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Regulation of Interception of Communications & Provision of Communication Related Information Amendment Bill: Adoption & Child Justice Bill; Second Hand Goods Bill: deliberations

Security & Constitutional Affairs

[Meeting Report Information](#)

Date of Meeting: 28 Aug, 2008

Chairperson: Kgoshi L Mokoena (ANC, Limpopo)

Documents handed out:

[Department of Justice/NCOP Proposed Amendments to RICA Bill](#) [1]

[RICA Bill - final version as voted on by Select Committee \(amendments incorporated\)](#) [2]

[Regulation of Interception of Communication and Provision of Communication related Information Amendment Bill \[B9B-2006\]](#) [3] as passed by National Assembly

[Child Justice Bill](#) [4]

[\[5\]Second-Hand Goods Bill \[B2-2008\]](#) [6]

[Second-Hand Goods Bill \[B2B-2008\]](#) [7]

Audio recording of the meeting:

[Further Deliberations on Child Justice Bill](#) [8]

Summary:

The Department of Justice had prepared a further version of the Regulation of Interception of Communications and Provision of Communication Related Information Amendment Bill, which was tabled. The amendments required by the Committee had been made, but the date of commencement must still be decided upon. Members discussed the options, and canvassed this also with a representative of Vodacom, and decided that the Bill should commence on a date decided by the President, with no specific dates included, but that ideally this should be in about six months time, to allow the service providers to put their preliminary systems in place, so that they could immediately start to implement the full capturing of details within the eighteen months now being specified in terms of amendments proposed by the Committee. All references to roaming had been deleted. The Department reiterated that it was not its intention to slip this provision in "through the back door" as it was in response to genuine concerns by the law enforcement agencies. The Committee adopted the Bill. They would state in their Report that the service providers should, within six months, report back to the Committee on the progress of the registration process, which would also allow for further discussion with the Department where needed, and at six monthly intervals thereafter.

Members put questions of a general nature to the Departments on the Child Justice Bill. The Department of Justice was asked to explain some terms in the Schedules, and to explain the inclusion of certain offences in Schedules 1 and 2, the multi-sectoral approach, including its budgeting, implementation, the challenges, meetings with non governmental organisations, what would result if one sector failed to contribute, whether the inter-sectoral committee met frequently enough and whether it was effective at local level. The Department was asked to make a technical amendment to clause 94 (2)(d). Further questions addressed the interests of the victims and community, assistance by an adult and legal representation, acknowledgement of responsibility by the child, problems with postponements and the possibility of using video-conferencing, and actions that could be taken if certain magistrates were not willing to use diversion. The South African Police Service expanded upon explanations given the previous day around transport and holding of children whose sexuality may be in question, and whether the guidelines were adequate to cope with these issues. More explanations were given on expungement

of criminal records, and the use of assessment reports for sentencing purposes. The Department of Social Development responded to questions around the Assistant Probation Officers and their availability, the capacity of the probation officers, the retention strategies of the Department for this scarce skill, and the Department's role on the intersectoral committee. Several Members expressed their disquiet that the systems did not seem to be working on the ground. The Committee also discussed how the principles around the Victims Charter were included in the Bill.

The Committee briefly discussed issues raised in two public submissions on the Second Hand Goods Bill. Second hand booksellers had requested to be exempt from the Bill. No formal mandates had yet been received from provinces. Some Members did not think it was appropriate to regulate books in this Bill, while others pointed out that there may be significant value attached to books. The Police Service said that there was the possibility for Associations to be formed, and apply for accreditation, which meant that their members would be exempt from the provisions of the Bill in respect of their particular trade. In respect of submissions by the foreign scrap metal dealers, the drafters had proposed some further wording that might address the problem and would forward it to the Committee for further deliberation. More discussions would be held on the remaining issues at the next meeting.

Minutes:

Regulation of Interception of Communications and Provision of Communication Related Information Amendment Bill (the Bill): Deliberations

Mr Lawrence Bassett, Chief Director: Legislation, Department of Justice, noted that the Committee had been given the amendments effected since the previous meeting. One exception had been left open: namely the commencement clause 7. At the moment, the commencement date, as approved by the Portfolio Committee, was still 1 January 2008. The Department needed the Committee's guidance.

Mr D Worth (DA, Free State) said that one of the service providers had suggested that their financial year started on 1 April and that would be convenient to them as the starting point for the gathering of the information.

