Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE

SUBMISSION

to the

PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

on the

Criminal Procedure Amendment Bill 2010 (B39 – 2010)

19 July 2011

1. Introduction

The Catholic Parliamentary Liaison Office welcomes the opportunity to comment on the proposed amendments to section 49 of the Criminal Procedure Act 51 of 1977.

During the course of last year there were various inconsistent and contradictory public statements by certain politicians and senior police officers about the so-called 'shoot-to-kill' policy. Both the public and the police – who often work under the most difficult and dangerous conditions – deserve clarity about when lethal force may be used and, to a large extent, the proposed amendments provide this. However, aspects of the amendments may also further confuse matters.

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2. Specific points

2.1. The definition of 'deadly force'. Where deadly, or potentially deadly, force is applied in an arrest in the South African context, with all police officers being armed, it is almost always applied by means of shooting. It therefore makes sense to refer specifically, though not exclusively, to 'shooting at a suspect with a firearm'.

2.2. The new s 49(2)(a). The new sub-section is an improvement on the previous one, and achieves much greater clarity. However, there is a potential problem with the way the new sub-section is worded. It appears to set a strictly objective test: deadly force may only be used if the suspect actually poses a threat of serious violence. It is easy to envisage a situation in which a suspect appears to pose such a threat but in reality does not do so – for example, an unarmed member of a gang engaged in a robbery. It is questionable whether the use of deadly force in such a situation would be protected by the proposed s 49(2)(a). A better formulation would be

> Provided that the arrestor may use deadly force only if he or she reasonably believes [or, believes on reasonable grounds] that
>
> (a) the suspect poses a threat of serious violence to the arrestor or any other person;

Such a formulation would afford stronger protection to the arrestor who, though acting reasonably, ends up using deadly force against someone who in fact posed no threat.

2.3. The new s 49(2)(b). The proposed s 49(2)(b) refers to "a crime involving the infliction or threatened infliction of serious bodily harm" [our emphasis]. We query whether the use of deadly force can be justified in a situation, for example, where a fleeing suspect is believed to have threatened verbally to stab or to 'beat up' someone. A mere threat, as opposed to an actual attempt, seems a flimsy basis on which to justify the use of deadly force, especially when it is borne in mind that people issue idle threats of serious harm all the time. We suggest that a better formulation here would be achieved by replacing the word 'threatened' with the word 'intended'. This would exclude instances where vague, heat-of-the-moment threats were issued, but would include the kind of threat that reflects an actual intention.

In addition, use of the word ‘intended’ would also cover attempt and conspiracy situations in which, for example, no threat may have been made, but legal intent to commit the crime exists.

4. Conclusion

We would be happy to make an oral presentation to the Committee should it wish us to do so.

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