
Parliamentary Monitoring Group



[Home](#)



• [Minutes for *this* committee](#) or for [any committee](#) • [Meetings since 1 April 2005](#) • [Search Minutes](#)

JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

10 March 2002

CHILD JUSTICE BILL: INFORMAL DELIBERATION

Chairperson: Adv JH de Lange (ANC)

Documents handed out:

[Summary of Comment on the Child Justice Bill](#)

[International Comparative Information on the Minimum Age of Criminal Responsibility](#)

[Children in Conflict with the Law: A Compendium of Child Justice Statistics: 1995-2001](#)

Statistics:Seventeen and Younger -Unsentenced and in Custody Longer than 365 Days (email info@pmg.org.za for a copy)

SUMMARY

The Committee commenced informal discussions on the Child Justice Bill. Members considered the views expressed by various organisations during the public hearings. Members agreed that the Clause objects of the Bill should be revisited and that a Preamble should be drafted to encompass the context of the Bill: to create a system suitable for children.

The Committee noted that although human rights and developmental issues inform the minimum age of criminal capacity, the setting of the age is no more than a policy decision. Children under the age of ten should remain in the system so they can be given support and guidance. The Committee agreed that no child under ten years of age should participate in a trial, but the Bill should contain some legal instrument to give the state some responsibility.

MINUTES

The Committee commenced informal deliberations on the Child Justice Bill. They received input from legislative drafters Mr Lawrence Bassett and Ms Ann Skelton.

Clause 2

Objects of the Bill

The Chairperson, Adv J H de Lange (ANC) drew the Committee's attention to Clause 2, outlining the objects of the Bill. In Clause 2(b) he pointed out the wrong usage of the word "*ubuntu*".

He referred to the Child Justice Alliance submission on the objects of the Bill. The clause has no legal meaning or worth. Mr Bassett and the other drafters would have to write mechanisms into the Bill to carry out the objectives articulated by the Child Justice Alliance.

Ms S Camerer (NNP) asked why there was not anything in the objects clause about the minimum age of criminal capacity for children.

The Chairperson stated that the objects clause was too broad to include something that specific. Raising the age of criminal capacity was a specific measure that should be included within the Bill. He asked Mr Bassett if that was the reason he did not include it in the objects clause.

Mr Bassett agreed that it was.

Mr J Jeffery (ANC) agreed that if the Committee raises the age of criminal capacity, that should not be listed in the objects of the Bill.

The Chairperson stated that the Committee would revisit the objects of the Bill clause later. He told Mr Bassett that he should prepare a Preamble to the Bill to encompass some of the principles that are now listed in the objects clause. The Preamble should state the context of the Bill: in South Africa, children have never been allowed to be children. This Bill aims to create a system suitable for children. The Preamble must capture this concept.

Clause 3

General Principles

The Chairperson noted a problem with Clause 3, the 'General Principles' section of the Bill. If the Committee writes into the General Principles that children under fourteen of age cannot be imprisoned, then it prevents the Committee from writing exceptions for extreme cases.

Furthermore, magistrates and judges may use the General Principles to interpret the Bill in ways unforeseen and unintended by the Committee.

Mr Bassett stated that it may be more fruitful to revisit the General Principles at the same time as the definitions, when the Bill is in the final stages.

The Chairperson stated Clause 3(3) had to do with detention and should be moved to the part of the Bill that deals with detention.

Clause 3(2) was also misplaced and should be in the part of the Bill that deals with the release and detention of a child. He told Mr Bassett to move 3(2) and 3(3) and rework them.

Mr Jeffery pointed out that the wording of Clause 3(3)(c) was inappropriate as it suggested that food, water, and medical treatment were currently unavailable to prisoners. Perhaps it would be more appropriate to state that in addition to rights enjoyed by other prisoners, children were entitled to parental visitations and so forth.

The Chairperson agreed that the wording was faulty. Clause 3(3)(c) should list provisions for children in prison, not rights.

The Crime Prevention Centre's submissions calling for "access to adequate sanitation and hygiene" are impractical. While it is a good general aim, it is beyond the scope of the legislation and the Committee.

