JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE
24 February 2003
CHILD JUSTICE BILL: PUBLIC HEARINGS

Chairperson: Adv J H De Lange (ANC)

Documents handed out:
Child Justice Bill [B 49-2002]
Community Law Centre submission
Resources aimed at the Prevention of Child Abuse and Neglect (RAPCAN) submission
Law Society of the Cape of Good Hope submission
Child Justice Forum submission (Appendix 1)
SAYSTOP Consortium submission (Appendix 2)
Child Rights Project submission (Appendix 3)

SUMMARY
The hearings on the Child Justice Bill continued and the Committee heard submissions from the Community Law Centre and Child Justice Centre. Both organisations expressed support for the Bill, especially on issues of sentencing and diversion. However, the Child Justice Forum requested that an independent monitoring structure be established through the Bill and not be provided for in the Regulations. They based their argument on the interests of justice. RAPCAN and SAYSTOP supported the Bill, placing great emphasis on the diversion programmes, highlighting their effectiveness. They were opposed to disallowing certain categories of offenders into the diversion programme, arguing that all children are to be treated equally. The Chairperson argued that in principle certain categories of offenders could be excluded from diversion programmes. He also questioned how the effectiveness of diversion programmes could be determined if they were not being monitored against specific principles.

MINUTES
The Chair noted that the Law Society of the Cape of Good Hope had withdrawn its submission. He expressed his dissatisfaction about this, saying that it was not the first time the Society had withdrawn its submission on the day of the presentation.

Community Law Centre submission
Ms J Gallinetti noted that the Community Law Centre (CLC) supports the Child Justice Bill and also applaud the Department for its programmes aiming at implementing the Bill. The Centre urges the Committee to retain all provisions prohibiting life sentence and imprisonment of children under the age of fourteen years. That would put the Bill on par with Article 37(a) of the UN Children Rights Convention, which also prohibits sentencing of children to life imprisonment without the option of parole.

Discussion
The Chair requested the Centre to submit the relevant clause of the Article together with the cases quoted in the presentation to the Committee since that would assist it in formulating its decision on the matter.

Ms S Camerer (NNP) asked what would the effect be of not imprisonment children below fourteen in practice.

Ms Gallinetti responded that the Centre does not say that these children should not be punished in law for their wrongdoing. But it understands that imprisonment is not a proper place for rehabilitation and that is why alternative placements for children should be explored. Children remain children regardless of the crimes they have committed and should always be treated as such.

Mr Jeffery (ANC) asked whether there are any facilities in place that can be used to accommodate children under thirteen years.

Ms Gallinetti responded that there are two institutions available at the moment that can be able to accommodate these children. However there are places of safety available through out the country that could also be used for this purpose but they first need to be capacitated.

Mr Jeffery asked the CLC to comment on the qualification contained in Clause 69(1)(b) of the Bill.

Ms Gallinetti replied that Clause 69 contains no qualification but an absolute prohibition of imprisonment sentence for children under the age of fourteen.

The Chair asked whether there are any statistics available stipulating the number of crimes committed by children under the age of fourteen.

Ms Gallinetti responded that the statistics that CLC has in its possession was acquired from institutions such as NICRO and the government Departments. She could not confirm its reliability.

Mr Jeffrey asked whether they mean that a child should be released after six months even though the process has not been concluded.

Ms Gallinetti responded that they understand the problems surrounding an investigation of a case, but it is unreasonable to keep a child in custody for more that six months. Based on that they advocate that cases involving children should be given a priority so that they could be finished within a reasonable time.

The Chair noted that although the argument holds water, it opens loopholes, which may be used by criminals in furthering their criminal conducts, thus using children as baits.

Ms Gallinetti acknowledged the concerns and requested the Committee to paraphrase the wording so that such loopholes can be prevented.

Mr S Swart (ACDP) asked whether the CLC thinks that legal representation should be made compulsory during the preliminary enquiry.

Ms Gallinetti responded that since they have represented children in a number of cases they believe compulsory legal representation in preliminary enquiries would be time consuming and this is what the Bill wants to prevent.

Child Justice Forum submission

Mr Van Reenen (Chief Magistrate: Wynberg) noted that they experienced problems with the referral programme since a number of children who were supposed to have been sent to places of safety end up being kept in prison, like Pollsmoor. In order for the Bill to be successful a provision for the establishment of a monitoring structure should be inserted.

Discussion

The Chair asked whether the Child Justice Forum (CJF) understands that, in principle, the Bill provides for the establishment of such a monitoring group although its nature would be set out in

the regulations to be promulgated by the Department.

Mr Van Reenen said that they object to such a procedure since it will involve judicial officers and might take too long to implement. They are in favour of an independent monitoring group and the nature of such monitoring structure should be clearly stated in the Bill.