The Chairperson noted that normally this would be left as "on a date determined by the President".

Mr Bassett reminded Members that there was an eighteen-month period for registration of clients that would start to run on the date of commencement of the bill.

Dr F van Heerden (FF+, Free State) asked why the wording "or such earlier date" had been used in the original wording.

Mr Sarel Robbertse, Senior State Law Adviser, Department of Justice, said that there was still a need to implement the Bill as quickly as possible, as it would facilitate the law enforcement agencies in their reporting on crime. He suggested that perhaps no specific date should be mentioned; simply "a date determined by the President". He thought that the mobile operators had already taken some steps, and they probably did not need a great deal of time to implement all outstanding issues.

Mr Bassett noted that the original wording was used to try to get some certainty. Dr van Heerden's suggestion would match the wording usually used.

Mr Hermann Smuts, Principal State Law Adviser, Office of the State Law Advisor, added that the danger of having a certain date was that this would be problematic if the promulgation happened to be delayed. The Department would prepare the proclamation for the President so they had some control over when it was sent through.

Mr Pakamile Pongwana, Managing Executive, Regulatory Affairs, Vodacom, noted that 1 April would be ideal. Now that the service providers knew what needed to be registered and verified, they would need about 6 months notice before the Bill commenced, to put systems in place. He said there were some practical problems. During November to January every system operator would freeze its systems, so that none would be changing the systems at this time. The RICA process was seen as an opportunity to create additional employment, and it would be necessary to do some further recruitment, requiring finances and training. The companies had known, to some extent, what the Bill would require, but he asked that these considerations be taken into account.

The Chairperson proposed that the conventional wording "on a date determined by the President" be

used for the date of commencement, but that the Committee Report should reflect that Parliament should receive a report from the service providers, within the next six months, as to progress made and the challenges encountered on this Bill. He asked that the Department also keep the Committee advised of any problem, as it would like to ensure that this was implementable.

Mr Smuts thought this was a good proposal. He said that the Department must be assured, before commencement, that the service providers were able to carry out their obligations.

Mr Pongwana also agreed that this was an excellent proposal and would enable the service providers to address the relevant authorities.

Mr Worth asked whether the 18-month implementation period would apply, and received confirmation that this was correct.

Mr Bassett confirmed that all the clauses were in line with the discussions yesterday.

Mr Robbertse tabled the C version of the Bill. He said that the changes would relate to roamers. The handset number would not need to be registered. Other amendments had been previously introduced into the Committee, and were also included.

Members agreed that this was acceptable.

The Chairperson read out the Motion of Desirability that was accepted by Members. The Chairperson stressed that excellent work had been done by all the officials, and congratulated them.

Mr Bassett read out draft wording just prepared by Mr Smuts to be included in the Report.

The Chairperson asked whether the service providers would be prepared also to report every six months.

Mr Shaun Talbot, HOD Project Management, Vodacom said that this would be acceptable.

Mr Pongwana noted that the wording to go in the Report would be acceptable, but suggested that the report include the words "amongst others" so that more information could be given.

The Chairperson then went on to a clause by clause reading of the C version of the Bill. Members agreed to clauses 1 to 6 as amended. Clause 7 would be changed so that the Bill came into effect on a date as determined by the President. The Chairperson noted again that the six month period would be included in the Report. Members therefore adopted the entire Bill, as amended.

Mr Pongwana thanked the Members for the way in which they had handled the Bill, and also thanked the Department of Justice for their cooperation in creating a Bill that was implementable.

Ms Ina Botha, Senior State Law Adviser, thanked Members for the level of engagement and said that the public could rest assured that the matter had been debated fully.

Mr Bassett, in relation to roaming, assured Members that the Department had not tried to bring this in through the back door, but that this suggestion had emanated out of discussions with the law enforcement agencies. It was not intended to cause annoyance, but had been a genuine attempt to address all concerns.

Mr Smuts noted that a Bill such as this would involve a huge amount of work. He noted that there had been good cooperation also from the Parliamentary legal advisers.

Mr M Mzizi (IFP, Gauteng) said that this Bill contained powerful clauses. He thanked the Department and the subscribers for their expert advice to the Committee. The Committee believed that this would go a long way to assist visitors and South Africans. He also thanked the Chairperson for the way in which he had conducted the meeting.

The Chairperson expressed particular thanks also to Mr Robbertse and said that the Committee would be glad to work with him again. He noted that the public was not aware of all the work that went into this type of legislation.

