JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE
25 March 2003
CHILD JUSTICE BILL: DELIBERATIONS

Chairperson: Adv J H de Lange (ANC)

Documents handed out:
Child Justice Bill [B 49-2002]
Summary of Submissions on the Child Justice Bill
Addendum to Summary of Submissions on the Child Justice Bill (Appendix)

SUMMARY
The Committee continued informal deliberations on the Child Justice Bill, focussing on Chapters 7 and 8. The Committee suggested that District courts should be used in cases for referrals and diversions. That there was a need to develop expertise at Regional Court level as well, which would be far more advantageous for the child. At Regional Court level the child received legal aid and the Committee thought that the quality of justice in all respects was better at the Regional Court level.

The Committee found the fact that assessors can be provided for adults and not for children, problematic. The exclusion of assessors was an attempt to avoid further possible delays. The Committee would consider the clause again.

MINUTES
Chapter 7
The Chairperson asked the legal team to explain how "charges" was used in the Bill.

After explaining that the drafters drew from Section 35 of the Constitution and Section 56 of the Criminal Procedure Act (CPA), Mr Basset said that they continued to use the word 'charge' as everyone was familiar with this.

Adv de Lange examining Clause 42 "Procedure upon referral of matter for plea and trial" and Chapter 7 of the Bill "Child justice Courts", noted that all children not dealt with in Part 1 or 2 will be dealt with under Section 56 (6) of the CPA. However, he thought perhaps it was necessary to put a cap on the investigation as was previously done under "Postponements". In other words, where bail was granted, but not paid, then Parts 1, 2 and 3 ought to remain. However, the child should be released with new bail conditions. He questioned whether this section would apply where a child was not granted bail.

Adv de Lange left it to the Department to decide where to slot in Clause 42, although he felt it should be placed under Chapter 7 as a 'Part 3'. This, he added, would make it easier to read.

He noted that there were no public comments on Clause 42.

Diversion
He asked the Department to make a note that he had not looked at the details of Clauses 43, 44,

45, 47, 48 and 49 in Chapter 6. He would revisit them at a later stage.

He noted there were several public submission on diversions. The submission by Prof Sloth-Nielsen was dealt with earlier. He did not agree with her second sentence. His assertion was that it would be best to examine diversions at a preliminary enquiry.

The Chairperson impressed on the Department that it should be explicitly stated within the Bill that when a matter was heard before a Child Justice Court, the Child Justice Bill would be the applicable statute. This was necessary as the court would be sitting as a different court and this Bill applied, except where it was mentioned that the CPA applied.

Ms Skelton, elaborating on Clause 50 (b), stated that this Clause referred to Section 89 of the Magistrates Court Act and this referred to a District Court. The idea, she added was to utilise the level of expertise at this level as Regional Court magistrates were not equipped to handle such cases, owing to a lack of exposure.

While he understood the preference for Districts Court magistrates, Adv de Lange added that District courts should be used in cases for referrals and diversions. He believed that there was a need to develop an expertise at Regional Court level as well. This would be far more advantageous for the child. At Regional Court level the child definitely received legal aid and the quality of justice in all respects was better at the Regional Court level. However, he decided that this issue should be flagged for reconsideration at a later stage. His concern was that this might be a ground for review at a later stage.

He firmly believed the aim was to create a tighter and more comprehensive Bill in general, rather than emphasise checks, balances and limits as this was a waste of State resources and ultimately did not provide a good package for child justice.

Ms Skelton explained that the reference in Clause 59 to a child justice court meant any court. For instance, if one is tried in the High Court, one could plea in a district court in terms of Section 119 of the CPA.

The Chairperson desired this to be made clear, as the Bill did not make distinction when a child was involved and when both a child and an adult were involved. The Department has to clarify that when both a child and an adult were involved then the court hearing the matter deals with the case in terms of this Child Justice Bill. When matters pertain to a child only, then the matter is heard in a Children's Court. The Department must add a Clause clarifying this point at this section of the Bill as it only applied at this point.

In addition, he thought that Clause 50 (2) (a) and (b) were in the wrong place as they were meant for diversion and so forth, not here at the trial stage.

In general, he was concerned that the Department was not making a clear distinction between new things that were introduced into the Bill as separate and distinct from the CPA.

Ms Skelton referred the Chairperson to Clause 60, which dealt with privacy.

