Transcript 1: Interview of Conrad Barberton by Prometheus.

Q. As a brief overview, I would like to ask you some questions which set a tone of how you came to be appointed as the consultant for the two costing processes the child justice bill as well as the children's bill. Basically I want you start by saying , when you started the process it was through a tender process that this came about? To be contracted for this assignment?

A. Well you have got to distinguish between the 2 processes, the first one being the child justice bill. There I was contacted directly by the committee that was responsible of the SA law commission, who approached me to do a costing of the bill because I was working with an institution that had experience in costing. And so it was a direct contact because the project was a relatively small project it did not need to go through the tender process. That bill was in fact actually costed three times, twice for the Project committee and the final time was when the Bill was being finalised by the Department of justice. The Dept. of Justice was using UNDP funds they commissioned me then to update the previous costing report.

Q. That's the only one I could get hold of on the internet (recosted)?

A. Yes, really because that's the latest version. The other ones were reports directly to the Project committee to assist them with the finalisation of the drafts. The children's bill was an open tender process, I tendered for it directly from within my company Cornerstone Economic Research. I understand there were 4 other tenders to do the costing

Q. Now I am trying to understand the process, I am not sure to what extent the two processes were different in terms of TOR as to how the process will unfold, were there any prescriptions on the TOR in terms of being participative, transparent accountable or did you just do it through your own initiative?

A. Once again you to divide it again, let's start with the child justice bill. The initial costing of the Child Justice bill for the project committee was a learning exercise, it was the first time a bill had been was costed in SA and it was the first time I costed a bill. So it was learning as we went along, me and my colleagues had a theoretical understanding of costing processes. It was really taking that theory and putting it into practise. Due to the nature of the CJB involving Justice, correctional services, police and the social the development departments it soon became habitant that in order to understand how the bill gets implemented, That we would need extensive consultation with the different departments and Economists. The bill is about children in conflict with the law, and so we needed to consult with people that were experts with regards to that particular subject. So by its very nature it became a participative process, in order for us to get the necessary information and insight into the CJ system. When we came to the re-costing of the bill, the TOR became a lot more explicit about the nature about the participatory process in that all the departments needed to buy into the process in order to insure that, they needed to be fully involved in the process. A number of Mechanisms have been put into place in order to ensure a full participation by all the different role players. When it came to the CB, the TOR referred to the fact that it should involve all the stakeholders given by that stage I had costed a number of other policies, and became more experienced with the process. I made it a conditions of my tender, that there would need to be full participation and signing off by all the relevant departments in order to ensure that they were in agreement with the results of the costing process. The TOR was more lenient about participation than the actual proposal that I prepared.

In response to the TOR and that is purely based on experience. Unless one gets the HOD of the department to sign off one doesn't have the proper commitment to the implications of the costing.

Q. Would that have been the case in the initial CJB that made you do need that sign off by the HOD's

A. Lets say there were certain difficulties in acceptance of the report the signing off the CJB where certain departments did not agree with the costing outcomes and they attempted to distance themselves even though they had participated and then so we introduced the sign off requirements.

Q. I am going back to the CJB I'm just surprised that this was the first time in the history of SA to have a bill costed this has not been done in SA, I would have thought that is would have been done before on a superficial level?

A. This has got to do with the nature of the understanding of the legislative process. Up until fairly recently, say the year 2000 the legislative process had been operating independently of the budget process. So parliament passed laws with very little regard to the financial implications of those laws. With the promulgations of the PFMA and the austerity measures experienced between 1997-2000, it became increasingly imperative that government needed to cost their legislation. It's also a consequence of our constitution where, if the government commits itself to the delivery of particular services in a law, they can be taken to court and the clients of those services can enforce their rights through the courts. This had not previously been done and as a result government did not feel the pressure. And with cases such as Grootboom, it became increasingly evident, that if government committed themselves to supplying particular services, they needed to have a way with the entire budget to do so.

