the legislation that has the most influence on the system and highlights the role of NGOs, churches and volunteers in the fight for improved conditions for children who commit offences.

Location: SJRP

Shelf reference: 661 NYA/B

Keywords: AFRICAN FOCUS, CAMEROON, COMMUNITY PARTICIPATION, JUVENILE JUSTICE

Parry-Williams, J. (1993) 'Legal reform and children's rights in Uganda - some critical issues'. *International Journal of Children's Rights*, 1: 49-69.

Sets out critical issues that have emerged in the context of Uganda in the process of reviewing existing laws concerning child welfare.

This article provides background information on Uganda's child care situation. It examines: the survival of the reform process; the acceptance of broad underpinning principles; the use of administrative structures appropriate to the socio-economic realities; the implementation process.

Location: SJRP

Shelf reference: 661 PAR/B

Keywords: BEST INTERESTS, CHILDREN'S RIGHTS, CUSTOMARY LAW, REFORM, RESPONSIBILITY FOR CHILD CARE, UGANDA, WELFARE

Raulinga, T.J. (1995) 'Children's Rights in Venda', in Pollecutt, L., Motshekga, M. and Gardner, A. eds. *Legal Rights of Children in South Africa*. Pretoria: National Institute for Public Interest Law and Research.

One of the research papers presented at an International Conference on the Child and the Constitution in South Africa.

This report deals with children's rights in Venda, with particular reference to legal representation in pre-trial and trial procedure, prison conditions of children, post-conviction and custody and rehabilitation and preventative services.

Location: SJRP

Shelf reference: 662 RAU/B

Keywords: CHILDREN'S RIGHTS, CHILDREN IN PRISON, COURT, INCARCERATION, LEGAL REPRESENTATION, POLICE STATIONS, PRISON, SENTENCING

Skelton, A. (1999) 'African Focus: Juvenile Justice in Kenya'. *Article 40*, 1/2:10-11.

Summary of the current child justice system in Kenya.

Highlights some of the author's findings on a project identification mission in Kenya before the country was due to debate a comprehensive Children's Bill.

Location: SJRP

Shelf reference: 661 SKE/B

Keywords: AFRICAN FOCUS, JUVENILE JUSTICE, KENYA

Sloth-Nielsen, J. and Van Heerden, B. (1997) 'New Child Care Act and Protection Legislation for South Africa? Lessons from Africa'. *Stellenbosch Law Review*, 3:261-279.

Overview of how South African criminal law deals with children and young persons.

This article runs through the background history and content of the South African Child Care Amendment Act 96 of 1996. It examines contemporary developments in child law in certain African countries and emphasises how these developments are key points of referral for South African reform. It draws upon common themes in recent African reform initiatives and concludes with by summarising some lessons for South Africa.

Location: SJRP

Shelf reference: 661 SLO/B

Keywords: AFRICAN FOCUS, CHILD CARE AMENDMENT ACT, EMPOWERMENT, GHANA, GUIDING PRINCIPLES, KENYA, NAMIBIA, SOCIAL SUPPORT, UGANDA, UN CONVENTION

Stapleton, A. (2000) 'African focus: The state of juvenile justice in Malawi'. *Article 40*, 2/1:8-9.

Overview of the juvenile justice system in Malawi.

This article identifies trends and provides a useful fact sheet on the juvenile justice system of Malawi.

Location: SJRP

Shelf reference: 661 STA/B

Keywords: AFRICAN FOCUS, JUVENILE JUSTICE, MALAWI

Stern, V. (1999) *Alternatives to prison in developing countries*. London: International Centre for Prison Studies, Kings College London and Penal Reform International.

A study examining the use of alternatives to incarceration in developing nations.

The author seeks to highlight that, in developing countries in Africa, Asia and Latin America, there are few alternatives to prison. Many convicted offenders and defendants awaiting trial end up in overcrowded, disease-ridden prison cells, with scant food and no access to health care. In some countries, death rates are very high. By placing prison at the centre of their penal systems, these developing countries are following models imposed from the West. In contrast, their indigenous cultures lend support to the use of such alternatives as restitution and community service sentencing. Case studies and appendices contain legislative and administrative models intended for practitioners in the developing and the industrialised nations.

Location: UCT Law Library

Shelf reference: DH 364.68096

Keywords: AFRICA, ALTERNATIVES TO INCARCERATION, COMMUNITY SERVICE ORDERS, CORRECTIONS, DEVELOPING NATIONS, RESTITUTION

Super, G. (1999) 'African focus: Juvenile Justice in Namibia'. *Article 40, 1/1:6-7.*

Takes a brief look at the juvenile justice system in Namibia.

The article draws attention to the lack of progression in juvenile justice in Namibia since the country signed and ratified the UN Convention on the Rights of the Child in 1990. It emphasises that the current laws pertaining to children are in dire need of reform. The article notes several initiatives that have been started during the last five years to improve the situation, in particular the revival of the inter-ministerial committee on juvenile justice.

Location: SJRP

Shelf reference: 661 SUP/B

Keywords: AFRICAN FOCUS, JUVENILE JUSTICE, NAMIBIA

Other countries

Cleland, A. and Sutherland, E.E. (1996) *Children's Rights in Scotland*. Edinburgh: W.Green/Sweet and Maxwell.

Pagination: i–xxxv, 1 -314

Comprehensive text book on children's rights in Scotland.

The book outlines how Scots law deals with children, particularly the protection of children. It addresses present law and practice and its significance to children, parents, and their legal and other advisors. The major changes in the law, introduced by the Children (Scotland) Act 1995 are fully addressed. The text examines the structure and ratification of the UN Convention on the Rights of the Child, and the proposals for reform in light of the Convention. Chapter 13 focuses specifically on children and the criminal justice system.

Location: UCT Law Library

Shelf reference: DH 346.013509411 CHI

Keywords: AGE OF CRIMINAL RESPONSIBILITY, CHILDREN'S RIGHTS, CHILD SCOTLAND, WITNESS, TRIAL, UN CONVENTION ON THE RIGHTS OF THE CHILD

Cunnen, C. and White, R. (1995) *Juvenile Justice: An Australian Perspective*. Melbourne: Oxford University Press.

This book describes and explores the issues, people and institutions involved with juvenile justice in Australia.