Chairperson de Lange stated that NICRO's suggestion was impossible and not workable.

The Chairperson brought the Committee's attention back to Clauses 3(2) and 3(3): 3(2) may not be necessary at all while 3(1) has stated broad principles that could create problems, especially problems of interpretation. The Constitution spells out the rights of the child. If a child should speak during part of the proceedings, insert that provision in the Clause where the child should speak.

Mr Jeffery stated that Clause 3(1)(g) was broad but it was good and maybe could be slotted in specifically somewhere else.

Adv M T Masutha (ANC) stated that delays in the child justice system can have an adverse effect on children. Certain clauses should be a statement of rights.

The Chairperson asked Mr Bassett to look at the legal effect of 3(1). The Preamble will form the background and may make 3(1) unnecessary.

Clause 4

Application of the Act

The Chairperson did not see the benefit of creating a separate category for eighteen to twenty one year-olds. This division would only create problems within the criminal justice system. If everyone eighteen years of age and older gets treated as an adult and everyone under eighteen years of age gets treated as a child, the system is simple. Magistrates may use the Child Justice Bill to deal with children and the Criminal Procedure Act to deal with adults.

Mr Jeffery disagreed. Legally and emotionally, there is reason to warrant different treatment for the eighteen to twenty one year-old group. Diversion should be an option for this age group. While the whole Bill should not apply, certain provisions should be extended to this age group.

Adv Masutha said that the eighteen to twenty one year old issue is not new. The Child Care Act provided for people in this age group. Raising the age from eighteen, however, could be problematic.

The Chairperson asked what 4(4)(b) meant. There should not be anyone over the age of eighteen serving a residential sentence. Clause 4(4)(b) should be erased.

The Chairperson stated that Mr Bassett would have to draft two options. The first would be to have separate laws governing the criminal justice procedure for those over eighteen and those under. The second would be to suit Mr Jeffery's idea of allowing diversion to apply to eighteen to twenty one year-olds. Perhaps that version could apply diversion and schedule one and two offences.

Mr S Swart (ACDP) asked if diversion was used presently for people over the age of eighteen.

The Chairperson stated that the Committee will ask NICRO if people eighteen and over are diverted, since they deal with diversion.

Ms Camerer stated that eighteen to twenty one year-olds seem to be heavily involved in serious crimes.

The Chairperson stated that those involved in serious crimes would not have the provisions of the Child Justice Bill extended to them. But those who committed a schedule one or two offence may have certain provisions extended to them.

The Chairperson asked if Clause 4(1)(b) was necessary. In a recent case, a 38 year-old was convicted of rape that he committed at the age of seventeen. Why should that person be tried under the Child Justice Bill? The magistrate may take his age into consideration when sentencing, but other provisions should not apply to this person.

Ms Skelton answered that (a) and (b) apply to those who are children at the time of the committed offence. The age when the offence was committed is the age that should matter for this Bill. Children should not be penalised if the system is slow to process their cases.

Mr Jeffery suggested that the time of arrest could be the cut-off. If one is arrested at the age of eighteen or older for a crime committed as a child the Child Justice Bill could apply only in the sentencing.

Adv Masutha stated that if the Committee should use principles to guide the setting of the age. If a 38 year-old goes on trial, the Child Justice Bill should not apply to that trial under any circumstances. Once the alleged criminal is over the age of twenty one, the Bill should not apply at all.

The Chairperson stated that the age when committing the offence should be the first age of importance to determine how the child is detained, arrested, and dealt with preliminarily. Then the age of the first court appearance should determine how the child is treated at the trial. This scenario will most often occur when a child is arrested just prior to his or her eighteenth birthday. The system cannot possibly run its course while the person is still a child.

Adv Masutha asked if this Bill would apply to non-nationals. He asked what would happen if the police assumed that the person is a child but later discover it is an adult. Do the proceedings start over?

The Chairperson pointed out that the ages of fourteen or under could also cause confusion over whether a child may be imprisoned.

Ms Skelton stated that there is a mechanism for such cases in Clause 82.