Q. Now coming to the actual processes the consultations, the choice of participants how were they chosen. What informed that processes? Besides the fact that these were departments who had a stake in the implementation in those bills. I'm trying to look at it with the perspective of the normal consultations with which the SARC project committee would undertake. They would go out to most of the stakeholders, NGO's etc. In this particular case it was the government, the civil servants basically that were in the process rather than the other stakeholder's one would have seen the Law Commission use in their consultations.

A. One needs to distinguish the costing process from a law writing process. The Law writing process, is soliciting the views of the broader society as to how the law should look like. Once that has been determined, the question is then what does government need to do and what finances does Government require in order to implement that law. And so the process becomes a lot more technical. Consequently the consultation that is undertaken is not so much consultation as it is participation. That we require people with experience and expertise to share with us their knowledge of how particular processes operate and how particular clauses in the bill will be implemented, or are most likely to be implemented. It is not something that you can approach the general public for information it's something that you need to work with the technocrats on. So in a sense people identify themselves in that if they work in a particular province or a particular department on the issue, then those are the people you would like to speak to and obtain their input from. When I say it's more participatory in certain instances, one runs a workshop process and obtains their input and their decisions on particular issues. For instance, reasonable time periods for the assessments of children in the case of the CJB. That is not a decision that an economist can take. Its taken by probation officers, and expert in the field. And we simply cost the consequences of that decision. In the CB, we ran a serious of 8 different workshops, on setting norms and standards for the delivery of different services. We facilitated those workshops, in a manner that elicited decisions around different norms and standards which we then costed as a costing team.

Q. Can you just explain that little bit of norms and standards?

A. When you talk about services to vulnerable children, what is the norm with regards to the length of time you would take to conduct an assessment of that child situation? So in many instances its norms related to activities, and one can think of standards that are relevant to the running of a childrens's' home, how many staff are needed to be on duty during the day/ during the night. What quantity of money do you require to purchase food for children, what is the norm in that regard? These things are not normally written down, but in order to do a costing you need to have a benchmark in order to do the costing. In the CB process, we opened the consultation process out of little bits; we did run workshops with representatives of the NGO sector. For two reasons, firstly, they have been actively involved in the drafting of the bill and have particular concerns that they wanted to draw our attention to these costs, and secondly, they have experience in running the many of the services and facilities like the CB is all about and so we needed to obtain their input into the costing.

Q. And I believe MPs were consulted you did run workshop with them

A.We didn't run any workshops with MPs, once the costing was complete; we then made a number of presentations at workshops at which MPs were present. A presentation of the results of the costing was made to them, not a consultation with MPs.

Q. By its nature, would you say, the actual participation by all these representatives from government in a way, it sort of built their capacity, of course at a much lower level rather than to say, here's a costing expert but to some extent their capacity in terms of the process they could understand they could understand they could follow take this process a step forward in future if they were to be required to do something like this, with the assistance of someone of course?

A. An explicit part of our tender to cost the CB, involved running 10 costing workshops where we went through the methodology that we would be using or applying in the costing of the bill, these were 3 day workshops, and they were very hands on exercises in getting people to understand the mechanisms and principles of costing. The feed back from those workshops has been very positive and I think that they contributed to a height and understanding of the nature of costing. And in certain instances I've seen, the principles being applied by people that participated in those workshops to their budget bids/plans. There was a deliberate attempt to not only get participation but to build capacity.

Q. I'm trying to then link the process now in terms of the other elements that I have identified on good governance in relation to accountability especially. The processes, the costing, when you did the costing and you were reporting to the HOD's cabinet, I'm not sure?

A. Well the costing of the Children's bill was designed specifically, so that the HOD's took responsibility for the results. In a sense that the costing team, from the Consulting Company, acted as technical advisors. This was spelled out from the beginning of the process and the results of each of the department's costs could be attributed to the work done by officials of the department. Therefore they were directly accountable for the results of that. The final report was written by the technical team but using the inputs that they received from each of the departments. This is spelled out very clearly in the report. So accountability for the results of the costing rests with each of the Provincial Departments and National Departments involved in the process.