Mr M Mzizi asked what would be the difference if such monitoring structure were to be provided for in the regulations and not in the Bill.

Mr Van Reenen replied that in principle there is no difference. However, CJF would appreciate it if the system were to be provided in the Bill since that would ensure that it becomes operative from the onset.

The Chair said that in most cases the offenders keep changing their legal representative with the view of delaying the trial proceedings. So if they were to be released after the six months due to the fact that the case could not be concluded would that be in the interest of justice and contribute to the creation of a rule of law?

Mr Van Reenen said that, personally, he is not in favour of the idea that the offender should be released after six months has lapsed. The decision in those circumstances should be left to the discretion of the presiding officer and the nature of the case before them.

Mr Jeffery asked the number of places of safety that are available throughout the country to accommodate the child offenders.

Before Mr Van Reenen could respond the Chair also asked about the security level in those places.

Mr Van Reenen responded that there are many place of safety available though out the country which would be able to accommodate these children and some of them are highly secured. However, most of these places lack proper infrastructure and that has resulted in some social development officers refusing to accommodate more children in these places, some alleging that the roofs are broken.

The Chair asked how long the roof of this facility has been broken.

Mr Van Reenen replied that it is said to be broken for more than four years.

Mr Saloojee (ANC) noted that even the Social Development Portfolio Committee, during its provincial visits, saw that there was a need to capacitate most of the places of safety, as they are not suitable to accommodate children.

The Chair said that since the State President has repeatedly said that civil servants who do not do their job should go, the Magistrates should ensure that this is done. If children who were supposed to have been referred to places of safety are kept in prison then those liable should be charged with contempt of court.

Adv Schmidt asked who would be charged with contempt in those cases: the police officers or the social development officers.

The Chair said that this would depend on the circumstances of each case and therefore it is the magistrate who would decide.

Mr Swart asked how the Magistrate is involved in the diversion process.

Mr Van Reenen replied that the duty to divert or not lies with the prosecution and the magistrates are not involved in the process. If magistrates were to be involved that would complicate matters one way or the other since the same magistrate would be expected to preside over the same case,

especially in those areas where there is only one magistrate.

The Chairperson asked the next presenters to note that Clause 68 of the Bill proposes residential supervision in the stead of imprisonment and to comment on that Clause.

Afternoon session

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) submission

Ms Bower read from her submission with regards to Chapter 1, 4 and Clause 38. Particular emphasis was placed on Chapter 6 - diversion. The Bill is to make provision for the fact that certain categories of crime are not to be automatically excluded for the purposes of diversion and that each matter should be looked at taking into consideration the circumstances of the offender.

Discussion

The Chairperson questioned Ms Bower on where the line for sexual offenses should be drawn with regard to diversion. Sexual crimes were horrific; why were they to be considered for diversion? The diversion process allowed the convicted person access back into society. Should they not exclude the most serious crimes? How was the Committee to balance both interests? The system had a problem in balancing the scales.

Ms Bower responded by saying that there was no easy solution and that poverty was a major contributing factor. It was, however, common knowledge that prison was considered a rape factory. It was not as if RAPCAN was against the offenders being punished but that they are being made into rapists in jail.

The Chairperson asked what percentage of rapists is part of the diversion process. How many reported rapists were under the age of 18?

Ms Bower replied that that question was not easily answered, insofar as it was impossible to determine how many rapes went unreported.

The Chairperson repeated the question asking how many sexual offenders that were in fact going through the system were under the age of 18 years.

Ms Bower stated that there were very few.

The Chairperson asked how many diversion programmes are available in South Africa.

Ms Bower replied that there were two, one in Cape Town and one in Durban, although there was another on in the Eastern Cape that fell under SAYSTOP. They were planning to expand them nation-wide.

The Chairperson asked how many cases had been diverted to them.

Ms Bower explained that the prosecution diverted the cases to them after which the accused would spend ten sessions with SAYSTOP.

The Chairperson asked what the level of reoccurrence was and how the accused was monitored after the case had been referred to SAYSTOP.

Ms Bower responded that it was difficult to follow up and the accused often did not have a fixed address.

Chairperson stated that the system could therefore not be effectively valued, one would not know what has become of them, as there had been no follow up.

Ms Bower added that they had followed up once on a few cases but that it was still a new system and it became difficult when it involved more than one jurisdiction.

The Chairperson said that if diversion could not be monitored it was of no value. One needed to determine the principles for evaluating diversion programmes - but that one was nervous when it came to the more serious crimes and when to send to diversion - the principles needed to we weighed up against other interests.

Ms Bower stated that their concern was that all children should be given special regard because of their age. All children are to be treated equally, not that the children were not to be held accountable but there was a need to ensure that the children's rights were protected.

