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THE DEVELOPMENT OF LEGISLATION IN RELATION TO THE COST

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Transcript 2: Interview of Ann Skelton by Prometheus

Q. I'm trying to talk to you about the whole thing of costing of the two bills of children. I have been talking to Conrad before and that is part of the reason why I'm talking to you as well. Having been part of both the processes. I know you were much more involved in the first one, the child justice Bill, I would like to talk to you about that. Starting from a point of view, that you were the South African Law Reform Commission project leader for the Child Justice Bill. Is that's where it all started?

A. We needed to have a practical sense of whether or not the law would be implementable. So we had a very definite idea that that committee at the law commission wouldn't just be drafting laws that were idealistic and may not have been implemented. We were very aware from the beginning because we were all people who were practioners in that committee.

Q. Who were the committee members?

A. It was Maggie Tserere, she was working for LHR then in Umtata, Tseliso Thipanyane I think he was at the Human rights commission then. Julie Sloth-Nielsen, and then there was Pat Moodley, she was on the SALRC side, and also from the Commission was Zubi Sedat? She was a commissioner for Durban. Then it was Hennie Potgieter who was the technical research person.

Q. So the primary reason was basically to ensure it was implemented it wasn't a question about affordability?

A. Well these things go together, we were basically saying that we don't want to sit here and draft some pie in the sky ideas if they are not going to be able to be implemented at the end of the day. We were trying to think what can be done, if we suggest, for instance say that the probation officers need to access every child, what

would the costing implications be, have we got enough probation officers and can we actually do it. So that was how we began, and when we did the first costing which Conrad was involved with, it was more of a cost benefit analyses.

Q. What were you looking at basically at that stage?

A. If you did the way we believe that you should spend time in the first and early part of the process of arrest, immediately after assessment, preliminary enquiry, if you spend time there, you would save more money in the long run. Because more children would be diverted, so you wouldn't have so many trials, you won't have so many children in custody. It would be like a systemic assessment to say if you would re-organize the system, like this not only would it be very good for children you would avoid them sitting in the criminal justice system, with all the negative connotations it has. You would also save money for the system. It was done without the Departments (Correctional services and social developments) full involvement. It was an assessment from an outsiders perspective, and consequently the department never bought into it. They didn't believe it, that it would save money. And in a way they were right. When the real costing and implementation planning process undertook, we saw that it would cost money in the short term. But in the long term, you could save money for correctional services and you could save money for justice, but seeing that our budgeting is in Silos, it is quite a difficult argument to make. So one of the remarkable thing about the costing of the Child Justice Bill, is that, when I was then moved towards the end of that processes of that building drafting, I moved to the UN child justice project. So then we decided that we would make this a proper costing and implementation planning of the child justice bill, the second one. The second one also did not fully involve the Departments to the extent that we later did.

Q. So the first one was basically Conrad doing his work? No involvement of the departments?

A. Yes, he might have interviewed people but they didn't produce the numbers.The second time around as well, he produced the numbers, but we had a more inter sexual discussion about it and that kind of thing. But it still didn't really capture the thing. The third time around we said, no more updates of that process, we're starting a new process. This process is the Department and the departments are going to do the work.

Q. The third one they (the department) were involved?

A. Yes, the third one is the final one, so they must actually generate the figures and we were quite strict about this. Conrad would be brought in to help them, to design the template to capture the information. And to get us all on the same page, so we knew what we were talking about, to explain the methodology, but not to actually do the work. He would run tests of all their data and say "is this logical, can this be, why is KZN spending less than a small province like Limpopo. So we did some adjustments in consultation with the departments. And off course it was a learning process. And he actually visited the provinces and we had workshops. And it was the first time that his idea of what he called an activity based costing, was developed through that process.

Q. So is that where the experimental nature of the process comes in?

A. Yes and when he moved on to the Children's Bill costing, then he had already developed the methodology or better developed his concepts around that. So I would say that the Child Justice Bill was more experimental and that the Children's Bill, that he kind of worked out a process.

