News & Views
FOR MAGISTRATES APRIL 1998

EDITORIAL

In more than one way this issue of 'News and Views' marks a special point in the history of the Law, Race and Gender Research Unit. Not only do we have a brand new look (compliments to our new sponsors!), but a publication that celebrates our first National Conference.

The Conference represents the culmination of three-and-a-half years of judicial awareness programmes (or social context training). It celebrates the fact that regional weekend conferences were held in virtually every province, and the fact that most participants at it have already been subjected to, enriched by and, hopefully, empowered by past presentations.

We are further extremely proud to have a core group of magistrates who will co-facilitate in what is unquestionably the Unit's most challenging and exciting presentation so far. I should think congratulations as well as a fair measure of good-luck wishes are in order for this enthusiastic and inspirational team of educators whose total commitment has redefined the concept of peer training.

We are also privileged to have on board at the Conference our Canadian partners (and world leaders) in social context training. It is therefore quite appropriate to include an article by one of these presenters, Professor Kathleen Mahoney, in this edition.

And then, finally, we seem to have entered another tempestuous period of judicial stocktaking and realignment in the aftermath of the recent submissions to the TRC by the judiciary. LRG welcomes this long overdue and necessary debate, and salutes the many requests for judicial education and awareness programmes with a social context focus. Nothing to beat that feeling of 'I told you so!'

FRANCOIS BOTHA

MAGISTRATES' INDEPENDENCE

In March 1998, Waheeda Amien of the Law, Race and Gender Research Unit had the honour of interviewing the Minister of Justice, Mr Dullah Omar. They managed to cover topical issues ranging from the concept of magistrates' independence to what the Department of Justice is doing to make justice more effective and efficient.

MINISTER DULLAH OMAR

Question: What do you see as the role of judicial officers at this point in time?

Minister: We must have an independent judiciary. The judiciary and judicial officers must not pander to public opinion though they must take public opinion into account. They must apply the law, they must administer justice in terms of the law and within the values of the Constitution.

Question: What do we mean by magistrates' independence? How do we measure their accountability? And how long do you think before they become fully independent?

Minister: The magisterial independence which we speak of is in relation to the functioning of the courts. With regard to decision-making and the conduct of trials, there should be no interference by anyone. It would be unacceptable if anyone, including the Minister or President, were to interfere with individual magistrates in relation to their handling of cases. The conditions should be created where magistrates can take decisions fearlessly, without fear of any reprisal, victimisation or interference.

But that does not mean that government does not have a role to play in the transformation of courts. You cannot have under the guise of court independence an entrenchment of the legacy of the past. What we did to transform our courts was to make them more representative: to ensure that blacks and women get appointed to the bench. The culture in the courts has to change so we have a role to play in ensuring that that takes place.

In addressing all these problems of transformation, we must also take steps to strengthen the independence of the judiciary. The two go hand in hand — there is no antagonism or conflict between the two.

Building independence is a process. With regard to magistrates, there is a Magistrates' Commission. Appointments are no longer made by the executive or by government as it was in the past. This Commission is being reconstituted to make it more

representative in terms of both race and gender. That process will be completed before the end of April when the new Magistrates' Commission will be announced. It will play an important role with regard to appointments, discipline and the general way in which magistrates conduct themselves. The Magistrates' Commission will also deal with complaints by the public. These complaints should be dealt with without political interference from the executive.

Salaries and conditions of service also need to be handled in a manner which will strengthen the independence of the judiciary. This is one of the programmes for the next decade.

Question: It seems that magistrates are concerned they are not fully represented in terms of the number of magistrates on the Magistrates' Commission. Are their concerns valid?

Minister: Their concerns are not valid. Taking into account the history of South Africa and racial exclusions of the past, I cannot have a situation where no transformation takes place. Government is the elected representative of the people and is authorised and mandated by the people to ensure that transformation takes place. We would therefore like to see a structure of the Magistrates' Commission which will guarantee that the Commission is representative of race and gender and which provides magistrates with a platform at the same time.

In terms of the law which we passed through Parliament to restructure the Magistrates' Commission, it will consist of over 20 people chosen by different roleplayers. But the formula enables the Minister and the President to make appointments which will help to make the Commission more representative. The new Commission will thus consist of regional court magistrates and other magistrates, but also lawyers and other persons who are not politicians but who have the interests of justice at heart.

