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Child Justice Bill: briefing by Parliament Research Unit, Correctional Services, Education Department

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Justice and Constitutional Development

Meeting Report Information

Date of Meeting:

27 Mar, 2008

Chairperson:

Mr Y Carrim (ANC) and Advocate C Johnson (ANC)

Documents handed out:

[Remand Detention Systems and Facilities](#) [1]

[Child and Youth Care Centres](#) [2]

[Legal Aid Board](#) [3]

Children in Conflict with Law (PMG was requested not to publicise this document.)

Relevant Documents:

[Child Justice Bill \[B49-2002\]](#) [4]

[Summary of Comments on Child Justice Bill](#) [5]

[Summary of Responses on Child Justice Bill](#) [6]

Audio recording of the meeting:

[Deliberations on Child Justice Bill \[B49-2002\]](#) [7]

Summary:

The Parliamentary Research Unit provided a situational overview of the activities of the key departments that deal with children in conflict with law, namely the South African Police Service, the Department of Justice and Constitutional Development, the Department of Correctional Services, the Department of Social Development and the Department of Education. The Committee discussed whether assessment should be provided for all children that entered the criminal justice system or only for those that went through the court process. There was confusion about whether all children were currently assessed or only those that went through the court process.

The Committee expressed irritation about the different explanations and statistics provided by the departments and the NGOs on this matter. The Committee would not proceed with the Bill unless it had clarity on certain issues. The DoJ, DSD, DCS and SAPS were asked to prepare a

document on:

- how many children were arrested?
- of those arrested, how many exited the system?
- of those that entered the system in whatever form, how many of them were assessed at present?
- if in terms of the Bill, there was assessment for all, would current figures increase substantially?

The Department of Correctional Services briefed the Committee on its strategy and plans for remand child detainees in correctional facilities. Notably, the presentation also looked at the number of sentenced and unsentenced children in the Department's facilities. Members posed questions around the Department's state of readiness to implement the Bill and the levels of overcrowding at Pollsmoor Prison. In addition, the Committee queried the deadline for the Department's new facilities.

The Department of Education informed the Committee that it was responsible for providing education at all child and youth care centres. It was emphasised that all learners would be taught in accordance with the National Curriculum Statement, but with appropriate adaptations in respect of barriers to learning. The Committee asked about the curriculum used at the specialised schools, the Department's capacity and the number of specialised schools in the country. The Committee was adamant that the Department should also provide education for children awaiting trial.

The Legal Aid Board presented a summary of the Board's response to the questions that the Committee posed to it during the public hearings. Notably, the Legal Aid Board represented 222 children under the age of 10 between April 2007 and February 2008.

The Committee considered clauses 52 to 54 of the Bill and it was resolved that previous diversion should not be considered as a previous conviction for purposes of sentencing but should be considered only for future diversion options.

Minutes:

Children in Conflict with Law

By way of introduction, Ms Christine Silkstone, Parliamentary Researcher, indicated that approximately 10 000 children were apprehended/arrested each month by the police. Of these, only between 2 750 and 4 000 children appeared in court. A further breakdown of the statistics showed that roughly 1 300 to 1 900 children were diverted from the magistrate's court each month. On average, 1078 children were detained in prison awaiting trial, and the monthly population of sentenced child prisoners numbered 900 on average.

Ms Nadia Dollie, Parliamentary Researcher, listed the key responsibilities of the South African Police Services (SAPS) in respect of children. This entailed the detention of children in police cells, their transportation to homes/courts/detention facilities and location and notification of family and probation officers. While SAPS strived to execute its mandate, there was broad consensus that numerous challenges, such as inadequate resources, space and training, persisted. Various statistics illustrated that 15% of all reported cases were attributable to children. On average, approximately 10 000 children were arrested each month and the highest arrests were located in the Western Cape, Gauteng, KwaZulu-Natal and the Eastern Cape respectively.

Ms Silkstone highlighted the specific responsibilities of the Department of Justice and Constitutional Development (DoJ) concerning children in trouble with the law. Various policies

and programmes, such as the Intersectoral Child Justice Steering Committee (ISSCJ), were established to improve the operational effectiveness within the child justice system. An analysis of the data, showed that 44 231 children appeared in court in 2006, and in 2007, this figure increased to 63 456. Other notable statistics showed that 20 478 children were granted legal aid between April and September 2007. In that same period, an average of 1 627 children were diverted each month.