Child Justice Bill (the Bill)

The Chairperson asked if there were any general questions to be put to the Departments. The Committee would not deal with the clause by clause deliberations at this stage. He reminded Members that after the formal presentation on the previous day from the Department of Justice, there had been a further briefing on how the Bill would be implemented.

Mr Worth said that on the previous day the Committee had not considered the Schedules. He referred to item 8 of Schedule 1 and asked what "compounding" and "crimen iniuria" were.

Mr Bassett noted that these were common law crimes that were very seldom used. He would obtain full definitions of these crimes, and would send them on. He confirmed that the spelling of "iniuria" was correct as the Latin used an "i" and "j" interchangeably.

Mr Mzizi questioned the offences in the Schedules. He thought that perjury (item 5) and contempt of court (item 6) were also serious, as was illicit possession or use of drugs (item 15), and wondered why these appeared in Schedule 1. The same was true of forgery, fraud, extortion and uttering. Exposure or display of child pornography was a problem in South Africa, and he wondered if this should not also be regarded as an offence to be put in Schedule 2 or 3. He also questioned inclusion of arson in Schedule 2.

Mr Bassett said that when the Schedules were first drafted, the Department of Justice (DOJ) had done an audit of all common law crimes to ensure that everything was covered. Some statutory crimes were addressed. He noted that some offences appeared in more than one schedule. Monetary values or the applicable fines or jail sentences were used to distinguish between them. Thus, theft in Schedule 1 related to theft of items worth not more than R2 500, whereas in Schedule 2 the value of items stolen was more than R2 500. It was not a Schedule 3 offence. The same applied to fraud. Statutory offences not otherwise specified were set out in item 17 of Schedule 1, but here again monetary values or permissible fines were used to distinguish between the seriousness. The statutory offences listed in Schedule 2 would attract imprisonment for three months to five years. In Schedule 3 they would attract a period of more than five years imprisonment. In so far as the sexual offences were concerned, he confirmed that those listed in Schedule 3 were the most serious sexual offences, including rape, sexual exploitation, compelling children to witness sexual offences and trafficking for sexual offences, where the victim was under 18. Those contained in Schedule 2 related to offences by a child against a victim of 18 years or older.

Mr Bassett said that NGOs and institutions dealing with sexual offences committed by and against children had noted that counselling and interventions against offenders had a very positive effect. That was another reason for including these under Schedules 1 and 2, where counselling and therapy would be most used. Sexual offences involving violence were included in Schedule 3. Mr Bassett noted that arson was a Schedule 2 offence. A previous version of the Bill had this in Schedule 1 and it was possible to put it back in, coupled with a note of the monetary value of the damage caused, if the Committee wished.

Mr A Moseki (ANC, North West) would also like to know more about implementation. He noted that there was a multi-sectoral cluster. He asked how the budget was working, and the challenges faced.

Adv Shireen Said, Chief Director: Vulnerable Groups, Department of Justice, said that each department was responsible for own funds, so the inter-sectoral approach was a challenge. For instance, arrests would involve SAPS, but the assessment would involve the Department of Social Development (DSD). What might be regarded as priority 1 for SAPS might be priority 10 for DSD. The policies of clusters aimed to resolve the different ways of budgeting and programming. was to cluster the work. The inter-sectoral committee had been operating for some time, yet the budget had only recently been looked at collectively. The priorities had been assessed and in future each Director General would have to sign off what was needed at the budgeting point. This was an attempt to manage matters better until the National Treasury rule was changed. Factually, the situation was that each Department was being managed separately.

Mr Moseki also asked about the meetings with the Non Governmental Organisations (NGOs) and what had been the challenges with this. Once again this boiled down to implementation. He would not like Parliament to be seen as making laws that were not being implemented.

Adv Said noted that most of the other committees in the Cluster did not include organs of civil society, but the inter-sectoral committee had a space for civil organs, and for interaction with the Chapter 9

Institutions. For instance the Public Protector had recently been able to identify and advise on systemic problems. The meetings were separated, so that the NGO meeting took place subsequent to the Government department meetings. The collective aspect added much value.

Mr B Ntuli (ANC, Kwazulu Natal) asked what would happen if one of the sector departments did not make the necessary contributions. He said that this Committee had been encouraging the Peace and Security Cluster, and had found that at a more local level it was not being effectively applied.