Question: It seems that some magistrates are fearful that lay assessors are an imposition on their judicial authority. Will the new Bill enforce this perception or can their fears be allayed?

Minister: I can understand the fears and concerns of magistrates because South Africa has never had such a system before. It constitutes a drastic change from the past and reforms the way in which decisions are taken in court and who participates in court. The Bill is far reaching because it gives lay assessors equal powers to magistrates — they will decide together with magistrates. There is also popular participation in the courts of other countries and the system works well because it brings communities closer to the administration of justice and helps to develop confidence in the justice system.

Question: To what extent has the Department of Justice taken pro-active measures to equip magistrates to deal with the current system?

Minister: With regard to our new Constitution, the Bill of Rights and the building of a human rights culture, everyone in South Africa needs human rights training and education. We must understand not only what our rights are but also what our obligations are under the new Constitution. If everyone recognises their obligations then everyone else will be able to exercise their rights.

It would be wrong for the Department of Justice to train magistrates because that would impact adversely on the independence of the judiciary. However, we need to facilitate such programmes. We've arranged with the Justice College to liaise with the Magistrate's Commission. The latter would determine the nature and content of the programmes which would be facilitated by the Justice College. These programmes are already taking place. Furthermore, I have an agreement with the government of Canada for the provision of assistance in training programmes and there are other roleplayers who are providing assistance. The law faculties at all the universities and the law teachers' society have agreed to be of assistance.

We are hoping that training programmes for magistrates and other personnel will be decentralised so that they can take place locally. These training programmes would focus not only on human rights issues but would incorporate an understanding of the law, techniques of prosecution, techniques of adjudication, how to write judgments, as well as an understanding of the constitutional values of our new dispensation and the Bill of Rights.

JUDICIAL EDUCATION: THE CANADIAN EXPERIENCE

PROFESSOR KATHLEEN MAHONEY OF THE UNIVERSITY OF CALGARY HAS BEEN INVOLVED IN JUDICIAL TRAINING IN CANADA FOR OVER 15 YEARS. HERE SHE SETS OUT SOME OF THE BASIC TENETS OF THE JUDICIAL EDUCATION THAT SHE HAS DONE AND DESCRIBES ONE OF THEIR WORKSHOPS.

To remove gender bias from the judicial processes, judges must be able to understand the impact of sex-role stereotypes, myths, and biases on their thinking and decision making. Deeply held cultural attitudes and beliefs about the `proper' roles for women and men must be examined and challenged where they interfere with the fair and equitable administration of justice. Judges must be given the necessary knowledge to appreciate the perspectives of minorities and the compounding complications of intersecting characteristics such as race and gender. This requires education programs that stimulate a sense of personal discovery and enable judges to identify and eliminate their own biases. Presentation of new facts and sensibilities assists this process, as does the involvement and commitment of non-judges. The key element to sustainable and successful reform, however, is the realisation that change must come from within the judiciary and that judges must lead the program. Not only does this give the program legitimacy and credibility in the eyes of judges, it addresses the requirement of judicial independence.

IMPARTIALITY AND FAIRNESS

A central objective of educational programs is to show judges how their own beliefs and attitudes affect impartiality and fairness. In addition, a `participatory' model of program delivery, which is capable of implementation in any part of the country at any level of court, is required. A close association with law schools and continuing legal education societies, as well as with non-legal professionals and private citizens, ensures that context-based learning will take place.

PEER LEADERSHIP

Another key element is peer leadership. Judges trained by credible `outsiders' are enabled to instruct and lead other judges in training-the-trainer sessions. While initially there may be some concern expressed about `imposed agendas of special interest groups', such sessions provide new facts and more precise knowledge that can only help judges maintain their genuine commitment to fairness and impartiality. This method of delivery also challenges judges to participate and to take responsibility for their own continuing education. At the same time it allows members of the broader community concerned with improving the quality of justice delivery to participate in the workshops and other sessions. Women, Aboriginal people, racial, cultural, and ethnic minority group members — people very unlike most judges — supply knowledge judges require but seldom receive. They describe and discuss the problems they experience in their daily lives as well as in the courts and sometimes provide entertainment to educate judges about their cultural and social reality.