Q. So it was a learning for him as well?

A. Yes, it was. I think he would acknowledge that yes.

Q. And for the department themselves, especially the people involved, the ones that was generating the figures. How did you bring them in?
A. A skills transfer process. What we did was, you needed an intersectoral committee with a strong leadership from one department, who would bring the other departments. So what we had was, we were based in Justice, that UN child justice project. So we said child justice would be the leader. We established being an intersectoral leadership for child justice. Which is still there but not quite working as it was in those days. Headed by Pieter Durant, he was the chief director responsible then. Whatever else one might say, he is a business minded person, so this appealed to him to quite an extent. The idea of that was to have senior people, consistency, and we had one meeting where we invited the CFO's, of the various departments concerned, to come and that was quite early in the process. It was actually Allen Mc Kenzie and the DG from social development, and I can't actually remember if the other CEO, s of other Departments came but they actually send Senior Financial Managers.

Q. The idea being that whatever happened in the committee, would be binding?

A. Those people had to sign off, whatever was agreed, they had to sign off on the budgets.

Q. Meaning whatever was agreed to was what they agreed to?

A. Yes, it was not just something that Conrad or the Child justice was saying, it was what each departments own financial manager was saying that was signed off. We've come to the conclusion that we needed to do that, cause we could see that there was no buy in the earlier costing process. The purpose was giving the department the leadership whilst providing them with support steering them to a certain extend to what needed to be done but not doing it for them. In that process it was like a skills

transfer, we all had to learn to talk the same language. But I think it was in the Children's Bill that Conrad defined that even more. And in his terms of reference when he got the tender, he said this is how I want to do it. I'll take responsibility for XYZ and it looked as though he was washing his hands off it and that he wasn't bothered. But he knew from experience that if the departments did not take responsibility, it meant nothing. It was the whole budgeting process so the reason we had to get the CFO's together, because we wanted them to get the idea, when they get to treasury, they would support one another. For example, correctional services will say, we will be saving money, therefore we support the bid for increased funds from Social Development. So it was sort of overcoming the silos, getting the departments to recognize that where other departments make money they would save money.

All this was pinned under the idea that it was better for children as well. But now we were speaking the language of efficiency, of economy and all that but also at the same time kept children out of the system as far as possible. Or keep them in the system for the shortest time possible, so it matched.

Q. It did especially if you bring departments to budget on the same level. It is very rare that you find some things like that especially for children?

A. So the other thing that we did, we said that there were one or two controversial things on the bill, lets examine them from a costing implementation point of view, to see if they are practical. And one thing was the preliminary enquiry because a lot of the information is shared. The magistrate could say one thing and not be allowed to preside at the trial. And in cities this doesn't cause too much of a disruption cause there's more than one magistrate but in those places where there's just one magistrate, we determined what the impact would be. How likely it was to happen and if it happened, would be the practical solution, what was the cost implication.

Q. Does that mean bringing in another magistrate?

A.Yes, possibly. What we discovered was that were already two pieces of legislations that cause this to occasionally happen. One is bail, because the magistrate might also hear something in the bail hearing. And the other thing was, plea bargaining. It might happen that the magistrate might hear something and have to recuse himself, it happens quite frequently with bail. Apparently what they then do is, once a month, two magistrates in similar districts would say " lets swap courts for the 3rd Wednesday, of every month". I'll deal with yours and you'll deal with mine. So it actually seems like we were just tagging along a system that's already there and developed and it wouldn't cost that much. The criticism of that clause from a costing perspective, was basically removed. So there might be other reasons you might wanted to make an argument against that clause but you couldn't make a costing and implementation argument against it anymore. The other thing was the one stop child justice centre. There was an ongoing debate about whether they should be specialized centres or not. Some ministers like it and some ministers don't and it go through fashionable stages and so on, but we believed quit a bit in that model although we never thought it should be made compulsory. But rather that you could do this, if it makes sense and if it was effective and efficient. And the costing actually established, Conrad did some exercise to establish that, most of the crime committed by children happen in urban areas, and you can identify them pretty easy. So if you put up child justice centres in 9 places in the country (or was it 18) you would have a very cost effective model cause you'll be able to deal with these cases very effectively. He went to one of the one stop child justice centres and saw how they were working. And he found that it was quite a cost effective model. So that was also something that could have died at implementation. He had some very specific ideas about if you interpret the law like this, and you decide to build this many centres, you would further enhance costs savings and efficiency. So those were some examples where this was still possible to go back and change the bill as the bill was still going to parliament, at this point. So had we discovered at this point that clause relating to the magistrate having to re-accuse him or herself. If that turned out to be difficult and

expensive, we might have gone and change some stuff. Similarly we then able to argue convincingly that it was not an unreasonable clause, that it had been we knew what the cost implications are and it wasn't that dramatic. Similarly if someone said, we don't need these 1 stop child justice centres, we don't like them, we could say that, hold on a minute, we've got this study that says, they are a very cost effective vehicle. So advocacy for some ideas, can be well supported by a properly costed analysis.

