



OVERVIEW OF THE IMPLEMENTATION OF
THE CHILD JUSTICE ACT, 2008 (ACT 75 OF 2008)

Good intentions, questionable outcomes

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1. INTRODUCTION

On 1 April 2010, after more than a decade of advocacy, deliberations, development and drafting, the Child Justice Act, 2008 (Act 75 of 2008) (hereinafter referred to as ‘the Act’) was finally implemented in South Africa.¹

This paper will focus briefly on the historical background of the process that preceded the enactment of the Act and highlight some of the developments which improved the situation of children in conflict with the law before the Act. It will also give an indication of the extent of child offending before 1 April 2010 and summarise the aims and other important provisions of the Act. It will include an overview of published documents that relate to the implementation of the Act and provide insight into some implementation-related challenges and achievements.

In many international laws and instruments, as well as country laws and policies, children in conflict with the law are labeled juveniles. In South Africa this term is no longer used, as ‘juvenile delinquent’ was regarded as having a pejorative connotation. In this paper, except where referring to the title of documents that use the term juvenile, the terms children in conflict with the law or child offenders are used interchangeably.

2. SUMMARY OF THE HISTORICAL BACKGROUND

South Africa’s predominant focus during the struggle years was to establish basic human rights and a democratic society. The need to develop a comprehensive child justice system only came to the fore during the early 1990s. In 1992 various non-governmental organisations (NGOs) initiated a campaign in an effort to raise awareness, both nationally and internationally, about the predicaments facing children in conflict with the law.²

With the establishment of the democratic Government in 1994 came a renewed focus on the need to protect the rights of children in conflict with the law and the development of a child justice system in South Africa. This need was once again highlighted with the enactment of the interim Constitution of the Republic of South Africa, 1993 (200 of 1993) and later the Constitution of the Republic of South Africa, 1996 (108 of 1996). Both the interim Constitution and the 1996 Constitution introduced various child-specific provisions, with the best interests of the child being of paramount importance in every matter concerning the child.

South Africa's ratification of the United Nations Convention on the Rights of the Child, 1989 on 16 June 1995, created various obligations relating to the protection of children and their rights. One of these obligations is the establishment of laws, procedures, and institutions to address and protect children in conflict with the law.³

In order to meet these obligations, the South African Law Reform Commission (SALRC) was requested by the then Minister of Justice and Constitutional Development, to launch an investigation to establish the feasibility of developing a child justice system in South Africa and to submit recommendations for the reform of this specialist area of the law. A project committee was appointed in 1996 to oversee this investigation.

An Issue Paper on Juvenile Justice was published for comment during 1997 which proposed that a separate Bill be drafted in order to provide for a cohesive set of procedures for the management of children accused of committing crimes. The Issue Paper was subjected to consultation with both Government and civil society role-players.⁴ Towards the end of 1998 the SALRC published a comprehensive Discussion Paper, accompanied by a draft Child Justice Bill. Once again wide consultation followed with all the relevant Government Departments and non-governmental organizations (NGO's) providing services in the field of child justice.

The draft Child Justice Bill encapsulated a new system for children accused of committing crimes, providing substantive law and procedures to cover all actions concerning such a child from the moment of the offence being committed through to sentencing. The workshops and seminars that followed the issuing of the Discussion Paper, as well as written responses to it, gained substantial support for the basic objectives of the Child Justice Bill as well as for the proposed structures and procedures.⁵ A report with a proposed draft Child Justice Bill was submitted to the then Minister of Justice and Constitutional Development in August 2000.

The extensive research and development that accompanied the drafting of the Child Justice Bill included a costing study undertaken by Applied Fiscal Research Centre, based at the University of Cape Town in 1998 and 1999.⁶ Subsequent to the costing and in certain instances as a result of the costing, various changes were made to the draft Child Justice Bill and a re-costing of the Child Justice Bill was commissioned by Dr Ann Skelton, at the time the coordinator of the United Nations Development Programme Child Justice Project in 2001. This costing exercise was unique in the history of drafting South African

Legislation, and served to highlight the financial benefits of enacting and implementing the Child Justice Bill.⁷

The Child Justice Bill 49 of 2002 (hereinafter referred to as the 'Bill') was introduced into Parliament in August 2002.⁸ Public hearings were conducted on the Bill in February 2003 and deliberations on the Bill by the Portfolio Committee on Justice and Constitutional Development followed in March 2003.⁹ Before the Bill could be finalised Parliament recessed for the elections in 2004 and the Bill was not placed back on the Portfolio Committee agenda in 2004, nor was there any progress on it in 2005 or 2006.¹⁰ In October 2007, a new version of the Bill was released by the Department of Justice and Constitutional Development and introduced into Parliament in January 2008.¹¹

Written submissions on the new version were due on 30 January 2008 and the public hearings started on 5 February 2008. Various civil society organisations and other institutions both individually and collectively under the auspice of the Child Justice Alliance were permitted to participate directly in the process. This participation included written and oral submissions, credible research, introduction of innovative methods of child justice practices and targeted advocacy and lobbying. These inputs influenced the legislative process and the provisions in the Bill. These were valuable contributions in ensuring that the rights of children in conflict with the law are adequately protected and that they receive the treatment envisaged in the international instruments and the Constitution.¹² Presentations on the Bill were also made by the relevant Government Departments to the Portfolio Committee for Justice and Constitutional Development, with an emphasis on government readiness to implement the proposed law.

The Bill was adopted by the National Assembly on 25 June 2008 and passed in September 2008. The then President, Kgalema Motlanthe, signed the Bill into law in May 2009. The Act was published in *Government Gazette* number 32225 on 11 May 2009 and implemented on 1 April 2010.

3. DEVELOPMENTS AIMED AT IMPROVING THE SITUATION OF CHILDREN IN CONFLICT WITH THE LAW BEFORE THE IMPLEMENTATION OF THE ACT

Before 1994 the need to develop a child justice system for South Africa was raised on numerous occasions because thousands of children suffered a harsh criminal justice system designed primarily for adults. Some of the concerns and problems highlighted included the fact that guardians were not contacted, no assessments of children were conducted and few attempts were made to divert children from the criminal justice system.¹³

Since 1994, even though South Africa did not have a separate child justice system various changes were initiated and other developments took place to improve the predicaments facing children in conflict with the law. In addition to the ratification of the United Nations

Convention on the Rights of the Child (1989) on 16 June 1995 and the African Charter on the Rights and Welfare of the Child (1990) on 18 November 1999, other changes and developments in this regard include:

3.1 The Constitution of the Republic of South Africa, 1996

The most important progressive step aimed at improving the protection of children's rights in general and specifically the rights of children in conflict with the law was the implementation of the interim Constitution of the Republic of South Africa, 1993 and later the Constitution of the Republic of South African, 1996.

In terms of section 35 of the Constitution, 1996, all the due process rights applicable to arrested, detained and accused persons also apply to children. Additional rights granted to children in section 28 include the right not to be detained except as a measure of last resort and for the shortest appropriate period of time; the right, when detained, to be kept separately from persons over the age of 18; and the right, when detained, to be treated in a manner and kept in conditions that take account of the child's age. The best interests' principle was broadened from its traditional family law domain to cover all matters concerning the child, and this includes children in conflict with the law.

3.2 Abolition of corporal punishment

In 1995 in *S v Williams*¹⁴ the Constitutional Court declared corporal punishment, a popular sentencing option for child offenders, unconstitutional.

3.3 Detention of children awaiting trial

On 10 May 1996 a new section 29 of the Correctional Services Act, 1959 (Act 58 of 1959) was published and came into operation from the date of publication. The aim of this new section 29 was to minimise the use of detention of children awaiting trial as far as possible, and to provide for the detention of only those children (over 14 years and under 18 years) who were charged with serious offences in prisons during the awaiting trial period.¹⁵

An Inter-Sectoral Committee on Child Justice (ISCCJ) comprising of the Departments of Justice and Constitutional Development, Safety and Security, Social Development, Correctional Services and the National Director of Public Prosecutions was formed and it developed and implemented an Interim National Protocol for the Management of Children Awaiting Trial in 2001.

The objectives of the Interim Protocol were to ensure:

- Effective inter-sectoral management of children who were charged with offences and who might needed to be placed in a residential facility to await trial;
- Appropriate placement of each child based on an individual assessment;
- Correct use of the different residential options available;
- The flow of information between the residential facilities and the courts;

- That managers of facilities were assisted to keep the numbers of facilities manageable;
- That communities were made safer through appropriate placement of children, effective management of facilities and minimization of abscondment;
- That the situation of children in custody was effectively monitored; and
- That appropriate procedures were established to facilitate the implementation of the new legislation, passed by Parliament.

These interventions and an increased focus on children awaiting trial in prison, significantly decreased the number of children awaiting trial in prison. There had been steady decline from a high of 2934 children awaiting trial in prisons on 31 December 1999 to 1165 by 28 February 2007.¹⁶ At the end of March 2008 a total of 1063 children awaited trial in prison.

3.4 Diversion

The National Institute for Crime Prevention and Reintegration of Offenders (NICRO) pioneered diversion programmes for child offenders from 1992, with the co-operation of public prosecutors and probation officers.¹⁷

Despite the fact that there was no legal framework for diversion in South Africa there was a steady increase in the number of cases being diverted away from the criminal justice system. According to the National Prosecuting Authority a total of 37 422 cases (adult and child offenders) were diverted during 2005/2006, 44 474 cases during 2006/2007 and 50 361 during 2009/2010.¹⁸ During 2009/2010, 32 per cent of the diverted cases were child offenders.¹⁹

The reason for widespread reliance on diversion, especially in cases involving child offenders, is that it can offer significant advantages to the child. Diversion is conceptualised as an alternative to the adversarial model of a contest between the prosecution and the defence. It focuses on keeping children out of the criminal justice system and uses family and community as resources. This gives children a chance to escape the stigmatisation and negative labelling resulting from involvement in the criminal justice system, while at the same time teaching them accountability and responsibility for their actions.