WORKSHOP ON ABORIGINAL PEOPLE AND EQUALITY

A program on Aboriginal equality which included police, Crown counsel, defence counsel, Native court workers and correction officials as speakers and contributors is a good example of the pedagogy and philosophy of the program. It addressed two major topics: the identification of systemic discrimination against Aboriginal people and their values; and an examination of the ways in which the justice system can more adequately respond to Aboriginal offenders. An important aspect of the program was the presence of Elders and translators from native communities, including the Dene, Métis and Inuit. Their importance to the proceedings was acknowledged in both the substantive sessions as well as ceremonially. Each day an Elder from one of the communities offered a prayer at both the opening and closing sessions.

The gender equality portion of the workshop was designed around three thematically linked analytical approaches. The first was an exploration of the principles of equality in the substantive law; the second, an investigation of the systemic social and economic consequences of sex discrimination, particularly in terms of violence and poverty; the third, an exposé of the consequences individuals' experience because of gender inequality and gender bias in the courts.

TEACHING TECHNIQUES

Throughout the seven-day workshop, a variety of teaching techniques was used, including lectures, dramatisations, panels, question and answer sessions, buzz groups, videos, and video commentary. Previously prepared papers on gender equality issues were distributed in the workshop materials, which also contained two videotapes on `A Judicial Approach to Gender Bias'. A written guide to the video material was provided, setting out questions for discussion and other explanatory material. Each judge was provided with a full set of materials in advance of the workshop.

NEWS FROM THE LAW REPORTS

THE ACCUSED'S LANGUAGE RIGHTS

Every accused person has the right to be tried in a language that he or she understands or, if that is not practicable, to have the proceedings interpreted in that language. Whenever any person is informed of any right, whether such right relates to the events which precede a trial or those which pertain to the conduct of the trial, the accused is entitled to be given such information in a language which he or she understands. This is the effect of s 35 of the Constitution Act 108 of 1996. One wonders to what extent this most basic of rights is observed in practice and how the noble aims of the provisions are ever going to be achieved.

PRETRIAL RIGHTS

The problem of observing the accused's language rights is far more difficult to achieve at the stage of pretrial procedures than in the trial arena. Given the cosmopolitan nature of South Africa's cities, the diverse languages spoken and the poor police resources, what are the chances of a police officer on night patrol coming across a crime in progress being able to advise the person to be arrested in his or her language of their rights according to the Judges' Rules? If the person is arrested and subsequently tried and the only issue at the trial is that the accused was denied his or her rights on arrest in terms of s 35, is the accused to be acquitted because of this failure? Certainly, if the provisions of s 35 are to be given their proper content, the accused should go free. Surely this is happening regularly in South Africa at the moment. What is to be done about the problem?

The writer was privileged to be shown recently an ambitious project undertaken by Justice College in Pretoria to train interpreters. A large hall has been equipped with computer terminals and the interpreters are to be trained by means of an interactive computer program. Could this system not be employed on a larger scale by the police force? Could not all police officers be trained in all official languages in how to inform the accused of their rights on arrest? The accused's subsequent rights (for instance those at the time of making of a confession or pointing out or those arising at an identification parade) can be adequately taken care of by qualified interpreters assigned for this purpose and arranged in advance but once again the interpreters ought to be properly trained as to the true nature of the explanation required to be given.

TRIAL RIGHTS

The position of the interpreter in the South African criminal justice system has in the past not enjoyed the status which it deserves. The vast number of trials conducted through the services of interpreters should have ensured the recognition of the professional status of the interpreter but the interpreter was in fact traditionally seen as a clerk whose functions were often to write up the court registers rather than concentrate on honing translation skills. This situation is fortunately being addressed now through the efforts of the Department of Justice, Justice College and a number of universities throughout the country. It is to be hoped that the interpreters will be trained in aspects of criminal law and procedure as well as human rights law with particular regard to the warnings which need to be conveyed to the unrepresented accused at various stages of the trial.

In a recent case which came before the Venda High Court, *S v Chauke* and Another 1998 (1) SACR 354 (V), Noorbhai AJ sounded a warning to trial magistrates in the following terms concerning the right to a fair trial and the accused's language rights: "However, I would like to sound a *caveat* to magistrates and interpreters alike, in the light of the very explicit provisions of s 35(3)(k) of the Constitution as well as the right to a fair trial: magistrates have to ensure and it must be clear from the record that the accused was tried in a language which he understood. If a trial is conducted in a language that the accused does not understand how can the trial be called `fair'? In that case it was not clear that the accused was tried in a language which he understood. The Court accordingly set aside the conviction.