But you'll also have to be flexible to say and honest enough to say, that that if the costing shows that that is not workable or durable enough to face that reality and deal with it.

Q. A good thing is that it was done during the drafting of the bill so you could still alter anything on it before it was passed?

A. One thing I can say about the Child Justice Bill process was, the drafting and advocacy process was a little bit more interlinked, than with the Childrens Bill. With the children's bill, there was a strange thing that half the children's bill was already in parliament or almost concluded and the other half was still coming. So one could influence the second half but not really the first half. And also that process was marching ahead, there was a clear indication from the minister that he was going ahead with this legislation. So the costing was a sort of "you better make this work" endeavour. And I think there was one crisis point that Conrad might have mentioned to you, at some point while we were having all these workshops with these service providers, he ran an activity based costing. What are the activities involve in foster care, in assessment of children, and whatever it was. Then we worked out, well it takes half an hour for this and an hour for this, who is the person that you can use, it has to be a social worker, how much time does it take and how much can you pay a social worker for that amount of time worked etc. So that was all worked out. He got

all that information and then he ran the scenarios to put all that information in his system and found out the bill was going to be way too expensive.
And remember the bill was going to be passed, we had to find a way to make it durable. So there had to be a crisis intervention, so he went back to the department and said, if I had to do things this way, the planning and everything, we can't do it. We won't get that amount from treasury, so they had to sit down and think about it again. They had a high level meeting, they got various some people in on this meeting, some from NGO's who do service , and many government people. If we going to do it the Rolls Royce model, everyone must have been given what they thought was optimal. They had to adjust those formulas, ideally they'd been given half an hour but they had to adjust it to an hour. And they were looking at the intensity of follow up for foster care. In some case you could have a less intensive follow up and some case you would have a more intensive follow up.
They manage to work out a system where by in the document Conrad presents both, he's got like the perfect scenario and making the best of it scenario. Low cost scenario and high cost scenario, something like that. And this is based on what the department say they spend and what he think they should be spending. It occurred in both cases bur more dramatically in the children's bill.

There are certain things that government is not doing, under the current law, therefore you can't load all the new costs and say the new Child Justice Bill is going to cost this. Let me give you an example from child justice, there's a constitutional requirement to keep all children separate from adults. But there are some police stations in South Africa that you don't have two separate cells, girls, boys, men everybody goes into the same cell. And government has a responsibility to do that. This is a pre-existing responsibility, it's not the child justice bill that causes that responsibility. Its already there as a requirement but its not happening.

So we costed on what you need to catch up on where you are now, and then what you need in addition to make this new law work properly. We did it in both processes, but

more consciously so in the children's bill process. We sort of stumbled over this in the child justice bill because we had a meeting with the police and they were saying, well we've got to do all this work and its going to cost us this much, I was saying wait a minute, the child justice bill does not require, and I wanted to show that the child justice bill was cost effective, I didn't want them to seem it too expensive.

So the same thing with the Children's Bill, there's certain things we're failing to do. There is not enough social workers now, let alone for the future. If your honest about these processes, you can't blame, the new legislation for creating new obligations for. These obligations exist, and then there are some new ones that we'll need, because of this new act.

If you do spend properly in these things, in the long run, you will spend less. If your systems work at front end, prevention, early interventions, and that was the logic, these things can cost you a lot of money when you do them, but in the long run, could save you a lot of money.

As your system gets better and better and more efficient and your people learn how to do their jobs properly, it improves and improves. And that is when a full cost analysis, access the long term advantages, including things like, if we had less children in prison and more children in schools, what would be the benefit of that in 20 years time, when those people immerge? That was never included in anything, that's a different exercise.

And there are so many variables that you have to take into consideration, and I'm not sure what its called but its like a long term cost benefit analysis exercise, scenario planning etc. Conrad would know but as far as I know that was never done. We were not looking at the cost benefit from a social perspective that a kind of an unwritten silent factor in all this. To keep these systems working, you got more law abiding

citizens, you got more children that are healthy & happy, that's got to be good for a society as a whole.