3.5 Assessments and pre-sentence reports

3.5.1 Assessments

The importance of individual assessment of children in conflict with the law has been recognised in international law. In South Africa, the Probation Services Amendment Act, 2002 (Act 35 of 2002) introduced the mandatory assessment of every arrested child who remains in custody before his or her first appearance in court. The Probation Services Amendment Act, 2002 also provides that if a child has not been assessed before his or her first appearance in court, the court may extend the time for the child to be assessed by periods not exceeding seven days at a time.²⁰

3.5.2 Pre-sentence reports

With reference to social inquiry reports (pre-sentence reports) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) require, that:

In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

In the Commentary it is stated that pre-sentence reports are an indispensable aid in most legal proceedings involving child offenders. The competent authority should be informed of relevant facts about the child, such as social and family background, school career, educational experiences, etc. In South Africa a pre-sentence report has been defined as:

Any report, which is drawn up by an expert of some kind, which is designed to assist the court in the quest to find an appropriate sentence, can be described as a pre-sentence report.²¹

Although there was no legislative obligation to obtain and consider pre-sentence reports prior to the Act, it has frequently been held by South African courts that no child offender should be committed to a reformatory without a probation report. This principle had to be followed unless good reasons existed for not doing so.

In *Gagu v The State*²² the South African Supreme Court of Appeal once again criticised the court *a quo* for sentencing a child offender in a serious case, where a lengthy prison sentence was imposed, without obtaining the necessary background information and facts. The matter was referred back to the trial court for imposition of sentence afresh after proper investigation of the pertinent facts and circumstances.

3.6 Criminal Law (Sentencing) Amendment Act, 2007 (Act 38 of 2007)²³

The amendment in the Criminal Law (Sentencing) Amendment Act, 2007 relevant to child offenders between the ages of 16 and under 18 years at the time of the commission of the offence, related to the fact that the court had to impose the prescribed minimum sentences on child offenders (falling into this age group) and could only set a lesser sentence if substantial and compelling circumstances were found to exist (section 51(1) and (2)). The court could, however, suspend part of the sentence, but not more than half of the prescribed minimum sentence (section 51(5)(b)).

The omission of the phrases 'best interests of the child', 'measure of last resort' and 'the shortest appropriate period of time' in this Act was a cause of great concern. The paramountcy of the child's best interests and the protection thereof, as demanded by the South African

Constitution and the relevant international instruments relating to child offenders, include the use of imprisonment as a measure of last resort and for the shortest appropriate period of time. In terms of the said amendment of the Criminal Law (Sentencing) Amendment Act, 2007, the courts could only deviate from the minimum sentence, as prescribed, when substantial and compelling circumstances existed. It was unclear how the best interests of the child offender (between the ages of 16 and under 18 years) would be protected if the court found that there were no substantial and compelling circumstances in a specific case. In this instance a sentence of imprisonment had to be imposed (not as a measure of last resort) and for the period as prescribed by the Act, of which only half could be suspended, (not for the shortest appropriate period of time).

In the *Centre for Child Law v the Minister of Justice and Constitutional Development and others*²⁴ the Constitutional Court declared sections 51(1), (2) and (6) unconstitutional, and invalid in so far as they were applicable to children under the age of 18 year at the time of the commission of the offence.

The Constitutional Court stated that the effect of the Amendment Act was to single out a precisely defined group of offenders (child offenders over 16 years and under 18 years of age) and limited the rights the Constitution specifically affords them. Justifying the limitation of their rights requires information or policies bearing directly on this group. There had been no satisfactory justification advanced for including 16 and 17 year olds in the minimum sentencing regime. Legislation cannot take away the right of 16 and 17 year olds to be detained only as a measure of last resort, and for the shortest period of time, without adequate justification. The Constitutional Court concluded that the limitation of section 28(1)(g) of the Constitution was unconstitutional.

3.7 Conclusion

Although the above changes and developments aimed at improving the situation of children in conflict with the law were fragmented, they definitely contributed to a more child rights-based approach in the criminal justice system. They also sensitised role players in the criminal justice system to the plight of children in the system and managed to intensify the focus on the growing need for a comprehensive child justice system. In a sense, by the time the Act came into operation many of its central features, such as diversion, were already familiar to court officials and were at least partially funded by the State.

4. CHILD OFFENDING AND RELATED STATISTICS BEFORE THE IMPLEMENTATION OF THE ACT

Accurate and reliable statistics on the extent of child offending in South Africa have been notoriously unavailable, inaccurate and unreliable. According to the available statistics submitted by the Parliamentary Research Unit to the Parliamentary Portfolio Committee on

Justice and Constitutional Development during a briefing on the Child Justice Bill on 27 March 2008 it was indicated that:

- Approximately 10 000 children were apprehended/arrested each month by the police;
- Of these only between 2750 and 4000 children appeared in court;
- Roughly 1300 to 1900 children were diverted from the Magistrate's Court each month;
- On average 1078 children were detained in prison awaiting trial,
- The monthly population of sentenced children numbered 900 on average.
- 44 231 children appeared in court in 2006;
- 63 456 children appeared in court in 2007
- During the period April 2007 to September 2007 an average of 1627 children were diverted each month.²⁵

At the end of June 2009 there were a total of 908 sentenced children in prison and 689 awaiting trial in prison.²⁶ The majority of children (sentenced and awaiting trial) in prisons committed aggressive crimes and economic crimes were the second most prevalent.

In 2008, on a monthly basis, approximately 3 000 children were awaiting trial detainees in secure care facilities, places of safety and home-based supervision.²⁷

Recidivism among child offenders in South Africa is often attributed, at least in part, to the corrupting and damaging effect of the criminal justice system.²⁸ There is no reliable figure on South Africa's overall recidivism rate (both adults and children) but most analysts settle on more than 66 per cent. Research conducted by the Centre for Justice and Crime Prevention on young offenders shows that imprisonment is a fairly constant feature in their lives: half of them (49.4 per cent) reported that they had been incarcerated prior to the offence for which they were currently incarcerated and 21 per cent reported that they had been incarcerated twice before.²⁹

The National Institute for Crime Prevention and Reintegration of Offenders (NICRO) conducted a study on the recidivism rates of child offenders that completed a diversion programme. The results indicate that just over six per cent (6.7 per cent) of these children re-offend within the first 12 months and less than ten per cent (9.8 per cent) during the first 24 months after participation in a diversion programme.³⁰

The inaccuracy, unreliability and unavailability of statistics on child offenders and what happens to them in the criminal justice system should, hopefully, be something of the past with the obligation, in terms of the Act, to keep and report on various statistics on children in conflict with the law. In terms of section 96(1)(e) an integrated information management system must also be established for monitoring and to provide qualitative and quantitative data relating to the various processes and procedures followed in terms of the Act.

5. THE CHILD JUSTICE ACT

On 1 April 2010, a day that has been widely described as historical and victorious in the protection of the rights of children in South Africa, the implementation of the Act was officially launched at the Walter Sisulu Child and Youth Care Centre in Soweto. The launch was attended by, amongst others, various Ministers (from Social Development; Justice and Constitutional Development; Women, Children and Persons with Disabilities), Deputy Ministers, Directors-General, members of the judiciary and magistrates, delegates from the National Prosecuting Authority and the representatives from civil society.³¹

The Act aims to establish a criminal justice system for children that expands and entrenches the principles of restorative justice, while ensuring their responsibility and accountability for crimes committed. It recognises the need to be proactive in crime prevention by placing an increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending; and balances the interests of children and those of society, with due regard to the rights of victims. The Act also creates special mechanisms, processes or procedures for children in conflict with the law by:

- amending the common law pertaining to criminal capacity by raising the minimum age of criminal capacity for children from 7 years to 10 years of age;
- ensuring that the individual needs and circumstances of all children in conflict with the law are assessed by a probation officer shortly after apprehension;
- providing for special processes or procedures for securing attendance at court, the release or detention, and placement of children;
- providing for appearance in a preliminary inquiry which is an informal, inquisitorial, pre-trial procedure, designed to facilitate the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases;
- providing for the adjudication of matters involving children which are not diverted in child justice courts; and
- providing for a wide range of appropriate sentencing options specifically suited to the needs of children.

The Act is significant because it creates a separate criminal justice system for children in South Africa. It is also important because it provides a legislative framework for various processes and procedures that, until its implementation, had been governed by either common law principles or practice (which often increased the risk of discriminatory applications and practices). The Act provides a legislative framework for the establishment of criminal capacity of children 10 years or older but under the age of 14 years. It also introduces diversion, the application of restorative justice approaches, submission of victim

impact statements before sentencing and pre-sentence reports to ensure individualised and proportionate sentencing of child offenders.