Adv Said noted that Clause 96(e) set out the responsibilities, functions and duties of the inter-sectoral committees. The committees had to measure progress and ensure that the different organs of state did comply with the National Policy Framework and this Bill. Lack of compliance would be raised at Director-General level. She noted that to date there had not been a meeting of the Directors General sitting purely to discuss child justice, but all Directors General in the criminal justice agencies did meet on monthly basis to discuss a multitude of issues, which may include child justice.

The Chairperson asked how effective the inter-sectoral committee would be if it met only twice a year; he was not sure that this would be sufficient.

Adv Said reiterated that the Directors General met already on a monthly basis to discuss general matters. It was considered too onerous to set more frequent meetings just for child justice matters. At the moment the Director General could designate a senior official (anyone over the level of Director) to attend meetings, and the inter-sectoral committee was made up of Chief Directors. She added that clause 96(3) also required the Cabinet Ministers, after one year, to submit annual reports, so she felt that the monitoring mechanism hopefully would ensure compliance.

The Chairperson noted her comments, but said that at local level the cluster meetings were not happening as they should. This included petty political in-fighting.

Adv Said agreed that there were some challenges in some provinces, and noted that the structure for child justice had been set up provincially only in the last eighteen months. Challenges in getting reports had resulted from lack of budget. The provincial coordinators had not always been invited to national meetings, but this had changed with effect from the last month, so that the challenges could now be picked up at national level. The way that departments were organised had an impact, as some had both national and provincial competencies.

The Chairperson referred to clause 94 (2)(d), and noted that the title needed to be amended to "the National Commissioner of Correctional Services". The DOJ took note of this.

The Chairperson noted that some children were committing serious crimes and he was worried if the interests of the victims and community were sufficiently addressed.

Adv Said noted that the Zinn principles required the interests of victim, community and accused to be balanced. That principle had been carried through in the Bill. The Victims Charter had placed more emphasis on how to manage the rights and responsibilities of victims. The principle of restorative justice was now being brought out. The Victim Impact statement was contained in clause 17. There were many challenges and systems to be aligned and dealt with. There was considerable concern on how children could be tracked. there was a subcommittee on awaiting-trial children to intervene as quickly as possible.

The Chairperson referred to clause 65, which dealt with assistance to a child. He asked for a distinction between assistance by an appropriate adult, and legal assistance, and asked if legal representatives would be appointed by the Legal Aid Board.

Ms Thandakazile Skhosana, Senior State Law Adviser, Department of Justice, responded that there was a difference between legal representation and parental or adult assistance. Clause 55 related to parental assistance. A parent or appropriate adult would normally assist a child. However, if there was likely to be prejudice to the Child, the Court could allow the proceedings to continue without parental assistance, or appoint an independent observer to assist the child, and this would be further dealt with in Regulations to the Bill. Legal representation was provided for in Chapter 10 of the Bill. If a child did not have a legal representative of his own choice, the Court must have one appointed from the Legal Aid Board.

The Chairperson asked for further explanation around the principle that a child could not be held responsible for a crime.

Ms Skhosana said that the Bill referred to a child acknowledging responsibility for the commission of an offence. This must be distinguished from an admission of guilt, which would be admitting to all the elements of the offence, including actual intention. This term of acknowledging responsibility applied to diversion, in other words, before the matter would reach a trial stage. The child must be able to acknowledge that his actions amounted to an offence, and appreciate that this was wrong, but it was not quite the same as admitting guilt.

The Chairperson asked about postponements, as set out in Clause 66. He knew that the Department of Justice was trying to address some of these problems, but said that he was aware of cases where the accused were warned to travel 100 kilometres, to appear at 9am, would only be called late in the afternoon, and be told that the case was postponed to another day. This involved considerable cost and inconvenience. He asked how this could be improved, and whether it might not perhaps be possible to have video conference facilities to deal with it.

Adv Said reported that this was happening in Pinetown, in a correctional service facility, as a test.

Mr Bassett added that the Criminal Procedure Amendment Bill, introduced in June, made provision for postponement by video. The Court Services Branch of the Department was planning to roll out the project, once approved, to 40 of the largest courts countrywide.

The Chairperson referred to clause 67, and asked what would happen if some magistrates refused to divert, and what would be done to address these anomalies.