The Chairperson responded that there was no international legislation stating that all children are to be treated equally and there could therefore not be an argument that a group cannot be excluded from diversion.

Ms Bower said that there was a need to give due regard to the circumstances on a case to case basis; it was not about recipes. There should not be an automatic exclusion from diversion.

Ms Bower dealt with Clause 70. RAPCAN felt that the circumstances in which the crimes were committed needed to be looked at on an individual basis.

Ms Bower questioned some of the definitions: "appropriate adult", "diversion", "age estimation and determination" and the meaning of "joinder".

Ms Bower questioned the practicalities of joinder; in which court would the child ultimately appear? The case of the child still needed to be heard in the children's not adult court.

Mr de Lange (Department of Justice) responded to Ms Bower by stating that joinder was a separate principle and that they would be looking at it. Application for joinder would have to be made.

The Chairperson directed his response to Mr de Lange stating that the joinder issue was a big problem and that they would be placing a large burden on the state in this regard.

Mr de Lange replied that they will have to look at the clause again.

Child Rights Project submission
Ms Padayachee, representing the Child Rights Project, stated that the Project supported aspects of the Bill, in particular the reinforcing of human rights and the safeguarding of justice.

Discussion
Ms Padayachee stated that the preliminary stage was to be conducted by a Magistrate and the time of children awaiting trail was to be reduced. Diversion was not being used optimally, particularly when the parents could not be located.

The Chairperson questioned how diversion would be of any help when the parents could not be located?

Ms Padayachee responded that what she meant was that when diversion was an option, it should be used. The original Magistrate should be the one noting the diversion, he would be aware of the objections and that proper records would be entered in the justice system.

The Chairperson questioned Ms Padayachee on what currently happens with the informal diversion by prosecutors. He asked what happened when the child did not show up for the program.

Ms Padayachee replied that a child needed to be put through a program but to get the child to complete the program would be a problem. She was not sure whether there was such a program at the moment. Ms Padayachee argued that it was the Magistrate who would be the one to take all the interests into account.

The Chairperson asked whether there was any scientific evidence on Ms Padayachee's submission on capacity.

Ms Padayachee replied that Prof Neelson would deal with that issue the following day.

The Chairperson asked for more information in terms of their submission of assessment of the offender.

Ms Padayachee submitted that this was to be conducted by the Magistrate and a medical practitioner.

The Chairperson asked about for her view on legal representatives.

Ms Padayachee responded that legal representation should occur from the preliminary stage through the Legal Aid Board.

At this point the Committee was addressed by Mark, who was accompanying Ms Padayachee, on his experience of diversion programmes.

"Mark" stated that he had been in a diversion program: house arrest, for three years and that he had been helped. After some time he had been, and was still being used, as a leader to help work with other convicts.

The Chairperson assisted in stating that he had been used as a role model and had learnt some skills.

Mr Swart asked Ms Padayachee for her experience in the application of justice in terms of accepting responsibility and in terms of the program - whether there had been any victim mediation?

The Chairperson asked how diversion worked in practice and whether there were any records in terms of diversion.

Ms Padayachee said that she knew of no records.

Advocate Masuta commented that the only reason to convert the enquiry into a children's court enquiry would be to establish whether a child is a child in need of care due to the social breakdown in the child's life. As an example, this meant that with a child living on the street, the court would have to deal with that but could not go as far as to correct the behaviour. It could not cater for that. So what would be the appropriate manner to deal with it?

An opposition Member questioned whether a Magistrate could estimate the age of a person using his personal experience. After citing an example of how Magistrates used to estimate the age of a child he questioned whether the determination should not be left to medical practitioners.

Ms Padayachee responded by saying that the Magistrates had a discretion and that their evidence was more probable.

The Chairperson responded that those had been different times; there was now legal protection and the state had the onus to prove the age of an individual, particularly when relevant.

SAYSTOP (Children's Rights Project, Community Law Centre, Nicro, Western Cape Provincial Office Institute For Criminology, UCT RAPCAN) submission

The Chairperson welcomed the submission of SAYSTOP, noting that their submission was very similar to that of RAPCAN, promoting the diversion programs for young sex offenders. The main points of their submission were presented by Ms Moefeeda Salie Kagee and Ms Anneke Meerkotter.

Ms Moefeeda Salie Kagee said that SAYSTOP was a consortium of organisations which manage sexual offences and that they were in favour of the Bill.

Discussion

The Chairperson asked what more the management involved than a ten session program.

Ms Kagee explained that they had a monitoring process in place by which they can apply to court to have the child re-arrested. Every child should be assessed in terms of the diversion.