6. REGULATIONS, DIRECTIVES, NATIONAL POLICY FRAMEWORK, NATIONAL INSTRUCTIONS AND RELATED MATTERS

- 6.1 The Act provides for the issuing of Regulations regarding any matter which is required by the Act to be prescribed by Regulation or any other matter which is necessary or practical to prescribe in order to achieve the objects of the Act. In terms of section 97(1) of the Act the National Director of Public Prosecutions must, in consultation with the Minister of Justice and Constitutional Development, issue Directives regarding all matters which are reasonably necessary or practical to be provided for in order to achieve the objectives of the Act, including diversion and related matters. These Regulations and Directives were approved by the Portfolio Committee for Justice and Constitutional Development on 23 March 2010.³² The Regulations were published in *Government Gazette* No. 33067 on 31 March 2010³³ and the Directives in terms of section 97(4) of the Act were also published on 31 March 2010.³⁴
- 6.2 In terms of section 93(1) of the Act, the Cabinet member responsible for the administration of justice must, after consultation with the Cabinet members responsible for safety and security, correctional services, social development, education and health, adopt a national policy framework. The national policy framework needs to ensure a uniform and collaborative approach by all role players in child justice system, guide the implementation and application of the Act, promote and ensure effective partnerships with non-governmental organisations and civil society and enhance service delivery in the child justice system. The national policy framework was approved by the Portfolio Committee for Justice and Constitutional Development on 26 May 2010 and published for public comments on 13 August 2010. Public comments had to be submitted to the Department of Justice on or before 1 October 2010.³⁵ The revised national policy framework with the integration of the public comments has not at the time of writing been published.
- 6.3 The South African Police Services' draft National Instruction 2/2010 Children in Conflict with the Law, was presented to the Portfolio Committee for Police on 4 May 2010 but was not approved at the time since it was unclear what the roll-out costs and the timeframe for the implementation thereof would be.³⁶ The final National Instruction 2/2010 Children in Conflict with the Law was approved and published

in the *Government Gazette* No. 33508, for general information, on 2 September 2010. The purpose of the National Instruction is to ensure that members of the South African Police Service treat children in conflict with the law appropriately and in accordance with the provisions of the Act and the Constitution.

6.4 In terms of Section 97(3)(a) the Department of Justice and Constitutional Development had to determine the category or class of persons who are competent to conduct the evaluation of the criminal capacity of children 10 years or older but under the age of 14 years, accused of committing a crime. Notice No. R. 273 published on 1 April 2010 identify the following categories or classes of persons as suitable to conduct such evaluations:³⁷

- A medical practitioner who is registered as such under the Health Professions Act, 1974 (Act 56 of 1974), and against whose name the speciality psychiatry is also registered; and
- A psychologist who is registered as a clinical psychologist under the Health Professions Act, 1974.

6.5 The Policy Framework for the Accreditation and Quality Assurance of Diversion Services in South Africa was also approved on 26 May 2010 by the Portfolio Committee for Justice and Constitutional Development. An invitation for applications for the accreditation of diversion programmes and diversion service providers was published in *Government Gazette* No. 33469 on 20 August 2010.³⁸ The accreditation process has been implemented in all nine (9) Provinces and will be conducted in four (4) phases. In the first phase, the applicants have to complete a self-assessment questionnaire. The second phase includes desk assessments, site visits and considerations. The decision on awarding accreditation is made during the third phase and if successful the service provider would be certified and placed in the quality assurance cycle. The fourth and final phase involves the maintenance of accreditation standards and quality assurance.

7. IMPLEMENTATION CHALLENGES

The successful implementation and administration of the Act depends largely on two important conditions; firstly that each Department fulfils its mandate, and secondly that the handover of responsibility towards children in conflict with the law between Departments is regulated and well managed.³⁹ In the first year since the Act came into operation, various implementation-related challenges have emerged and are discussed below.

7.1 Lack of public awareness about the Act, its provisions and benefits

International research shows that the public does not favour the locking up of children for crimes that are not serious, especially if they understand the background from which the child comes and if they are informed about the alternatives such as diversion and community-based sentences.⁴⁰ Similar research has not been conducted in South Africa, but there are constant demands from the public on government to act tougher on crime. One of the aims of the Act is to deal with children in conflict with the law outside of the criminal justice system. To do this successfully, the buy-in of and support from affected communities and the general public – are essential to ensure the effective reintegration of these children back into their families and communities. Information and awareness of the Act and its aims and benefits are of utmost importance in achieving this.

It is equally important to avoid negative reporting in the media about children in conflict with the law and the crimes they commit because this contributes to a discriminatory and negative stereotyping of these children and regularly results in a call for a tougher approach in dealing with these children.⁴¹

Since the implementation of the Act there had been a lack of visible information sharing, awareness-raising and communication to the general public about the Act, its provisions and its benefits to both children and society. This lack of public information and knowledge sharing about the Act was clearly illustrated in the media reports and public ignorance following the Terre'Blanche murder and the so-called Jules High School rape case, discussed hereunder.

7.1.1 Eugene Terre'Blanche murder trial

The murder of Eugene Terre'Blanche on 3 April 2010 and the subsequent arrest of two suspects, including a 15 year-old boy, brought the Act under both media and public scrutiny and the case was widely viewed as the first 'test case' for the Act.⁴² From the media reports following the arrest and court appearances of the alleged child offender, it became very clear that there is an urgent need to raise public (including members of the media) awareness on the provisions and processes to be followed in terms of the Act as well as on the benefits of the Act to children in conflict with the law and to society at large.

There were various incorrect media reports about the provisions of the Act and processes to be followed in terms of the Act, such as the fact that the *in camera* appearance of the child offender was as a result of the Act, that the criminal capacity of the child needed to be assessed and this assessment was to be conducted by the social worker and that the child offender may get off scot-free because of the implementation of the Act.⁴³ The correct position is, however, that the *in camera* appearances of children have always been regulated by the Criminal Procedure Act, 1977 (Act 51 of 1977). Also, the child accused did not fall into the age bracket (10 years or older but under the age of 14 years) applicable to the evaluation of criminal capacity and it was therefore not necessary to

evaluate his criminal capacity. These evaluations are not conducted by a social worker but by a psychiatrist or clinical psychologist. The intention of the Act is not to enable children accused of committing crime to get off 'scot-free' but it is to deal with them in an individualised manner taking into account his or her own personal circumstances, the nature of the offence and the interests of society. The Act further does provide for sentences of imprisonment for a period of up to 25 years.

Every accused person in South Africa has the constitutional right to a fair trial and this includes the right to be presumed innocent until proven guilty. Some media reports clearly infringed on the child's right to fair treatment and a fair trial, including a report in which the National Director of Public Prosecutions acknowledged that the child had a previous conviction and also reports that the child made a confession about the murder to his mother.⁴⁴

The legal representative of the 15-year-old accused indicated that he would not apply for bail and the child was kept in custody in a Child and Youth Care Centre where, according to reports 'he enjoyed three meals a day and sleeping on a bed for the first time in his life.'⁴⁵ Statements such as these further contribute to public perceptions that the Act and the processes followed in terms of the Act are soft on crime.

The adult co-accused, Chris Mahlangu aged 28, was granted bail of R5000 on 14 July 2010. The National Director of Public Prosecutions took the decision on appeal and the accused was re-arrested in October 2010 following a decision by the Gauteng North High Court that the accused was a flight risk.⁴⁶ The 15 year-old accused appeared in court at 30-day intervals in terms of section 66(2)(b) of the Act. According to reports, the National Prosecuting Authority indicated the trials would not be separated. In terms of section 63(2) the provisions of the Act will be applicable to the child offender and the provisions of the Criminal Procedure Act, 1977 will apply to the adult offender.⁴⁷ Both accused were formally charged with murder, house breaking and robbery with aggravating circumstances, *crimen injuria* and attempted robbery with aggravating circumstances.

Section 63(5) provides that no person may be present at any sitting of a child justice court, unless his or her presence is necessary in connection with the proceeding of the child justice court or the presiding officer has granted him or her permission to be present. Various Media companies applied on 22 November 2010 for permission to have access to the trial.⁴⁸ Media Monitoring Africa entered as *amicus curiae* and argued that the fair trial rights of the child must be upheld, and that the media should not be present whilst the child is testifying. Later, the Terre'Blanche family joined the proceedings to ask that some of the family members be permitted to attend the trial. Judgment was finally handed down on 28 April 2011. Raulinga J ruled that 16 members of the media and four members of the Terre'Blanche family would be permitted to observe the trial via close circuit television in another room. The face of the child offender would be obscured, and no information concerning his identity could be published. This was an important victory, because had the media houses been successful in their bid to obtain access to the courtroom the protective

function of section 63(5) would have been destroyed.

The trial was postponed to early May 2011 and then postponed again until October 2011 due to the fact that the adult accused's legal representative has withdrawn from the matter and the newly appointed legal representative needed time to adequately prepare for the trial.⁴⁹ The trial will run for an estimated two weeks.⁵⁰ The postponement of the trial until later in 2011 means that, despite the implementation of the Act, its aims and provisions, the case against this child offender- who has remained in detention – would still have been dragged out for more eighteen months after the alleged offence has been committed.

7.1.2 Jules High School rape charges

On 4 November 2010, more than six months after the implementation of the Act, another case involving child offenders was reported on in the media. In this case two boys, aged 14 and 16 years, were arrested on 8 November 2010 for the alleged rape of a 15-year-old school girl. The alleged rape took place at the Jules High School in Jeppestown and other learners allegedly filmed the incident on their cellular phones.