Q. Would the same apply for the other one of transparency?

A. Well transparency takes on a number of dimensions. Firstly there's the way in which the costing is done, is the methodology transparent? Are the assumptions transparent? Are the norms and standards that you use, transparent? The Second dimension is the process that you follow is it clear who's responsible for what part of the process? For what set of decisions in the process? And the third dimension in the transparency in the costing of a bill is, how are the results reported and written up, is it understandable transparent? Is it well communicated to the target audience? Being the department but in the case of costing a bill also legislature and to the general public. In the case of both of these bills, I think communication to the legislature and to the general public has been fairly good. The Department once they've received ownership of the reports made a conscious effort to publicise them to communicate them to the different stakeholders. I have been involved in costing processes where Departments have place an embargo on the results of costing efforts and not communicated them to Parliament or to anybody else.

Q.Would that be reasons of the effect of cost factor if one can put it like that, had exceed expectations and that they didn’t want to proceed with that bill or what ever?

A. Well it wasn’t a bill that was costed, but I actually announced privy to the reasons for their decisions.

Q. I recall reading the fact that in this child justice bill, parliament was really happy about that, that this was the first time a bill was costed, there was an implementation plan, and they were able to deliberate on something they knew was cost factors, I don’t know whether it was because of they actual process revealed that if the process was actually permitted it would save government a lot.

A. The reason for the stalling of the child justice bill is unconnected with the fact that it was costed. I think there are other political reasons, for it not being promulgated yet. Having said that, there are probably cause for the bill to be revived and for it to go through the process.

Q.Would the same, I suppose, would not apply, I suppose the figures then would not apply now, maybe because of the passage of time, would that be a reason?

A. Yes things have changes, if they did want to know what it would currently cost, to implement the bill. They would have to revise the costing of the bill. Generally speaking we would only entail updating the prices. One would have to have another look at the number of children that are in conflict to have to see how that have an impact on the costing.

Q. I seem to recall that for the processes your organization, or yourself, acted as secretariat for the departments for these processes, am I correct?

A. In the case of the child justice bill, there was a secretariat located with in the dept of justice, it was a joint project between the dept of justice and the UNDP, for the children's bill it was decided that, well it was part of the TOR that the winning tender will coordinate participation of all the different stakeholders and role-players and yes, the costing team did act as the secretariat to the Project committee. In a sense, it was a good thing because it enabled us to control the process very tightly and to ensure that all the deadlines were made.

Q. And in the result it was an efficient process?

A. Well that suggesting that the dept. isn't able to run an efficient process, which I don't think it's necessarily correct. it has the advantage of a dedicated team only focusing on one thing. Where as usually officials in a department are focus on a number of things and are necessarily unable to coordinate.

Q. I'm almost through- how did you find the whole process? You said The child justice bill was your first experience you costed even though you had the theoretical background, you costed other processes, As a practice is it something that is worth retaining, promoting and at which level again, Is it always better to commission consultant ? I am aware that government is looking into RIA? In that light, what would be your view?

A. Lets say I've seen a range of costing studies, done by different role player, consultants, people in government, people from larger consulting company, the quality really depends on the technical expertise of the people doing the costing. And their understanding the subject matter they are dealing with. I've seen very bad costing done by companies in the private sector and I've seen good costing done by companies in the private sector. I don't think there's necessarily a right or wrong approach. My preference has always been, and this is from my experience working as a consultant, is to build capacity within government to do their own costing. And the primary reason for that is, they need to take responsibility and be accountable for the results of that costing. It is always possible to shift responsibility and accountability by saying “ Oh such and such a consultant company has done it ”. We don’t fully agree with their results, whereas if it is a unit within the department, does the costing, the HOD of that department, should take responsibility for that costing. It would be difficult to shift responsibility within the department

Also the discipline of costing is closely related to the discipline of budgeting and if one can strengthen departments costing capacity, then their budgeting capacity will improve. It is in the interest of the country and efficient administration that departments learn how to do costing and take responsibility for their own costing. The National treasury can provide guidance and frameworks and assistance. But ultimately the departments are responsible for the implementation of the policy and departments are responsible for their own costing.