The Chairperson asked if that meant an assessment before diversion. He continued to agree with Ms Kagee that one assessment prior to diversion and one after would be required but that any decisions would only be made after assessment.

Ms Kagee stated that telephonic monitoring was being conducted and that probation officers had been schooled in the programme. Assessment had been done through family group conferences and victim participation has also been used.

The Chairperson quested Ms Kagee on the value of the monitoring if a child was found raped by a child who had been on a diversion program.

Ms Kagee responded by saying that once a child had been assessed it was difficult to monitor them.

The Chairperson asked whether there were any further follow-ups after the assessment.

Ms Kagee replied that this should be seen as a management problem.

The Chairperson confirmed that at present the diversion consisted of a 10 x 2 hours per week session.

Ms Kagee conceded that it was at the discretion of the prosecutor and probation officer.

The Chairperson asked what the survivors thought about the punishment.

Ms Kagee responded by saying that none of the survivors had said that they did not think that they should not be put in the program.

The Chairperson asked how many children had been re-arrested after they had been in the program.

Ms Anneke Meerkotter said that in the Western Cape about 100 offenders were going through diversion.

Mr Swart queried the value of family conferences to the victim of the crime.

The Chairperson asked Ms Kagee how many services were in fact willing to participate.

Ms Kagee replied that there were 98 probation officers partaking in current studies. Unfortunately they only look at the children and not the effectiveness of the program. However, circumstances clearly dictate the need for a program and provision needs to be made to develop diversion programs.

The Chairperson stated that it was very difficult to accept that when a young person was raped, a ten week was the end of it. The country was new at diversion and it was very difficult to accept such diversion programmes as the only outcome.

Ms Anneke Meerkotter requested that the diversion programs be given as an alternative

sentencing option.

The Chairperson questioned this; how would you know how effective they were? One needed more information on the effectiveness of the diversion programs.

The hearings were adjourned for the day.

Appendix 1:
CHILD JUSTICE FORUM
WESTERN CAPE

SECRETARIES: UMAC, 88 STATION ROAD OBSERVATORY CAPE TOWN 7925, TEL 021 4483717, FAX 021 4485476, EMAIL sean@umac.org.za

9 December 2002

SUBMISSION ON CHILD JUSTICE BILL

Comprising of representatives from the:
South African Police Service
Department of Justice and Constitutional Development,
Department of Correctional Service
Department of Education
Department of Social Services and Poverty Alleviation
Department of Community Safety
Department of Home Affairs

NDPP
Legal Aid Board
Office of the Inspecting Judge
City of Cape Town
Open Society Foundation
UMAC
NICRO
Institute of Criminology, UCT
Community Law Centre, UWC

This submission is made by the Child Justice Forum and is endorsed by all its members. This submission consists of two parts, the first of which will provide the history, background, tasks and successes of the Child Justice Forum (a provincial body) monitoring child justice and the second part will argue for the inclusion, creation and establishment of such monitoring structures at all levels to be included in the body of the Child Justice Bill.

HISTORY, BACKGROUND AND TASKS OF THE CHILD JUSTICE FORUM

Experience in the benefit of a Provincial Level Monitoring Committee has been gained through the practical history of the Western Cape Child Justice Forum over the past three years.

In 2000 the Western Cape Provincial Administration was taken to court by outspoken opposition members of parliament against the constitutional violation of children's rights. The issue involved 600 awaiting trial youth detained in the Province, some kept longer than six months in overcrowded and appalling circumstances.

In March 2000 a meeting of Provincial stakeholders responsible for the implementation of the

system, most notably the South African Police Service, the Department of Justice, Correctional Services, Social Services, Education and key non governmental organizations was convened to address this issue and was the genesis of the Western Cape Child Justice Forum.

A detailed planning process followed to highlight the key problem areas identifying specific tasks and time frames. This provincial committee oversaw the entire process and over a five-month period the number of youth detained were reduced to less than one hundred. This however requires ongoing intervention to maintain.

At the heart of the problem that led to the court case and which will continue to bedevil the best intention of the Child Justice Bill is poor to non-existent intersectorial co-operation and planning and Departments with no previous history in the field unequipped and unprepared for the new challenges. We believe the lessons learnt through this process and the valuable gains made in managing the Child Justice System are motivation for the creation of such monitoring structures in the Bill.

Over the years the Child Justice Forum have been able to monitor numbers of awaiting trial children, work on the establishment of one stop facilities, champion the utilization of options such as diversion and promote restorative justice - all core components of the child justice system.

THE CHILD JUSTICE BILL

The latest version (August 2002 version which was introduced into parliament of the Child Justice Bill under chapter 11 provides for the monitoring of child justice but leaves the establishment of these monitoring bodies and procedures to be made by regulations.

