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Child Justice Bill & Impact of State of Nation Address: Researcher's briefing

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Joint Monitoring Committee on Children, Youth and Persons with Disabilities
Meeting Report Information

Date of Meeting:

22 Feb, 2008

Chairperson:

Ms W Newhoudt-Druchen (ANC)

Child Justice Bill [B49-2002] January 2008 version [1]

Audio recording of the meeting:

Presentation by Research Unit on the Child Justice Bill [B49-2002] [2]

Summary:

A Parliamentary Researcher gave a report on the Child Justice Bill, focusing on the main attributes set to transform Children's Justice. The key points of the report were the minimum age for criminal capacity, methods of securing attendance of a child at a preliminary inquiry, referral, assessment, the preliminary inquiry itself and diversion. The minimum age for criminal capacity had been set in the Bill at 10 years of age. The researcher pointed out that there had been a call to raise the minimum age to 12 in accordance with international standards. The Bill provided for securing attendance of a child by arrest, summons and written warning. The point was made that before any such action was taken, it was necessary for a police official to open a docket for the consideration by the Director of Public Prosecutions (DPP), as to whether or not the matter should be set down for the holding of a preliminary inquiry. The circumstances for referral, assessment and diversion were explained. It was highlighted that the criteria for assessment were contentious, as some had argued that all children should be assessed. Members raised questions on the age limits, the effects of the Bill, alignment to the Children's Amendment legislation, provisions in relation to imprisonment and separation of children and adults, and stressed the need for this Committee to be involved in further discussions.

The second report discussed the impact of the 2008 State of the Nation Address on the work of the Committee in relation to vulnerable groups. The report began with a comparative review and then focused on the impact of the Address on vulnerable groups, particularly in relation to the highlights. The main issue raised was that no specific provision had been made to promote access to certain basic services for socially vulnerable groups, and especially for the disabled. According to the researcher the Address was vague on how the government intended to implement their proposals, especially how it was intended to eradicate poverty and provide

health for all. Members agreed that there was a need to address the public health sector, and to provide legislation to deal with issues affecting the disabled. The Integrated National Disability Strategy should be reviewed. They also suggested that this Committee invite members from other portfolio committees to find solutions to problems faced by socially vulnerable groups.

Minutes:

Child Justice Bill: Parliamentary Researcher's Briefing

Ms Christine Silkstone, Parliamentary Researcher, briefed the Committee on the Child Justice Bill recently introduced. She noted that the Bill dealt largely with the criminal capacity of children. In this Bill the minimum age at which a child was presumed to have criminal capacity had been raised from the current level of 7 years of age to 10 years, but that there had been a call during public hearings to raise it further to 12 years, in accordance with United Nation's recommendations. She explained that the only other alternative was to make differentiations in age according to the seriousness of the crime.

Ms Silkstone highlighted that the Bill also proposed that all children go to a preliminary inquiry. She said that the preliminary inquiry was held prior to the plea. Although the inquiry was an informal hearing it was regarded as the child's first appearance in court. She explained that the purpose of the inquiry was to establish whether the matter could be diverted, or whether the matter should be transferred to a children's court, and it also provided the opportunity for the prosecutor to assess whether there were sufficient grounds for the matter to proceed to trial. She noted that if it was established that the child lacked criminal capacity then the matter would be referred back to children's court. The procedure for referral was laid out in Clause 41 of the Bill.

Ms Silkstone explained that there were many issues pertaining to the securing of attendance of a child at the preliminary inquiry. She noted that in the case of an arrest warrant being issued for a child, and such child being detained, then the issue of where the child was to be detained became contentious. Although it was stipulated that children must be separated from adults, this was not always the case as separation was subject to availability of space. In addition when children were being transported to detention facilities they were supposed to be separated from adults but again this was not always the case as there were not enough police vehicles to ensure this.

Another contentious area that Ms Silkstone highlighted was that of assessment. According to the Bill, children below the age of 10 were to be assessed by professionals. Children between the age of 10 and 14 were to have their cases considered for diversion. She pointed out that civil society argued that children who committed serious crimes were those most in need of assessment and that all children should be assessed. The only problem was that there were not enough resources, as currently defined in the Bill, to do this. The purpose of an assessment was to determine the age of the child, to establish if the child had any previous convictions or if the child had a previous diversion. The assessment also determined if the child has criminal capacity and any other relevant issue pertaining to the case.