The Chairperson explained he had no problems with that Clause, but the right place for that would be under the sections relating to diversion, and not where it existed presently.

Imam Soloman asked whether a court could serve as an adult and child court. If so, why were references to this contained in this Bill and not the CPA?

The Chairperson explained that the major difference was the stage before trial. The link was quite easy to understand, he continued, as it allowed for easy reference. A whole system was being created by the Bill.

The Chairperson asked whether it was necessary to keep Clause 51 at its present position. He suggested that perhaps this should form a part 5 in the present chapter or perhaps in another.

Ms Skelton explained Clause 51 as envisioning a separate facility with its own court and police cells.

Adv de Lange thought this concept was too idealistic especially with regard to smaller towns.

He also noticed that Clause 51 did not explain the objective or the purpose of the One Stop Justice Centres.

Ms Skelton agreed with him and they would rectify this.

Adv de Lange asked whether the language in Clause 51 (3) should be a "must" or "may" as regards the situation of the One Stop Justice Centres. His query was whether the Department firstly really wanted that and second, whether they really needed that.

Ms Skelton agreed that with Adv de Lange. The factors set out there delineated what a One Stop Justice Centre should be. They had taken a purposive approach. Their idea was to set a long list of factors and in this way prevent problems at a later stage.

Adv de Lange indicated that the Department should create a certain level of flexibility. They need to redraft this section.

He asked the Department to explain "boundaries of jurisdiction" in Clause 51(5)(a).

Ms Skelton replied that the idea was to position Child Justice Centres in such a way so that it would facilitate a large area.

Adv de Lange argued that the wording was incorrect here. It seemed as if the Department wanted a clause that would determine the jurisdiction of a children's court. However, a jurisdictional court only applied for trial purposes. He asked whether it was necessary to have a jurisdiction court for diversion. There cannot be concurrent jurisdiction. Therefore the Department would have to think about the consequences of trial type and referral/diversion matters. He advised the Department to give more thought to this Clause and reword it.

Examining Clause 52, "Parental assistance", he noted that they had discussed this several times previously and the Department should therefore adapt it as previously discussed.

Adv de Lange wondered whether the Department would add Clause 42 "Procedure upon referral of matter for Pleas and Trial" to Clause 53, relating to the conduct of proceedings in the child justice court. He realised that 'assessors' were entirely excluded from child proceedings. He questioned the rationale for this.

Ms Skelton replied that this was done in order avoid delays. They did, however, take into consideration several comments. They were of the opinion that assessors hold up trials.

Adv de Lange highlighted that the Assessors Act had been recently redrafted whereby a trial could continue without the presence of an assessor. He decided he would flag this Clause. The fact that assessors can be provided for adults and not for children, posed constitutional anomalies he argued. He expressed concern over the legality of these provisions.

Clause 53 (3) was vague and a similar provision to this was found in the CPA. He reiterated that if the Department had chosen to insert a provision similar to one found in the CPA, it would mean that the drafters were changing the CPA for good reason. He therefore questioned the purpose of this Clause in the Bill.

Ms Skelton responded that the intention behind this Clause was to add to the inquisitorial nature

when that may be in the best interests of the child. They were thinking of a child without legal representation.

Adv de Lange asked again whether it was indeed necessary to have such a provision in the Bill. Was there a current prohibition in the law that they wished to change? Otherwise, he argued, it was merely creating confusion.

Ms Skelton explained that they were attempting to add to the CPA. Nevertheless, she conceded that they would have to examine the CPA, as they did not wish to cloud the issues.

Adv de Lange decided to flag this and asked the Department to respond later after comparing it with Section 167 of the CPA.

He was not sure whether subClause 4 was appropriately situated.

Similarly in Clause 53 (5), he did not think the Department had correctly expressed themselves. He had no problems with their idea; rather he was concerned with the use of terminology such as " hostile cross-examination". The court acts in the best interests of children at all times, therefore the Department should create a more general principle.

Ms Skelton explained Clause 54 as being to linked to an earlier provision where a child must have someone present with them (a legal guardian or parent). The idea was that if the proper person was not present with them, then this Clause presented a sanction for not following the proper protection mechanisms.

Adv de Lange was concerned that this Clause could cut both ways and asked whether the Department had considered the position in other jurisdictions.

