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JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

20 February 2003

CHILD JUSTICE BILL: BRIEFING

Chairperson: Adv J H De Lange (ANC)

Documents handed out:

[Child Justice Bill \[B 49-2002\]](#)

[Briefing by Adv VP Pikoli, Director General](#)

[Presentation by Department of Justice and Constitutional Development](#)

[Presentation on Costing the Child Justice Bill by Mr Conrad Barberton](#)

SUMMARY

The Department briefed the Committee on the Child Justice Bill, noting that there are many children awaiting trial in South Africa's Courts. The Bill sought to protect child offenders by placing the emphasis on their age and also promoting inter-sectoral collaboration. The Bill also proposes a change from the old Roman-Dutch law principle regarding the minimum age for criminal capacity. The Chairperson noted that the Committee's concerns that the Department would be able to implement the Bill so that the expectations of the public were not unduly raised.

MINUTES

The Chair noted that for the first time the Committee will not only concern itself with the legislative and technical aspects of the Bill, but also with its implementation. They will not allow the Department to raise people's expectations while knowing that it did not do its proper research regarding the implementation of the Bill. The Department should convince the Committee during its presentation that it has done its research regarding this Bill.

Briefing by Department of Justice

Adv Pikoli: Director General, Department of Justice, noted that the Bill is a effort of the inter-sectoral approach involving various Departments such as Social Development, Correctional Services, SAPS, National Public Prosecuting Authority, consultants, South African Law Commission and also the Department of Justice. He said that the number of children awaiting trials in our prisons alarmed the inter-sectoral committee. They also acknowledged the fact that prisons conditions are not suitable for rehabilitation purposes. Children are not born a criminals but are made to be one by the conditions they live in. With that in mind they met with various civil organisations and with traditional leaders since they realised that there is no better investment than the one to our children.

Discussion

The Chair asked which laws the presenter was referring to when he said that 'current law relating to children who commit crimes is fragmented and incomplete'.

Adv Pikoli said that he was referring to the Criminal Procedure Act, Probation Act and Child Status Act as they all insignificant when it comes to child offenders.

The Chair asked the Department to make copies of the relevant Acts available to the Committee, especially those parts dealing with children. He further noted that the number of children awaiting trials had reduced in September 2000 to 1862; why did it escalate to 2371 thereafter?

Adv Pikoli responded that the initial decrease of the said number was largely due to the inter-sectoral intervention on the part of government. After Parliament passed the law granting the Magistrates the power to decide on the release of children offenders they then refused to release such children although some of them had committed minor crimes.

The Chair asked whether the Bill states where the child would be kept during the probation period.

Ms A Skelton (Department of Justice) responded that there are different possibilities that can be pursued by a police officer in this regard. Amongst other things this include placing the child with the parents/guardians or in a place of safety. Imprisonment would be the last resort after all the other possible avenues had been considered and taking into account the nature of the crime and such child's responsibility.

The Chair asked the Department to clarify the difference between petty and serious crimes.

Adv Pikoli draws the Committee's attention to the Schedules of the Bill and noted that Schedule 1 relates to petty crimes and Schedule 2 to serious ones.

The Chair noted that in his interpretation the implication of the Bill would be that when an offender is a child the Child Justice Bill principles should be applied instead of applying those of the Criminal Procedure Act.

Ms Skelton concurred and further noted that there is indeed an interrelationship between the CPA and the Bill. The principles of the Child Justice Bill should therefore be applied whenever there is a child offender even when the child appears in a normal Court.

The Chair asked what would be the case if a child is charged with murder.

Adv Pikoli responded that this is a departing point since in those cases such a child would be tried as an adult and not as a child.

The Chair asked what is the difference between this Bill and the laws applied in other countries, such as USA. In those countries a child in a murder case is also treated as an adult and not as a child.

A Departmental official responded that in principle there is no difference between the Child Justice Bill and the laws of those other countries. However, the Child Justice Bill emphasises the nature of the child and requires the judicial officers to take that into account when using their discretion.

Mr J De Lange (Department of Justice) also noted that the judicial officers were always required to take into account the provisions of Ss 15, 33(2)(m), 36(4), 58(3) and 81(2) of the CPA when dealing with any Schedule 3 offence, which includes, among others, murder.

The Chair noted that if the judicial officers were to be given discretion when dealing with Schedule 3 this might jeopardise uniformity in our legal system, since every officer would exercise discretion different from another officer.

Mr M Mzizi (IFP) agreed with the sentiments raised by the Chair and noted that certainty should be established about the differences between an enquiry involving a child offender and the one where such child is charge with murder.

A Departmental official noted that in such cases the prosecutor would use discretion after consultation with other relevant role-players, whether to divert the case or put such child on trial.

The Chair said that it is not proper to give the prosecutor such powers since what is in the best interest of the child is not much of his concern but what would be in the interest of the prosecution. This responsibility should have been given to the Magistrate, being a neutral party throughout the process.

Ms M Tserere (National Prosecuting Authority) acknowledged the concerns raised by the Committee, but noted that, notwithstanding their part in the proceedings, the prosecutors have diverted about 32 000 cases. It was until last year when the Magistrates began refusing to release young offenders that the number of children awaiting trial began to increase rapidly.

The Chair asked the Department to provide the Committee with the statistics of children awaiting trials in prison, together with the alleged decrease following diversion.

Adv M Masutha (ANC) noted that in principle diversion constitutes conviction based on preliminary enquiry findings. With that in mind and learning from the TRC experience, what is the legal effect of diversion on future prosecution?

Ms Skelton responded that it is important that the child should first accept responsibility before diversion could take place and a failure to accept such responsibility would result in a case going to trial.

The Chair asked the reason why a legal representation is not made mandatory in a preliminary enquiry.

Adv Pikoli responded that any evidence obtained during such preliminary enquiry would be inadmissible in Court. Requiring legal representation would complicate such proceedings.

The Chair noted that as the Bill proposes an increase in the minimum age for criminal liability what scientific evidence does the Department have to support its proposal to change a legal principle, which has been there for many years?

Adv Pikoli responded that this proposal is based on the research conducted by the South Africa Law Commission. The research revealed that the minimum age for criminal capacity used internationally is ten years.

The Chair requested the report of such research and noted that it should also include information on the number of children between seven and ten that had committed major crimes during the past five years and how many of those children have been convicted. He then asked the reason why the application of the Bill should also be extended to children below the age of twenty but over the age of eighteen years.

Ms Skelton replied that this should only occur in cases where a child offender is charged with other persons who are below the age of twenty one but over the age of eighteen.

The Chair requested the Department to submit a report regarding an international position on this matter. The Department should note that it requested the Committee to amend existing laws and as such it should be prepared to produce scientific evidence to support their case. The Committee would not pass any laws which would have the effect of raising people's expectations that the Department would not be able to meet in practice.

The meeting was adjourned.

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