The book provides an introduction to the main concepts and issues in juvenile justice, and provides a consolidated overview of the dynamics of youth crime and the institutions of social control. The book not only provides basic information about the actual workings of the juvenile justice system but raises a number of questions and issues which warrant further examination. The book is divided into three main sections. Part A: History and Theory provides an historical and theoretical overview of the development of juvenile justice from the nineteenth century to the present. Part B: The Dynamics of Juvenile Crime examines the nature and extent of contemporary juvenile crime. The final section of the book Part C: The State, Punishment and Crime Prevention, looks more closely at the responses of the state to juvenile offending. This book will be of special interest to criminology and law students. It is also an important reference source for youth and community workers, justice department officials, members of the police, social scientists, social workers and young people themselves who want to find out more about parts of the system, and important social issues, about which they may not have had adequate information previously.

Available from UNISA through Inter-Library loans

Available on line: http://www.oup-usa.org/toc/tc_0195536134.html

Keywords: AUSTRALIA, CANADA, CRIME PREVENTION, NEW ZEALAND, JUVENILE CRIME, JUVENILE JUSTICE, PUNISHMENT, STATE, UNITED KINGDOM, UNITED STATES

Daly, K. (2001) 'Conferencing in Australia and New Zealand: Variations, Research, Findings, and Prospects', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

A chapter on conferencing in Australia and New Zealand.

The author draws on Australia and New Zealand as countries that have moved quickly and completely in embracing the idea of conferencing. She highlights that there are large variations in the way in which conferences are organised, the theory(ies) animating practices, and the stated aims and purposes of conferences. Daly also reviews the growing body of research that exists on how well conferences meet the expectations of participants, how they compare with court, and the degree to which they may succeed in reducing the likelihood of re-offending and in assisting victims' recovery from the disabling effects of crime. The chapter concludes with notes on the limits of jurisdiction-specific thinking and the potential for innovative research.

Location: SJRP

Shelf reference: 671 DAL/B

Keywords: AUSTRALIA, CONFERENCING, COURT, IMPLEMENTATION, INDIGENOUS, JURISDICTIONAL VARIATION, NEW ZEALAND, PRACTICE, RESEARCH

Dignan, J. and Marsh, P. (2001) 'Restorative Justice and Family Group Conferences in England: Current State of Future Prospects', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

A paper exploring the current state and future prospects of restorative justice and family group conferences in England.

The authors chart the recent development of restorative justice in England, concentrating initially on the current status and progress of family group conferencing. In order to assess the future prospects of conferencing, recent legislative developments that clearly incorporate some key elements of restorative justice are also examined.

Location: SJRP

Shelf reference: 671 DIG/B

Keywords: FAMILY GROUP, CONFERENCING, CRIME AND DISORDER ACT, ENGLAND, INTEGRATION, OFFENDERS, RESTORATIVE JUSTICE, VICTIMS, YOUTH JUSTICE

Duff, A. and Garland, D. eds. (1994) *A Reader on Punishment*. New York: Oxford University Press.

This book offers an interesting collection of essays on theories, rationales and principles behind punishment.

The editors have brought together academic writings on the philosophies of punishment, penology, and the sociology of punishment. The collection of essays closely links philosophical discussion with the realities of penal practice. An intellectual guide to understanding how policy and implementation interact.

Location: UCT Main library – LEVEL 4

Shelf reference: 364.601 READ

Keywords: CENSURE, CRIME, DETERRENCE, INCAPACITATION, PROPORTIONALITY, PUNISHMENT, RETRIBUTION, SENTENCING

Home Office. (2001) *An Exploratory Evaluation of Restorative Justice Schemes*. Crime Reduction Research Series Paper 9. London: Home Office.

The full profile for this reference can be found previously under the section entitled “General Background: Restorative Justice”.

Hudson, J., Morris, A., Maxwell, G.M. and Galloway, B. (1996) *Family Group Conferences – Perspectives on Policy and Practice*. Australia: The Federation Press

The full profile for this reference can be found under the section entitled “Child Justice Options: Family Group Conferences and Victim-Offender Mediation”.

Juvenile Justice Center. (1995) *A Call for Justice: an Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*. Washington: American Bar Association.

Report on American system of legal representation of juvenile offenders.

This report is a national assessment of the current state of representation of youth in juvenile court and an evaluation of training, support, and other needs of practitioners. It examines all stages of representation, from the time of arrest to the time of discharge from the juvenile justice system, and covers all regions of the United States, including urban, suburban and rural areas.

Location: SJRP

Shelf reference: 662 JUV/B

Keywords: COUNSEL, LEGAL REPRESENTATION, ROLE OF COUNSEL, UNITED STATES

Kelk, C., Koffman, L. and Silvis, J. (1995) 'Sentencing Practice, Policy and Discretion', in Harding, C., Fennel, P., Jörg, N. and Swart, B. eds. *Criminal Justice in Europe: a Comparative Study*. pp. 319-339. Oxford: Clarendon Press.

An analytical comparison between the sentencing policies of the Netherlands and those of England and Wales.

This article outlines the traditional differences between sentencing in the Netherlands, England and Wales in order to demonstrate the effects of Europeanization and the tendency to develop sentencing guidelines.

Location: SJRP

Shelf reference: 673 KEL/S

Keywords: DISCRETION, ENGLAND, HOLLAND, NETHERLANDS, PENAL POLICY, PROPORTIONALITY, SENTENCING, WALES

Matshego, B.J. (2001) 'Best practices in the institutional and community-based treatment of young offenders'. *Article 40*, 3/3:4-5.

A short report on the 118th international training course on "Best practises in the institutional and community-based treatment of young offender" at UNAFEI (United Nations Asia and Far East Institute for Prevention of Crime and Treatment of Offenders) in Fuchu, Tokyo, Japan from 14th May to 15th July 2001.

This report outlines the background to the course hosted by the UNAFEI and the challenges faced by organisations in charge of the treatment of young offenders. The course highlighted that a thorough integration of prevention and treatment in both institutional and community-based treatment settings is required to increase the efficiency of crime reduction through offender control. The course put forward a model of community-based treatment called 'Communities that care', based on the principles of diversion, reintegration, community participation, supervision and care, prevention and accountability. This model includes the creation of multi-disciplinary teams to assess collectively the young offenders, and to devise a treatment plan that meets the best interests of the young offender. It calls for training systems that will equip each officer with core competencies to execute proper care and supervision of young offenders. In addition the need for an offender-based information system is highlighted.

Location: SJRP

Shelf reference: 674 MAT/B

Keywords: COMMUNITY PARTICIPATION, COMMUNITY-BASED TREATMENT, CRIME REDUCTION, IMPLEMENTATION, INSTITUTIONS, INTEGRATION, OFFENDER CONTROL, POLICY, PRACTICE, PREVENTION, UNITED NATIONS

Maxwell, G.M. and Morris, A. (1995) 'Deciding about Justice for Young People in New Zealand: the Involvement of Families, Victims and Culture', in Hudson, J. and Galloway, B. eds. *Child Welfare in Canada: Research and Policy Implications*. Canada: Thompson Educational Publishing.