Ms Skelton confirmed that they did consult other jurisdictions and that police officers taking statements from children was commonly prohibited.

Adv de Lange asked for a clarification of an "independent observer" in Clause 53 (3)(b).

Ms Skelton directed him to the definitions.

Adv de Lange suggested that perhaps it would be better to use "intermediary" as was done in the Sexual Offences Act.

Ms S Camerer (NNP) concurred with the spirit of the provision. She preferred the use of "parent" and not "appropriate adult". Her main concern was that children should be in the care of somebody.

Mr L Landers (ANC) noted that it was not clear who did the accreditation.

Adv de Lange explained that a regulation was passed that created the category of people that could do that.

He suggested that the Department look at the principle and add a rider: 1) to add an independent observer, and 2) specify that a police officer of a particular rank would qualify.

He asked why identity parades were dealt with separately.

Ms Skelton was not sure herself and stated that would look at the old version of the Bill.

Adv de Lange agreed with her and suggested that the Department tighten up these loose Clauses. Moreover, he was not sure why Clause 53(4) was necessary in the first place.

Commenting on Clause 55 "Children in detention at child justice courts", he added that wherever there are references to instructions, these should be specifically tabled in Parliament or published

in the Government Gazette. This specification should be inserted into the Bill.

Referring to the evaluation report in Clause 56, he wondered whether this be necessary in every single case. Additionally these children would have to be kept somewhere, as these were serious crimes.

Ms Skelton responded the number of children younger than fourteen years and who were charged with serious crimes were a smaller number. Therefore, the system would be able to absorb them.

Adv de Lange suggested that Clause 56 should be drafted in simpler terms, and to specify that the evaluation report forms part of that evidence. This Clause had to be linked to a Regulation, which would set out the people that may be appointed, and that such evidence must be placed before court. Although a certain level of discretion should be left to magistrates. In addition, it should be clear that the decision of capacity is to be made at the end when the trial is finished.

Adv de Lange referred to the submission by of RAPCAN on Clause 57. He did not agree with the views expressed by Prof Sloth-Nielsen, as he believed that the justice system could not afford cross-examining witnesses twice. It was neither practical nor financially feasible.

Clause 58 was previously discussed. Adv de Lange noted that it was supported by the National Council on Child and Welfare and CLC.

Clause 59 created a new procedure. He suggested that the Department find something different from ordinary diversion. He agreed that there must be an acquittal, although there should be something to indicate that one still pays a price. This Clause required some thinking.

Ms Skelton drew his attention to an example in the US, where the judge directs the diversion, which better facilitated control.

Ms Camerer added her support for this idea. She preferred the idea of an interventionist responsibility by the courts.

Adv de Lange agreed, but added that he strongly believed that if a child has committed a rape, their slate should not be wiped off clean.

Ms Skelton clarified that this Clause was not drafted with only serious cases in mind.

Adv de Lange then recommended that the Department should limit this to cases where you have diversion as an option as this would be the more effective way.

He questioned the reference to the acquittal in the absence of the child.

Ms Skelton replied that acquittal was conditional on diversion.

Unconvinced, he recommended that the Department think about that and suggested something softer but preserved the same effect as an acquittal.

It seemed again as if Clause 60 echoed provisions in the CPA. As he mentioned earlier, if provision were covered in the CPA already, was this Bill attempting to change those provisions when repeated here?

He suggested that the Department may want to differentiate between sittings and the information gathered from sittings. Sittings, he added, should be placed in the right place in the Bill, while the latter ought to be included in a general clause applicable to assessments, preliminary enquiries and trial.

Chapter 8
Adv de Lange wished to know what were the big changes in this chapter *vis-à-vis* the CPA.

Ms Skelton pointed to Clause 69 where a child may be incarcerated in a residential place or prison.

Adv de Lange pointed out that a child under fourteen years could not go to prison. In addition, minimum sentences did not apply to children under eighteen years at all.

Ms Skelton highlighted Clause 72 on prohibition of certain forms of punishment. The idea here was to encourage community-based incarceration.

Adv de Lange expressed his deep concern about the purpose of prison sentences. He suggested the Department stipulate "in addition to ".

Mr J Maseka (UDM) asked how the Bill targeted children who were between twelve and fourteen years and were used by adult syndicates to commit heinous crimes such as hijackings.

Ms Camerer voiced her concerns that prison was not the place for children under the age of fourteen. These were children in need of care and should rather be sent to a reform school.