Q. I'm interested in the participation of the various departments in the second costing of the Children's Bill, because you mentioned that Conrad was the one who said that he want to help them, " I will go the every province and sit with every person but I want this departments to give me the numbers, not the other way around" ?

A. That worked pretty well, some departments better than others. Social development took the matter on board with the Children's Act. They did a thorough job and I think the people learned so much about budgeting. Honestly, I don't know how people budgeted before? Because we had workshops with people, and they had no idea of how much they are spending in the provinces on certain program. The other thing we discovered was, the people who did the program work, never sat down and talk to the finance people. They all seemed so disconnected. This process brought the people into the same room. The finance people now realized, Oh there is somebody sitting and planning these things. We need an extra 2000 diversions, and how are we going to do that?
Or we got a foster care back log of 20 000, how are we going to clear that over this year. So I really think it helped those people to understand how to really do costing and budgeting.

Q. In terms of involving public (and I asked Conrad the same question), civil society, in the whole costing process, what is your view on that? Well one way of looking into that is to say that Conrad is not of civil society, so civil society was involved. But I know at some stage when they were developing the norms and standards, civil society was part of that.

A. There were probably less of civil society in the costing of the children's bill. I think Conrad would have interviewed people like NICRO, and I know he visited the

one stop child justice centre and there was a NICRO office there. Well in order to understand how diversion works and how much diversion costs, he had to talk to talk to them. But I didn't think it was extensive, it was more extensive in the Children's Bill process. And I didn't see it as a consulting for the sake of consulting, or consultation for the sake of getting information. Because it had the feeling of people feeling involved. There were, with the Children's Bill working group, they were very organized.

They had their own workshop and they demanded to invite their own financial experts from Idasa etc. They wanted Conrad to come and give them a demonstration. Conrad was a bit nervous because he'd been commissioned by government to do this. Now is he able to just go there and have meetings or not. You'll have to ask him. We were a little bit careful about just handing over.

We shared some useful information with the Children's Institute and got very useful information back from them. So there was a special workshop with the Children's Institute that was an organized civil society unit. Then there were costing workshops on the norms and standards, that were reverted later to activity based costing. In other words we had to work out (as I said earlier) how many hours do we spend on a foster care placement. There, we had a wide range of different people, very interesting. We had people from children's homes working with babies, who raised questions about, you're not factoring in babies. Because they are more intensive, one has to spend more time with them. What about children with terminal illnesses, who will pay for the funeral expenses. There all these kinds of little issues raised by them. And then of course you can't be incredibly nuanced. You can build on these factors to a certain extend but you have to opt for a middle roaches position sometimes.

Actually that was standard, the children's home stuff. They worked out what percentage of children's homes needs extra support as they worked with babies. Which percent of children's homes need extra support as they work with children with disabilities. So there you would build in more staff and if it was a secure care facility the child to staff ratio would be higher. If it had babies the staff to child ratio

would be higher. So there were columns where you could drop off this information and put it into the computer to calculate.

Q. What happened to members of parliament, I think there was a workshop, but more a matter of sharing?
A. A briefing that's what its called. Conrad gave a briefing to the portfolio committee when the child justice bill first went to parliament. I think he came back and provided additional information as well. As a matter of fact it was quite dramatic as Johnny Lange stormed out in the middle during Conrad's presentation.

Q. Why, I thought he was receiving positive acclaim, why was he storming out?

A. Because Conrad said Johnny doesn't understand how to read budgets! And poor Conrad turned around and said "what have I done"? By large I think the costings were received well by parliament. I think Johnny said he didn't want to throw praise around especially about the child justice bill, its not perfect but it is 100% better than anything we've seen before. In terms of the effort behind trying to cost these issues.

Q And the fact that they were debating around something that they all understand rather than what was the previous position.

A. And what it did was to remove this habit that politicians have when they say, its too expensive! Without any information. Well we can say, its been costed. But what could they really ask for?

Q- So from a good governance point of view it was a perfect for them?

A. Here's another example of how good is was. The Child Justice Bill had a budget in 2004. In the 2004 budget you'll see money allocated to the child justice bill, but it was never passed! And it still haven't been passed. It's only going to parliament in

January. They just changed the dates now from the 18th for written and the 24th for oral. Now it's the 30th January for written and the 5th February for oral.

Well I think this is one of the first examples of a bill that haven't even been passed but there was money allocated, but that was good. We could still spend that money. Remember we weren't preparing for a system that had not been implemented yet.