A solid overview of how New Zealand currently deals with young offenders.

This compact article offers a useful, detailed introduction to the treatment of young offenders in New Zealand, with particular focus on family group conferences which lie at the heart of new procedures as a means of avoiding formal court processes and court sanctions. It draws information from research carried out between August 1990 and May 1991, examining the experience of 700 young people in trouble with the law throughout the country.

Location: SJRP

Shelf reference: 661 MAX/S

Keywords: ACCOUNTABILITY, ARREST, CHILDREN'S RIGHTS, CULTURAL ISSUES, DIVERSION, FAMILY GROUP CONFERENCES, NEW ZEALAND, PARTICIPATION, VICTIMS

Maxwell, G.M. and Morris, A. (1993) *Family, Victims and Culture: Youth Justice in New Zealand*. Wellington: Social Policy Agency and the Institute of Criminology.

Pagination: i-xix, 1-228

The first major research project into the New Zealand youth justice system following the implementation of the Children Young Persons and Their Families Act 1989.

This study is a result of a large-scale survey of the various components of the New Zealand youth justice system, from the decisions of front-line police officers when apprehending young people for offending through to the outcomes of proceedings in Family Group Conferences and the Youth Court. The report provides an excellent account of the successes, obstacles, failings and challenges of the new system.

Location: SJRP

Shelf reference: 661 MAX/S

Keywords: ARREST, CHILDREN'S RIGHTS, CULTURAL ISSUES, FAMILY GROUP CONFERENCES, NEW ZEALAND, PARTICIPATION, POLICE, YOUTH COURT, YOUTH CRIME, YOUTH JUSTICE

Maxwell, G.M. and Morris, A. (1994) 'The New Zealand Model of Family Group Conferences', in Alder, C. and Wundersitz, J. eds. *Family Conferencing and Juvenile Justice: The way forward or misplaced optimism?* pp.15-43. Canberra: Australian Institute of Criminology.

A well-constructed report on how family group conferences work in New Zealand.

This compact article offers useful information on family group conferences. It explains how they operate within the new legal framework in New Zealand, how they are arranged and who they involve. It includes an interesting section on the views of those involved in such conferences and their satisfaction levels with the outcomes.

Location: SJRP

Shelf reference: 671 ALD/S

Keywords: ACCOUNTABILITY, ARREST, CULTURAL ISSUES, DIVERSION, FAMILY GROUP CONFERENCES, NEW ZEALAND, PARTICIPATION

Maxwell, G.M. and Robertson, J. (1995) *Child Offenders: a Report to the Minister of Justice, Police and Social Welfare*. Wellington: Office of the Commission for Children.

Pagination: 1-68

A New Zealand report describing current practice in dealing with offenders aged between 10-13 years.

This study presents the results of an inquiry into the adequacy of current responses to children aged 10-13 years who commit criminal offences. It examines whether criminal court proceedings in such cases would be more appropriate than referrals for a Family Group Conference. It highlights interesting findings on the family backgrounds of the offenders, on the different responses to offending and on the various difficulties encountered with referrals and co-operation.

Location: SJRP

Shelf reference: 671 MAX/S

Keywords: CHILD AND YOUTH CARE WORKER, CHILD CARE, FAMILY GROUP CONFERENCE, NEW ZEALAND, POLICE, POLICY, PROFILING RESEARCH, REFERRAL

McCold, P. (2001) 'Primary Restorative Justice Practices', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

The full profile for this reference can be found under the section entitled "Child Justice Options: Family Group Conferences and Victim-Offender Mediation".

Miller, F.W., Dawson, R.O., Dix, G.E. and Parnas, R.I. (1985) *The Juvenile Justice Process*. 3rd edition. United States of America: The Foundation Press Inc.

This book offers a comprehensive insight into the field of juvenile justice in the United States.

The authors provide a carefully-structured analysis of each stage of the American juvenile justice process, with statutory authorities and case law being integrated within their appropriate subject-matter categories. Chapter 1 describes the legal and philosophical bases for a separate juvenile justice process. Chapter 2 then looks at the substantive law governing juvenile conduct. Arrest and the investigation of juveniles forms the subject matter of Chapter 3 whilst Chapter 4 explores the informal processes that can take place in the early stages. Chapter 5 focuses on pre-trial detention and Chapter 6 on the decision to treat a child as an adult. Chapter 7, the longest chapter, investigates the adjudication hearing. Chapter 8 looks at the disposition hearing which then links in with Chapter 9 on training schools. Chapter 10 deals with the issue of parole and the final Chapter 11 looks at the importance of confidentiality.

Location: Community Law Centre, University of the Western Cape

Shelf reference: INT IU.99 JUV

Keywords: ARREST, CONFIDENTIALITY, DETENTION, HEARING, JUVENILE CONDUCT, JUVENILE JUSTICE, PAROLE, PRE-TRIAL, TRAINING SCHOOLS, TRIAL, UNITED STATES

Miers, D. (2001) *An International Review of Restorative Justice*. Crime Reduction Research Series Paper 10. London: Home Office.

This review provides an overview of the position and use of restorative justice programmes in twelve European jurisdictions, together with summaries and examples of programmes in Australia, Canada, New Zealand and the United States of America.

The full profile for this reference can be found previously under the section entitled "General Background: Restorative Justice".

Morris, A. and Maxwell, G. (2001) 'Implementing Restorative Justice: What works?', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

An interesting look at the various ways restorative justice can be assessed.

By examining the operation of conferencing, victim offender mediation and circles, the authors explore these diverse practices, identifying their strengths and weaknesses and assessing their potential. Since restorative justice practices reflect different values and different objectives, these are the benchmarks on which the effectiveness of each process is assessed. The authors choose to conduct this assessment on the following bases: the offenders' and victims' sense of empowerment and inclusion in and satisfaction with restorative justice processes; on whether or not victims feel better as a result of participating in them; on whether or not offenders are held accountable in

meaningful ways and make amends to their victims; and on whether or not restorative practices impact on re-offending and reintegration.