Adv de Lange explained there were two issues to be noted:
1) children over the age of fourteen and 2) children under fourteen. He questioned why was the test, substantial and compelling reason necessary for children over fourteen.

Ms Skelton replied that imprisonment was a measure of last resort and they aimed to set a high test.

Explaining why they did not include a Schedule, she stated that they were trying to stop the current situation of magistrates over-using imprisonment. Thus, imprisonment was limited to necessary cases.

Adv de Lange added that for children over the age of fourteen substantial and compelling reasons should apply only to Schedules 1 and 2. He was not sure whether minimum sentence should be excluded for sixteen to eighteen year olds. This would have to be flagged and revisited later.

Ms Skelton, commenting on life imprisonment, stated that there was no limit in the Bill for the length of time, which differed from the position in Australia and Britain. Therefore, if the Committee members wished to insert a limit it would be very much in line with international and foreign practice.

Adv de Lange suggested that a cap of five to ten years be placed in Schedule 2.

Examining Schedule 1, he asked what the standard sentences were for that area. The Department should use words like " repeat offender". Therefore, if a child was a repeat offender the courts would have a choice of Schedules.
Likewise, Schedule 3 should have a cap of five to ten years for items 2, 4, 5 and 10.

Explaining Clause 69 (3), she stated that it was linked to community based sentences.

Adv de Lange replied that he would have to be persuaded.

Ms Skelton responded that they would go back and look at the SALC report.

Adv de Lange expressed his concern with Clause 68 "Rreferral to residential facility", in that magistrates and prosecutors would veer away from this so that they could put children back into prison. If the Bill wished to encourage this, then perhaps it would be better to link this Clause to imprisonment. It would have to be mentioned that as a condition of sentence a certain period would be imprisonment.

Ms Skelton conceded that the cut-off age of eighteen counted against the child. She added that the

purpose and intent would be destroyed if a child spent time in rehabilitation for some years and was then put into prison. Therefore, the upper age of 21 years ought to retain.

Adv de Lange confirmed that imprisonment for children under fourteen years should be based on two grounds: as a last resort and in exceptional circumstances.

The meeting was adjourned.

Appendix:
ADDENDUM TO SUMMARY OF COMMENTS ON THE BILL

Comments received after 28 Feb 2003.

CLAUSE 4(3)(a):

CJ 54 (Human Rights Commission)

It is not clear what this provision seeks to achieve. Our reading of this section is that it could potentially stand to jeopardize the spirit of the Bill and the targeted segment of the population that it has set out to protect.

CLAUSE 18(1):

CJ 54 (Human Rights Commission)

The Commission is of the view that separate records for child offenders should be kept.

CHAPTER 4: ASSESSMENT OF CHILD

CJ 54 (Human Rights Commission)

Diversion should be an option at the assessment stage, and not only be available at the preliminary inquiry. This would help with deal with backlogs that currently exist in courts and in addition ensure a more effective flow of cases.

CLAUSE 36(5)(a):

CJ 54 (Human Rights Commission)

The HRC is very concerned about the unduly long periods the child must wait before reappearing in court.

CLAUSE 44: CHILD TO BE CONSIDERED FOR DIVERSION UNDER CERTAIN CIRCUMSTANCES

CJ 56 (Community Law Centre)

In response to a question put by the Chair to Ms. J Gallinetti during her oral submission to the committee the community Law Centre has submitted the following further comment on the question of Are diversion practices constitutional, particularly in the light of Section 34 of the Constitution?

Article 34 of the Constitution states
'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a
court or, where appropriate, another independent and impartial tribunal or forum."

The Community Law Centre points out that according to the case of S v Pennington 1997 (10) BCLR 1413 (CC) that criminal proceedings are not ordinarily referred to as "disputes". In the case

Chaskalson P held "The words any dispute' may be wide enough to include criminal proceedings, but it is not the way such proceedings are ordinarily referred to. That Section 34 has no application to criminal proceedings seems to me to follow not only from the language used but also from the fact that Section 35 of the Constitution deals specifically with the manner in which criminal proceedings must be conducted".

It is therefore submit that this section of the Constitution does not affect the constitutionality of diversion and it cannot be argued that diversion is a violation of section 34 of the Constitution. It would appear that section 34 relates primarily to access to court, in that it seeks to ensure citizens a right to due process of law in the context of civil proceedings.

