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JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE

4 September 2003

CHILD JUSTICE BILL: DELIBERATIONS

Chairperson: Adv J H de Lange (ANC)

Relevant documents:

[Child Justice Bill \[B49-2002\]](#)

Working draft of Child Justice Bill (not available electronically)

SUMMARY

The Committee dealt with Clauses 65 to 76 of the Child Justice Bill and also effected some amendments on the Schedules of the Bill.

MINUTES

Clause 65: Child Justice Court may divert matter

Ms F Chohan-Khota (ANC) was of the view that the proceedings should not end after diversion. The Court should be given a discretion to decide what to be done thereafter.

The Chair objected to this view. He said that such would be illegal since diversion by its very nature presupposes that once it is done then the trial is legally finished. Therefore a trial can not then be reopened and the only sensible thing would be to use such diversion as the mitigating circumstances should such child commit another crime. However, he suggested that what the Committee can do in this circumstance is to insert a provision requiring the probation officer to file a report with the Court and only if the presiding officer is satisfied that the child has complied with the diversion order, could the proceedings be stopped.

Clause 67: Privacy and confidentiality

The Chair asked why this clause has been removed.

The department responded that there are provisions in the Criminal Procedure Act that deal with the matter and those provisions also apply to children witnesses.

Chapter 10: Sentencing

Clause 69: Pre-sentence reports

The Chair noted that 69(4) is a repetition and thus the **underlined words** should be deleted.

Clause 70: Factors to be considered at sentencing

The Chair said that it is important to note that the elements of sentencing may be used in combination in terms of 70(2).

Clause XX: Impact of offence on victim

The Chair proposed that "and financial consequences" in XX(1) be substituted with "financial or other consequences". He noted that the **prosecution** cannot be compelled as stipulated by XX(4) since there is only discretion to do so and thus proposed that XX(4) be deleted.

Clause 71: Community-based sentences

The Chair noted that a combination of diversion, community-based sentence and monitoring could be done and thus proposed that a provision to that effect be inserted.

Clause 72: Restorative justice sentences

The Chair said that the provisions relating to restorative justice sentences should be broader and not just be limited to restorative justice forums.

Adv A Skelton (Director: UNDP Child Justice Project) then proposed that "forum" in 72(1)(c) be substituted with "process".

The Chair noted that it is important that this term "process" be tightened by defining it. He requested that the provisions of 72(2) be refined. He said that it is not necessary that "recommendations" be included in paragraphs (a) to (c) of 73(3) and it should be deleted. He asked that 72(5) be refined and proposed the following phrase: "The Child Justice Court must impose any sentence that it deems fit-â€".

Clause 73: Sentences involving correctional supervision

Adv Skelton noted that the rationale behind this clause is to create consistency. Thus this clause require the Court that convicts a child under fourteen years to imprisonment to have due regard to the rules applicable to such child.

The Chair noted that the manner in which the provision has been formulated is very confusing and would be very difficult for one to understand it. He asked for it to be refined and make it clear what the provisions of paragraphs (h) and (i) of S276 relates to and which sections of the Criminal Procedure Act are applicable.

Clause 75: Sentence of compulsory residence in residential facility

Adv Skelton noted that rationale behind this clause is to remove the administrative powers from the Minister of Education and vest them in the probation officer.

The Chair applauded the five factors stipulated in 75(1)(b) and noted that their importance cannot be undermined. However he felt that the same should also be required in other sentences and proposed that the department should refine them accordingly. He also asked that the two year period stipulated in 75(2) should be changed to five years. It should be either five years or 21 years old, whichever came first.

Ms Choha-Khota proposed that a provision requiring the probation officer to submit a report back to the Court on the progress of such child be inserted in 75(3)(b)(iii).

The Chair agreed and noted that a certificate to that effect should be issued. He proposed that a sanctioning provision should be inserted in 75(3)(c) and also that the cabinet members mentioned in 75(4) should do so in consultation with the police. He asked that "system" in 75(4)(b) be substituted with "procedure". He said that the places so designated should be tabled to Parliament.

Mr L Landers (ANC) noted that it is important that what is meant by "education" be clearly defined so as to avoid any misinterpretation of it.

Clause 76: Sentence of imprisonment

The Chair requested that the drafters clearly indicate which sections would apply to 76(1). He requested that the whole subclause should be refined and thus make it clear that rape is an exception to the provision of 76(1)(a) while it does not apply to those of 76(1)(b). He proposed some changes to the Schedules of the Bill and that firearms and drugs should form part of Part 1 of Schedule 1.

The meeting was adjourned.

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