Location: SJRP

Shelf reference: 672 MOR/B

Keywords: ACCOUNTABILITY, CULTURE, EMPOWERMENT, IMPLEMENTATION, LOCALITY, OFFENCE TYPE, OFFENDER PROFILE, PARTICIPATION, RECIDIVISM, REINTEGRATION, STATUTORY BASIS, VICTIMS

Scottish Office. (1995) *Scotland's Children: A Brief Guide to the Children (Scotland) Act 1995.*

Guide providing information on the Children's (Scotland) Act.

This guide is designed to provide information on the Children (Scotland) Act 1995 and to draw its purposes, themes and structure to the attention of all who have an interest in the law as it affects children and their families in Scotland. It addresses a wide range of readers, but is no substitute for the Act itself, which carries the authority of law as determined by Parliament. It outlines the most important changes that the Act introduces for children and young people in Scotland.

Location: SJRP

Shelf reference: 661 SCO/B

Available on line: <http://www.scotland.gov.uk/library/documents4/sc-ch-00.htm>

Keywords: CHILD PARTICIPATION, HEARINGS SYSTEM, JUVENILE JUSTICE, SCOTLAND, UN CONVENTION

Uglov, S. (1995) *Criminal Justice*. London: Sweet and Maxwell.

Pagination: i – xxxi, 1-346

This comprehensive textbook explores the A – Z of the British criminal justice system.

In this book there is comprehensive coverage of the institutions, procedures and decision-making process which make up the UK's criminal justice system. The book also considers the formal framework of rules and procedures, informal and discretionary nature of decisions that are taken, and the broader social context in which the criminal justice system operates. Of particular interest to youth justice is the thorough analysis of the creation of "secure training units" for children as young as 12 years old.

Location: UCT Law Library

Shelf reference: DH 345.050941 UGLO

Keywords: COURT, CRIMINAL JUSTICE SYSTEM, EVIDENCE, JUVENILES, NON-CUSTODIAL, POLICE, PRISON, PROSECUTION, SENTENCE, TRIAL

WITNESS, UNITED KINGDOM

US Department of Justice, Bureau of Justice Statistics. (1997, May) *National Conference on Juvenile Justice Records: Appropriate Criminal and Non-Criminal Justice Issues.*

Contains the presentations of speakers at the May 1996 conference on collection and use of juvenile records.

This book contains the presentations of speakers at the May 1996 conference on collection and use of juvenile records. Issues addressed were Federal and State policies and practices, experiences of States in using and maintaining juvenile records, fingerprint requirements, and use of juvenile records in connection with educational programs and firearm checks. The conference is the latest in the series of conferences supported by BJS that address policies and technologies that affect the maintenance and use of records within the criminal justice system. This report was prepared by SEARCH, the National Consortium for Justice Information and Statistics.

Location: SJRP

Shelf reference: 661 BUR/S

Available on line: <http://www.ojp.usdoj.gov/bjs/abstract/ncjir.htm>

Keywords: JUVENILE JUSTICE, LEGISLATION, POLICY, PRACTICE, RECORD-KEEPING, STATISTICS, UNITED STATES

US Department of Justice, Bureau of Justice Statistics. (1997, May) *Privacy and Juvenile Records: A Mid-Decade Status Report.*

A comprehensive and broad overview of the status of U.S. juvenile justice records and information systems as of 1995, as well as an analysis of related information and privacy issues.

This book describes the development of theories underlying the juvenile justice system and their impact on record-keeping. The report also discusses changes in legislation and policy affecting juvenile justice activity and the use of juvenile offender records for criminal justice and non-criminal justice purposes. The report is part of the continuing BJS series on criminal history and related records prepared by SEARCH, the National Consortium for Justice Information and Statistics.

Location: SJRP

Shelf reference: 661 BUR/B

Available on line: <http://www.ojp.usdoj.gov/bjs/abstract/pjir.htm>

Keywords: JUVENILE JUSTICE, LEGISLATION, POLICY, RECORD-KEEPING, STATISTICS, UNITED STATES

Van der Linden, A.P., Van der Reep, G.B.C.M, Ten Siethoff, F.G.A. and Zeijlstra-Rijpstra (1994) *Jeugd en Recht*. Houten: Bohn Stafleu Van Loghum.

'Jeugd en Recht' is a book written in Dutch about youth and the law in the Netherlands.

This book gives a general overview of how the law affects young people in the Netherlands. It covers adoption; the legal relationship between parent and child; youth and criminal law; law regarding children cared for outside their own family. It also explores organisations which deal with young persons and how the youth care system operates and how children's issues are financed. International aspects of child law are examined and the book closes with a look at the current developments in policy.

Location: Available through Inter-Library Loans, UCT

Keywords: CHILD LAW, INTERNATIONAL LAW, JUVENILE JUSTICE, NETHERLANDS

Weitekamp, Elmar G.M. (2001) 'Mediation in Europe: Paradoxes, Problems and Promises', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing.

A paper exploring the paradoxes, problems and promises of mediation and restorative justice in Europe.

The author begins by explaining the various terms employed when people talk about restorative justice. He continues by exploring the paradoxes, problems and promises of mediation and restorative justice in Europe. Examples of mediation and restorative justice are discussed, and their development and problems are highlighted. Possible solutions to current dilemmas are also proposed.

Location: SJRP

Shelf reference: 672 WEI/B

Keywords: AUSTRIA, FAMILY GROUP CONFERENCING, FRANCE, GERMANY, MEDIATION, NORWAY, OFFENDERS, RESTORATIVE JUSTICE, RETRIBUTION, SPAIN, UNITED KINGDOM, VICTIM

IMPLEMENTING CHILD JUSTICE IN SOUTH AFRICA

Cost

Barberton, C. (2000) 'Reallocating expenditure to implement the draft Child Justice Bill'. Article 40, 2/2:4-8.

Examination of the extent of expenditure reallocation necessary for the government to realise the savings anticipated following the implementation of the Child Justice Bill.

Following a summary of the background and content of the draft Child Justice Bill, the article highlights how the implementation of the Bill will impact on the expenditure responsibilities of at least four national departments and two provincial departments. By using several tables combined with textual explanation, a clear indication is given of the total annual expenditure by these various departments from the current-day setting to the post-implementation phase.

Location: SJRP

Shelf reference: 656 BAR/B

Keywords: AUDIT, CHILD JUSTICE BILL, COST, COSTING, EXPENDITURE, IMPLEMENTATION

Barberton, C. (2000) 'Costing Child Justice'. Article 40,2/1:1-3, 10-11.

An easy-to-read report on the seminal costing study undertaken to examine the economic implications of the draft Child Justice Bill.