In any event, when looking at all types of offences, the availability of admission of guilt fines can be likened to diversion as the offender can avoid formal court in trivial matters just as certain minor offences can be diverted from court. In this instance a mechanism in section 57 of the CPA exists, which allows for disputes not being determined in an ordinary court of law.

On the issue of whether diversion is constitutional from the victim's perspective, particularly in relation to serious offences such as rape and murder, the Community Law Centre makes reference to section 12(1)(c) of the Constitution provides that "everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources." Reference is also made to the Carmichele case which emphasises a victim's right to life, human dignity and freedom and security of the person. On the other hand, the committee's attention is drawn to section 179(2) of the Constitution which states that:
The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.

Section 179 has established a single prosecuting authority that is now regulated by the National Prosecuting Authority Act 32 of 1998. It has been stated that "it is the duty of the national director of public prosecutions to see to it that prosecutions are instituted without fear, favour or prejudice that is correctly and with just cause.

Section 20(1) of Act 32 of 1998 sets out the powers, duties and functions of the prosecuting authority and states.

The power as contemplated in section 179(2) and all other relevant sections of the Constitution, to
(a) institute and conduct criminal proceedings on behalf of the State;
(b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
(c) discontinue criminal proceedings, vests in the prosecuting authority and shall, for all purposes, be exercised on behalf of the Republic."

Therefore the national prosecuting authority has a clear discretion and power to direct criminal proceedings and this extends to the decision to either conduct criminal proceedings or discontinue them.

It has been noted by Du Toit et al (commentary to CPA) that the powers of the prosecuting authority are extensive and therefore have to be exercised with care and the highest degree of objectivity and it is only in exceptional cases that a court will interfere.

An example of this occurred in S v F 1989 (1) SA 460 (ZH) A where a 10 year old boy was charged with indecent assault of a 8 year old girl. The review court found that the element of wrongfulness had not been adjudicated on and the State had failed to prove its case. In forming this decision, Greenland J held:

Though mindful of the Attorney-General's prerogative in regard to prosecutions, I am compelled to hold it is wrong, unjust and prejudicial to the interests of the accused and society to prosecute a child where the evidence is that such child will not understand or apprectate the proceedings."

It is submitted that the discretion granted to the prosecuting authority by the Constitution envisages that the prosecution must act in the best interests of the State and this entails weighing up the circumstances of the crime, the victim and the accused in making a decision to prosecute. It is further submitted that the prosecution has the discretion to discontinue proceedings in appropriate matters. In light of this it is submitted that any victims rights could be reasonably and justifiably limited by a prosecutorial decision to divert in appropriate circumstances.

On the issue of **whether certain categories of offences should be excluded from diversion,** the CLC proposes that for certain serious types of offences extra checks and balances could be built in such as the need to have the agreement of the victim prior to considering whether to divert such matters, or the use of victim impact statements to guide the preliminary inquiry in deciding on the diversion of such matters. These special procedures could be spelt out clearly for such cases.

On the issue of **whether diversion exposes the State to liability** the CLC describes the finding of the court in the case of *Carmichele V Minister of Safety and Security and another 2001(10) BCLP 995 (CC)*

In addressing concerns that delictual liability might affect the proper exercise of duties by public servants, the Constitutional Court noted that
"Liability in this case must thus be determined on the basis of the law and its application to the facts of the case, and not because of an immunity against such claims granted to the respondents [49]."

With regard to the role of prosecutors the Court stated that they "have always owed a duty to carry out their public functions independently and in the interests of the public" [72]. The Court however cautioned that "care should be taken not to use hindsight as a basis for unfair criticism" [73]. The Court emphasised the role of prosecutors as set out in the United Nations Guidelines on the Role of Prosecutors which has been incorporated in the National Prosecuting Authority Act 32 of 1998 and in terms of which prosecutors shall, in the performance of their duties:

"Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect [73]."

Subsequent to Carmichele, the extent of State liability in cases with similar facts, was examined. In the Supreme Court of Appeal case of *Ghia van Eeden V Minister of Safety and Security* (case no. 176/2001, judgement delivered on 27 September 2002), the Court emphasised that an open-ended, flexible approach was used in determining whether a particular omission or act should be held unlawful [22]. The case concerned a woman who was sexually assaulted and raped by a serial rapist who had escaped from police custody. In addressing the respondent's concern about the danger of "limitless liability on public authorities" the Court in this case noted that "[i]n deciding that question the requirements for establishing negligence and causation provide sufficient practical scope for limiting liability" [22].