Ms Thulisile Ganyaza-Twalo, Parliamentary Researcher, summarised the services that the Department of Social Development (DSD) provided to children in conflict with the law. Its principal aim was to provide an alternative to the criminal justice system and create constructive crime prevention programmes. For this reason, secure care facilities, home-based supervision and places of safety were established. DSD's budget allocation for social crime prevention and youth development totalled R7 million. DSD continued to experience challenges regarding the shortage of secure care facilities and human capital.

Ms Dollie described the services that the Department of Correctional Services (DCS) offered to children in conflict with the law. The Child Offenders Policy and White Paper on Corrections stated that no child under the age of 14 should be placed in prison, and where this was the case, appropriate facilities should be provided for such children. The DCS offered a range of programmes for sentenced offenders but not for children awaiting trial. A situational overview was provided of the number of awaiting trial children, the provinces where they were mainly located and the age and an offence breakdown of this category of offenders. Similar statistics were illustrated for sentenced children. Lastly, she listed the challenges faced by DCS in terms of children in correctional centres and community corrections. Issues relating to overcrowding, training and professional services were identified by the presenter.

Mr Dennis Bandi, Parliamentary Researcher, expanded on the role that the Department of Education (DoE) played for young offenders. The Child Justice Bill introduced the terminology "residential facility" for sentencing children instead of "reform school". The new terminology had a broader meaning, which accommodated sentencing facilities run by DoE and DSD. The Bill also provided that where a recommendation had been made that a child be sentenced to a residential facility, a person in charge of that facility was required to support such recommendation with a sworn statement regarding the availability or otherwise of accommodation of the child in question. In terms of awaiting trial children, who were accommodated in secure care facilities, DoE was responsible for their education and the professional development of educators. In line with the Children's Act, an agreement had been reached between DSD and DoE for the former to take over responsibility for the infrastructure of reform schools, within the next two years. The presenter also tabled the capacity of youth centres around the country and the different challenges faced by DoE.

Discussion

Mr Carrim complimented the Research Unit for presenting a useful document.

Mr Carrim observed that in today's Cape Times, the newspaper had produced alarming statistics regarding children in prison, and asked from where they had obtained their information.

Advocate Shireen Said, Chief Director: Vulnerable Groups, DoJ, explained that the newspaper article was a summary of the statistics, which she had presented to the Committee two weeks ago. She also accused the Cape Times of distorting the information.

Mr Carrim questioned why there was a child under the age of 14 awaiting trial in prison. He also wondered whether this was legally possible.

Mr Johan Le Grange, Regional Head: Corrections, Western Cape, DCS, explained that a child under 14 could be detained if a magistrate instructed that this must be done. He added that he would need to investigate whether there was such a child in DCS facilities.

Mr Carrim requested DCS to investigate and to report personally to him whether there were any children, under the age of 14, who were in prison for more than 24 hours and under what circumstances this was done. He argued that nobody under 14 years should be detained in prison under any circumstances and that such a situation would contradict DCS's own White Paper. Lastly, he queried in what circumstances children under the age of 14 could be sentenced to prison.

Dr Lirette Louw, Researcher, DOJ, explained that the magistrate had the discretion to sentence a child to prison.

Mr Carrim countered that it was not civilised to have children, who were under 14 years, in prison. He questioned how it came to be that five children under the age of 7 years were under correctional supervision.

Mr Willem Damons, Deputy Commissioner: Remand Detention, DSC, explained that the correctional supervision option was not in the hands of DCS but in the hands of the magistrate. DCS was compelled to implement the magistrate's orders. He voiced doubts about the accuracy of the statistics tabled to the Committee.

Mr Nthuthuzelo Vanara, Parliamentary Legal Advisor, found it "odd" that children under the age of 7 were under correctional supervision. This implied that they were convicted, which was not possible because they did not have criminal capacity. Consequently, there was no legal basis for their detention.