A highly-condensed version of the author's in-depth study into the costing of the implementation of the Child Justice Bill. It links some of the important innovations of the Bill with their potential cost. This was achieved by firstly establishing a 'baseline' estimate of expenditure on the current system. The author then calculates the expected costs of the changes proposed by the Bill, and then finally projects the costs of the 'full' scenario which seeks to replicate the flow of children through the child justice system as it is envisaged in the Draft Bill.

Location: SJRP

Shelf reference: 656 BAR/B

Keywords: AUDIT, CHILD JUSTICE BILL, COST, COSTING, EXPENDITURE, IMPLEMENTATION

Barberton, C., Ajam, T. and Stuart, J. (1999) 'Costing the implementation of the Child Justice Bill and Developing a strategy for implementation', Report for the SALC, October 1999. Cape Town: Applied Fiscal Research Centre, University of Cape Town.

Pagination: i – vi, 1 - 106

An in-depth financial analysis of the cost of implementing the Child Justice Bill.

This report, as far as can be determined, represents the first time in South Africa that a Bill has been costed before being tabled in Parliament. It explores and compares the cost-effectiveness of the way in which children are currently processed by the existing criminal justice system with the system described by the Child Justice Bill. This is done by generating three scenarios: the 'baseline' scenario which seeks to replicate the flow of children through the current criminal justice system as closely as possible; the 'full' scenario which seeks to replicate the flow of children through the new child justice system described in the Bill; and the 'roll out' scenario which seeks to replicate how the new child justice system is likely to function at about the halfway point in the process of implementation. The report also gives a good indication of the savings that would result from the implementation of the Bill.

Location: SJRP

Shelf reference: 656 BAR/S

Keywords: AUDIT, CHILD JUSTICE BILL, COST, IMPLEMENTATION, SAVINGS

Caseem, S., Perry, H., Sadan, M. and Streak, J. eds. (2000) *Child Poverty and the Budget 2000: Are poor children being put first?* Cape Town: Idasa.

Pagination: 1-175

A clear, easy-to-read guide to government spending on budget programmes that target children.

In its National Programme of Action for Children, which demands that children be "put first" in policy, budget allocations and service delivery, the government promises to alleviate child poverty. This book sets out to ask the question: Are the children being put first? Chapter 4 investigates in particular whether or not children are being prioritised in the justice sector and deals with both children in conflict with the law and with children requiring state care and protection. In particular it looks at recent policy and legislation development in child justice. Although expenditure planning in the justice sector is not disaggregated for children, consolidated national and provincial justice expenditure in general gives us some idea as to whether the Government is "putting its money where its mouth is".

Available from Idasa bookshop, 6 Spin St, Cape Town, 8001

Keywords: BUDGET, COST, EXPENDITURE, JUSTICE, POLICING

Robinson, S. and Biersteker, L. eds. (1997) *First call: the South African Children's Budget*. Cape Town: Idasa.

Pagination: i-ix, 1-342

A clear, easy-to-read guide to government spending on budget programmes that target children.

The Children's Budget is an exciting, innovative study that takes a closer look at the link between policy commitments that the government has made towards children in South Africa and what the government is spending on programmes that benefit children. It provides critical information and an analytical resource for advocacy groups that are active in promoting the rights of children. It also provides policy-makers, implementers and legislators with the necessary information to take into consideration when responding to the particular needs of children. It can help decision-makers become more aware of the impact of policies when drawing up "child-friendly" programmes for department budgets.

Location: SJRP

Shelf reference: 656 ROB/S

Keywords: BUDGET, CHILDREN'S RIGHTS. COST, EXPENDITURE, JUSTICE, POLICING

Robinson, S. and Sadan, M. (1999) *In Where It Hits Hardest, Children and the budget in South Africa*. Cape Town: Idasa.

This book looks at the priority policies and programmes that attempted to guide transformation of the juvenile justice and child care and protection systems. It looks at the justice expenditure and notes that there are no dedicated expenditure categories for children, only limited analysis of spending on juvenile justice. The authors look at access to criminal justice services, crimes against children including 14 225 cases of rape, 3 451 cases of indecent assault, etc. They also look at Family Advocate Services, law reform, the Maintenance Act (No. 99 of 1998), Domestic Violence Act (No. 116 of 1998), Review of the Child Care Act (No 74 of 1983), Sexual Offences Against Children (Law Commission Project 108, Issue Paper 10).

Location: SJRP

Shelf Reference: 656 ROB/S

Keywords: ACCESS, COSTING, JUVENILE JUSTICE, REFORM, SPENDING, TRANSFORMATION

Sloth-Nielsen, J. (1999) 'Charting the development of a new juvenile justice statute in South Africa: an opportunity for innovation'. *Youth Justice Matters*, December:18-20.

The full profile for this reference can be found previously under the subsection entitled "General Background: Process of reform".

See specifically p.20 a short overview of the above-mentioned report 'Costing the implementation of the Child Justice Bill and Developing a strategy for implementation'.

Process

Barberton, C. (2000) 'Reallocating expenditure to implement the draft Child Justice Bill'. Article 40,2/2:4-8.

The full profile for this reference can be found under the previous subsection entitled "Cost".

The article briefly highlights how the implementation of the Bill will impact on the expenditure responsibilities of at least four national departments and two departments in each of the nine provinces.

Barberton, C., Ajam, T. and Stuart, J. (1999) 'Costing the implementation of the Child Justice Bill and Developing a strategy for implementation', Report for the SALC, October 1999. Cape Town: Applied Fiscal Research Centre, University of Cape Town.

The full profile for this reference can be found under the previous subsection entitled "Cost".

Not only does this report prepare a costing of the juvenile justice system proposed by the Child Justice Bill but it also develops a strategy for implementation.

Department of Justice. (2001) *Interim National Protocol for the Management of Children Awaiting trial*. Pretoria: Child Justice Project and Department of Justice.

Short policy document outlining proposed South African national practice for the management of children awaiting trial.

This useful publication gives the background history of the recent changes to the law regarding the detention of children awaiting trial. It describes the current law as well as the policy framework and law reform. Having briefly stated the objectives of the interim protocol, it summarises the roles and responsibilities of the departments and personnel involved in dealing with children awaiting trial, from the stage of arrest through to monitoring.

Location: SJRP

Shelf Reference: 666 DEP/B

Keywords: AGE, ARREST, ASSESSMENT, CHILDREN AWAITING TRIAL, DEPARTMENT OF SOCIAL DEVELOPMENT, MONITORING, POLICE, PROBATION OFFICER, REMAND, SENTENCE

Glanz, L. ed. (1994) *Preventing Juvenile Offending in South Africa: Workshop Proceedings*. Pretoria: HSRC.