The Chairperson asserted that in the case of an adult being treated as a child, the solution would be simple: stop applying the Child Justice Bill. Complications will arise when a child is treated as an adult. The trial may have to begin again.

Adv Masutha stated that the point of the preliminary inquiry was to establish the age of the child. In theory no problems related to age should occur after the inquiry stage.

The Chairperson stated that in some cases false or faulty documents may be used in the preliminary inquiry that lead to a faulty age determination. If the magistrate discovers that a child is being tried as an adult the trial should stop for the magistrate to determine whether the child should be offered diversion. If the magistrate decides against diversion, then the trial should restart with the provisions of the Child Justice Bill.

The Committee dealt with the issue of criminal capacity. The Chairperson stated that although human rights and developmental issues inform the minimum age of criminal capacity, the setting of the age is no more than a policy decision. Children under the age of ten should remain in the system so they can be given support and guidance. Perhaps an early diversion programme is necessary for this age group so they can be part of the system.

Adv Masutha agreed that, especially in the case of a repeat offender, children under ten should be accountable in the system.

The Committee agreed that no child under ten years of age should participate in a trial, but the Bill should contain some legal instrument to give the state some responsibility.

The Chairperson stated that Clause 5(4), which releases children from prison who were not granted a certificate with intent to prosecute, was impossible. The state cannot let a murderer free because he has been held for fourteen days.

Clause 7

The Chairperson noted that NICRO raises many issues that Mr Bassett should break up in Clause 7(1). A brief discussion was held on lowering the amount needed for dealing from R500 to R300. It was decided that the level should remain at R500 and the prosecutor should have the leeway.

NICRO suggested that four offences that should be categorised as Schedule 1 offences. The Committee decided that loitering with the intention of committing prostitution and the possession of suspected stolen goods to the value of R500 should be changed to Schedule 1 offences. Yet the possession of car-breaking implements and the possession of housebreaking implements should be Schedule 2 offences.

Citizen's arrest, as in the case of security guards, would be subject to the provisions of the Child Justice Bill.

The Chairperson redirected the discussion to the issue of non-nationals.

Mr Imam G Solomon (ANC) said that non-nationals should be treated like South African children in the arrest phase. The state should determine that they are non-citizens in the preliminary inquiry phase and then deal with them accordingly.

The Committee agreed to leave the provision alone.

Clause 7(1) stated "Unless there are compelling reasons justifying an arrest, a child may not be arrested for an offence committed in Schedule 1." Adv de Lange explained that this provision was aimed at preventing a child from being traumatised for petty offences. However, final discretion to arrest must lie with the police officer.

Adv de Lange stated that 7(3)(b) seems to be in the wrong place in the Bill.

The Chairperson stated that the Legal Aid Board should be informed about the child's case if a probation officer needs to be informed.

He asserted that it was imperative for Clause 7(4) to read that the police official 'must immediately' inform the probation officer. A 24-hour deadline may then be imposed. He added that nowhere within the preliminary inquiry clause is the 48-hour deadline for the preliminary inquiry stated.

Clause 8

Summons

The Chairperson noted that if the summons is served on the child while the parent is not present, a copy must be given to the parents. There is no need for a copy if the parents are present.

Clause 10

Uncertainty As to Child's Age

The Clause addressed measures to be taken by police to ensure that children are correctly identified as children. Ms Camerer stated that it was necessary to spell out the proper procedure for the police.

Other Members reasoned that it would be easier and more equitable to assume that the child is younger.

Ms F Chohan-Kota (ANC) asked what would happen if the police had to assume that a child was under ten. Could they not arrest the child?

Ms Skelton explained that the police officer would be obliged to take the child to a probation officer for age verification.

The meeting was adjourned.

Disclaimer Every attempt is made to ensure that this information is accurate, but this minute is not an official record of the meeting and therefore should not

be regarded as a complete and correct record of the proceedings in the committee.

Copyright All material presented on the PMG website is copyright © Parliamentary Monitoring Group. <http://www.pmg.org.za/>
No part may be reproduced in any form without acknowledgement of the PMG.