It appears however that an accused should not be forced to accept an interpreter where he or she does not require one. This is what happened in *S v Lesaena* 1993 (2) SACR 264 (T) where the appellant gave his testimony through an interpreter even though the accused's language preference was Afrikaans. The Court held that this constituted a fundamental irregularity in the proceedings: the assistance of an interpreter was a right in favour of the accused which he could exercise if he so wished and was not to be imposed on him if he did not.

The seriousness with which the Courts have viewed the failure to provide proper interpretation is evident from the case of *S v Ndala* 1996 (2) SACR 218 (C) where the Court referred to s 6(2) of the Magistrates' Courts Act 32 of 1944 which regulates the use of interpreters in the magistrates' courts. The Court pointed out that there was a duty cast on the magistrate to ensure that the accused was sufficiently conversant with the language in which evidence was being presented and to use an interpreter if necessary and that an accused has the right to the services of a competent interpreter if the language he or she

understands is not the court's official language. In *Ndala's* case the conviction and sentence were set aside because the interpreter had not been duly sworn in.

In *S v Abrahams* 1997 (2) SACR 47 (C) the accused was a deaf mute who had been assisted by an interpreter conversant with sign language but who was not adequately conversant with Afrikaans, in which language the proceedings had been conducted. The Court held that the magistrate had failed to comply with the requirements of s 6(2) of the Magistrates' Courts Act 32 of 1944 in that he had failed to appoint a competent interpreter and the proceedings were accordingly set aside.

These cases indicate that the Courts view the failure to provide proper interpreting facilities in a serious light and the inevitable result of such failure is the setting aside of the proceedings. Although s 6(2) of the Magistrates' Courts Act required the appointment of interpreters for accused persons who were not conversant with the language in which evidence was given, the provisions of s 35 of the Constitution go much further and provide that all information concerning the accused's rights which are required to be given to the accused must be given in a language which the accused understands.

Where an unrepresented accused who comes before the court is not conversant with the language(s) of the court and such accused pleads guilty there is a grave responsibility placed on the interpreter to explain the elements of the offence to the accused in clear and understandable terms. The interpreter is required to understand the distinction between negligence and *dolus eventualis*, negligence and recklessness, to be able to explain the effect of s 1(1) of Act 1 of 1988, to be able to explain competent verdicts including the arcane distinctions between housebreaking with intent to commit a crime unknown to the prosecutor and housebreaking with intent to commit a specific offence.

It is clear that with the greater recognition of language rights promoted by the Constitution greater demands are going to be placed upon magistrates and presiding officers to ensure that accused persons are able fully to understand the proceedings. Because of the numerous languages spoken in South Africa this in turn is going to require the establishment of a professional corps of interpreters who are able to ensure that accused persons who would not otherwise understand the proceedings can play a full role in such proceedings in order to ensure that they enjoy a fair trial.

Dear Magistrates,

In May 1998, Juta will publish **Women and the Law — Empowerment through Enlightenment**, an invaluable book developed by the Unit for Gender Research in Law at UNISA. This book looks at the law through women's eyes and explains those legal issues most important to women. In addressing areas of the law such as *Women and Violence, Women and the Family* and *Women and Employment* inter alia, a very practical approach is adopted, with case studies highlighting the issues. For example, the section on *Women and Violence* concentrates on those forms of violence most commonly encountered by women, namely assault and rape, and on the available remedies. Victims of violence are also told where they may seek help. *Women, Human Rights and Democracy* explains the new constitution and its implications for women, international conventions relating to women, especially CEDAW, and the national machinery for the advancement of women such as the Office on the Status of Women and the Gender Commission. Priced at approximately R100,00, this book will be widely available.

Commissioned by Lawyers for Human Rights and the Association of Law Societies, and written for use by candidate attorneys and students of the ALS Schools for Legal Practice, **THE BILL OF RIGHTS HANDBOOK 1998** by J de Waal, I Currie and G Erasmus provides an uptodate guide to all aspects of Bill of Rights litigation. The operational provisions of the Bill of Rights (application, standing, interpretation, limitation and remedies) and the procedures applicable to constitutional litigation are systematically explained. A detailed consideration of the fundamental rights is furthermore included. Retailing at R109.00, this work will be an invaluable resource for all practitioners and for students of constitutional law.