A report of the proceedings of a two-day workshop which was held at the Human Sciences Research Council (HSRC) during February 1994.

This publication represents a collection of papers that were presented by experts in various fields, followed by discussions in topic-related groups. On the first day of the workshop the proceedings focussed on the primary and secondary prevention of juvenile offending and on the second day on tertiary prevention. The papers presented then formed the basis of a proposed national strategy and the findings of the discussion groups set the minimum requirements for a plan of action to prevent juvenile offending in all regions of South Africa.

Location: Community Law Centre

Shelf reference: AFRICA/SOUTH AFRICA IV.99 GLA

Keywords: CAUSES OF CRIME, CHILD JUSTICE, COMMUNITY PARTICIPATION, CORRECTIONAL PROGRAMMES, COURT, DIVERSION, EMPOWERMENT, IMPLEMENTATION, POLICE, PREVENTION, RESIDENTIAL FACILITIES, SUPPORT NETWORKS, YOUNG PEOPLE AT RISK

Inter-ministerial Committee on Young People at Risk. (1997) *Report of the Durban Pilot Assessment, Reception and Referral Centre*. Pretoria: IMC.

Pagination: 1-135

The full profile for this reference can be found under the section entitled "Child Justice Process: Assessment".

Marais, R. (1999) 'Taking transformation from big cities to gravel road communities - a rural outreach programme'. *Article 40, 1/3:9-10.*

Details the formulation and operation of an outreach programme to help rural areas benefit from new child justice initiatives.

This report describes how NICRO, along with its partners at the Stepping Stones One-Stop Youth Justice Centre, set up a training campaign in rural areas in the Eastern Cape province in order to ensure that transformation in child justice can reach even the most remote parts of the country.

Location: SJRP

Shelf reference: 670 MAR/B

Keywords: DIVERSION, NICRO, ONE-STOP YOUTH JUSTICE CENTRES, RURAL AREAS, STEPPING STONES, TRANSFORMATION

Sloth-Nielsen, J. (1999) 'Towards a New Child Justice System'. *Article 40, 1/1:4-5.*

The full profile for this reference can be found under the section entitled "General Background: Process of reform: 1998 onwards".

Steyn, F. and Foster, H. (2001) 'Impediments in the management of young offenders in the Free State'. *Article 40, 3/1:10-11.*

Interesting insight into various impediments that arise in the management of young offenders in the Free State.

An abbreviated version of the findings of a study into the range of training needs experienced by persons actively involved in the management of young offenders. The paper explores and discusses problems that arise at grass roots level from the time of reception through to aftercare. The article concludes with several suggestions which warrant further consideration regarding the improved functioning of the child justice system.

Location: SJRP

Shelf reference: 660 STE/B

Keywords: YOUNG OFFENDERS, PERSONNEL, TRAINING

Wood, C. and Ehlers, L. (2000) 'Challenges to setting up diversion programmes in rural areas'. *Article 40 2/4:8-9.*

Offers important guidelines for establishing diversion programmes in rural areas.

The authors share valuable lessons learnt from their experiences with the SAYStOP initiative. The article highlights specifically the need for programmes to adapt to the hurdles presented by the rural context; to be supplemented with additional follow-up sessions when implementing adapted versions of diversion programmes; to build partnerships with organisations involved in the provision of diversion; and to draw in members of the community in which they work.

Location: SJRP

Shelf reference: 670 WOO/B

Keywords: DIVERSION, RURAL AREAS, SAYStOP, YOUNG SEX OFFENDERS

Role players: Duties, responsibilities and opinions

Brey, F. (2000) 'NICRO's diversion plan beyond 2000'. *Article 40, 2/4:5.*

Report on a workshop held by NICRO (Western Cape) to develop its strategic direction for the new millennium.

The article reviews the aims of the workshop and what was discussed by the participants.

Location: SJRP

Shelf reference: 670 BRE/B

Keywords: DIVERSION, IMPLEMENTATION, NICRO

Carloo, R. (2000) 'The impact of the training workshop on probation practice'. *Article 40, 2/1:7.*

A brief report on the impact of the training workshop on Probation practice held in November 1999 by PAWC.

Location: SJRP

Shelf reference: 665 CAR/B

Keywords: PROBATION

Community Law Centre. (1999) *What the Children Said: A consultation with children on the Draft Child Justice Bill.* Cape Town: University of the Western Cape.

A condensed version of the report on a Consultation with Children on their opinions of the New Draft Justice Bill.

As South Africa moves through the process of transition, the laws that regulate the way in which children are processed through the juvenile justice system has come under systematic and comprehensive review. Little effort has thus far been made to incorporate the views of children as they experience the various stages of the legal process. Article 12 of the United Nations Convention on the Rights of the Child, which South Africa ratified in 1995, requires that States assure the child the right to express its views in all matters that affect it. In an effort to bring these voices into the discourse of law reform, children of different ages and from broadly different circumstances were provided with the opportunity to express how they themselves experience the criminal justice system. This publication is the result of extensive consultations with children, the words are theirs and the voices are clear.

Location: SJRP

Shelf reference: 660 COM/B

Keywords: CHILDREN'S RIGHTS, CHILD JUSTICE BILL, CHILD PARTICIPATION

Community Law Centre. (2001) 'National Interim Protocol for the management of children awaiting trial', Article 40, 3/2:4-5.

A short report on the background, launch and goals of the National Interim Protocol for the management of children awaiting trial.

This brief article begins by describing the origins of the National Interim Protocol for the management of children awaiting trial. It highlights the commitment made by the Departments of Justice and Constitutional Development, Social Development, Correctional Services and the South African Police Service on International Children's Rights Day 2001. It also neatly summarises the aims and objectives of the protocol.

Location: SJRP

Shelf reference: 674 COM/B

Keywords: CHILDREN AWAITING TRIAL, IMPLEMENTATION, INTER-SECTORAL MANAGEMENT, INTERIM PROTOCOL, UN CONVENTION

Community Law Centre. (2001) 'An update on the activities of the Child Justice Alliance', Article 40, 3/2:9.

An update on the activities of the Child Justice Alliance.

This one-page article highlights the recent activities of the Child Justice Alliance. These activities include regional workshops on the Child Justice Bill, the setting up of the Child Justice web site, networking with other related forums and the creation of a vision for child justice reform.