Adv Said responded that this had been a reality. The Department could pinpoint which magistrate was involved if it received details of cases and dates. She asked that Members becoming aware of such problems must contact the Department so that steps could be taken. Mechanisms were being built into the Bill, such as Clause 96(1)(e), which included diversion. The Department, if it had specific instances reported, could look at assessment reports and could deal with the case and the magistrate. In terms of this Bill, there would have to be more in the Court record, as written reasons were required if the presiding officer decided not to consider or adopt the recommendations of the assessment report.

The Chairperson agreed fully with the protection of the community considerations in Clause 69(4)(b).

The Chairperson asked the South African Police Service (SAPS) official to expand upon the responses given by Commissioner Geldenhuys the previous day, about transport and detention of children who might be gay or lesbian or trans-gender. There were also cases where Awaiting Trial Detainee (ADT) children had been transported to court with hardened adult criminals.

Ms Susan Pienaar, Head: Crime Prevention, SAPS, said that the sexuality of children was a difficult issue. It was not always immediately apparent what was the sexual persuasion of a child. Where there were visible differences, which might put that "different" child at risk, SAPS would try to transport the child separately, and the larger police stations would try to assist each other with transport and provision of separate holding cells, wherever possible. On the ground, it was often a junior person who may have to make a judgment call. She indicated that Clause 97(5)(a) made provision for instructions and SAPS could issue specific guidelines to help police station members to exercise their judgment when it was not apparent how to deal with the person. In developing those guidelines, SAPS would need to take advice from those dealing with trans-gender issues.

Ms Pienaar noted that the current instructions provided for separate transport of children and adults, and if that did not happen, the SAPS members would be committing an offence. If Members were aware of instances where there had been breaches, she urged them to let SAPS know. SAPS must be alive to safety issues, particularly of awaiting trial detainees (ADTs), and this might require separate transport, placing a guard to watch over the child, even if the child was detained in an office with a guard and not a cell, or some other discretion being exercised. SAPS would certainly try to put clearer and more comprehensive guidelines.

Ms Pienaar noted that on the previous day a question had also been raised about expungement of criminal records, and the situation where a child's record might be expunged, the child employed, and the child then committing another offence. The concept of expungement recognised that many children committed offences through circumstances beyond their control, and so recognised also that this should not be held against them for ever, but that they should have the opportunity to start afresh. In the specific circumstances outlined in the questions asked, she said that if the employer could prove

negligence against the State for having expunged a record, then an action could be instituted against the State. However, if the process had been properly followed it was unlikely that the Court would rule in the employer's favour. It was a criminal offence to expunge without a valid certificate of expungement, and if this had been done without a valid certificate then the State could not be held liable. She added that if the question was specifically asked if any offences had been committed, and the child answered in the negative, then this would amount to misrepresentation, but the actions would lie between employer and child.

Mr Bassett also noted that another question was asked the previous day in relation to whether the assessment report was used for sentencing. He read out from a High Court case in 2000, where the Magistrate had used an assessment report in sentencing, and the High Court held that the purpose of an assessment report in respect of a juvenile was to assist the prosecutor and other officials whether to continue with the prosecution of a child. This was very different from the probation officers' report. The High Court found the actions of the Magistrate inappropriate and set aside the sentence.

Mr Mzizi said that the probation officers' work had been discussed the previous day. He had been concerned, in relation to previous legislation, that the costs of tracing had not been budgeted for, and asked that this must be taken care of in this legislation.

Mr Steven Maselesele, Director, Department of Social Development, said that the DSD was compelled to render diversion services and assessments. It had a retention strategy for social workers in rural and urban areas, including the Occupation Specific Dispensation. The NGO sector played a significant role, as they complemented the services and monitoring. The Department had developed minimum norms and standards for diversion, which indicated how to work with the NGO sectors.

Mr Maselesela said that social welfare workers were a scarce skill. The Department had examined other alternatives. The Probation Services Act allowed for Assistant Probation Officers (APOs) – and these were the “tracers” to which Mr Mzizi had referred. A budget had been allocated, and 264 were permanently employed by the State. It was intending to employ a further 772 APOs to assist the probation officers.

He added to some of the remarks on the intersectoral committee. He noted that the DSD had a provincial coordinators forum that complemented the Child Justice Forum, and they would deal with probation matters. There was sufficient oversight.

Several Members expressed their doubts at how this was working on the ground. He added that the DSD had put mechanisms in place, although he conceded that this might not be working fully at the moment. There were APOs assigned to each and every police station. When a child was arrested, the police would be able to access the names. DSD was involved in and was participating in advocacy programmes and awareness campaigns. He said that the DSD would need to accredit the NGO service providers, and therefore the DSD must ensure, in terms of the Bill, that there was availability of resources to implement the diversion programmes.

