

Child offenders with psychiatric disorders- Hidden victims of policy and practice

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OUTLINE

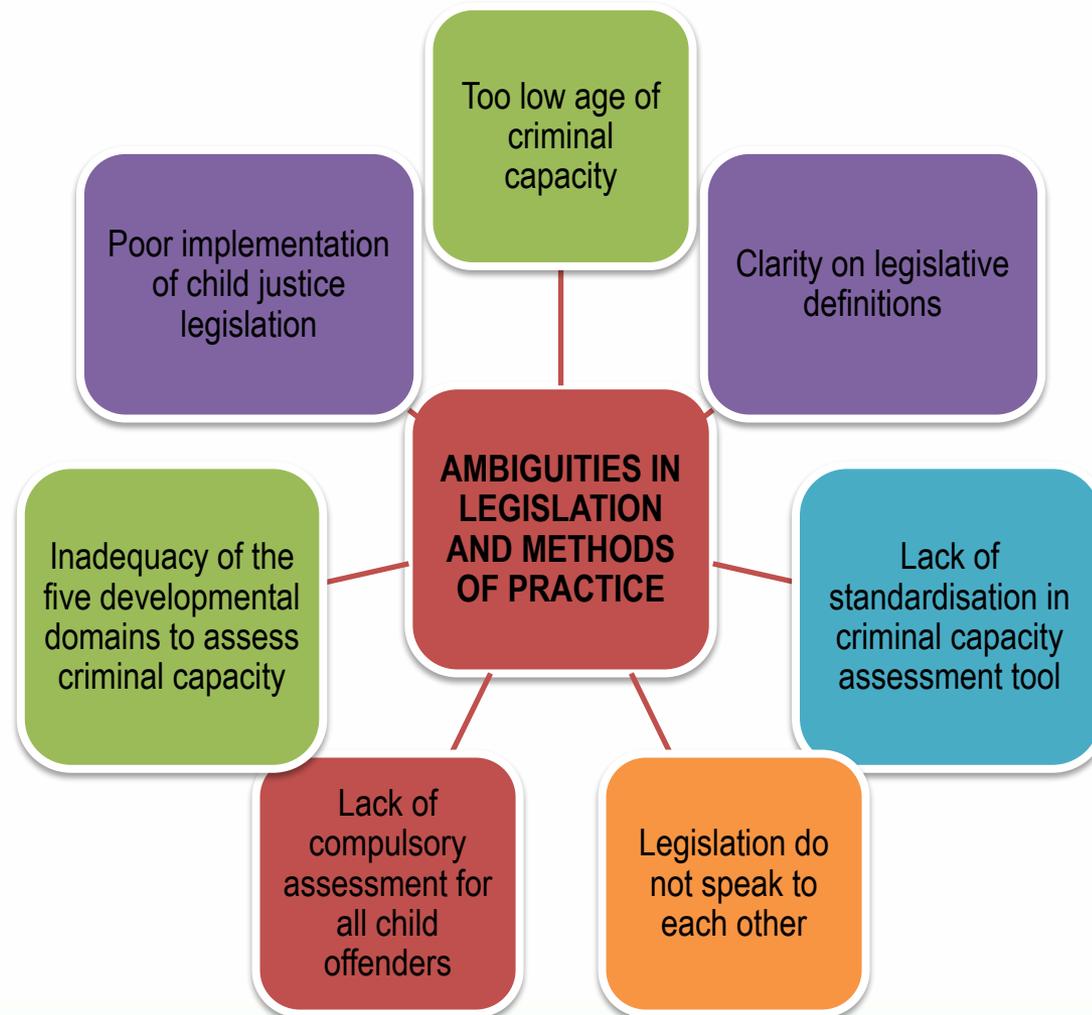
- Introduction and background to the study

- Child Justice legislative ambiguities:
 - Too low age of criminal capacity
 - Clarity on legislative definitions
 - Lack of standardisation in criminal capacity assessment tool
 - Legislation do not speak to each other
 - Lack of compulsory assessment for all child offenders
 - Inadequacy of the five developmental domains to assess criminal capacity
 - Poor implementation of child justice legislation