Mr Carrim asked Adv Johnson to work with Ms Dollie, Adv Said and the DCS to determine whether the statistics were correct. He was adamant that if the statistics proved to be correct and the matter was not resolved by 2 April, the Committee would approach the Minister of Justice, the President and the Deputy President to do something about the situation.

Mr S Swart (ACDP) noted that 10 000 children were arrested each month and that at least two-thirds of them were released soon thereafter. He presumed that those children who were released were not assessed at all. As a result, he wondered whether DSD would have the necessary capacity because all children would have to be assessed in terms of the Bill.

Mr Carrim queried whether all 10 000 children were currently assessed by DSD.

Adv Said confirmed that this was the case in most instances. However, the remainder were not assessed because they were either placed in the care of their parents or in placement facilities shortly after their arrest.

Ms Vuyelwa Nhlapo, Deputy Director-General: Integrated Development, DSD, added that children were only assessed after they appeared in court.

Mr Carrim sought clarity on how many children DSD currently assessed and in anticipation of the Bill, how many more children would it have to assess and if it had the capacity to do so. He stated that he was confused because the non-government organisations had informed the Committee that all children were assessed.

Dr Anne Skelton, Centre for Child Law, University of Pretoria, maintained that not all children were assessed, but only those that appeared in court.

Mr Vanara contradicted Dr Skelton's viewpoint, and insisted that all children were assessed, even those that exited the system.

Mr Carrim became agitated and commented that the Committee's discussion yesterday was based on the wrong premise, that all children were being assessed anyway. He stated that every NGO had informed the Committee that all children could be assessed and did not make it clear to Members that assessment would only be for those children that appeared in court.

Mr Lawrence Bassett, Chief Director: Legislation, DOJ, understood the NGOs to have said that every child that was alleged to have committed an offence should be assessed.

Mr Carrim wondered whether anything could be done for those children that exited the system after they were arrested, but not charged.

Ms Conny Nxumalo, Chief Director: Families and Social Crime Prevention, DSD, indicated that DSD had worked on a maximum of 11 000 arrested children, and if this number were halved, DSD would have more capacity.

Mr Carrim stated that the quality of work done by DSD should be enhanced.

Adv Said indicated that an average of 14 000 children interacted with the system every month compared with an average of 11 000 children that were arrested and charged every month.

Mr Carrim expressed confusion and irritation regarding the different explanations and statistics provided by the departments and the NGOs on this matter. He stated that he was tempted to stop the entire process because the departments, particularly DoJ, were unable to respond to basic questions. He suggested that the Committee would not proceed with the Bill unless it had clarity on certain issues. Firstly, on average how many children were arrested? Secondly, of those children that were arrested, how many exited the system? Thirdly, of those that entered the system in whatever form, how many of them were assessed at present? In terms of the Bill, the Committee would like to see assessment for all, and would therefore like to know if the current figures would increase substantially if this were to happen. This should be a document prepared by DoJ, DSD, DCS and SAPS and be presented to the Committee next week. The Committee would alert the Chief's whips office that DoJ was not ready to bring the Bill to Parliament.

Mr Swart believed that the Committee should continue with the process. He reasoned that DSD had the capacity to do assessments for 11 000 children and that the Committee could specify that assessment would only be possible for children that had been through the court process.

Mr I Solomons (ANC) agreed with the Chairperson's comment on this issue. He stated that there needed to be greater clarity on when "assessment kicks in".

Afternoon session:

Noting the earlier discussion, Mr Carrim expressed disappointment that there was no consensus between the different departments regarding basic issues. To address this, he suggested that DoJ convene all the role-playing departments to facilitate the processing of the Bill.

Adv Johnson agreed with this proposal. She stated that there was a lot of confusion about whether assessment took place when a child was arrested or arrested and charged. She indicated that the departments simplify things so that the Committee know "what is going on".

Mr Carrim apologised for his earlier outburst. He maintained that the Committee could no longer expedite the process (of finalising the Bill) despite their intention to do so, and that the onus now rested with the executive.

Mr Swart believed that the problem was not insurmountable if all the departments co-operated.

Adv Said explained that the departments were not far apart and that most of the problems had to do with terminology and different processes.

Ms Nxumalo stated that it would be unfortunate if the process were stalled. She indicated that DSD was excited when the legislation was resuscitated because it had already begun work on most of the aspects outlined in the Bill.