According to media reports the boys admitted their part in the consensual sex during their first appearance in court and the victim maintained that she had been raped. After studying the evidence contained in the case docket the prosecutor concluded that there was insufficient evidence to prosecute the two boys on a rape charge and they requested further investigation to be conducted while considering other possible charges.⁵¹

On 11 November 2010, the senior public prosecutor and the acting director of public prosecutions had 'a lengthy consultation with the girl and possible witnesses' and it was decided to charge all three children (the two boys and the girl) with contravention of section 15(1) of the Sexual Offences and Related Matters Act, 2007 (Act 32 of 2007). In terms of this section a person who commits an act of sexual penetration of the child is, despite the child's consent, guilty of having committed an offence. In cases where both the 'perpetrator' and 'victim' are both children the institution of a prosecution must be authorised in writing by the National Director of Public Prosecutions, and both parties must be prosecuted for contravention of the said section. Of concern in this regard is that the 'victim' did not have legal representation during these consultations and her subsequent appearances in court.

All three accused appeared at a preliminary inquiry on 17 November 2010 and they were released into the custody of their parents. On 1 December 2010 the charges were provisionally withdrawn and the court ordered that the accused must attend a three-month diversion programme. If the diversion programme is completed successfully they will not have criminal records.⁵²

According to incorrect media reports, the decision to charge all three accused was made in terms of the Act. This is another example of misleading and incorrect reporting during the coverage of a high profile case involving child offenders, once again highlighting the need for raising public and media awareness about the Act and related child justice matters.

Successful implementation of the Act depends, to a large extent on the support for and acceptance of children in conflict with the law by their parents and their communities, and failure to effectively inform the public and the media about the Act and its benefits will definitely have a negative impact on implementation of the Act.

7.2 Training of police officers

Since the police are the first point of contact that children in conflict with the law have with the criminal justice system, the need for specialised training for all law enforcement officials involved in the administration of child justice, has been highlighted in international law.⁵³

South Africa does not have specialised units dealing exclusively with children in conflict with the law, and the possibility therefore exists that any police member could encounter a child in conflict with the law. As a result it is essential that all police members on all levels should receive training on the Act and be able to act in an informed and appropriate manner when dealing with children.

The South African Police Service developed training on the Act to be rolled out in three (3) phases. The first phase consists of a one-day information session and is targeted at provincial heads responsible for visible policing, and commanders of the various branches and units (station, detective branch, family violence, child protection and sexual offences unit (FCS)). On 30 July 2010 a total of 5 138 members were trained in phase one.

The second phase of the training is a two-day in-service training targeted at members of crime prevention, members responsible for police cells and detention, detectives and FCS. On 30 July 2010 a total of 990 members were trained in phase two.

The third phase of the training is a one-week in-service learning programme targeted at visible policing members, detectives and FCS members. Only 151 members underwent the phase three training.

Only a small percentage of SAPS members (6279) had been trained on the provisions of the Act on 30 July 2010 (four months after implementation) and indications are that the process had just started.⁵⁴ There are 150 319 police officers in South Africa and the fact that less than five per cent of them have been trained on the Act highlights the gap in training and the urgent need for training of police officers on the Act.⁵⁵

Inadequate training of police officers presents an enormous stumbling block for successful implementation of the Act, because police officers are usually regarded as the face of the criminal justice system as they are the first point of entry into the system.

7.3 Decrease in the number of arrests

The Act prohibits the arrest of a child under the age of 10 years and such a child, suspected of having committed an offence, must be handed over to his or her parents or an appropriate adult or a guardian or to a suitable child and youth care centre. This procedure is also applicable where the police official is uncertain about the age of the child but believes that the child is under the age of 10 years. Furthermore, a child who is 10 years or older may

not be arrested for committing a Schedule 1 offence unless there are compelling reasons to justify the arrest. Children can be arrested if suspected of Schedule 2 or 3 offences, although the option of a summons remains available.

During the period 1 April 2010 to 30 June 2010, a total of 19 487 children were charged by the South African Police Service.⁵⁶ This translates to about 6495 children per month, which is substantially lower than the approximately 10 000 children arrested per month, reported to Parliament in 2008.⁵⁷

According to the above statistics, reference has been made to the number of children charged as opposed to children arrested. The reason for only referring to children charged is unknown, but it is clear that there is no differentiation between the number of children arrested, the number of children that were handed written warnings or those issued with summonses to appear at preliminary inquiries, as required by section 96(1)(e) of the Act.

From a comparison between the statistics furnished in 2008 and those presented in Parliament in 2010, one can clearly see a decrease in the number of children entering the criminal justice system since the implementation of the Act. Not surprisingly, there have been reports by civil society organisations working in the child justice sector of a visible decrease in the number of children arrested.

There may be various reasons for this: In the past the children under the age of 7 years could not be arrested because the minimum age of criminal capacity was 7 years of age. The minimum age of criminal capacity has been raised to 10 years and this means that all children between the ages of 7 and under 10 years, that could in the past be arrested, can no longer be arrested. This amendment of the minimum age of criminal capacity, may account for some of the decreases in the number of arrests but certainly not for all of it.

There are no available statistics on the number of children between the ages of 7 and 10 years that were arrested by the police before implementation of the Act. However, the fact that Legal Aid SA reported in 2008 that it represented only 222 children under the age of 10 years between April 2007 and February 2008, serves as an indication that raising the minimum age of criminal capacity to 10 years cannot account for the significant decrease in the number of arrests of children.⁵⁸

Other reasons advanced by the Department at a briefing to Parliament for the decrease in the number of children arrested are:⁵⁹

- The South African Police Services (SAPS) were making more use of alternate methods of policing children;
- Due to the World Cup there had been a general decrease in crime; and
- There was also normally a dip in the crime rate in the winter months.

These reasons are not convincing. The alternate methods of policing were not explained in the briefing and even if it means that the police only arrest children as a measure of last resort, they must still hand over a written warning or issue a summons to the child, which

should still be reflected in the statistics. Furthermore, the World Cup only ran during the second part of June 2010 which would then only account for just over two weeks of the period reported on.

A more realistic explanation for the drop in the number of children arrested could be attributed to the fact that some police officers at station level may have been informed about the Act and its implementation but have not received training on the specific provisions applicable to the apprehension of a child and procedures to be followed after a child has been arrested. The lack of training of police members has been highlighted in paragraph 7.2 above. Uncertainty and ignorance about correct and lawful procedures when dealing with children suspected of having committed a crime, could result in police officers opting not to arrest children suspected of having committed offences, at all. This is, in fact, the most plausible reason for the drop in numbers of children being arrested or being handed a written notice to appear at court.

7.4 Shortage and unavailability of probation officers

A general shortage of probation officers nationally and the unavailability of probation officers after-hours in certain districts has been experienced and highlighted since the implementation of the Act.⁶⁰ As probation officers are all trained social workers, the shortage of probation officers is as a result of the shortage of social workers generally.

Probation officers play an essential and integral part in the successful implementation, application and operation of the Act. Their involvement in the process starts from the initial assessment of the child as soon as possible but within 48 hours of apprehension and continues through to the monitoring of diversion orders, convening family group conferences, the submission of pre-sentence reports in cases that have not been diverted and also the monitoring of some of the sentences passed in terms of the Act, particularly community-based sentences.

There are approximately 484 probation officers, in the employment of the Department of Social Development, who are currently servicing 388 magisterial courts, 88 high courts and 299 periodical courts. There are therefore not enough probation officers to have one at each court.⁶¹

A shortage of probation officers and their unavailability after-hours will therefore have a very negative impact on the successful implementation of the Act and will result in the violation of the rights of children in conflict with the law.

The Department of Social Development has initiated various strategies in an attempt to eradicate the shortage of probation officers in the long term, such as awarding scholarships to students in the social work profession, career fairs to encourage young people to pursue careers in the social work profession and the drafting of a policy for the social service profession.⁶² It is however, not clear how the shortage of probation officers and the related gaps and challenges will be addressed in the short term.

Consideration should be given to identify other suitable persons to assist probation

officers with certain duties in terms of the Act, such as the monitoring of compliance with certain sentences such as community-based sentences and sentences involving fines or alternatives to fines, to lighten the burden on probation officers. Final year or honours' social work students, criminology graduates, BA graduates with psychology majors etc. might be considered to fulfil some of these functions.

7.5 Decrease in the number of diversions

Diversion of child offenders plays a central role in the Act. The Act provides for the possibility of diversion in all matters. There is no exclusion from the possibility of diversion based solely on the nature of the offence and any child accused of committing any crime can therefore be diverted from the criminal justice system, if desirable in the circumstances. The Act provides a framework for diversion and therefore reduces the risk of discriminatory applications and practices relating to diversion.

Diversion may be considered throughout the child justice process up until before closure of the case for the prosecution.

The prosecutor can divert a child accused of committing a Schedule 1 offence before the preliminary inquiry. If the prosecutor or Director of Public Prosecutions indicates that a matter can be diverted, the inquiry magistrate can divert any suitable matter during the preliminary inquiry, and the child justice court can divert any suitable matter anytime during the trial before closure of the case for the State.

Statistics on number of diversions during the first six months after implementation of the Act are reflected in table 1.

Table 1: Children diverted in terms of the Child Justice Act (1 April – 30 September 2010)

Forum	Quarter	Total children	Ages 10–13 years	Ages 14–17 years
District Court	Q1	3122	151	2971
	Q2	4341	244	4097
Total District Courts		7463	395	7068
Regional Court	Q1	199	0	199
	Q2	74	13	61
Total Regional Court		273	13	260
National total		7736	408	7328

Source: Parliamentary Monitoring Group

A total of 3321 children were diverted in terms of the Act during the first quarter of the 2010/2011 financial year (from 1 April 2010 to 30 June 2010). The majority of these diverted children (3170) were between the ages of 14 to 17 years.