The Chairperson asked that perhaps the DSD should also respond at some stage as to why inexperienced officials were being sent to some provincial meetings.

Ms F Nyanda (ANC, Mpumalanga) asked when the APOs had come into being.

Ms Miche Sepeng, Deputy Director, DSD, said that probation officers had been placed in provinces since 1997, when the DSD started to deal specifically with children in conflict with the law, as prior to that, social workers were providing probation services in addition to other responsibilities. They might not be in all areas, but they were assisting in courts with children in conflict with the law

Mr Maselesele explained that there were only 424 probation officers country-wide, who were not evenly spread. They were servicing 388 magistrate's courts, and all the high and periodical courts. The DSD was trying to meet the requirements.

Adv Said noted that children had to be assessed within 48 hours after arrest. That occurred in most cases, but where it did not, then the child must be placed elsewhere while awaiting a date for court. She said that many of the challenges around allocation of probation officers had been raised at the provincial forums. The APOs were trying to address the problem, but they were not permitted to present reports. It was now also agreed with SAPS that the lists of children arrested were sent to the provincial level, where monitoring would take place. She reiterated that challenges and problems should be brought to

the attention of the inter-sectoral committee.

Mr Ntuli asked how the Victim's Charter could be included in this Bill. He did not feel that there was sufficient emphasis on their rights.

The Chairperson noted that the Victim Empowerment Centres (VECs) were badly resourced, especially in comparison with what the offenders were receiving.

Adv Said pointed to the various clauses in the Bill where victims' rights were discussed and she said that the overall implementation of the Bill would put into place the necessary responses around victims.

The Chairperson noted that the Committee would continue deliberations on the Bill the following Tuesday.

Second Hand Goods Bill (the Bill)

The Chairperson welcomed SAPS, who had been asked to report back to the Committee on the issues of concern that had been raised in relation to the Second Hand Goods Bill. A submission had been made by the Booksellers' Association, who had questioned whether it was appropriate that books be in the same category as other goods, and he would like SAPS to address this issue. In addition, scrap metal dealers had pleaded for exemption. SAPS had noted that even if such companies were foreign-owned, they could join an association and thus apply through that for exemption. The dealers had responded that the association may not accept them as members, that there might be competition preventing them from joining, and that they may not wish to join if they did not agree with the policies of the association.

The Chairperson added that in his province there had been concerns around the sale of cell phones, and the threshold of R100.

Mr Worth asked if any of those making written submissions had appeared before the National Assembly (NA) Committee at the National Assembly level.

Mr Bert (J A) van der Walt, Director: Legal Services, SAPS, said that people appearing before the NA had been dealers, the metal recycling association, Cash Converters, second hand dealers and the Pawnbrokers Association. Those presentations supported the Bill in general, with the exception of the vehicle dealers, who requested to be exempted. Some further amendments were made at the Portfolio Committee as a result of submissions made. He did not think that these submissions to the NCOP had duplicated issues raised at the NA.

Mr Ntuli thought that there was merit in removing second hand books from the list.

Mr Moseki said that his Province had held public hearings and he would report on his provincial mandate later.

Mr Mzizi noted that he had contacted his province, and had drawn their attention to the public hearings and to the items dealt with in the Bill. There were other items such as sports equipment, shop fittings, valuables and so on, that perhaps also needed to be considered. He had not yet received his negotiating mandate. The Bill was not dealing in terms with books, although the Department had listed likely second-hand goods. He felt that a book, if stolen, would not change its value or form, that it would likely be used for own consumption by the thief, and it might not be appropriate to include books. He pointed out that most booksellers were already registered either for company or tax purposes.

Mr Worth noted that there had been public hearings in the Free State. The main issues raised were around registration processes and certificates. He also felt that books should be left out. One of the purposes was to limit trade in stolen goods and he had the impression that this Bill focused on control of copper wire theft and metals. He did not think that books being sold at second hand bazaars and fetes should be regulated under this Bill.

Dr D van der Merwe (DA, Northern Cape) noted that Northern Cape had held public hearings but he had not yet received feedback. He did not think that books should be included. He thanked the Department for a good Bill.

Ms Nyanda noted that she had not been at the briefing, but personally would not have thought that books should be covered by the Bill. She pointed out that many libraries had their books stolen, but that

could be dealt with from a criminal stance.