Section 80(1) of this version of the Bill particularly states that "*the cabinet member responsible for the administration of justice must make regulations regarding the procedures to be put in place to monitor and assess the proper application of and compliance with this Act".* .

However, chapter 12 of the draft bill of the South African Law Commission provided for the establishment and regulation of Child Justice Committees at district level, the establishment of a provincial office for Child Justice and the establishment of a national office for Child Justice. Provision for the establishment of these structures was made in the primary legislation in sections 104-114 which also clearly set out the various role, powers, responsibilities and duties of each of these structures.

This submission argues for the reinsertion of such clauses (which adequately spells out the functions, role and duties of such structures) in the body of the Act as opposed to it being left to regulations. This submission further calls for these structures to be established at district level, provincial level and national level to ensure the proper planning and implementation of the Child Justice Bill. To leave these structures to be established by way of regulations, would result in unnecessary delays as the implementation of the new Child Justice System would require substantial planning, training and oversight in order for the various departments to fulfill their obligations under the new system.

The need for monitoring mechanisms at all levels is not new and is recognized in facilities such as the Community Police Forums which provide for both area and provincial boards. The value of having monitoring structures in place can certainly be drawn from the experience of the Child Justice Forum as highlighted above.

In conclusion we believe that the provision for the creation of monitoring structures at all levels and for these to be effective is best done when incorporated in the body of the Act. This will prevent

any unnecessary delays and will certainly provide the platform and legal obligation to immediately put in place monitoring structures or to alternatively formalize any current existing child justice monitoring structures. The incorporation of the monitoring clauses found in the South African Law Commission version of the Bill also clearly identifies who should form part of these structures, the role they need to fulfill and also the duties and functions which need to be performed. It is submitted that the original clauses be reinserted into the body of the Act as opposed to leaving this to the regulations.

In conclusion we also state our wish to make an oral submission to the Committee

Yours sincerely

Sean Tait

Secretary

Appendix 2:
SUBMISSION ON THE CHILD JUSTICE BILL
TO: THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT
BY: SAYSTOP - DIVERSION PROGRAMME FOR YOUNG SEX OFFENDERS
Partners: Children's Rights Project, Community Law Centre, UWC

NICRO, Western Cape Provincial Office

Institute for Criminology, UCT

RAPCAN

PLEASE NOTE THAT THE SAYSTOP CONSORTIUM WISHES TO ADDRESS THE PORTFOLIO COMMITTEE AT ANY PUBLIC HEARINGS THAT MAY OCCUR AND ACCORDINGLY REQUESTS AN OPPORTUNITY TO DO SO.

This submission consists of two parts. The first section consists of the background to SAYStOP and a general comment on young sex offenders and the Child Justice Bill. The second part consists of specific comments on sections in the Bill.

PART 1: BACKGROUND TO SAYStOP AND GENERAL COMMENT

Background

SAYStOP was formed in 1997 for the purpose of seeking innovative and effective interventions to treat and manage young sex offenders with the aim of preventing a pattern of deviant behaviour from being established and decreasing the possibility of further offending.

It was of concern to a number of individuals in the Western Cape that there was an increase in the cases involving children who commit sexual offences and despite charges being laid cases were not being prosecuted. The reason for this it seemed was that a number of cases were regarded as experimental and in other cases the charges were withdrawn due to the young age of the child alleged to have committed the offence or the relationship between the child and the victim.

This results in children not being held accountable for their actions and returned to the community without any referral to a programme that would assist them to understand and change their

abusive behaviour.

As a result the SAYStOP project has developed a programme that can be used to divert children from the criminal justice system or used as an alternative sentence. The programme is particularly beneficial as it provides constructive alternatives to existing sentencing options and by diverting children it holds them responsible and accountable while attempting to address the reasons for the offending behaviour and potentially provide an opportunity for reintegration into the community.

The project partners with the State in so far as the service providers i.e. facilitators of the programme are probation officers in the employ of the Provincial Department of Social Services. These probation officers are then trained by the SAYStOP project and after the training they continue to receive mentoring services and follow up site visits to assist them in their facilitating. The SAYStOP programme also offers a telephonic advice service and a newsletter to keep the facilitators updated on developments.

The facilitators run groups of children referred to the programme throughout the Western Cape and the programme has recently been extended to the Eastern Cape as well. The programme has received numerous requests from Gauteng, Northern Province and the Northern Cape for the programme to be extended to those areas because of the lack of services and interventions available for young sex offenders and the obvious need for them.