Remand Detention Systems and Facilities: Briefing by DCS

Mr Damons said that Cabinet had mandated DCS to lead a Justice, Crime Prevention and Security (JCPS) Project Team, which would develop a programme for better operational management of Remanded Detainees (RDs). The key deliverables entailed an analysis of the existing legislative framework and the development of procedures and protocols to handle backlogs within the criminal justice system for awaiting trial detainees. In addition, DCS would be required to develop a common information management system and enhance its human resources strategy plan. Other requirements included the development of remand detention facilities and the development of an appropriate costing and budgeting model.

Mr Damons provided statistical information of children in DCS facilities. Currently, 908 sentenced children were detained in such facilities compared with 1141 unsentenced children. The majority of child offenders under the age of 18 years were located in the Eastern Cape and KwaZulu-Natal. The concluding segment of the presentation focused on the challenges faced by DCS. These included, amongst others, the inadequate collaboration with other departments for provision of services to children awaiting trial and the provision of age appropriate facilities and services to children.

Discussion

Mr Magwanishe dismissed the presentation as “unhelpful”, and accused DCS of not doing anything to prepare itself for the implementation of the Bill.

Adv Johnson asked how much time DCS would need to implement the Bill. She wondered if DCS would have trouble cooperating with other departments. She asked whether DCS had sufficiently trained personnel to implement the Bill.

Mr Damons could not give a definite date regarding DCS’s state of readiness to implement the Bill. He explained that DCS currently rendered services to children. However, they were “not worth mentioning” because they were not structured. In addition, he admitted that his department did not have sufficiently trained personnel. Both the DSD and DoJ had been approached to assist with this. He announced that the DCS was building five new facilities, which were at an advanced stage.

Mr Carrim examined whether DCS had a deadline for the completion of the new facilities, and also enquired how long it took to build such facilities.

Mr Damons clarified that the first facility in Kimberley was expected to be completed by February next year. DCS had started the process of output specifications for the remaining four

facilities, and would only start the tender process some time next year. It normally took 18 months to complete such facilities.

Mr Carrim observed that if the Bill took a particular course, DCS would be relieved of taking on children and this responsibility would shift to DSD. Nevertheless, he wanted assurance about the quality of DSDs services.

Mr Damons indicated that DSC would outline its implementation plan in due course.

Mr Carrim noted that DCS provided educational opportunities for prisoners. Consequently, he believed that it was unacceptable that children awaiting trial were not provided with this right. If DSD did not have additional resources, funds should be utilised on children awaiting trial rather than sentenced offenders.

Adv Johnson mentioned that when the Committee visited Pollsmoor Prison, it discovered the overcrowding of children awaiting trial. DCS officials had explained to Members that this situation existed because they could not find beds in secure care facilities for these children.

Mr Johan Le Grange, Regional Head: Corrections, Western Cape DCS, denied that there was any overcrowding of children awaiting trial at Pollsmoor in the past four years. On the other hand, he indicated that there was overcrowding of juveniles at this correctional facility.

Adv Johnson responded that Members were confused and that this contradicted the claims made by Mr Dennis Bloem, the Chairperson of the Correctional Services Portfolio Committee.

Briefing by Department of Education on Child and Youth Care Centres

Ms Jennifer Rault-Smith, Chief Director: Curriculum Assessment Development, DoE, said that in 1996, reform schools and schools of industry were devolved to Provincial Education Departments (PEDs). Unfortunately, this was done without any policy directives and the PEDs responded differently to the management of these schools. The Children's Amendment Act, which was gazetted in March 2008, made provision that facilities at such schools should be transferred to DSD within two years. It was envisaged that the respective Education MECs would sign a Memorandum of Understanding with their DSD counterparts.

Ms Rault-Smith emphasised that PEDs were responsible for providing education to children in all child and youth care facilities. This must be done in accordance with the National Curriculum Statement, but with appropriate adaptations in respect of barriers to learning. It was recognised that the data on learner statistics needed to be improved and that there should be a focus on the recruitment of additional teachers. Lastly, the safety issues for these specialised schools were listed.

Discussion

Mr Swart questioned how DoE managed to lose so many unsentenced children in the system.

