JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE
11 March 2003
CHILD JUSTICE BILL: DELIBERATIONS

Chairperson: Adv J H de Lange (ANC)

Documents handed out:
Child Justice Bill [B 49-2002]

SUMMARY
The Committee examined Clauses 33 to 36. The contentious areas highlighted by the Chairperson were the ambiguity between detention and bail, detention in a police cell and detention in places of safety. Essentially the Clauses were in need of substantial redrafting. Adv de Lange requested Ms Skelton to report on the number of children awaiting trial and the number of children in reformatories.

MINUTES
Afternoon session
The panel comprised Mr Hennie Potgieter, South African Law Commission, Ms Anne Skelton, UNDP Child Justice Project and Mr Lawrence Bassett, Department of Justice.

Clause 33
No submissions were made on this Clause. In drafting the new Clause, Adv de Lange (ANC) said that it would have to be contextualised correctly. In the main, he was concerned that there was no distinction in Clause 33 as in the Schedules when the issue pertains to children facing trial. Children can be released under Schedule 3, but he believed that this was incorrect. There should be equal application of these criteria. He asked the representatives to persuade him why should it be acceptable to release children charged with Schedule 3 offences, to their family.

Mr L Basset replied that the factor listed in Clause 33(2)(m), "the receipt of a written confirmation by the Director of Public Prosecutions to the effect that he or she intends to charge the child with an offence referred to in Schedule 3", answered Adv de Lange's question directly.

The Chairperson expressed his concern that the language in the Clause was mandatory. This was not bail, he added. Moreover, no distinction was made with regard to a Schedule 3 offence.

Ms A Skelton referred the Chairperson to Clause 30.

The Chairperson was adamant that this did not change anything. His main concern was why Schedule 3 offences should be subjected to 'release'. The issue of bail was not even an option. He directed his attention to the Clause 35 on Bail. He expressed his shock that in this Clause, bail was discretionary, while Clause 33 expected 'all' children 'must' be released.

He tried to understand the difference between 'release' and 'bail' as understood in the Bill. He asked what safety mechanisms there were for release.

Ms A Skelton attempted to clarify issues. Generally, there is more than one person responsible for a child. In light of this, there was a preference to release a child into the care of parents, and/or adults. However, if the courts or the police still felt that a release would be unsafe, then bail would be implemented.

Still, unconvinced, the Chairperson added that this would still not hold the child accountable for their actions. In this case the parents were being held accountable. Therefore, this mechanism was faulty.

Ms A Skelton referred the Chairperson to subclause 6 (33).

Unconvinced, the Chairperson, asked the representatives to apply their minds to the following issues:
-Whether release should be mandatory.
-Mechanisms for accountability.
-What mechanisms existed for a failure to comply.

As an aside, he asked whether an 'appropriate adult' also included a probation officer. Ms Skelton responded that no, a probation officer was not included. The Chairperson said that he was under the impression that the inclusion of a probation officer was to cater for street children.

Speaking generally, he added that he thought that the Clause was too wide, and the drafters should think about narrowing it. He wondered what would happen if an offence was not included in Schedules 1, 2 or 3. He added that a 'catch-all' provision must be added to include common law crimes and all three Schedules must include statutory crimes.

While on the issue of the Schedules, the Chairperson highlighted a gap in the Schedules *vis-à-vis* the amounts specified. It appeared that nothing was mentioned between the amounts of R10 000 and R 50 000 (Schedule 3 (8)). Therefore, the representatives needed to go through the Schedules as well.

Adv de Lange highlighted his concern that statutes that refer to money laundering and other such forms of organized crime, especially as regards children, were not reflected in this Bill. He suggested that the representatives should use as guidance the provisions of the old Criminal Procedure Act, recent updates on bail, minimum sentences, the Prevention of Organised Crime Act and statutes relating to the application of the international criminal court (Rome Statute) in South Africa.

Ms Skelton added that the release of children was modeled on section 72 (1) (b) of the CPA.

The Chairperson quickly commented that that the mere fact that provisions were encapsulated elsewhere did not necessarily mean that they were right.

In summary, he stated that Schedule 3 must be excluded until there was further clarity on its structure. He requested that Ms Skelton conduct further research about how accountability mechanisms, 'may'/'must' release provisions were dealt in other jurisdictions.

Clause 34
Ms Skelton highlighted that release under recognisance was aimed at the situation of older children. Here older children were released and then asked to return with their parents on the next date of appearance.

Looking at Clause 34(2), the Chairperson asked whether the provisions were the same in the Criminal Procedure Act.

Clause 35
Adv de Lange expressed his dissatisfaction with a submission made on this Clause. He also

expressed his discontent that the wording in Clause 35 was not clear enough. It was necessary to specify why this Clause is contingent on the factors in Clause 33(2).

Ms Skelton added that there were special factors which were specific to children.

Adv de Lange stated that there was no way in which this Bill could alter the existing bail laws. Therefore, if there are additional factors, these should be added, but under no condition could two separate bail regimes exist, one catering for children and the other for everyone else.

In summary, the whole section on bail required redrafting and amounts have to be set out as well. When determining the amount of bail, it has to be an amount of some significance. For instance, bail should be used to ensure that a person attends a bail hearing.

Clause 36
Adv de Lange added that these Clauses had to be contextualised as well. There has to be other alternatives. For example, in the event that a child cannot pay their bail, where would that child be placed? Therefore, the drafters have to look at the bail amount and placement.

Adv de Lange rejected the submission by the Law , saying that was not premised on a proper reading of the Clause.

He read Prof J Sloth-Nielson's submission, which asked why children should be kept in police cells.

Ms Skelton responded that there was a limitation, which Prof Sloth-Nielson had overlooked, as set out in Clause 36 (1)(a)(i).

Adv de Lange was still confused about what would happen if a child is given bail. Where would such a child be placed if unable to pay it. He indicated that there must be some clarity between detention for 48 hours and detention after bail. The 'and' between (i) and (ii) he also found to be disconcerting. It was clear, he stated, that a great deal of redrafting was required here too.

Agreeing with Prof Sloth-Nielson, that a child cannot be kept in a police cell after detention, he asked what would happen to a child who committed a Schedule 2 offence and there was no place of safety, only prison. How does one choose and would one then have to take a child 300/400 kms to a place of safety as opposed to a nearer prison? These were his concerns.

Ms Skelton, responded in the affirmative that this was the intention of the Bill.

If that was the intention of the Bill, Adv de Lange then posed the following questions:
-What would be the first thing that would have to be examined?
-What about the grounds that were set out in the Clause?
-What about the interests of society?

Ms Skelton added that the Bill was drafted to keep children out of prison.

Unsatisfied, Adv de Lange stated that this was neither acceptable or workable. According to the Bill, all children who fall under Schedule 2 (those between fourteen and eighteen years), must be kept in a place of safety or security. He asked if the representatives were aware of the following:
-How many such places existed to accommodate the numbers of children awaiting trail?
-Would this then mean that children would be removed from prisons to places of safety?
-Was there sufficient capacity at these places of safety to accommodate this new influx of children from prisons?

Ms Skelton replied that the idea was to have a gradual shift in the movement of children from prisons to places of safety to homes or to community centers.

Adv de Lange reflecting, stated that they would have to look at the previous amendment of the Bill, and should circulate this and the number of children that will be involved in this process.

Ms Skelton responded that there were approximately 4000 children awaiting trial and 2000 in prison, whilst others were in places of safety.

In conclusion, Adv de Lange requested Ms Skelton to report on the number of children awaiting trial and the number of children in reformatories.

The meeting was adjourned.