The National Prosecuting Authority performed below their diversion target during this quarter and the reason advanced for this was 'the administrative nature of the steps set out in the Act'.⁶³ This explanation is not satisfactory since the possibility of diversion is one of the central themes and aims of the Act. The prerogative to divert a matter or not rests exclusively on prosecution and in cases where the child is accused of having committed a Schedule 1 offence, the prosecutor may divert the matter (in appropriate circumstances) without intervention or permission of any other party.

During the second quarter (from 1 July 2010 to 30 September 2010) the number of children diverted increased to 4415 and the majority were once again between the ages of 14 to 17 years (4140).⁶⁴ According to table 1, a total of 7736 children have been diverted since the implementation of the Act until 30 September 2010.

Table 2: Type of offences of matters diverted in terms of the Child Justice Act

Forum	Quarter	Total schedule 1 offences	Total schedule 2 offences	Total schedule 3 offences
DC	Q1	1499	876	318
	Q2	2010	1316	549
DC Total		3509	2192	867
RC	Q1	19	39	68
	Q2	8	25	19
RC Total		27	64	87
Q1 Total		1518	915	386
Q2 Total		2018	1341	568
National Total		3536	2256	954

Source: Parliamentary Monitoring Group

From table 2 it is clear that during both first and second quarter of 2010/2011, the majority of cases that were diverted for Schedule 1 offences, 1518 during the first quarter and 2018 during the second quarter.⁶⁵

Civil society organisations offering diversion services and programmes have reported a visible drop in the number of children referred to diversion programmes since the implementation of the Act. These reports correlate with the fact that National Prosecuting

Authority failed to meet their diversion target in the first quarter.

The fact that children do not want to take responsibility for their actions (one of the requirements for diversion) and also that prosecutors do not divert Schedule 2 and 3 cases have been advanced as possible reasons for the decline in the number of diversion cases since the implementation of the Act. Confirmation for these allegations could not be found. However, from the information supplied in table 2 it is clear that the number of diversions for Schedule I offences (3536) is only marginally higher than those diverted for Schedule 2 and 3 (3210). The lower number of arrests by the South African Police will definitely contribute to a decrease in the number of diversions.

The Department of Justice and Constitutional Development has since embarked on a national research project to establish the reasons for the drop in the diversion numbers.⁶⁶

Table 3: Stages when cases were diverted

Forum	Quarter	No. of section 9 referrals	No. of section 41 diversion	Preliminary inquiry diversion
District Court	Q1	194	644	956
	Q2	168	756	1222
District Court Total		362	1400	2178
Regional Court	Q1	2	6	39
	Q2	0	2	6
Regional Court Total		2	8	45
Q1 Total		196	650	995
Q2 Total		168	758	1228
National Total		364	1408	2223

Source: Parliamentary Monitoring Group

Section 9 of the Act refers to matters involving children under the age of 10 years as well as cases involving children 10 years or older but under the age of 14 years, where the child does not have the necessary criminal capacity. In Schedule 1 offence cases, the prosecutor may decide that criminal capacity is not likely to be proved before the preliminary inquiry. In these cases the prosecutor must withdraw the charges, and may cause the child to be taken to a probation officer to be dealt with in terms of this section. This process cannot and should not be regarded as diversion since children under the age of 10 years and those 10 years older but under the age of 14 years with no criminal capacity cannot be diverted.

According to table 3 a total of 364 children were referred to a probation officer to be dealt with in terms of section 9 of the Act, during the period 1 April to 30 September 2010.

Section 41 deals with diversion by the prosecutor before the preliminary inquiry in respect of offences referred to in Schedule 1 of the Act. It is interesting to note that, according to table 2, the majority of diverted cases (3536) were for Schedule 1 offences (and the prosecutor could have diverted these cases before the preliminary inquiry), yet only 1408 cases (table 3) were diverted by the prosecutor before the preliminary inquiry.

One of the objectives of the preliminary inquiry is to establish whether a matter can be diverted or not. The majority (2223) of cases diverted during the period 1 April 2010 to 30 September 2010 were diverted during preliminary inquiries in district courts. Only 48 cases were diverted during the preliminary inquiries in regional courts. The fact that substantially fewer cases were diverted from preliminary inquiries in regional courts could be as a result of the fact that preliminary inquiries are not conducted in regional courts in all the provinces (see paragraph 7.5 below).

Disturbing questions and doubts about the accuracy and reliability of the information furnished emerge when comparing the numbers and totals supplied in tables 1, 2 and 3. It is clear that the totals do not correspond and/or are very confusing. What is even more disturbing is the fact that the Department of Justice and Constitutional Development and the National Prosecuting Authority have been reporting on diversions for a number of years and it is almost unbelievable that there could still be discrepancies in the reported statistics.

According to table 1 the total number of children diverted in terms of the Act during the period 1 April 2010 to 30 September 2010 was 7736. However, both tables 2 and 3 provide diversion numbers and if these are added up, the totals are significantly higher than the stated total of 7736 (table 1). It is also not clear where the number of diversions referred to in table 4 would fit into the picture. To enable a clearer understanding of the extent of the application of diversion in terms of the Act, and more importantly, to monitor implementation progress in this regard, there is definitely a need for a more detailed and logical reporting format.

As indicated, in terms of section 67(1)(a) of the Act, a child justice court may, at any time before the conclusion of the case for the prosecution, make an order for diversion in respect of a child, if the child:

- Acknowledges responsibility for the offence;
- Has not been unduly influenced to acknowledge responsibility;
- There is a *prima facie* case against the child;
- The child, and if available, his or her parent, an appropriate adult or a guardian consent to diversion, and
- The prosecutor indicates that the matter may be diverted.

Table 4: Outcome of cases referred to trial and diversion programmes

Forum	Quarter	Refer to trial				Outcome of diversion			
		Convicted	Acquitted	Diverted	Other	Complied	Not complied more onerous diversion	Trial convicted	Trial acquitted
DC	Q1	70	16	243	483	269	18	31	2
	Q2	61	18	331	793	383	73	12	7
DC Total		131	34	574	1276	652	91	43	9
RC	Q1	5	1	1	33	5	0	5	0
	Q2	4	0	7	2	0	1	0	0
RC Total		9	1	8	35	5	1	5	0
Q1 Total		75	17	244	516	274	18	36	2
Q2 Total		65	18	338	795	383	74	12	7
National Total		140	35	582	1311	657	92	48	9

Source: Parliamentary Monitoring Group

From table 4 it appears as if a total of 582 cases have been diverted during trials in child justice courts during the period 1 April to 30 September 2010. Very few cases were diverted during trials in regional courts (8 cases) during this six-month period.

A total of 657 children complied with their diversion orders during this period and in 92 cases children were ordered to more onerous diversion orders following a failure to comply with the initial diversion orders.

A significant number of cases have been reported under the 'other' column in table 4 and it is not clear whether these cases represent cases that are pending, have been withdrawn, struck off the roll or have been converted into children's court inquiries or all of the aforementioned.⁶⁷ Since the cases reported under the 'other' column represent such a high number of cases one would expect a more detailed explanation of these cases and the reasons for their inclusion in the statistics. This would create a better understanding of the provided statistics and an accurate picture of the situation. The total reflected under this column is significantly higher than those reflected under trials, convictions, acquittals or diversions.

7.6 Conducting preliminary inquiries

A new process in South African law, provided for in the Act, is the conducting of a preliminary inquiry. A preliminary inquiry is an informal pre-trial procedure which is inquisitorial in nature. The objectives of the preliminary inquiry are to consider the assessment report of the probation officer, to establish whether or not the matter can be diverted, to decide on the placement of the child where the child has been arrested and detained, to refer the child to a children's court if the child is in need of care and protection and to refer the matter for plea and trial if not diverted or referred to a children's court.

The Act does not specify whether all preliminary inquiries should be conducted in district courts or whether preliminary inquiries in cases of serious offences should be conducted in regional courts.

There is some confusion in this regard: in some districts, all preliminary inquiries are being conducted in district courts and are only transferred to regional courts, when the child is charged with a serious offence and the matter is ready to go on trial. In other districts preliminary inquiries are conducted in both district and regional courts (in cases where the charges are of such a serious nature that the trial, if any, would be conducted in the regional court).⁶⁸

The first option is in line with the practice being followed in all magistrates' courts regarding first appearances of offenders, namely that all first appearances are conducted in district courts and only transferred to the regional court, where applicable, once the matter is ready to go to trial.

To conduct all preliminary inquiries in district courts (or special preliminary inquiry courts) and to only refer those involving serious offences for trial to regional courts, may be the preferred and more practical way for various reasons. Firstly, because there are fewer regional courts available and with the time limits for postponements stipulated in Act, it may be difficult to adhere to these time limits for postponements due to the case load and unavailability of regional courts.⁶⁹ Secondly, once a magistrate has conducted the preliminary inquiry, he or she may not preside over the trial of the matter where he or she heard any information prejudicial to the impartial determination of the matter (section 47 (10) of the Act). If a preliminary inquiry was conducted by the only regional court magistrate at a specific court, a regional magistrate from another region would have to preside over the trial in these circumstances, and this could result in unjustified and unnecessary delays in the finalisation of the matter. Thirdly, specialisation in the conducting of preliminary inquiries will be easier to achieve at district court level.

Since the preliminary inquiry plays an important part in achieving the aims and objectives of the Act and ensuring the protection of the best interests of the child in conflict with the law, uniformity and certainty in the conducting of the preliminary inquiry is essential.