Location: SJRP

Shelf reference: 660 COM/B

Keywords: CHILD JUSTICE ALLIANCE, CHILD JUSTICE BILL, REFORM, PARLIAMENTARY DEBATE, VISION

Ehlers, L. (1999) 'Children's Views on a New Child Justice System'. Article 40, 1/2:6-8.

A summary of a survey conducted on children's ideas about the new draft Child Justice Bill.

The article highlights the key themes on which children were asked to comment, including the minimum age of prosecution and age determination, police powers and duties, assessment and referral, diversion, the proposed idea of a preliminary inquiry, the child justice court, sentencing, legal representation and erasing of records.

Location: SJRP

Shelf reference: 660 EHL/B

Keywords: CHILD JUSTICE BILL, CHILD PARTICIPATION

Gallinetti, J. (2001) 'Advocacy Campaign planned around the Child Justice Bill'. *Article 40, 3/1:1-3.*

The full profile for this reference can be found previously, under the section entitled "Process for Reform: 1998 onwards".

Glanz, L. ed. (1994) *Preventing Juvenile Offending in South Africa: Workshop Proceedings.* Pretoria: HSRC.

This collection of papers include suggestions for primary prevention of crime through the involvement of families, schools, and the community. Papers on tertiary prevention highlight the importance of the roles of the police, the courts, correctional programmes, diversion service providers and residential facilities. The full profile for this reference can be found previously in this section, under the subsection entitled "Implementing child justice in South Africa: Process".

Graser, R. (1999) 'Training trends: Training in probation practice - a new vision'. *Article 40, 1/3: 6-7.*

Offers an insight into the development of the first Honours and Master's programmes in Probation and Correctional Practice in South Africa.

This article explains the way in which the School of Social Work at the University of the Western Cape set about developing programmes in probation practice. It describes briefly the composition of the students currently enrolled and highlights some teething problems it has experienced since its inception.

Location: SJRP

Shelf reference: 665 GRA/B

Keywords: CHILD JUSTICE BILL, PROBATION, CORRECTIONAL SUPERVISION

Moolman, A. (2001) 'Prevention may lead to a cure', *Article 40, 3/2:8.*

A one-page report on an intervention to eliminate gangsterism in Bohlokong, near Bethlehem, South Africa.

This article details the background and discussion that formed the basis of three community projects aimed at tackling the prevalence of gangsterism in Bethlehem. The first project is the training of teachers to work with "at risk" young people; the second is a youth empowerment sports programme; and the third project aims to revive social and community life in Bohlokong.

Location: SJRP

Shelf reference: 663 MOO/B

Keywords: COMMUNITY PARTICIPATION, EMPOWERMENT, GANGSTERISM, INTERVENTION, NICRO, PREVENTION, YOUNG PEOPLE AT RISK

Mukwevho, H. (2001) 'The role of prosecutors in enabling diversion'. *Article 40, 3/3:1-2.*

A short article on the role of prosecutors with regard to diversion.

This article begins with a short summary of the role of prosecutors, emphasising in particular their role in choosing when and when not to divert. It stresses that prosecutors need both to know and understand the *concept* of diversion and also to appreciate the *need* for diversion. The author observes that, until recently there has been no coherent policy regarding the place of diversion in the criminal justice system and, as a result, diversion has been implemented selectively and disjointedly. Despite the NDPP's release of policy directives regarding diversion, a large proportion of the courts do not practise diversion. This article summarises the findings of an audit done by the Sexual Offences and Community Affairs Unit of the NDPP on diversion practice by courts throughout South Africa. This audit reports back on which courts are practising diversion, what problems are being experienced in the implementation of diversion, which programmes are being utilised and why certain courts are not practising diversion.

Location: SJRP

Shelf reference: 674 MUK/B

Keywords: AUDIT, COURT, DIVERSION, IMPLEMENTATION, MONITORING, NICRO, POLICY, PROSECUTORS, SENTENCING

Skelton, A. (1993) *Children in trouble with the law: a Practical Guide*. Pretoria: Lawyers for Human Rights.

Pagination: 1-76

A practical guide for legal practitioners, court personnel and other professionals involved with youth justice.

This small book helps practitioners with some of the problems encountered when children are caught up in the criminal justice system. It identifies some possible solutions and alternatives which are available.

Location: SJRP

Shelf reference: 660 SKE/S

Keywords: CASE LAW, CHILDREN IN CUSTODY, CHILDREN'S COURT, COURT, DIVERSION, JUVENILE JUSTICE, LEGAL AID, SENTENCING

Skelton, A. (2000) 'The Child Justice Project...'. *Article 40*, 2/3:5.

A short report outlining the role of the UN Child Justice Project in South Africa.

Location: SJRP

Shelf reference: 660 SKE/B

Keywords: UN CHILD JUSTICE PROJECT

Skelton, A. and Frank, C. (2001) 'Conferencing in South Africa: returning to our future', in Morris, A. and Maxwell, G. eds. *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, pp. 103-119.

This article includes descriptions of restorative traditions in practice and highlights how community involvement in the administration of justice should be an integral part of the new child justice system. The full profile for this reference can be found above, under the subsection entitled "Child Justice Process: Family group conferences and victim-offender mediation".

Sloth-Nielsen, J. (1996) *Law, Practice and Policy: South African Juvenile Justice today*. Cape Town: University of the Western Cape.

The full profile for this reference can be found previously under the section entitled "General Background: Process of reform: 1992-1998".

Within the report is a summary of one of the research papers regarding the changing role of the South African Police Service in relation to child justice (see pp.20-22). The report also highlights the key issues raised in workshops and papers, including a workshop on police powers and juvenile justice (see pp.37-41) and one on the role of youth justice workers, probation officers, child care workers, legal aid providers and prosecutors (see pp.77-78).

Sloth-Nielsen, J. (1999) 'Charting the development of a new juvenile justice statute in South Africa: an opportunity for innovation'. *Youth Justice Matters*, December 1999: 18-20.

This article includes (at p.19) a short overview of the Community Law Centre's report called 'What the Children Said'.

The full profile for this reference can be found previously under the subsection entitled "General Background: Process of reform: 1998 onwards"

Sloth-Nielsen, J. (1999) 'Rescue Remedy'. *Article 40*, 1/3:1-2.

Illustration that there are ways for social workers, correctional officials, staff of NICRO, and even members of the public to become activists in challenging the imprisonment of children where this is perceived to be unfair.

This article reports on the cases *S v S* and *S v Khuliliwe Precious Mtshali and Liniwe Mokgopadi* where, through the intervention of concerned individuals, a high court judge could step in to correct an injustice.

