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JUSTICE PORTFOLIO COMMITTEE

4 February 1999

SUPERIOR COURTS BILL; CRIMINAL PROCEDURE AMENDMENT BILL [B7-99]; PREVENTION OF ORGANISED CRIME AMENDMENT BILL [B2-99]; INTERCEPTION AND MONITORING BILL: DISCUSSION

Documents handed out

[Superior Courts Bill \(draft\)](#)

[Criminal Procedure Amendment Bill](#)

[Prevention of Organised Crime amendment Bill](#)

[Representations: Prevention of Organised Crime Act, 1998](#)

SUMMARY

The committee was briefed on the Superior Courts Bill which aims to consolidate and unify the laws pertaining to the Superior Courts throughout South Africa including the ex-TBVC states.

The Criminal Procedure Amendment Bill [B7-99] does away with the automatic review procedure used in cases where the accused is unrepresented. The committee agreed that alternative safeguard measures must be put in place for the protection of the unrepresented accused and agreed to flag the issue for further consideration.

MINUTES

Superior Courts Bill (draft)

Mr de Lange (departmental law advisor) explained that the Supreme Court Act and the Constitutional Court Complementary Act form the sources used in the construction of the Bill. Moreover, it was drawn up against the backdrop of the Hoexter Commission. The chairperson requested a summary of the Hoexter Commission report. Mr de Lange referred the committee to Sections 166 and 171 as well as item 16(6) of Schedule 8 of the Constitution [Act 108 of 1996] as the source legislative provisions for the drafting of the Bill.

He said that most of the lower courts, as a result of rationalisation were compatible with Chapter 8 of the Constitution, but other courts needed to be reconstructed. He also pointed out that the Supreme Court Act of 1959 did not incorporate in its provisions the functioning of the courts in the ex-TBVC states. The Bill thus aims to consolidate and unify the laws pertaining to the Superior Courts throughout South Africa including the ex-TBVC states.

Mr de Lange also alluded to the debate as to whether the seat of the Appellate Court should be in Johannesburg or Bloemfontein. It had been provisionally decided that Johannesburg should be the seat of this court.

The law advisor pointed out that in clause 14 of the Bill a wider discretion was given to the Supreme Court of Appeal as per hearing of appeals. Furthermore, that the provisions in the Bill were more rights-orientated. The chairperson, when analysing clause 46, pointed out that the TBVC court rules differ from the other Supreme Court rules - therefore the rules pertaining to the ex-TBVC courts should be repealed.

The Chairperson also wanted to know if there were any provisions regarding which language was to be used in court. Mr de Lange referred to clause 36 (1) of the Bill, even though eleven official

languages are recognised, the practice which evolved and will continue to be utilised, that is, the use of English and Afrikaans as the lingua franca of the courts.

Ms Ngwane was concerned about the workings of clause 20 (judgement by default) because clause 20 allows default judgement to be given by an official of the court, namely, the registrar. The feeling of the committee was that default judgements should be administered by the court. A decision was not reached on this issue. The rest of the provisions in the Bill were enactments of the above-mentioned legislation.

Criminal Procedure Amendment Bill

Mr de Lange pointed out that the object of the Bill was to repeal sections 302 and 303 of the Criminal Procedure Act of 1977. These sections relate to the automatic review procedure used in cases where the accused is unrepresented. Mr de Lange pointed out that the Department of Justice statistics show a total of 27 000 automatic review cases. The task committee evaluated the number of hours spent by judges and prosecutors in considering this form of litigation in relation to the number of convictions which are eventually overturned by this form of litigation. Statistics show that only 3% of convictions in the Magistrates Courts are actually overturned by the review procedure. Mr de Lange pointed out that the Bill does not aim to repeal a judge's inherent discretionary power to consider the record of the Magistrate Court proceedings in chambers if interested. Mr de Lange said that an opportunity had been afforded to all judges, prosecutors, magistrates and interested parties to render opinions as to the need for sections 302 and 303.

Ms Ngwane (ANC) pointed out that the automatic review procedure serves as a safeguard measure for the unrepresented accused who is tried by an inexperienced magistrate. She asked what safeguard measure for the protection of the unrepresented accused had been created in lieu of it. The chairperson shared her concern and requested Mr de Lange to supply the committee with all the relevant statistics and submissions regarding the repeal of automatic review procedure.

The committee agreed that alternative safeguard measures must be put in place for the protection of the unrepresented accused. The committee agreed to flag the issue for further consideration.

Interception and Monitoring Bill

The committee did not spend much time considering the mechanics of this Bill. The Bill aims to prohibit the availability of telecommunications to service providers, for example, Vodacom or MTN, if such entities disallow the government to monitor and intercept telecommunications insofar as it is relevant to the proper and fair administration of justice in a criminal trial. The committee requested a briefing on the costs involved in the "monitoring and interception process" as well as on all relevant reports and submissions.

Prevention of Organised Crime Act

The committee had received representations from the Banking Council of South Africa and Accounting-General / State Expenditure regarding this Act. The committee briefly considered the representations regarding substantive and technical issues. Mr de Lange pointed out that after careful perusal of the Bill, he had found that the Act was in need of certain technical grammatical changes. Mr de Lange was asked to effect the technical changes to the Act.

The Accounting-General / State Expenditure representation suggested that the proceeds of the Criminal Assets Recovery Fund established by the Act should not be used for the benefit of victims of crimes but should be used solely for the benefit of law enforcement agencies. The chairperson, however, pointed out that the minister is given a discretion in this regard. The issue was flagged. The committee agreed to reconsider the representations at a later date.

General

- Ms S Camerer asked whether the committee could be briefed on the Justice budget because it is believed that the 1999 allocated amount is less than what was expected.

- A request was made for a briefing on the plight of prosecutors.

- The chairperson announced that the Regulations to the Prevention of Organised Crime Act have

been put in place.

- It was announced that the budget debate would take place on 18\03\99

Committee members present:

1. Mr De Lange (Chairperson)
2. Dr van Heerden
3. Ms L Ngwane
4. Mr Solomons
5. Ms Jana
6. Ms. S. Camerer
7. Mr J de Lange (State Law Advisor)
8. Mr Van Rensburg
9. Mr Mhlangu

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