Finally Ms Silkstone gave recommendations for the way forward. She said that there was a need to establish more wellness centres because at the moment there were only two, in Port Elizabeth and Bloemfontein. In addition she said that there was a need for inter-sectoral collaboration to co-ordinate the activities of different departments. She said that the Child Justice Bill would need to be aligned to the proposed Children's Status legislation. Ms Silkstone also said that the growing numbers of child headed households was an issue that the Committee should consider. She suggested that there should be reallocation of resources, especially to the Magistrate's courts, for the preliminary inquiries. Finally she acknowledged that the language of the Bill was

difficult for the lay person and that this should be rectified.

Discussion

The Chairperson asked the Researcher to explain the concept of diversion.

Ms Silkstone responded that diversion was an intervention that was instituted to rehabilitate offending behaviour. She said that a diversion established a time order, which would determine when a child was to sit for a meal, go to church or social activities, and established a curfew for the child. She explained that at the moment there was no legislative framework regulating this.

The Chairperson asked why the minimum age for capacity was set at 10 years if the United Nations had set the age at 12 years. She said that it was necessary to consider that children of today had a lot more external factors affecting them.

Ms Silkstone explained that the UN convention raising the minimum age for criminal capacity was only recently introduced and was brought to the Committee's attention only after the drafters had set the minimum age at 10 years. She said that the matter would be taken up for review.

The Chairperson asked how bail was regulated in the case of a child offender. She highlighted that a child could well not be able to afford bail, if the parent was not able to pay or was not available to pay, and questioned whether in such a case it was fitting to keep a child in detention for lack of money to pay bail.

Ms Silkstone said it had been suggested that the Bill offer alternatives other than money. She explained that there had not yet been any alternatives established and the matter would still be discussed. She would report back to the Committee

The Chairperson asked whether there was an alternative to imprisonment of children. She said that considering that prisons were full and that it was difficult to ensure the separation of children from adults; an alternative should be provided by the Bill.

Ms Silkstone noted that children committing petty crimes were provided with alternatives to arrest and imprisonment. She said that the Bill provided for different approaches depending on the seriousness of the crime. The Schedules to the Bill contained a classification of the crimes.

Ms J Chalmers (ANC) asked why the finalisation of the Bill was taking so long.

Ms Chalmers also asked how the Bill fundamentally changed the status of children in trouble with the law.

Ms Silkstone said that there were many factors in the Bill that would impact positively on children's justice. She said that the introduction of the diversion intervention was one of the key points. She also said that the mandatory preliminary inquiry tried to improve the judicial protection for children. She highlighted that the purpose of the Bill was to provide for systems that cater for children. However she accepted that there was still a lot of work to be done regarding the obstacles faced in finalising the Bill.

Ms Chalmers agreed that the wording of the Bill was too complicated and asked how and when the alignment of the Bill to the Children's Act Amendment Bill was to take place.

Ms Silkstone said that the drafters were aware of this and that formal deliberations would be held at a later stage. She said that they were still dealing with policy issues.

Ms Chalmers expressed concern regarding the effects of incarceration on children. She gave the example of a child who was sodomised in prison. She asked how the Bill would try to regulate the exposure of children to such situations.

Ms Chalmers asked whether the proposed budget for 2008 took into cognisance the impact of this Bill as it was one of the most important pieces of legislation to be passed in 2008.

Mr M Moss (ANC) asked what role the committee could play during the deliberations on the Bill. He asked if there were any obstacles that had impeded the finalisation of this Bill.

Mr Moss said that, when dealing with children, officials must remember to treat them as children. Although children may do wrong, there was a difference between being naughty or rude and acting in a criminal way. He said that sometimes when children committed a crime they were just being naughty, and when they were being punished it must always be borne in mind that no matter the wrongdoing they were still children.

Mr A Madella (ANC) asked whose responsibility it was to determine what "an appropriate adult" was in situations where there was no parent to whom a child could be released. He noted that in a country like South Africa, with its large numbers of street kids, there were few to take responsibility for those children. He emphasised that it was important for the Committee to agree that the minimum age for criminal capacity be raised to 12. He said that this would provide judicial protection for the child. Mr Andrew explained that he had been to many child court inquiries. He said that when a child was placed with older children or adults, the child became vulnerable to victimisation. He said that there should be no compromise when it came to the separation of child offenders from older youths or adults.

The Chairperson asked what the procedure was regarding the appointment of legal counsel for children.