Q. And I’ve read that in some instances (I’m not sure whether it’s the Cabinet memo) that there are requirements from treasury require costing, that some departments can by pass the treasury and go straight to cabinet. Isn’t there a system that has been established by now that would curtail such practices?

A. Well there’s 2 systems, an older system and a newer system. The older system is the cabinet memo system, one of the requirements of the cabinet memo must allow the Cost implications of whatever is contained in the cabinet memo. And unfortunately those cost implications are not scrutinized very closely. Primarily, because the cabinet memo, are done at short notice and so there is not time to subject them to necessary scrutiny. And secondly, certain departments simply bypass the scrutiny process and submit their requirements directly to cabinet. Without going through the regular requisite checks and balances. That is something that needs to be strengthening checked and the Presidency looking at it. The second area is, cabinet has just recently accepted a policy that requires the production of a regulatory impact assessments to be conduct to all new with regards to all new regulations legislations and policy. And that is a system that is beginning to be rolled out. It is managed by the national treasury and it will greatly strengthen the costing of policy

Q. Does that mean will overrule the cab memo system?

A. It is directly link to the cabinet system and it just gives treasury more control

Q. The endorsement of this regulatory impact assessment, how different is it from the costing process or is t basically the same thing, but calling it in a different name?

A. It is basically the same thing just a slight change in methodology but it’s largely the same

Q. I think I have almost come to more or less the end, is there something you want to tell me that was part of the process maybe is important and I did not pose a question on it, related to my central issue of Good governance?

A. I think part of the process of good governance is to have a requisite number of stakeholders to participate in the process. And when it comes to costing the technocrat’s, officials, and the consultants need to produce a technically sound document. In order to really maximise good governance, that document need to be read and understood by the people in the legislature. And this is where significant amount of capacity need to be built. Is in the legislatures and legislators ability to read interpret and process information on costing and budget? The challenges that legislators change so one needs to train the new legislators after each intervention. This will continue to be a challenge, but its one that needs to be addressed to make good governance effective when it comes to costing and the budget.

Q. Anecdotally I have heard people saying that costing can be used to stifle human rights issues because of cost considerations i.e. when you look at the cost implication it is quite costly to do that, is it something that is there or from your side, is it

A. The question is how do we realise Human rights? is it by to write them into law or is it by actually delivery of serviced that needs those rights. In certain instances we can meet the human rights by forbidding certain kinds of action. We can call it negative rights and those can be written into law without significant cost implications- e.g. the police cannot abuse people that they detain. However the vast majority of human rights and socio economic rights, require some kind of positive action by the state in order for them to be realised. And in most instances, if you simply write them into law, without there being implementation plans the budgets the capacity within government to live that, writing them into law is just a costing exercise. The process of costing, doing proper implementation planning is essential to the actual realization of these rights. So one needs to see the costing and implementation planning as an integral part of process of realization rights. I do not believe that the process stifles the realization of rights quite the contrary. In fact if you think about it, If we didn't plan to deliver social security grants, in order to realise old peoples rights to pensions, then the vast majority of old age people would not have had pensions at this stage. It's because there were proper planning, proper budget in order to set aside the resources to finance those pensions, so that the old people can enjoy their rights to pension.

And the same can be said for people that are HIV positive, proper planning proper resourcing was required to meet their rights, the same can be said for people that are homeless, proper planning proper resourcing, of a home building program. The same can be said about children's rights. Unless we do proper planning proper resourcing proper costing, the rights of children cannot be met. Unless proper planning is done it is not possible to realise those rights.

If you look at countries with pretty bills of rights but poor implementation of these rights it is because they have not done costing and these become paper rights only.

Thank You