Ms Rault-Smith conceded that this was a major problem. She stated that the Department had attempted to deal with this by initiating a learner data tracking system.

Mr Solomons believed that DoE did not take reform schools and schools of industry seriously.

Mr Carrim questioned whether the Department was doing anything about children awaiting trial, who were not receiving any education.

Ms Rault-Smith commented that she could not make promises on behalf of the Director-

General, but would raise the issue with him. She agreed that it was unacceptable that awaiting trial children were not afforded the same right as sentenced detainees.

Mr Carrim stressed that the Committee had a formal position on this matter, and was adamant that this should be done immediately before the finalisation of the Bill.

Adv Johnson wondered whether the DoE was aware of children, who absconded from these facilities. Secondly, she queried how many reform schools were available across the country.

Ms Rault-Smith admitted that absconding was a problem, particularly in Mpumalanga. There were 408 special schools across the country.

Mr Tumisang Bojabotshesa, Parliamentary Researcher, asked if DoE provided a diluted curriculum in these schools.

Ms Rault-Smith confirmed that the Department did not offer a watered down curriculum to these special schools.

Mr Carrim asked what the policy reason was for the transfer of youth and care facilities to DSD.

Ms Nxumalo explained that this was done to standardise the programmes offered by the different facilities.

Mr Mthetho Mqonci, Deputy Director: Social Crime Prevention, DSD, added that DSD was better equipped to deal with children who were in these specialised facilities.

Briefing by Legal Aid Board

Mr Patrick Hundermark, Legal Development Executive, LAB, presented a summary of the Board's response to the questions that the Committee posed to it after it made it a submission during the public hearings. It highlighted that LAB represented 222 children under the age of 10 between April 2007 and February 2008. In the same time period, 747 children between the ages of 10 and 12 were represented by the organisation. Insofar as when LAB should offer its services to children in conflict with law, it was felt that this should be done at the preliminary inquiry phase instead of the assessment stage. In addition, he explained the organisation's position regarding clause 13, and updated Members on the situation concerning two children (aged 8 and 12 years respectively), who were found on the DCS database.

The Committee did not pose any questions to the presenter.

Clause by Clause Deliberations on the Bill

Clause 52

Mr Bassett read out the provisions of the clause. Members were satisfied with the clause, and it remained unchanged.

Clause 53

Mr Bassett explained the contents of the clause.

Ms Jacqui Gallinetti, Coordinator, Children's Rights Project, insisted that diversion should not be considered as a previous conviction for the purposes of criminal records and should not be regarded as an aggravating factor for purposes of sentencing.

Mr Bassett clarified that there was nothing in the clause which treated diversion as a previous conviction.

Mr Carrim believed that this was a policy issue. Tentatively, he was leaning towards the viewpoint that diversion should in fact be considered as a previous conviction because it implied that it did not work initially.

Adv Said suggested that previous diversion should not be considered for purposes of sentencing, but only for future diversion options.

The Committee agreed with this proposition.

Clause 54

Mr Bassett provided a summary of the clause.

Mr Carrim felt that the timeframes (in the Bill) were onerous, and questioned whether DSD would be prepared to carry out the provisions in the clause.

Ms Nxumalo confirmed that DSD would be able to meet the deadlines by the time the Bill was promulgated.

Adv Said proposed that the three months for the tabling of DSD's policy framework and system of accreditation to Parliament, be extended to six months. She argued that the former period was not sufficient.

Ms Gallinetti contended that the four-month period, for the applications to be submitted, should be reduced to two months.

Both proposals were accepted by the Committee.

In response to the Catholic Institute's submission on this clause, Mr Carrim was adamant that Parliament should play a role in the accreditation of diversion programmes. This would ensure that the diversion programmes were meaningful and complied with the minimum standards set out in the Bill.

Clause 55

Mr Bassett specified the contents of the clause.

Ms Gallinetti claimed that the reference to clause 57 in clause 55(1)(a) was limiting, and singled out a specific group of child offenders (that is, sexual offences cases).

Mr Bassett explained that the 2002 Committee had made an exception for children who committed certain serious sexual offences. It was felt that such children, who were diverted, undergo adequate corrections and be subjected to meaningful diversion programmes.

The meeting was adjourned.

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