



CHILD JUSTICE BILL

Parliamentary Submission on the Child Justice Bill

Prepared by the South African Human Rights Commission.

The South African Human Rights Commission welcomes this opportunity to submit to the Justice Portfolio Committee a submission on the Child Justice Bill. The Commission would like to start by welcoming this important Bill and congratulate the South African Law Commission and in particular the project committee that so tirelessly worked to produce a Bill of such high quality. This Commission notes that this bill has been costed and that an implementation plan has also been developed. This is indeed commendable and exemplary.

We recognize that the Bill incorporates the Riyadh Guidelines as well as the relevant provisions in the Convention on the Rights of the Child. It therefore brings our domestic legislation in line with our international legal obligations.

The Bill also clearly imbues the spirit of the South African Constitution and more particularly section 28 (g)(i)(ii) and (h). It is Bill that has crafted into its provisions the principle of the Best Interest of Child. The Commission also attaches much appreciation to the time frames set out in the Bill as important safeguards to protect children in trouble with the law.

While we acknowledge that existing departments are carrying many of the procedures that the Bill sets out particularly the Constitutional obligations out we underscore the importance of a composite piece of legislation. This Bill brings together all the interventions and addresses them in a more holistic way, placing the child at the centre and make clear provisions of the various roles and responsibilities of inter governmental officials. The integrated approach that is current through out the Bill is necessary for a more efficient and effective child justice system.

The Commission would like to flag some areas of concern:

1) Chapter 2 Application and Criminal Capacity (4) (3) (a) It is not clear what this provision seeks to achieve. Our reading of this section is that it could potentially stand to jeopardize the spirit of the Bill and the targeted segment of the population that it has been set out to protect.

2) The Commission notes an important aspect of the Bill namely the Preliminary Inquiry, Chapter 5 in this regard the Commission would like to suggest that diversion be an option already at the stage of assessment.

While we take cognizance of the sequencing approach set out in the implementation plan we would like to register our concern around the very critical stage of the new Bill the preliminary inquiry in that it may not be very feasible in a small rural town were capacity and infrastructure lack. Postponement of Preliminary Inquiries again may be open to abuse in areas that do not have the proper infrastructure.

This we believe would help deal with the backlogs that currently exist in the Courts and in addition ensure a more effective flow of cases.

3) While we fully recognize the need for parents to be part of the process it is not clearly who will have the role of locating the parents of the child in trouble with the law.

4) Of concern to the Commission Chapter Five section 36(5)(a) (2) in terms of the unduly long periods the child must wait before reappearing in Court.

5) As regards to keeping of records Chapter 3 18 (1) the Commission is of the view that separate records for child offenders should be keep.

6) the need to establish effective and confidential complaint mechanisms in police cells should be accessible.

In keeping with rights based approach the Bill makes provision for monitoring the application of the legislation. The Commission would like to commit itself to supporting its self to this aspect of the Bill.

We see this Bill as part of breaking the cycle of children involved in crime and one that emphasizes the children in their environmental and social spheres. It also breaks ground in that it unpacks the rights based approach in that it does not loose sight of the fact that while children have rights they also have responsibilities.

The issue of developing capacity is noted by the Commission. The Bill will require that training of magistrates, police officers, probation officers and correctional services staff are trained in handling and treating children, and the basic rights which children are entitled.

Finally the Commission recognizes that while the aspect of educating children about their rights falls outside the ambit of its scope it is an important parallel phase to ensure that children know and understand their human rights. This is an area in which the Commission will engage with.

If properly implemented this Bill will could have a phenomenal impact on our criminal justice system and more particularly on how children in trouble with the law are treated. This Bill makes for a positive contribution to our democracy and rule of law.

Commissioner Charlotte Mc Clain
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