Dr van Heerden thought that the exclusion of all books would be incorrect as there were some that were extremely valuable. It was difficult to generalise, but he accepted that the principle was not to legislate for exceptions, so he would support the removal of the books from the Bill.

Mr N Mack (ANC, Western Cape) noted that Western Cape was in favour of the Bill without amendments. He thought, however, the Bill did accommodate the exception of books being sold by those who belonged to an association. He pointed out that he would not think they would have problems in belonging to an association that could apply for exemption for its members, as there was little competition amongst booksellers, and that would be sufficient regulation. He agreed that theft of books could have very serious consequences and did not believe that all sales of books should be exempt.

The Chairperson noted that Limpopo did not see a need for books to be included as a category, and he suggested that perhaps there could be classification of the books that were to be covered. However, it was open to persuasion if other provinces felt strongly about the issue. This would be further covered at the negotiating stage.

Mr A Manyosi (ANC, Eastern Cape) raised a technical point. He queried if the intention of the Bill should not be stated as to "eliminate", rather than "limit", trade in stolen goods.

Mr van der Walt responded that the Department was reluctant to use "eliminate" but agreed that another word could be found.

Mr M Vanara, Parliamentary Legal Adviser, understood what mischief the Bill intended to address. He asked how large was the problem of stolen books was.

Mr van der Walt said that there were so many potential items that could be stolen that it was difficult to formulate a list. Crime patterns were constantly shifting, and this made it difficult to predict what crimes would be prevalent at any time. Books were currently one of the items being regulated. However, the Bill sought to allow exemptions to be granted to associations who could prove that their members were not involved in criminal activities, and in respect of matters where there was not great prevalence of theft. The Second Hand Booksellers Association had asked for books to be removed from the Bill, but he pointed out that the Minister could in fact already exempt this Association. He was not able to say how many books were being stolen. The Bill was attempting to cast the net wide, rather than specifically address itself to books. If booksellers as an association were exempted, it would also be possible to regulate further by requiring booksellers, for instance, to note purchases or sales of books over a certain value, or of a certain type, in a register.

The Chairperson said that he accepted the comments. However, he wondered whether this would not be too problematic to implement.

Mr Worth agreed that SAPS probably had more to do than regulating second hand book dealers, including those at fetes. He suggested that the petition be acknowledged, but that a reply be sent that the person making the submission should join the association and apply for exemption.

Mr Mzizi said that the onus should not be on the booksellers to prove their innocence.

Ms Ntombi Mnyikiso, State Law Adviser, Office of the Chief State Law Adviser, said that this was a policy decision to be taken by the Committee and the drafters would abide by any decision made.

Mr van der Walt said that SAPS would not be seeking to control the sale of second hand books, which was the reason for the exemption provision. An association (as referred to in clause 42) such as the Second Hand Book Dealers Association would be accredited, if they applied and motivated for accreditation. The Minister would exempt its members from complying with the provisions of the Act. There would not be inspections and stock keeping, as would apply in the case of trading where crime was prevalent. Vehicle dealers, for instance, could be exempted from keeping certain records, because they already had to keep this under the Income Tax and National Roads Act, and those would be brought to their attention by the Association.

Mr van der Walt then moved to the suggestion made by the scrap metal dealers in relation to the suggestion that they should apply to an association. He said that foreigners would effectively be excluded from dealing as the Bill was currently worded. However, he and Ms Mnyikiso had suggested

some new wording to deal with the issue. Their proposal was that on page 9 of the Bill, after line 21, there would be an insertion in 14(1)(e) to say "in the case of a natural person appointed to manage and be responsible for the business of the dealer in respect of sub clause (2)". That would mean that the person to apply for exemption must be a permanent resident.

Then, on line 25, the words "(a), (b), (c) , (d) or (f)" would be inserted, to take out the reference to permanent resident share holders or partners. He would send this wording to the Committee.

Dr van Heerden asked why a person would be disqualified from being registered as a dealer if he or she was under administration or was an unrehabilitated insolvent. He asked why an unrehabilitated insolvent should not be permitted to start selling second hand books. Dr van Heerden noted that there was also an obligation to register as a dealer. He said that surely these particulars would be registered under the Insolvency Act.

The Chairperson asked that this be carried over to the next meeting for further discussion.

He thanked Mr van der Walt for the summary of submissions that had been produced so that the Members could brief their provinces.

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