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THE CONSTITUTION AND MUSLIM PERSONAL LAW

Dr Najma Moosa is a senior lecturer in the University of the Western Cape Law Faculty. This is a summary of a talk she presented to magistrates at the Wynberg Magistrates Court on 18 June 1997 as part of the Law, Race and Gender Research Unit's Magistrates' Education Programme.

Current discrimination against Muslim women is not religiously based. Muslim personal law (MPL) is essentially a religiously-based private law with divine origin in the *Qur'an*[1] which, along with the *Sunna*[2] of Prophet Muhammad, are the primary sources of Islam. MPL applies to marriage, divorce, inheritance, polygyny, custody and guardianship etc. In these areas of MPL one finds little or no change in Muslim countries which were quite prepared to follow secular codes in other areas such as criminal law. Minor reforms were, however, introduced in the twentieth century when *Qur'anic* verses were transformed into codes of MPL. Reasons advanced for discrimination against women included patriarchal interpretations of Islam and cultural and customary influences.

Islamic law (*Shari'a*), on the other hand, is the conservative (man-made) interpretation and application of the primary sources (*Qur'an* and *Sunna*) by early Muslim jurists like *Hanafi*, and *Shafi'i*.[3] It is common for later Islamic law interpretations to be mistaken for original Islam. There is, however, a difference between the two.

MPL is practised to the detriment of Muslim women in many countries. To highlight the distinction between Islam and Islamic law interpretations of Islam, divorce and polygyny can be taken as examples. The triple divorce (or what is commonly known as the 3-in-1 divorce) allows a husband to unilaterally divorce his wife in one sitting, making the divorce immediate and irrevocable. This practice is contrary to the *Qur'anic* waiting period or *iddat* which seeks to effect a reconciliation between the spouses. Similarly, the *Qur'an* has a strong leaning towards monogamy. In fact, polygyny or the practice of having more than one wife at the same time is restricted in Pakistan, while Tunisia prohibits it. In other Muslim countries polygyny is permissible. This reflects how Qur'anic interpretations can differ from country to country.

South Africa presents a unique opportunity for its implementation to the advantage of women. The Constitution guarantees freedom of religion and also makes provision in the Bill of Rights for legislation that recognizes religious personal law and Muslim marriages. Unlike the interim Constitution, the final Constitution subjects a recognised MPL to the Bill of Rights.

The relationship between constitutional law and MPL has to be very carefully considered. Failure on the part of Muslims to address and resolve the challenges facing them would result in upholding the *status quo* of MPL, namely, to continue to exist and function independently of South African law. At the very least, Muslim women should be permitted to exercise a choice. In reality, however, the vast majority of Muslim women are subjugated by men and male-dominated *Ulama* (religious) bodies which continue to regulate their lives along the traditional interpretations of Islamic law. For these women there is no choice. By subjecting MPL to the Bill of Rights, the State opens up an opportunity for the implementation of MPL to the advantage of women. This bold step now guarantees that whatever the details, a code of MPL will provide for equality between the sexes and simultaneously allow for the achievement of this goal to be left in the hands of Muslims.

Once MPL is recognised, its implementation (in a court or another tribunal) is guaranteed in section 34 of the Constitution. While focus was placed on the drafting of a constitution, reform of the system of judges and magistrates who will apply its mandates has been neglected. The Bill of Rights can be effective only if judges and magistrates are willing to interpret the Constitution with imagination, foresight, knowledge and due regard to gender problems and sensitivities, the different religions and their intricacies, social conditions, and background and customs that are found in South African society at large. Previous studies of the South African judiciary indicate that courts are alienated and their officials socially segregated from the communities they serve. Other systems of law are foreign to them. If secular courts are to play a role in the administration of MPL, then training of their personnel is needed.

1 The *Qur'an* was revealed to Prophet Muhammad in the seventh century and is considered by Muslims to be the literal word of God.
2 This is the received customs associated with Muhammad embodied after his death in book form called *Hadith*.
3 In the eighth century, four major *Sunni* (traditionalist) Islamic schools of law were established and named after its founders, namely *Hanafi, Maliki, Shafi'i* and *Hanbali*.