- Conclusion



AMBIGUITIES IN LEGISLATION AND METHODS OF PRACTICE



TOO LOW AGE OF CRIMINAL CAPACITY

□ *International Human Rights treaties*

- United Nations Convention on the Rights of the Child (UNCRC, 1990).
- United Nations Guidelines for Prevention of Juvenile Delinquency (1990) (Riyadh Guidelines).
- The United Nations Rule for the Protection of Juvenile Deprived of their Liberty (1990).
- African Charter on the Rights and Welfare of the Child (1990).
- The United Nation Convention on the Rights of Persons with Mental Disabilities (UNCRPD) (2007)

□ *Inadequacies of the minimum age of criminal capacity increasing from 10 – 12 years of age (Child Justice Amendment Bill)*

□ *Obligation to meet the best interest of the child, as per the Child Justice Act, The Children's Act and the UNCRC (1990)*



CLARITY ON LEGISLATIVE DEFINITIONS

- Lack of clarity on the definition and/or criteria pertaining to the “*Best Interest Standard*”.

“In all matters concerning, the child, the best interest of the child is paramount”, as stipulated in 28 (2) of the SA Constitution.

- Section 7 of the Children’s Act, the following factors are outlined for consideration, however these factors lack definition.

The *capacity* of parents/relevant guardian, *nature* and personal relationship between parent and child, *age, maturity, stage of development, physical, intellectual, emotional, social and cultural development, any disabilities*, the need for the *stability of family and environment* and *non-exposure to maltreatment, abuse, violence*.

- Criminal Procedure Amended Act

Section 77 made changes to terminology from “*Mental Defect*” to “*Intellectual Disability*”.

- Child Justice Act Amended Bill indicates : to **amend wording** in order to facilitate the interpretation of a phrase.
- Child Justice Act, section 11, on criminal capacity does not clearly define the **four pillars** against which the child ought to be assessed.

realities



LACK OF STANDARDISATION IN CRIMINAL CAPACITY ASSESSMENT TOOL

- Criminal capacity assessment **lacks standardization**
- Initial assessment **lacks standardization**
- Probation officers **were required** to provide an expert opinion on the criminal capacity – this has been **amended**, due an identification of **inadequate skills**, as per the Child Justice Amendment Bill.
- Section 11 of the Child Justice Act **fails to identify and consider** the influence of psychiatric disorders.



LEGISLATION DO NOT SPEAK TO EACH OTHER

- No conclusive definitions
- Lack of standardization
- Inadequate implementation in order to meet the best interest of the child.
- ***Child Justice Act 75 of 2008***
- ***Children's Act 38 of 2005***
- ***Criminal Procedure Act 51 of 1977***
- ***Mental Health Care Act 17 of 2002***



LACK OF COMPULSORY ASSESSMENT FOR ALL CHILD OFFENDERS

- **All children** who come into conflict with the law need to be assessed **holistically**
- **All children** who come into conflict with the law **need** to be assessed for **criminal capacity** – this should **include children 14 – 18 years of age, who are considered to already have criminal capacity**, based on the minimum age per legislation.

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INADEQUACY OF THE FIVE DEVELOPMENTAL DOMAINS TO ASSESS CRIMINAL CAPACITY

Section 11 (ss3) stipulates that, “An inquiry magistrate or child justice court may, on own accord, or on the request of the prosecutor or the child's legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (1), in the prescribed manner, by a suitably qualified person, which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child”.

- Cognitive***
- Moral***
- Emotional***
- Psychological***
- Social development***

realities



POOR IMPLEMENTATION OF CHILD JUSTICE LEGISLATION

- Poor implementation in terms of meeting the best interest of children who conflict the law
 - Rendering the child offender both an offender and a hidden victim of inadequate policy and practice.



CONCLUSION

□ Child Justice legislative ambiguities:

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