Children who attend the programme are selected on a number of criteria:

- Age: the programme accepts children aged between 12 and 18 years, however most referrals are of children aged between 12 and 16 years. It is thought that children younger than 12 have difficulty grasping the abstract concepts contained in the programme and also have a limited attention span.
- Offence: the programme deals with children who have committed a crime of a sexual nature. However in determining whether to accept a particular child, the nature of the offence is examined in order to determine if it was exploratory in nature. In addition the programme will only accept children accused of crimes where there are minimal aggravating circumstances. In other words children involved in a violent sexual assault or gang rape would not be accepted on the programme. Furthermore the child must accept responsibility for his or her actions
- Address: the child must have a fixed address
- Guardian: the child must have a parent or guardian or care-giver to take responsibility for ensuring the child's attendance at the sessions.

The programme consists of 10 sessions usually run once a week for 2 hours at a time. As stated, some groups have been adapted because of geographical difficulties associated with travelling to one place for a ten-week period.

- Session 1: Crime awareness - informs the child of the aims of the programme, nature, causes and consequences of crime etc.
- Session 2: Self-esteem - broadens the participants self knowledge, creates awareness of factors which influence their self concept and promotes a positive attitude towards themselves
- Session 3: Understanding my body - examines the changes that take place in boys and girls bodies as they enter puberty and normalises the feelings that go with these changes
- Sessions 4 and 5: Sexuality, socialisation and myths - creates awareness of appropriate sexual behaviour towards others, debunks myths about gender stereotypes
- Sessions 6 and 7: Victim empathy - identifies different feelings that people have, creates understanding of feelings of powerlessness and how this relates to situations of abuse, initiates process of preventing relapse into offending by making participants aware of

possible feelings of their victim
- Sessions 8 and 9: Relapse prevention- explore anger triggers and responses to anger, looks at ways of responding to anger and conflict situations
- Session 10: The way forward: encourages communication between caregivers and the children and makes caregivers part of the children's future aspirations.

General Comment

Why intervene with young sex offenders?

There is a definite need to focus on the offender to try and redress the power imbalance that more often than not causes violence to be perpetrated against women. It is also argued that interventions with young offenders are successful as these interventions occur during a time when the child's personality, attitudes and beliefs are still in their formative stages and can be altered where there are serious behavioural problems.

Who are young sex offenders? It is noted that there is a range of types of children who display sexually deviant behaviour. Friedrich explains:

> " Some children who are called sexually aggressive may not even be intrusive with other children but are simply reacting to their own victimisation in a compulsive, self-stimulating manner. Other sexually aggressive children may engage in very extensive but largely mutual interaction with other children, typically other sexually abused children. Finally, there are sexually aggressive children who truly are intrusive and coercive, but they are quite different from children who are simply reactive to their sexual abuse."

It is therefore important not to simply generalise when speaking of young sex offenders, but to realise there are varying degrees and classes of offending of this nature.

Likewise, there are differing motives behind children who are sexually aggressive and Araji explores these as follows:

- Self control - children who are impulsive or compulsive or both
- Emotions expressed - sexually aggressive children demonstrate deep feelings of anger, rage, shame and loneliness
- Abuse histories - Sexually aggressive children may have been sexually abused but not necessarily. All have experienced some type of abuse - physical, sexual, or emotional - usually multiple types.
- Abuse-Victim relationships - sexually aggressive children seek out others who are perceived as less powerful, unequal in status and who can be controlled
- Environments - the majority of sexually aggressive children live in dysfunctional-type homes or environments that include families that lack boundaries, especially in the area of sexual activities
- Treatment outcomes - of all children demonstrating problematic sexual behaviours, children who act sexually aggressive are the most resistant to treatment

It is therefore evident that interventions are paramount in the management of these types of offenders.

As far as the effectiveness of managing serious juvenile offenders is concerned it has been said that a purely punitive approach discounts advances made in the area of treatment. According to Lipsey, " it is no longer constructive for researchers, practitioners, and policy makers to argue

about whether delinquency treatment and rehabilitative approaches work. As a generality, treatment clearly works. We must get on with the business of developing and identifying the treatment models that will be most effective and providing them to the juveniles that will benefit"

In relation to serious and violent juvenile offenders, the Office of Juvenile Justice and Delinquency Prevention's Study Group on Serious and Violent Juvenile Offenders has reached certain conclusions and key findings in expanding its knowledge about such offenders and determining which types of interventions can reduce their level of offending. These include:

- It is never too early: Preventative interventions for young children at risk for serious and violent juveniles should be implemented at an early stage and are known to be effective
- It is never too late: Interventions and sanctions for known serious and violent juveniles can reduce the risk of re-offending
- Among the strongest predictors of serious and violent juveniles evident between the ages of 12 and 14 are lack of strong social ties, anti-social peers, non-serious delinquent acts, poor school attitude and performance and psychological conditions such as impulsivity
- The best preventative interventions are based on an integration of different services, including services provided by the juvenile justice system, schools, mental health, medical health and child protection agencies
- The re-offending of serious and violent juveniles can be reduced by appropriate intervention, especially interpersonal skills training and cognitive-behavioural treatment
- Better designed evaluations of the effectiveness of programs are needed and studies of the cost-effectiveness of one programme compared with others

How intervening with young sex offenders impacts on the efforts to prevent violence against women

SAYStOP is a programme for young sex offenders. The focus is on the offender and not the victim. As such, the young offenders participating in the programme, thus far almost exclusively males, have not necessarily only committed a sexual offence against a women or girl child, but can have offended against a member of their own sex. However, it is generally recognised that most instances of sexual assault are committed against women or girls.