Location: SJRP

Shelf reference: 669 SLO/B

Keywords: CHILDREN IN PRISON, LITIGATION

Sloth-Nielsen, J. (2000) ‘Case reviews’. *Article 40, 2/3:8-9.*

Case reviews stressing the importance of the assistance of a probation officer. Contains some criminal procedural language.

This article reports on two separate review judgments that both emphasise the importance of the assistance of a probation officer. The use of a pre-sentence report from a probation officer is described as an important source of information, not only regarding the personal circumstances of a child but also as a way of accurately determining the age of a child. This in turn is essential for the purposes of imposing an appropriate sentence and a sentence that is structured so that it gives direction to the young offender.

Location: SJRP

Shelf reference: 673 SLO/B

Keywords: PRE-SENTENCE REPORT, PROBATION OFFICER

Sloth-Nielsen, J. (2001) ‘Case reviews on minimum sentences for children’, *Article 40, 3/2:1-3.*

A short report emphasising that the judgments of the courts can play a vital role in interpreting the legislation, setting standards, and laying down guidelines for those involved in the administration of justice. The full profile for this reference can be found previously, under the section entitled “Sentencing: purpose and principles”.

KEYWORDS

Keywords

ACCOUNTABILITY
ACCUSED
ADMINISTRATION
ADVOCACY
AFRICAN FOCUS
AGE
AGE DETERMINATION
ALTERNATIVE CARE
ALTERNATIVES TO INCARCERATION
ANALYSIS
APPEAL
ARREST
ASSESSMENT
ASSESSMENT, COMPULSORY
ASSESSMENT, DETAILED
AUDIT
AWAITING TRIAL
BAIL
BEST INTERESTS
BILL OF RIGHTS
CASE LAW
CENSURE
CHARGE SHEET
CHILD AND YOUTH CARE WORKER
CHILD CARE
CHILD CARE ACT (1983)
CHILD JUSTICE ALLIANCE (CJA)
CHILD JUSTICE BILL (2000)
CHILD JUSTICE COURT
CHILD PARTICIPATION
CHILDREN'S COURT
CHILDREN'S COURT, INQUIRY
CHILDREN'S RIGHTS
COMMUNITY
COMMUNITY PARTICIPATION
COMMUNITY SERVICE ORDERS
COMMUNITY-BASED CORRECTIONS
CONFIDENTIALITY
CONSTITUTION
CONVICTION
CORRECTIONAL SERVICES ACT (1994)
CORRECTIONAL SERVICES ACT (1996)
CORRECTIONAL SERVICES ACT, S29
COST
COUNSEL
COURT
CRIME
CRIME CONTROL
CRIME PREVENTION
CRIMINAL CAPACITY
CRIMINAL JUSTICE SYSTEM
CRIMINAL LIABILITY
CRIMINAL PROCEDURE
CRIMINAL PROCEDURE ACT (1977)
CRIMINAL RECORD
CRIMINAL RESPONSIBILITY
CULTURAL ISSUES
CUSTODY
CUSTOMARY LAW
DEFENCE
DETENTION
DETENTION, RELEASE
DETENTION, TREATMENT
DETERRENCE
DEVIANCE
DISCRETION, PROSECUTORIAL
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DIVERSION
DOLI CAPAX
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DUE PROCESS
EARLY INTERVENTION
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EMPOWERMENT
EVIDENCE
EXPUNGEMENT OF RECORDS
FAMILY GROUP CONFERENCE
HEARINGS SYSTEM
HUMAN RIGHTS
IMC (INTER-MINISTERIAL COMMITTEE ON YOUNG PEOPLE AT RISK)
IMPLEMENTATION
INCAPACITATION
INDICTMENT
INDUSTRIAL SCHOOLS
INTERNATIONAL INSTRUMENTS
INTERNATIONAL LAW
ISSUE PAPER 9
JOURNEY PROGRAMME
JUDICIAL ADMINISTRATION
JUVENILE JUSTICE
JUVENILES
LEGAL AID

KEYWORDS

LEGAL REPRESENTATION
LEGAL STATUS
LEGITIMATE EXPECTATION
LITIGATION
MAGISTRATE
MONITORING
MONITORING COMMITTEES
NET-WIDENING
NICRO
ONE-STOP CHILD JUSTICE CENTRE,
STEPPING STONES
PARENT/GUARDIAN
PAROLE
PENAL POLICY
PENAL REFORM INTERNATIONAL
PILOT PROJECT
PLACE OF SAFETY
PLEA
POLICE
POLICE CELLS
POLICY
POLITICAL WILL
POPULAR JUSTICE
PRELIMINARY INQUIRY
PREPARATION
PRESUMPTION OF INNOCENCE
PRE-TRIAL
PRE-TRIAL COMMUNITY SERVICE
PREVENTION
PRISON
PROBATION
PROBATION OFFICER
PROFILING RESEARCH
PROGRAMME EVALUATION
PROPORTIONALITY
PROSECUTION
PROSECUTORIAL DISCRETION
PUNISHMENT
RATIFICATION
RECEPTION
RECIDIVISM
RECORD KEEPING
REFERRAL
REFERRAL PROCESS
REFORM
REFORM SCHOOL
REGISTRATION

REINTEGRATION
REPORT, BACKGROUND
REPORT, PRE-SENTENCE
RESIDENTIAL CARE
RESOURCES
RESPONSIBILITY
RESTITUTION
RESTORATIVE JUSTICE
REVIEW
RITE OF PASSAGE
RURAL INITIATIVES
SCHOOLS OF INDUSTRY
SECURE CARE
SELECTION, PARTICIPANT
SELECTION, PROGRAMME
SENTENCE
SENTENCE, NON-CUSTODIAL
SENTENCE, WHIPPING
SOCIAL SUPPORT
SOCIAL WORKER
SOUTH AFRICAN LAW COMMISSION
(SALC)
SALC, PROJECT 106
SAYStOP (SOUTH AFRICAN YOUNG
SEX OFFENDERS PROGRAMME)
STATISTICS
STATUTORY PROCESS
STREET CHILDREN
TRADITIONAL COURTS
TRANSFORMATION
TRIAL
TRIAL, JOINDER
TRIAL, SEPARATION OF
TRUTH AND RECONCILIATION
UN (UNITED NATIONS)
UN CHILD JUSTICE PROJECT
UN CONVENTION
UNSENTENCED
VERDICT
VICTIM EMPOWERMENT
VICTIM OFFENDER MEDIATION
VICTIM PARTICIPATION
VIOLATION
WELFARE
WITNESS
YES (YOUTH EMPOWERMENT
PROGRAMME)