Appeal Court finally supports victims of sexual offences

S V RODNEY JACKSON (CASE NUMBER 35/97; DATE OF JUDGMENT 20 MARCH 1998)

The Supreme Court of Appeal should be applauded for addressing past errors by ruling that the testimony of victims of sexual offences may no longer be treated in the same manner as that of accomplices and children. The **Jackson** decision turns the spotlight on the cautionary rule'that until now has applied to the testimony of sexual complainants. Criticism could, however, still be levelled at the Court for not going further and considering wider constitutional issues of equality etc. But Rome wasn't built in a day and it should be remembered that this watershed judgment was delivered by the very same judge who not so long ago in circumstances akin to those in this case considered correctional supervision an appropriate sentence where a 19 year old virgin was raped by two appellants (see **S v A**[2]).

The facts of **Jackson**, as presented by the complainant were: The complainant, a 17 year old schoolgirl, was spending the afternoon with her sister and friends when they met the appellant, a policeman they knew. The appellant then gave driving lessons to some and these 'lessons' led to the appellant and complainant ending up alone in his car. The appellant raped her although she tried to fight him off. She then met her sister and a friend, and in a somewhat hysterical state told them that she had been raped by the appellant. This accusation was repeated to the appellant when he arrived at the park: he denied the accusation.

The complainant's plimsolls and an earring were found in the car. A district surgeon who examined the complainant found evidence of a slight degree of penetration which provided some corroboration of her evidence. Her sister provided further corroboration.

The appellant's version of the events differed from that of the complainant in all material aspects. According to him she pushed him away after being a willing party. At no time did he take off her clothes and he denied that he raped or even attempted to rape her.

The regional court magistrate rejected the appellant's evidence as untrue and unreliable and accepted the complainant's version. On appeal to the Provincial Division the appellant argued that the regional magistrate had not properly applied the cautionary rule and therefore had not treated the evidence of the complainant with sufficient scepticism. The Court accepted this argument but confirmed the conviction on different grounds not relevant to this note.

Before the Supreme Court of Appeal the State defended the original judgment of the regional magistrate but argued that the cautionary rule should be rejected. It challenged the cautionary rule on the basis that it discriminates against women, and furthermore unjustifiably increases the burden of proof on the State in proving the guilt of an accused in sexual offences. After reviewing academic and legal literature Olivier J A, writing for the Court, found that the rule is based on outdated stereotypes. Empirical research refuted the notion that women lie more easily or frequently than men or that they are intrinsically unreliable witnesses.[3] The cautionary rule should be rejected. The judgment is best captured in the words of Olivier J A (at page 18):

In my view, the cautionary rule in sexual assault cases is based on an irrational and out-dated perception. It unjustly stereotypes complainants in sexual assault cases (overwhelmingly woman) as particularly unreliable. In our system of law, the burden is on the State to prove the guilt of an accused beyond reasonable doubt - no more and no less. The evidence in a particular case may call for a cautionary approach, but that is a far cry from the application of a general cautionary rule.

The judgment will have a major impact on existing practice. Presiding officers no longer have to apply the cautionary rule in evaluating the evidence of complainants wholly on the basis that they as complainants have a motive to incriminate. What is required of them is to view the testimony of such witnesses within the context of all evidence available to the court in determining the credibility of the witness. Such an approach is not only rational in the sense that it will still give accused person in sexual cases the same protection against false evidence as accused people in other cases, but at the same time it is fair towards complainants who were treated with unjustified suspicion by this rule in the past.

ESTHER STEYN, UNIVERSITY OF CAPE TOWN

1 See **S v D and another** 1992 (1) SA 513 (Nm) at 516 for a discussion of the rule.
2 1994 (1) SACR 602 (A). 3 See pages 13-14 of the judgment.

NEW LAWS

MAGISTRATES' COURTS (ASSESSORS) AMENDMENT BILL, 1998

This bill provides a framework for using lay assessors in criminal proceedings in magistrates' courts. Assessors may be appointed to assist the presiding officer at bail applications, trial proceedings and sentence proceedings. Two assessors must be appointed (i) at the trial of a person for an offence involving the infliction of bodily harm (unless the offence is not so serious as to warrant imprisonment without the option of a fine); (ii) if the offence is of great prevalence in the area or (iii) if the offence is of such a serious nature that the accused person would be liable to imprisonment without the option of a fine.