Pickup argues that gender analysis of human development indicates that one of the main causes of violence against women lies in the unequal powers relationship between women and men that entrenches male dominance over women. She looks at a number of strategies to combat and challenge violence against women including direct support to survivors of violence, challenging attitudes and beliefs and challenging the State's responses to violence against women.

One of her strategies is challenging violent men. She notes, however, that mainstream development and humanitarian organisations have not tended to work with men and resist this idea for a number of reasons. These include the fact that there are limited resources available for violence against women and these should not be used on the perpetrators but rather the survivors. Likewise, women activists and gender and development policy-makers are reluctant to dilute the political power of their focus on women.

The reason given for developing strategies to engage male perpetrators is that most forms of violence against women will not end until men change. It is argued that by directly challenging the behaviour of violent men, and ensuring that men and boys are encouraged to reject violence, the goal of achieving safety for women can be reached.

The Child Justice Bill

It is submitted that a separate child justice system for children in trouble with the law is long overdue. Children are a vulnerable group of persons in society and the Constitution has identified them as in need of special protection. The Bill is aimed at protecting the rights of children accused of committing crimes as well as regulating the system whereby a child is dealt with and ensuring that the roles and responsibilities of all those involved in the process are clearly defined in order to provide effective implementation. The effect of the Bill being adopted as legislation will be to revolutionise the criminal justice system in South Africa in as far as it affects children in conflict with the law. The Child Justice Bill creates a specialised criminal procedure system designed to expeditiously manage young offenders in a co-operative and holistic manner. The various facets of the Bill are interconnected and are co-dependant in a way that ensures maximised service delivery to children by the State and civil society.

SAYStOP is particularly encouraged by the inclusion of provisions for assessment and diversion. These are practices that are of paramount importance in the process whereby proper interventions and treatments for young offenders are identified and put into operation. As a result the Bill introduces a child justice system aimed at ensuring that children who are capable of being diverted away from the system are, and that children who are serious offenders and against whom the community needs to be protected are dealt with accordingly. This accords with the UN Convention on the Rights of the Child, which emphasises the fact that the best interests of the child need to be balanced against the interests of the community to be safe and secure. While ensuring that a child's sense of dignity and self-worth are recognised, the Bill also provides for mechanisms that ensure that a child respects the rights of others. In this respect the formal introduction of diversion, and the underlying principles of restorative justice, into our child justice system is very exciting and encompasses the ultimate goal of achieving a system that allows child offenders to participate in a meaningful process of recognising their actions, making amends for them and preventing re-offending. SAYStOP supports the inclusion of diversion in the Bill.

In addition, the delays and abuses that systematically occur in the present system can be avoided by the adoption of the clauses in the Bill that provide for time periods in which certain procedures must be completed and that set out minimum standards for the treatment of children who are arrested, detained and pass through the criminal justice process. SAYStOP supports these sections.

PART 2: SPECIFIC SUBMISSIONS

We agree with and support the following provisions contained in the present Bill and submit that they should be included in the final legislation. However, this does not mean that we are not in agreement with most other provisions in the Bill, we merely wish to highlight those of particular relevance and importance to young sex offenders.

- Chapter 1 - objects of Act and general principles.
- Chapter 4 - assessment of child. However it submitted that section 38 of the Cabinet's version of the Bill on purposes of assessment, which has been excluded from the present Bill, should be included in order for the Bill and assessment to have greater clarity and put the provisions of the chapter in context for probation officers and social workers. These provisions serve as useful general principles and guidelines for assessment.
- Section 38 - postponement of preliminary inquiry for detailed assessment.
- Chapter 6 - diversion. We specifically support the move not to exclude certain categories of crimes for the purposes of diversion. It is evident from the discussion above that there are various types of young sex offenders and the motives for committing these types of offences differ drastically. It would therefore be counterproductive to focus on the general nature of the offence and not the offender and specific details of the crime by excluding certain offences from diversion. The approach taken of assessing each matter as it occurs, it is submitted, is the correct one.