Ms Silkstone explained that the appointment of legal representation was provided for in the Bill. She explained that where a child was below the age of 14, or below the age of 16 and in prison, the State would provide legal representation. She said that where a child waived his or her right to legal representation legal personnel would be appointed to assist him or her.

Ms Chalmers asked whether legal representation was allowed at the preliminary inquiry.

Ms Silkstone replied that at the moment there was no allowance for legal representation at preliminary inquiries. However she expressed that her personal view was that there should be such representation.

The Chairperson asked what happened to those children that were abused in detention. She suggested that maybe they should be taken to foster homes instead of holding facilities.

Ms Silkstone said that this was an interesting suggestion and that she would record this for future discussion.

Mr Madella asked whether the Committee had considered increasing capacity to assess. He said that it was possible to train paralegals or use lay assessors as an alternative to professionals.

Ms Silkstone responded that the use of only certain professionals to assess was a moot point that would be discussed in future. She said that there had been suggestions to use psychology honours students, criminology students and graduates.

The Chairperson also asked why there were only two wellness centres in the whole country.

Mr Moss asked when the formal deliberations would be held on aligning the Bill to the Children's Act.

Ms Chalmers added that it was necessary for the JMC to send some delegates to join in the deliberations.

Ms Silkstone said that she was not sure when the deliberations were to be held but promised to alert the Committee when the date was set.

The Chairperson suggested that the Researchers should make recommendations that would be taken to the deliberations. She also said that she hoped that the Bill would be written in such a style that it could be understood by lay people.

Ms Chalmers requested that the Research Department should summarise the issues discussed at this meeting for the deliberation meeting.

Mr Madella agreed

Ms X Makasi (ANC) suggested that the Committee should meet before the deliberations to discuss these recommendations. She said that they would need to pin point the matters that they would challenge.

Mr Moss suggested that the Committee should arrange to visit prisons and places or safety so that they may have a first hand experience of what was happening on the ground.

The Chairperson agreed.

State of the Nation Address: Impact on the work of this Committee: Parliamentary Researchers' Report

Ms Kashiefa Abrahams and Ms Nokutula Nxaba, Parliamentary Researchers, gave a report focusing on the key themes raised by the latest State of the Nation Address (SONA). These were the idea of "business unusual", strengthening democracy, provision of basic services, war on poverty, bridging the gap between the first and second economy, skills development, land reform, health for all, co-operative governance, crime, World Cup 2010 and enhancing bilateral and multilateral relations.

The researchers explained that the idea of business unusual was to provide service that was innovative, and more efficient. She noted that this would hopefully have a positive impact on children. She said that since the President urged that South Africa must focus on the foundation of the Constitution, this would have a positive impact on children's rights that had previously being short changed.

The Public Sector Summit that was a step to improve the public sector would promote democracy. She said that it was good to see that the President made special mention of the importance of giving effect to the rights of children, youth and people with disabilities. However she expressed concern that there was no review to show the extent that youth and children's programmes had been implemented. She stated that it was important to strengthen partnerships with Chapter 9 institutions to determine the magnitude of rights violations of socially vulnerable groups.

Another focus area was the provision of water, sanitation and electricity. The researchers explained that these services were vital to socially vulnerable groups. She noted that access to tap water on site was 32% coverage in Eastern Cape and 93% in Western Cape. She said that this was unacceptable.

The researchers explained that in the Eastern Cape in 2004, 79% of people were living in poverty and in 2005, 80% were living in poverty. It was worrying to look at how many more poor people there were than financially secure people, and to consider how many of those poor people were not being provided with basic services. The researchers expressed concern that there was no plan of action mentioned in the SONA of how the State intended to eradicate poverty.

Ms Nxaba explained that the SONA focussed on the development of small, medium and micro enterprises (SMMEs). However she questioned the extent to which the disabled were able to access SMMEs, considering that there was no specific piece of legislation that dealt with the issues of disabled people. She gave the example of provision of transport. She said that the government only targeted specific areas when they dealt with the issue of transport. She said that it was mainly urban areas that were considered, and even then there was no provision for special needs of the disabled. The most vulnerable people were those who were disabled and living in rural areas. Ms Nxaba added that even when the government spoke of skills development they never prioritised the needs of the disabled. Many disabled were not schooled and they did not benefit from skills development. She asked whether the Committee had ever considered what the fate of a disabled child was in prison.