The Child Justice-Judicial Training Division of Justice College is in the process of arranging a workshop in an effort to compile general guidelines for preliminary inquiries for magistrates to promote national uniformity in conducting preliminary inquiries.⁷⁰

One of the guiding principles of the Act is that every child, should as far as possible, be given the opportunity to participate in the proceedings, especially the preliminary inquiry, where decisions affecting him or her might be taken. In an attempt to create a less formal setting during the preliminary inquiry, some magistrates have started to conduct these inquiries without their court gowns, to facilitate a more child-friendly environment conducive to a more relaxed and less threatening atmosphere to encourage children's active participation in the proceedings. This innovation has been driven by the magistrates themselves, as the Act does not require this.

7.7 Postponement of proceedings

7.7.1 Preliminary inquiry

Section 48 of the Act regulates the postponement of the preliminary inquiry and stipulates limited timeframes and reasons for such postponements. In terms of section 48(1)(a) the inquiry magistrate may postpone the preliminary inquiry for a period not exceeding 48 hours where the child is in detention and the prosecutor indicates that diversion is being considered but an assessment has not been done and is required. Subsection (b) further provides that a 48 hour postponement may also be granted if such a postponement is necessary to secure the attendance of a person or to obtain information essential for the conclusion of the inquiry, to obtain the views of the victim regarding diversion and the diversion option being considered, make arrangements for a specific diversion option, find alternatives to detention, assess the child if it has not been done or for further investigation of the matter. The inquiry may be postponed for an additional 48 hours if the postponement is likely to increase the prospects of diversion.

Section 48(4) provides for the postponement of the inquiry for a period not exceeding 14 days if the probation officer recommended that a further detailed assessment of the child be undertaken or if the written indication for the diversion of the matter is awaited from the relevant Director of Public Prosecutions.

The inquiry may, however, be postponed for a period determined by the inquiry magistrate in cases where the child is in need of medical treatment or where the child has been referred for a decision relating to mental illness of defect in terms of section 77 or 78 of the Criminal Procedure Act, 1977.

Following enquiries about the interpretation and application of this section to the Child Justice Alliance from magistrates, there appears to be uncertainty whether these timeframes only refer to children in detention or to all children appearing at preliminary inquiries. The general view seems to be that the 48 hour postponements only apply to children in detention.⁷¹ One of the reasons for this uncertainty and the view that it only applies to children in detention is that it might not always be in the best interest of a child not in detention to adhere to these time limits – the child may for example have to write exams on the specific date. Magistrates also comment that the provisions in the Act

relating to postponement of preliminary inquiries more generally are constraining. This was intended by the Act, in order to ensure that the preliminary inquiry does not drag on. However, reports from magistrates to the Child Justice Alliance suggest that more flexibility is required.

7.7.2 Proceedings in child justice courts

The Act also regulates the postponement of proceedings in the child justice court. According to section 66(1) all criminal trials of children must be concluded as speedily as possible and the postponements must be limited in number and in duration.

If a child is in detention in prison prior to the commencement of the trial, the child justice court may not postpone the matter for a period longer than 14 days at a time. If the child is in detention in a child and youth care centre the postponement may not be for a period longer than 30 days at a time and not for a period longer than 60 days at a time if the child has been released.

Since the implementation of the Act there have been reports that in some provinces regional courts do not always comply with the time limits for postponements as stipulated by the Act and this results in matters being postponed for unacceptably long periods at a time.⁷²

This practice is not only in contravention of the provisions of the Act and negatively impacts on its aim to ensure the speedy conclusion of all trials of children but also infringes on these children's constitutional right to a speedy trial. The reasons for this apparent failure to comply with the provisions of the Act are not clear since the 14 day postponement rule has been in existence since 1996, long before the implementation of the Act. The fact that all the regional magistrates have not received training on the Act or that some regional courts have heavy case loads and case backlogs have been advanced as possible reasons for the failure of some regional courts to comply with the provisions of the Act in this regard.⁷³ These reasons or arguments are not convincing at all. Irrespective of whatever the reasons for this unacceptable practice are, the situation needs urgent intervention.

7.8 Legal representation

7.8.1 Preliminary inquiries

A child's appearance at a preliminary inquiry is regarded as his or her first appearance before a lower court. Legal representation at preliminary inquiries is not compulsory and the Act states that nothing precludes a child from being legally represented during the inquiry.

Since the implementation of the Act, it has emerged that the application of the provisions in the Act relating to legal representation at preliminary inquiries differs between districts. In some districts inquiry magistrates postpone the preliminary inquiries to give the children

appearing at the inquiries, the opportunity to obtain the services of a legal representative. In other districts preliminary inquiries proceed without legal representation of the child.

The reasons for the difference in the application of these provisions are not clear.

The statistics on the number of children legally represented at preliminary inquiries are unavailable. Legal Aid SA indicated that they dealt with 10 120 new criminal matters involving children during the first quarter (1 April 2010 to 30 June 2010).⁷⁴

It remains, however, desirable and sometimes crucial that in cases where legal issues or rights issues are to be decided on, to ensure that the child is legally represented at all times. The importance of legal representation, in some cases even before the preliminary inquiry, was illustrated in the above mentioned so-called 'Jules High School Rape case' where the school girl, who was initially the victim in the matter, was charged with the two school boys, 'after the senior public prosecutor and the acting director of public prosecutions had a lengthy consultation with the girl', without legal representation.

7.8.2 Child justice courts

In terms of section 83(1) of the Act a child appearing before a child justice court may not waive his or her right to legal representation, and if he or she does not want to give instructions a legal representative will nevertheless be appointed and his or her duties are set out in the Act. It has, however, emerged that there are inconsistencies in the interpretation of section 83 of the Act. Some child justice court magistrates are of the opinion that the child cannot waive his or her right to legal representation, and therefore the trial cannot proceed without the presence of a legal representative. Others are of the opinion that the court cannot force the child to have a legal representative and therefore proceed with the trial where the child indicates that he or she does not wish to have a legal representative.⁷⁵ However, the Act is clear on the issue of legal representation in the child justice court and therefore, failure to comply appears not to be an interpretation issue but rather a contravention of the Act.

7.9 Evaluation of the criminal capacity of children 10 years or older but under the age of 14 years

7.9.1 Determination of criminal capacity

The Act amended the common law principle of criminal capacity by raising the minimum age of criminal capacity from 7 years to 10 years, which means that no child under the age of 10 years can be prosecuted for infringement of the penal law.

The Act retained the common law rebuttable presumption pertaining to criminal capacity and only amended the presumption by raising the lower age of the presumption from 7 years to 10 years. Therefore, in terms of section 7(2) of the Act a child, 10 years or older but under the age of 14 years is presumed to lack criminal capacity, unless the State proves, beyond reasonable doubt, that the child had the capacity to:

- appreciate the difference between right and wrong at the time of the commission of an alleged offence; and
- act in accordance with that appreciation.

From the provisions in the Act governing the establishment of the criminal capacity of a child, it is clear that it is the intention of the legislature to ensure that the criminal capacity of the child (10 years or older but under the age of 14 years) is considered at the earliest possible point (within 48 hours where the child has been arrested) in the child justice process and thereby ensuring that the child is afforded the protection that the rebuttable presumption clearly offers the child between the applicable ages.

To achieve this, the Act provides that every child who is alleged to have committed an offence must be assessed by a probation officer unless assessment has been dispensed with by the prosecutor, and the reasons for such dispensing have been recorded by the inquiry magistrate. One of the purposes of the assessment, in the case of a child who is 10 years or older but under the age of 14 years, is to express a view on whether expert evidence on the criminal capacity of such a child would be required.

After completion of the assessment, the probation officer must compile the assessment report with recommendations on various issues stipulated in the Act, including, where applicable: the possible criminal capacity of the child, if the child is 10 years or older but under the age of 14 years, as well as measures to be taken in order to prove criminal capacity.

The assessment report must be submitted to the prosecutor before commencement of the preliminary inquiry, and in the case where the child offender has been arrested the preliminary inquiry must be conducted within 48 hours after the arrest.

The prosecutor, who is required to decide whether or not to prosecute the child must, in the case where the child is 10 years or older but under the age of 14 years, take the following factors into account:

- The educational level, cognitive ability, domestic and environmental circumstances, age and maturity of the child;
- the nature and seriousness of the alleged offence;
- the impact of the alleged offence on any victim;
- the interests of the community;
- a probation officer's assessment report;
- the prospects of establishing criminal capacity if the matter were to be referred to a preliminary inquiry;
- the appropriateness of diversion; and
- any other relevant factor.

If the prosecutor is of the opinion that criminal capacity is not likely to be proved he or she must withdraw the charge and may cause the child to be taken to a probation officer for

further action, if any (section 9). If the prosecutor is of the opinion that criminal capacity is likely to be proved he or she may divert the matter before the preliminary inquiry, if the child is alleged to have committed an offence referred to in Schedule 1; or refer the matter to a preliminary inquiry.

One of the objectives of the preliminary inquiry is to consider the assessment report of the probation officer, with particular reference to the view of the probation officer regarding the criminal capacity of the child, if the child is 10 years or older but under the age of 14 years, and whether an evaluation of the criminal capacity of the child by a suitably qualified person is necessary. The preliminary inquiry is in essence the first appearance of the child in a lower court.

The diversion of matters is another objective of the preliminary inquiry, but the inquiry magistrate may only divert the matter if he or she is satisfied that the child had the necessary criminal capacity at the time of the commission of the offence. The Act furthermore states that the inquiry magistrate must consider the assessment report of the probation officer when making a decision regarding the criminal capacity of the child, before diverting the matter during the preliminary inquiry.