NATIONAL PROSECUTING AUTHORITY BILL, 1998

The Bill provides for a single national prosecuting authority and for the appointment of a National Director of Public Prosecutions, Directors of Public Prosecutions, and prosecutors.

JUDICIAL MATTERS AMENDMENT BILL, 1998

This bill increases the penal jurisdiction of district courts from one to three years and the regional courts' jurisdiction from 10 to 15 years.

WITNESS PROTECTION BILL, 1998

This bill aims to streamline witness protection by addressing the problems experienced with the present witness protection programme.

MAGISTRATES' AMENDMENT BILL, 1998

This bill aims to facilitate the new cluster-system of court management. It also provides for the reduction in the retirement age of magistrates — magistrates will have to vacate office at 60.

CHILDREN IN PRISON IN SOUTH AFRICA

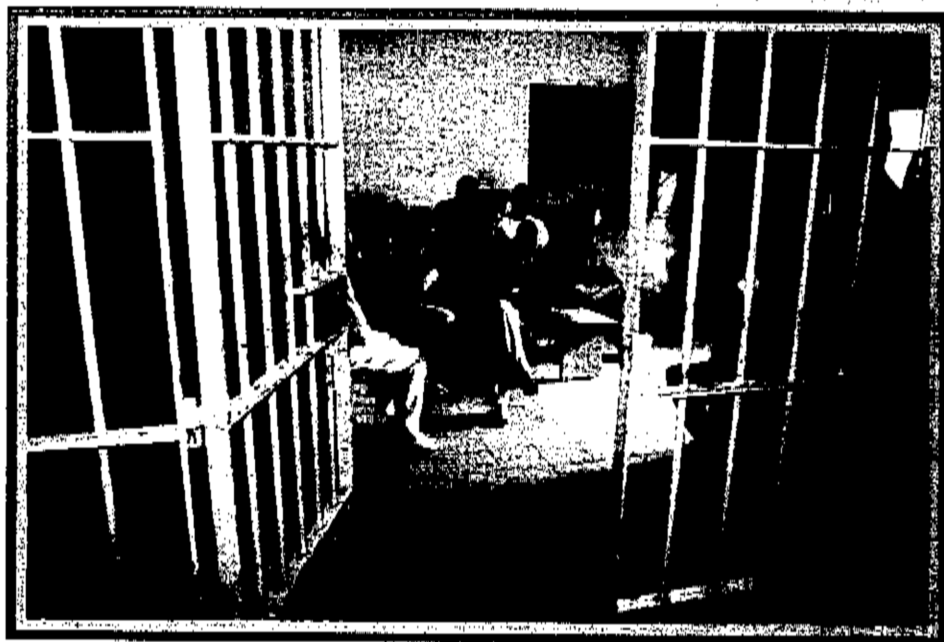

PHOTO: ERIC MILLER & GARTH STEAD, I-AFRIKA PHOTO AGENCY

A new study entitled *"Children in Prison in South Africa — A Situational Analysis"* has been released by the Community Law Centre at the University of the Western Cape. It is a compilation by researchers from numerous non-governmental organisations.

The study outlines problematic circumstances under which children are detained, including poor diet, lack of education, lack of recreational facilities, keeping children with offenders over the age of 21, gangsterism, rape, overcrowded sleeping quarters, lack of clothing and bedding, lack of exercise, lack of medical care, poor hygiene, and a threat of AIDS. The serious lack of legal representation was also highlighted as resulting in the unnecessary jailing of numerous children who may have undergone community service. Thus, the report indicates that South Africa falls far below international standards for the detention of children.

The booklet is available from the Community Law Centre at no cost. For more information, contact:
Ms Collette February at the **Community Law Centre, University of Western Cape, Private Bag X17, Bellville, 7535** or on **021-959 2950 (ph) / 021-959 2411 (fax).**

MAINTENANCE BILL, 1998

This bill:

* aims to improve the enforcement of maintenance orders by the courts
* lays down guidelines and checklists to assist presiding officers in the determination of the amount of maintenance to be paid
* provides for the deduction of maintenance payments from the wages of respondents in appropriate cases
* provides for the determination of alternative methods of making maintenance payments where necessary
* provides for making maintenance orders in the absence of the respondent in appropriate cases where there has been proper service on the respondent.

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