- Section 62 - pre sentence reports required.
- Section 64 - community-based sentences.
- Section 65 - restorative justice sentences.
- Section 70 - postponement or suspension. However it is submitted that section 93(3)(j) of the Cabinet's version be included in the present section, which reads:

  > " Any other condition appropriate to the circumstances of the child and in keeping with the principles of this Act, which promotes the child's reintegration into society."
  >
  > It is submitted that this provision allows for innovative and individualised responses to children's behaviour and is in keeping with the objectives and principles of the Bill.

There are certain provisions that we submit are problematic for one reason or another. These are as follows:

Definition of "appropriate adult"

It is submitted that this does not make sense in that a primary caregiver necessarily is a factual custodian and is, in most instances, also a member of the child's family.

Definition of diversion

It is submitted that it is confusing to define diversion as " diversion of a child". It is submitted that it would be best to define it as "referral of a child". In addition, the terminology " to the informal procedures established by Chapter 5" is also confusing as this refers to the preliminary inquiry. Perhaps it would be best to state, " to the informal options established in chapter 6 by means of the procedures established in chapter 5".

Age estimation and determination

In the Cabinet's version of the Bill the provisions relating to age estimation and age determination were contained in the same chapter as criminal capacity. It is submitted that this was a logical approach as both issues deal with the age of a child and questions on age usually arise at the outset of a particular matter and so a section at the beginning of the Bill on this, would make sense. In addition, there was a clear grouping of all the responsibilities and powers of the various role-players that created a holistic and easy to follow picture of how age should be estimated and determined. However, the present Bill has moved the sections dealing with age estimation and age determination to various parts of the Bill and so it is now quite difficult to read these sections without having to move from place to place

- Section 8 of the Cabinet's version deals with the age estimation by a probation officer and this has been relocated to section 24 of the present Bill under the chapter of assessment. Again, it is noted that age estimation is one of the purposes of assessment, but it is submitted that logic demands that all issues relating to age estimation and determination should be located in one area in the Bill so that this process is clear.
- Section 9 of the Cabinet's version dealing with the age determination by the inquiry magistrate is relocated to sections 31 and 82 of the present Bill under the chapters dealing with the preliminary inquiry and general provisions. Again, as stated, it is submitted that it would be more appropriate that these provisions be grouped together in one area in the Bill for consistency.

Chapter 11 - Monitoring of child justice

The original SALC draft Bill had extensive provisions regulating the monitoring of the Bill. These are now relegated to the regulations. It is submitted that the monitoring provisions should be reinstated in the Bill. On account of the various number of government departments that have responsibilities under this piece of legislation, the real possibility for violation and infringement of children's rights that can occur in the system and the critical scrutiny of the general public towards the criminal justice system as a whole, it is desirable that proper monitoring systems be in place immediately and that they are included in the primary legislation to ensure the highest form of accountability.

Appendix 3:
Ms S Padayachee
LAWYERS FOR HUMAN RIGHTS
With South Africa having ratified the CRC and the AC on the Rights and Welfare of the child it is the country's obligation to bring legislation in line with international Standards. **Section 28 (1) (g)** of the South African Constitution states that : " a child should be detained as a measure of last resort and for the shortest possible period of time ".

The Child Justice Bill provides for a criminal justice system that would be specific to the needs of children who are in conflict with the law. The bill looks at reinforcing the child's respect for human rights whilst taking into account the fundamental freedom of others by holding him or her accountable thus also safeguarding the interests of victims and the community.

In addition to our written submissions. I would like to highlight only the following:

a. *Preliminary stage*

(A) ***PRELIMINARY STAGE***

This stage is important as the child once arrested is assessed by a Probation Officer and a report is compiled which would be used by the inquiry Magistrate. Occasions might arise where the child is not assessed and a report is not handed in and this would be dispensed with by the inquiry Magistrate.

It is vitally important that the pre-liminary stage is conducted by a Magistrate who is able to make an informed decision after hearing evidence from the child, his or her parent or an appropriate adult. He or she would adopt an inquisitorial role when gathering information from all those present.

This stage is important as it would also ensure that there would be a reduced amount of children awaiting trial in prison, in cells or in a secure care facility. At present most of the prisons have an overflow of children awaiting trial and should there be an option for the diversion of the child, this would be in line with the principles of restorative justice.

By using the inquiry Magistrate, a ***record*** *of all diversions, convertions to a children's court enquiry and those that are set down for trial is maintained. The Magistrate should be aware of these options as the child has entered the criminal justice system once arrested.*

This stage sets out the child's entry into the justice system. The inquiry Magistrate role is ascertaining the circumstances and seriousness of the matter. I am of the opinion that the inquiry May should participate in the stage, as they take into account the best interests of the child.