The inquiry magistrate, therefore, only considers the criminal capacity of the child (10 years or older but under the age of 14 years) when he or she wants to divert the matter and not when deciding on the placement of the child or when referring the matter to the child justice court.

The inquiry magistrate or child justice court may, of its own accord, or on the request of the prosecutor or the child's legal representative, order an evaluation of the criminal capacity of the child by a suitably qualified person (psychiatrist or psychologist). This evaluation report must be submitted to the inquiry magistrate or the child justice court within 30 days of the date of the order.

Section 11(5) provides that, where the inquiry magistrate has found that the child's criminal capacity has not been proved beyond a reasonable doubt he or she may, if it is in the best interest of the child, cause the child to be taken to a probation officer for any further action (section 9). In instances where the prosecutor decided to prosecute the child (10 years or older but under the age of 14 years) and the matter has not been diverted by the prosecutor or the inquiry magistrate, the matter must be referred to the child justice court for plea and trial.

During the trial in the child justice court, the State must prove beyond reasonable doubt the capacity of a child, who is 10 years or older but under the age of 14 years, to appreciate the difference between right and wrong at the time of the commission of an alleged offence and to act in accordance with that appreciation. Although the onus rests on the State to prove criminal capacity, there is no legal obligation to prove it prior to putting charges to the child or at any specific stage during the prosecution.

According to section 11(2)(b) of the Act, the child justice court must also, when making a decision on the criminal capacity of the child in question for purposes of plea and trial,

consider the assessment report of the probation officer and all evidence placed before it prior to conviction, which evidence may include a report of an evaluation on criminal capacity by a suitably qualified person. Where the child justice court has found that the child's criminal capacity has not been proved beyond a reasonable doubt he or she may, if it is in the best interest of the child, cause the child to be taken to a probation officer for any further action.

7.9.2 Criminal capacity and implementation of the Act

Certainty about the criminal capacity or lack thereof, before diverting the matter is essential because a matter may only be diverted if there is a *prima facie* case against the child (which includes criminal capacity). It would be unjust to divert a matter if the child cannot be prosecuted, especially since failure to comply with a diversion order may result in the prosecution of the child, in which case the acknowledgement of responsibility by the child maybe recorded as an admission by the child, or it may result in a more onerous diversion order against the child. Another reason why certainty about the child's criminal capacity is essential is the fact that a diversion order from the level two (2) diversion options can run for a period of up to 24 months (if the child is under the age of 14 years) and it will be totally unacceptable, and unlawful to expect a child, without the necessary criminal capacity to comply with an order for such a long period of time.

The diversion of a child who did not have the necessary criminal capacity, may also reduce the chances that the child would comply with the diversion order and will result that the matter end back in court again for failure to comply. If this happens in a number of cases, it may result in a perception by the prosecution and magistrates that diversion is not effective. Such a perception will have a serious impact on the successful implementation and application of the Act since it could result in prosecutors and magistrates becoming wary of diverting matters and decide to rather opt for the prosecution of these matters. It will also bring the child, who is not suppose to be in a diversion programme in the first place, into contact with children who did commit crimes and this may have a negative influence on the child.

Since the implementation of the Act, some magistrates are uncertain whether or not they may still decide on the criminal capacity of children without necessarily referring the child for an evaluation to a psychiatrist or psychologist.⁷⁶ One of the reasons for this uncertainty is that these magistrates are of the opinion that they are not trained to determine the criminal capacity of these children. It is important to keep in mind that the concept of the criminal capacity of children and the evaluation thereof has remained unchanged with the inclusion of it in the Act. All the factors and guidelines identified and developed by the courts in the past, to assist in decisions about the criminal capacity of children, are still applicable and relevant. It is therefore still possible for presiding officers to decide on the criminal capacity of children 10 years or older but under the age of 14 years, by taking into account the facts and circumstances of the case, without necessarily

requiring an evaluation report by psychiatrist or psychologist. Magistrates should be made aware of this to ensure uniformity and to eliminate unnecessary delays in the finalisation of these matters.

With the inclusion of the evaluation of criminal capacity in the Act, there has been an increase in the number of requests for assessments of criminal capacity (this might be due to the abovementioned uncertainty amongst magistrates) and the Department of Health has been requested to assist with these assessments. However, the Department of Health has indicated that they have a shortage of psychologists and psychiatrists and is not in a position to assist with the evaluation of the criminal capacity of children. Private psychologists and psychiatrists can assist in this regard but they charge expert witness fees and budgets allocated for the evaluations of criminal capacity are quickly exhausted.⁷⁷ These shortages in both human resources and budget result in undue delays in the finalisation of cases involving children 10 years or older but under the age of 14 years who's criminal capacity are uncertain.

A possible solution in this regard could be an earlier date for the review of the minimum age of criminal capacity by Parliament as envisaged by section 8 of the Act. Such a review could then also include an investigation on the feasibility of retaining the rebuttable presumption of criminal capacity, if the minimum age of criminal capacity is raised.

7.10 Transportation of children in detention

In terms of the national policy framework the handover of responsibility towards children in conflict with the law between Departments should be regulated and well managed and the transportation of children in detention is an important aspect in this regard.

This important aspect in the child justice process has for some reason not been addressed in the Act, the Regulations, the National Instruction or the national policy framework. There exists a lot of uncertainty on who should transport children in detention to and from the various places.⁷⁸ The transportation needs of children in conflict with the law include transport:

- From the police station to detention facilities,
- From detention facilities to police in cases where further investigation are required,
- From the court to detention facilities,
- From detention facilities to hospitals (including mental health facilities) or other medical treatment facilities,
- From court to hospital (including mental health facilities) or other medical treatment facilities,
- Transportation of sentenced children from child and youth care centres to attend court as witnesses, and
- From court or detention facilities to deportation centres, where applicable.

Guidelines on the transportation of children in detention are essential to ensure the protection of the rights of children in conflict with the law and will provide certainty on who is responsible to transport these children.

Another transport related challenge involves the vast distances that have to be travelled from the child and youth care centres to the courts where the children must appear. In some Provinces this poses a huge challenge because the police have to book the child out of the child and youth care centre the day before the court appearance and transport the child to the court. Upon their arrival at the court, the day before the appearance, there is no accommodation available for the child and the child has to be detained in a police cell or lockup.⁷⁹ This practice is not only in contravention of the provisions of the Act but also renders the child vulnerable to an increased and unnecessary risk of abuse and victimisation.

Correct and clear guidelines regulating the 'handing over' of children in conflict with the law from one role player to another plays an essential part in the successful implementation of the Act. Failure to provide such guidelines also increases the risk of these children failing through the 'cracks' in the system at each 'handing over' point which in turn increases their vulnerability and also make it more difficult to determine liability in cases where these children's rights have been violated.

7.11 Lack of uniformity in the official forms used by the courts

The Act provides for various new processes and procedures to be followed in respect of children in the criminal justice system and the existing forms used by magistrates are no longer sufficient and not always applicable. Some of the changes in the processes and procedures include the conducting of a preliminary inquiry and evaluation of criminal capacity, the diversion of matters in the different stages of the child justice process, and the referral of a child to a probation officer for further action in terms of section 9. No official forms have been issued by either the Department of Justice and Constitutional Development or Justice College to address these changes and different needs.

Magistrates have designed and developed their own forms to fill the gaps and this resulted in various different versions of different forms being used by the different courts to accommodate the changes and new options in the processes and procedures. In an attempt to identify these gaps and shortcomings in existing forms and to develop new standardised forms catering for the changed needs in the system, the Child Justice-Judicial Training Division of Justice College is in the process of arranging a workshop with magistrates.⁸⁰

7.12 Educational programmes for children awaiting trial in prisons

The lack of and the urgent need for educational or other programmes for children awaiting trial in prisons have been highlighted before the implementation of the Act. The Act places emphasis on the effective reintegration of children in conflict with the law and to encourage them to become law-abiding and productive adults. One way of achieving this

is to ensure that these children's constitutional right to education is protected, even if they are awaiting trial in prisons.⁸¹ Yet, despite the implementation of the Act, there is still no schooling or educational programmes provided for children awaiting trial in correctional services centres. Some of these children are detained, while awaiting trial, for up to a year and sometimes the cases against them are withdrawn after this long period which means that they lose out on their education for very long periods of time. This issue was again highlighted in the matter *Centre for Child Law v the Minister of Correctional Services*.⁸² This case involved the detention of children awaiting trial in the Durban Westville Prison and the way in which they were treated and the fact that no educational programmes are offered to them while in detention.

It is therefore necessary to develop and implement educational programmes that would provide education to any child held in detention. These programmes should be flexible enough to cater for children of different educational levels and for different time periods, as some children are awaiting trial in prisons for long periods of time and others are detained only briefly. Budgetary constraints appear to be hampering the provision of educational programmes to children awaiting trial in prisons and therefore this unacceptable and unconstitutional state of affairs remains a challenge.⁸³

7.13 Lack of training of all the role players in the child justice system

The various Departments playing a role in the child justice system have embarked on separate training of their respective officials dealing with children in conflict with the law. There has also been some inter-sectoral training where officials of the relevant Departments received training and information during the same training session. It has been reported that arranging and conducting inter-sectoral training faces some challenges because of the involvement of the various officials from the different Departments, and budget constraints. Not all officials and other role players (including legal representatives, magistrates and judges) dealing with children in conflict with the law have received training on the provisions of the Act.⁸⁴

This lack of training has an impact on all aspects of the child justice system and is a serious challenge for the successful implementation of the Act:

- Untrained police officers do not arrest/apprehend children suspected of committing an offence and they do not apprehend children under the age of 10 years because they do not know what to do with them or how to deal with them. They also arrest and detain children who may not be arrested or detained in terms of the Act.
- Untrained probation officers do not know about the timeframes for assessments, the requirements and standards for assessments, the submission of adequate assessment reports, the need to be available after hours for assessments and the other duties bestowed upon them in terms of the Act.

