



# Why do we need the Child Justice Bill?

**The Child Justice Bill is important for achieving the following goals:**

- Protecting children that come into conflict with the law, and ensuring consistency in criminal justice practice (in terms of South Africa's international and Constitutional obligations)
- Ensuring that child offenders are held accountable for their actions
- Preventing child offenders from committing further offences, thereby promoting crime prevention and a safer South Africa

## **A. Protecting Children and Ensuring Consistency in Criminal Justice Practice**

**The Constitution:** Specific rights for children are provided for in s28 of the South African Constitution. "A child's best interests are of paramount importance in every matter concerning the child" (s 28(2)). This means also that when a child has come into conflict with the law, the child's best interests are most important, more important than any other consideration. At present, the legislation governing our criminal justice system is not equipped to ensure that this is so.

Our Constitution also says that children should only be detained as a measure of last resort and for the shortest possible period of time (s 28(1)(g)), where they are accused of committing an offence. Children, who are detained, must also be held separately from persons over the age of 18 years and must be treated in a manner and kept in conditions that take account of the child's age.

**International obligations:** South Africa has ratified the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child. Both documents have specific articles dealing with child justice – articles 37 and 40 of the CRC and article 17 of the Charter. South Africa has an obligation to ensure that its domestic laws comply with the provisions contained in these international and regional treaties.

Other international documents lay down certain standards for children in conflict with the law, with which South Africa as a country embracing human rights, should comply. These are the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Riyadh Rules) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

## **Ensuring certainty and consistency in criminal justice**

**practice:** Because the child justice practice at present is not governed by legislation, uncertainty and inconsistency are constant dangers. We therefore need legislation to ensure that children in conflict with the law are dealt with consistently and appropriately. Therefore, the Child Justice Bill should establish a clear set of systems and procedures, that are easy for those in the criminal justice system to understand, and that are consonant with Constitutional and international obligations noted above.

## **B. Holding Child Offenders Accountable and Promoting Crime Prevention**

**Diversion:** This process enables children who accept responsibility for an offence to gain access to intervention programmes that will address the offending behaviour and its causes. A diversity of diversion programmes is necessary, and all children who accept responsibility for their offence should have access to these programmes if the Bill is to be successful in promoting accountability and crime prevention. For diversion, sentencing and the appropriate placement of children to be successful, it is necessary that all children who enter the criminal justice system are properly assessed. Many diversion programmes promote Restorative Justice, which is also an important vehicle for promoting accountability and crime prevention.

**Sentencing:** In sentencing children that have been found guilty of offences, the Constitutional provision that children should only be detained as a measure of last resort and for the shortest possible period of time (s 28(1)(g)), should prevail. In cases where children are sentenced to custodial sentences, assurance is needed that appropriate programmes and protections are in place to ensure that children do not become abused or further criminalised.

**Restorative Justice:** This is an approach to justice that engages offenders, victims and others in discussion relating to the identification of the needs that have arisen from the crime event and addressing the harm that has been caused. In such processes, child offenders often have to face their victims, account for their actions, make restitution and commit to actions or programmes that seek to prevent re-offending.