



**Submission to the Portfolio Committee on
Justice & Constitutional Development**

on the

CHILD JUSTICE BILL (B49-2002)

1. INTRODUCTION

The Southern African Catholic Bishops' Conference Parliamentary Liaison Office welcomes the return of the Child Justice Bill to Parliament and is pleased to have the opportunity to engage with the Committee on Justice and Constitutional Development on this important piece of legislation. This Bill is especially welcome following as it does the Children's Amendment Bill and the Sexual Offences Bill which were passed in December 2007. It is hoped that these three pieces of legislation will provide a comprehensive spread of services, programmes and protection that will give substance to the constitutional entitlements of children and will indeed be in the 'best interests of the child'.¹ Furthermore, we note that this Bill moves away from a juvenile justice approach characterized by control and punishment to a model characterized by rehabilitation, reintegration, restitution and restorative justice.

We agree with the sentiment expressed in the Preamble that, as a result of our apartheid past and our often violent present, as well as the difficult individual circumstances experienced by many young people, children from various backgrounds have "turned to crime". There is an urgent need to reverse this process of criminalization and to prevent children from coming into conflict with the criminal justice system. Furthermore, we feel that in the past measures employed to deal with children of all races in trouble with the law have been unduly harsh, and whether from a lack of resources or a lack of understanding, have failed to serve the best interests of the child.

2. CONCERNS

Notwithstanding the above we do have some concerns regarding the Bill presently before Parliament. It differs in some respects from the original Bill introduced in 2002 and includes punitive changes. As the Child Justice Alliance² points out, the Bill does not allow for diversion of certain children based on their age and alleged offence committed, and it does not allow certain children to attend the preliminary inquiry based on their age and alleged offence committed. Alarming, the Bill allows for children under the age of 14 to be held in prison awaiting trial if they have committed serious offences. The Bill also allows for mandatory requirements for sentencing based on age and nature of the offence.³ This seems to us to be out of step with both the Constitution and the UN Convention on the Rights of the Child.

We are puzzled by the cross-referencing to the Child Care Act of 1983. The Children's Act of 2005 and its companion the Children's Amendment Bill have been passed by Parliament. Certain sections of Children's Act are already operational, and we understand that the Child Care Act has been, or will shortly be, repealed. The new Children's Act and the Child Justice Bill should be seen as complementary pieces of legislation facilitating policies that move away from the punishment and control model of discipline to interventions focusing on care, rehabilitation and reintegration.

3. DEFINITIONS

¹ Section 28 of the Bill of Rights

² The SACBC Parliamentary Liaison Office has been a member of the Child Justice Alliance since its inception in 2001.

³ Newsletter from the Child Justice Alliance, January 2008

⁴ Clause 78

We welcome the inclusion of 'Victim-offender mediation' in the list of definitions.

4. OBJECTS OF THE BILL

We endorse the objects of the Bill. We particularly support objects (c) and (d). It is imperative that the relevant government departments and agencies collaborate and support each other in an effort to build a coherent strategy in dealing with juvenile justice. Likewise, cooperation with civil society and NGO's from the children's sector is essential.

5. AGE OF CRIMINAL CAPACITY

In our first submission on the initial draft of this Bill we supported the provision that children under the age of ten at the time of the offence cannot be prosecuted.⁵ However, we have concerns that children between the ages of 7-10 may, due to their perceived immunity from prosecution, be rendered vulnerable to exploitation.⁶ There may be a risk that such children may be used by adults to commit crimes such as housebreaking or theft, and end up becoming repeat offenders due to the fact that they cannot be prosecuted.

6. CHILDREN IN COURT PROCEEDINGS

While we welcome and support the provisions relating to the treatment of children during court proceedings as set out in Clause 55, we feel that it is vital that the child be separated from adult accused at all times; this must include transport to and from the place of detention and the court. Qualified statements such as 'if at all possible' can and will be interpreted subjectively and open-endedly. These 'escape clauses' do not afford all children equality of treatment and protection. Furthermore, it does not inspire confidence in the child justice process to have compromises and loopholes built into the legislation. Contact with adult offenders reduces young people's chances of making a fresh start away from crime.⁷

7. CONCLUSION

The criminal justice system and its processes should be the last resort for young offenders. The enactment of the Child Justice Bill will mean that children in trouble with the law have a far more appropriate legislative protection than that afforded them in terms of the Criminal Procedure Act and the Child Care Act.

The 'diversion process' offers hope for a future uncompromised by the stigma of criminal imprisonment and uncorrupted by the harsh conditions which characterize prisons and correctional facilities.

For further information, please contact

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⁵ Submission on the Child Justice Bill by the SACBC, 2003

⁶ The issue of grooming children and the vulnerability of children to such exploitation was raised in the Sexual Offences Act.

⁷ UNICEF, Peace Child Project on Children's Rights