- Magistrates do not know how to conduct preliminary inquiries and this result in a lack of uniformity in the procedures that are followed. Ignorance about the Act also causes uncertainty and differences in the interpretation and application of certain provisions of the Act and in some instances results in cases being postponed for too long periods of time in contravention of the Act, the Constitution and international instruments.
- Untrained clerks of the court do not have the capacity to complete the new court forms to be used during the new and different stages of the child justice process resulting in unnecessary delays in the finalisation of cases.
- Prosecutors do not consider diversion in all deserving cases and do not know what factors and requirements should be taken into account during such consideration.

7.14 Inaccurate and unavailability of statistics

Despite previous calls by Parliament, two (2) years before the implementation of the Act, for accurate and reliable statistics this is still a challenge.⁸⁵

Accurate, reliable and available statistics is one of the prerequisites for the successful and effective monitoring of the implementation of the Act. From the submissions of the various reports to Parliament since the implementation of the Act it is clear that the statistics presented only focused on diversions and related statistics (even these appear to not correspond) and do not reflect statistics on issues such as the number of assessments of children, the number of preliminary enquiries or the number of children awaiting trial (not only those in detention in prisons). The following serves as an illustration of the frustration of unavailable statistics: According to the South African Police, they charged a total of 19 487 children during the period 1 April 2010 to 30 June 2010 (the first quarter) and from table 1 it appears that only 3321 children were diverted during this period.⁸⁶ This immediately raises the question as to what happened to the other approximately 16 000 children in the child justice system?

Effective monitoring of the implementation and application of the Act will be very difficult, if not impossible, without accurate, reliable and available statistics. It also raises the question whether the integrated information management system as envisaged by section 96(1)(e) of the Act has been established and implemented.

Role players and decision makers in the child justice sector need accurate and reliable information on the number of children in the child justice system and information on what happens to them in the child justice system to be able to respond to problems or challenge as they emerge.

8. IMPLEMENTATION ACHIEVEMENTS

8.1 A significant decrease in the number of children awaiting trial in prison

There has been a significant drop in the number of children awaiting trial in prison since the implementation of the Act. According to the Department of Correctional Services, the incarceration levels of children (both awaiting trial and sentenced) at the end of May 2010 were as follows:

Table 5: Children in detention in prisons on 31 May 2010

Category of children in detention	Number of children in each category
Unsentenced (awaiting trial)	425*
Sentenced	731**
Total number of children in detention	1155

* Including 1 child under 14 years of age ** No children under 14 years of age

The majority of these children have been accused of or convicted of aggressive offences (530) followed by economical offences (334).

At the end of June 2010 there were 297 children awaiting trial in prisons and these can be tabularised as follows:⁸⁷

Table 6: Children awaiting trial in prisons on 30 June 2010

Age	Number of children
14 years	4
15 years	29
16 years	77
17 years	187

On 31 August 2010 there were only 275 children awaiting trial in prisons. The significant drop in children awaiting trial in prisons can, according to the Justice, Crime Prevention and Security Cluster Departments, be attributed to:

- the concerted efforts made by the Regions to remove children to secure care facilities;
- referral of children to Legal Aid South Africa to ensure that they have legal representation

- the fact that these children have to appear in court every 14 days also contributed to the decrease.⁸⁸

These advanced reasons are not really convincing since the 14 day remands were also required in terms of section 29 of the Correctional Services Act, 1959.

Table 7: Children in detention in prisons on 31 October 2010⁸⁹

Category of children in detention	Number of children in each category
Unsentenced (awaiting trial)	290
Sentenced	632*
Total number of children in detention	922

* Including 1 child under 14 years of age

From table 7 it is clear that there has been a slight increase in the number of children awaiting trial in prisons, but the overall number of children in prisons (sentenced and unsentenced) has decreased.

It appears from table 7 that one (1) under 14 year old was serving a prison sentence on 31 October 2010, but it is not clear whether he or she had been sentenced before implementation of the Act, when it was still possible to sentence such a child to imprisonment. Since the implementation of the Act a child under the age of 14 years, at the time of sentencing, may not be sentenced to imprisonment (section 77(1)(a)).

9. CONCLUSION

South Africa has made huge progress towards protecting the rights of children in general, and specifically the rights of children in conflict with the law, before and with enactment of the Act. With the implementation of such radical changes in the criminal justice system applicable to children, one would expect some challenges facing the implementation process. It is however important to keep in mind that while challenges will be part of the process, true success lies in the way that these challenges are dealt with and eliminated.

The purpose of this paper was not to merely give a background and overview of the process of the establishment of a child justice system in South Africa but also to give a little insight into some of the challenges facing the implementation process. Of the challenges highlighted, the lack of public awareness and knowledge about the Act and the unavailability of accurate and reliable statistics are viewed as the most important challenges that need to be addressed urgently. Without the support of families, communities and society at large, proper rehabilitation and reintegration of children in conflict with the

law will be difficult, if not impossible. And without accurate and reliable statistics we will never be able to effectively monitor the implementation and application of the Act to ensure the protection of the rights of children in conflict with the law.

From the challenges identified in the paper, it is clear that there is still a lot of work that needs to be done towards successful implementation of the Act and that training of all role players need urgent attention. It also shows that everyone should play a role to ensure that these and other challenges preventing a fully operational child justice system are eliminated. This will contribute to more efficient solutions for child offenders and will ultimately lead to a safer South Africa.

10. RECOMMENDATIONS

Following the identified challenges the following recommendations are made to enhance and facilitate continued efforts towards successful implementation of the Act:

- The Act aims to provide mechanisms and procedures to deal with children in conflict with the law outside of the criminal justice system and thereby giving them a second chance to become constructive and contributing citizens. It places increased emphasis on the effective rehabilitation and reintegration of these children back into their families and communities to minimise the risk of re-offending. To achieve this it is essential to involve families and communities in the process and to encourage them to change their often negative perspectives about children in conflict with the law and to persuade them to support and accept these children to ensure that they do get the second chance the Act offers them. Knowledge sharing and public awareness raising about the Act and its benefits to children in conflict with the law and society in general is therefore essential for the successful implementation of the Act. This process should be an ongoing national priority.
- It is essential for the quality of the administration of child justice that all professionals involved in law enforcement, social services, prosecution, the legal profession and the judiciary receive appropriate training on the content, significance of the Act and their duties and obligations in terms of the Act. This training should be ongoing. Such training will not only eliminate challenges regarding the uniformity in the application and interpretation of the Act and but will also ensure procedural uniformity in all courts nationwide. The training should, however, not only focus on the provisions of the Act but should also include training on the social and other causes of child offending and different developmental stages of children (such as the psychological development of children). The roll-out of training programmes to all professionals dealing with

children should be accelerated as a matter of urgency to ensure the protection of the rights of children in conflict with the law.

- The shortage of probation officers and their unavailability after-hours needs urgent attention. A possible solution would be to re-assess the role that probation officers play in terms of the Act and the duties conferred upon them in terms of the Act. Some of these functions and duties, such as the monitoring of certain sentences and diversion orders and the composition of pre-sentence, could be reassigned to other professionals or specified final year or honours students. This will ease the acute shortage of probation officers in the short term. Long term solutions, such as those implemented by the Department of Social Development, should continue and should be strengthened by investigation, development and implementation of additional efforts and measures.
- The research project focusing on the reasons for the decrease in the number of diversions, commissioned by the Department of Justice and Constitutional development, should be finalised and the recommendations should be considered to eliminate the reasons for the decrease in the number of diversions and to ensure that all deserving cases are indeed diverted away from the criminal justice system. Follow-up research to monitor the progress should also be considered. It will be important to determine what percentage of cases coming into the system are being diverted, and what is happening to the remainder of cases.
- Clear and practical guidelines on the transportation of children in detention should be developed and implemented as soon as possible. This would establish certainty on who should transport these children where. Clarity in this regard will also assist in the determination of responsibility and liability in cases where a child's rights have been violated.
- The different official forms utilised during the child justice process need to be standardised to ensure national uniformity in all courts.
- Consideration should be given to raising the minimum age of criminal capacity of children before the four year period remaining is completed, coupled with a consideration of whether the *doli incapax* presumption should be retained or discarded.
- Every child of compulsory school age has the right to education suited to his or her needs and abilities, and the lack of educational programmes for children awaiting trial in prisons must receive priority attention and solutions must be found.
- Accurate and detailed statistics on children in conflict with the law are essential in the effective application and administration of the Act. Concerted efforts to publish accurate statistics to all the role players on a regular basis will assist with the identification of trends and early detection of challenges to enable early interventions to eliminate an escalation of problems. Attention should be focused on gathering accurate and reliable data and on publishing it regularly.

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- 67 An attempt to obtain more information about the cases reflected under 'other' in table 4, from the Department of Justice and Constitutional Development has been unsuccessful.
- 68 Interview with Joe Ngelanga, Magistrate and Control Lecturer at the Child Justice-Judicial Training Section, Justice College on 19 January 2011.
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- 70 Interview with Joe Ngelanga, Magistrate and Control Lecturer at the Child Justice-Judicial Training Section, Justice College on 19 January 2011. The workshop is planned for April 2011.
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