Ms Abrahams stated that 1.3 million children under the age of 6 attended educational facilities in 2005. She said that there was a need to stress the importance of Early Childhood Development (ECD). The State should be providing for access to appropriately resourced facilities to enable caregivers to stimulate their children's development from an early age. She said that 1000 sites were to be built and 3500 practitioners were to be trained. She said that it was necessary for these facilities to be made fit for the disabled and for caregivers to be trained to care for disabled children.

On the issue of skills development, Ms Abrahams expressed concern as to whether disabled people had access to some of the skills development programmes in place, such as the literacy programme, and Further Education and Training (FET) colleges, and whether they were considered for programmes such as the Umsobomvu Youth Fund and other social grants. She said that some of the problems faced by the disabled were language barriers, lack of resources and lack of facilities that accommodated disabilities. She said that it was necessary for the State to make provisions for the disabled and that their parents should also become active in ensuring that they attained the skills they required to better themselves. She suggested that research should be undertaken to see how far the disabled were catered for and how many of the disabled were being left out of such programmes.

Ms Abrahams questioned if it was appropriate for the youth to be forced to join the National Youth Service when they faced many atrocities and suffered from a lot of difficulties.

On the question of land redistribution, Ms Abrahams said that there was a need to consider the recent increase in child headed households when implementing land reform policies.

Ms Abrahams said that it was necessary to increase the child support grant to extend it to children from age 0 to 15. She also said that there was a need to increase the National Schools Nutrition Programme. In addition she said that there was a need to focus on issues facing children between the age of 10 and 14.

Ms Abrahams then moved to the idea of Health for all. She said that the health sector was one of the major problem areas facing the State. She said that many public hospitals were short of resources. She said that there had been an increase in the number of early deaths (children below the age of 5). She said that something must be done to monitor and regulate this. She said that in the past there had been problems with the payment of claims and this must be addressed. She stressed that there was a need to address the issue of birth registration and the procedure for obtaining an ID document. She said that both these documents were important for official purposes and were needed to access a lot of governmental programmes. She said that it was alarming that Home Affairs was not on the agenda.

In relation to the idea of a Pledge, Ms Abrahams said that she hoped that the pledge had not been implemented to be a mere recitation but that it would actually serve to change the behaviour of our youth, and teach them to be responsible and accountable for their actions.

Ms Abrahams said that there was a need to restructure and modernise the judiciary. She said that the Child Justice Bill would be instrumental in this development.

The researchers expressed that although the World Cup 2010 was an exciting initiative this should not serve to counter progress regarding child survival and eradicating poverty. She stressed that the Committee should not get caught up in the excitement and forget their mandate.

The researchers finally commented that the proposed youth charter would do a lot in the fight to strengthen bilateral relations. In addition she said that there was a need for South Africa to learn from other countries. She said that the Committee should begin by monitoring and evaluating Chapter 9 institutions with regard to their relations with children and the disabled.

Discussion

Ms Makasi commended the Research team on the well-presented report. She said that the Committee appreciated the appointment of a researcher. She said that this would enable the Committee to challenge all the other sectors.

Mr Madella said that the comparative analysis was important and appreciated that the Research team had included this in their report. He said that there was a need for something to be done about the state of the public health sector. He cited an example of a disabled person who would have to wake particularly early to visit a hospital and join the long queues that were synonymous with public hospitals. He said that such a person might not even get attention because the hospital might reach its quota before attending to this person.

Mr Madella said that there was a need for legislation that dealt specifically with issues affecting the disabled. In Zimbabwe there was a Disability Act to deal with such issues and suggested that maybe South Africa needed to follow suit. He said that there was a need to map the challenges faced by the disabled and highlight these issues when the Committee discussed the budget.

He also suggested that the Integrated National Disability Strategy (INDS) needed to be reviewed.

Ms P Bhengu (ANC) interjected that the Committee had already requested a long time ago that the INDS be reviewed, and yet to date no progress had been made.

Ms Abrahams responded that she did acknowledge that a lot of work needed to be done. She

said that maybe the members of the Committee could use their position in other committees to make some of these recommendations. She said that the review of the INDS was to be taken up. She suggested that the Committee should visit some Health Centres and ECD facilities to get an idea of what was going on.

A Member commented that there was a need to have centralised meetings where the Committee invited members from other portfolio committees, so that they could attempt to find synchronised solutions to the problems faced by socially vulnerable groups. She gave the example of feeding schemes in schools. She said that many rural schools were neglected and they did not even have scholar transport, books or resources. She said that the most affected were facilities for the disabled.

The Chairperson agreed that there was a need for the Committee to draw up a plan.

The meeting was adjourned.

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