This point was also emphasised in the Supreme Court of Appeal case of *Minister of Safety and Security V Dirk van Duivenboden* (Case no 209/2001, judgement delivered on 22 August 2002) where the Appellate Court stated that "the requirements for establishing negligence and a legally causative link, provide considerable practical scope for harnessing liability within acceptable bounds" [19].

In terms of all the above cases therefore, public servants can be held liable where their negligence or misconduct infringes the rights of victims. Liability would then be present, as in the *Carmichele* case, where the prosecutor failed to bring previous similar convictions to the attention of the presiding officer in a bail application, and the accused committed an offence on release from bail.

It is submitted that liability does not extend to cases where subsequent offences were committed,

either after diversion, a suspended sentence withdrawal of charges or parole, except where evidence indicates that the prosecutors, police or judicial officers neglected their duties, did not apply their minds to the facts of the case and did not pay due consideration to factors which would indicate the likelihood of further offences.
Various checks and balances are applied before a case is diverted from the criminal justice system. Firstly, a probation officer will make an assessment of the child and his or her circumstances and whether the case should be diverted in the circumstances and with due consideration of the impact on victims and the community. Secondly, a probation officer in charge of the diversion programme to which a child might potentially be referred, will make an assessment of the appropriateness of the referral after interviewing the child and considering all surrounding circumstances. Finally the prosecutor will apply his or her mind to the matter of whether diversion is a suitable option. The prosecutor should take the views of the victim into consideration when deciding whether to make a recommendation for diversion. If all the above parties, after applying their minds and finding diversion the most suitable manner of dealing with the offence, and the child commits a subsequent offence, it is submitted that the State cannot be held liable.

Section 297A

Another option to consider when looking at State liability in relation to diversion is the provisions of section 297 A of the CPA. These state that:

"(1) If patrimonial loss may be recovered from an accused on the ground of a delict committed by him in the performance of community services in terms of section 297, that loss may, subject to subsection (3), be recovered from the State.

(2) Subsection (1) shall not be construed as precluding the State from obtaining indemnification against the liability in terms of subsection (1) by means of insurance or otherwise.

(3) The patrimonial loss which may be recovered from the State in terms of subsection (1) shall be reduced by the amount from any other source to which the injured person is entitled by reason of the patrimonial loss suffered by him.

(4) In so far as the State has made a payment by virtue of a right of recovery in terms of subsection (1), all the relevant rights and legal remedies of the injured person against the accused shall pass to the State.

(5) If any person as a result of the performance of community service in terms of section 297 has suffered patrimonial loss which cannot be recovered from the State in terms of subsection (1), the Director General Justice may, with the concurrence of the Treasury, as an act of grace pay such amount as he may deem reasonable to that person."

It is submitted that these provisions can also be made applicable to instances of diversion. In addition it is submitted that, in any event, it might be expedient for it to be mandatory that the relevant State departments indemnify themselves through insurance, against potential delicts suffered by persons on account of actions by an accused undertaking a diversion programme.

CLAUSE 58: TIME LIMITS RELATING TO CONCLUSION OF TRIALS

CJ 56 (Community Law Centre)

It must first be noted that the 6 month time limit only operates from plea. This allows the police and prosecution to co-ordinate their efforts to ensure that all preparatory work is done before putting the charge to the accused for plea purposes and thereby ensuring that a trial can reasonably occur within a six month time period.

It is submitted that in certain instances the interests of justice might require a child offender to be held for longer than 6 months. Provision is already made for this in that the crimes of murder rape and robbery with aggravating circumstances are excluded from the time period. It is acknowledged that items 6 (b) and 7(a) of schedule 3 are of also such a serious nature that the 6 month time period might not justifiably apply. However it is submitted that the remaining items in schedule 3 are not worthy of excluding the time limit and therefore the time period limit should still apply.

As far as limiting section 58(3) on account of fault for the delay on the part of the accused is concerned, it is submitted that this is in order only in so far as circumstances where the child accused might have escaped or refused to attend court. This would clearly be willful default on the part of the accused. However, in so far as delays on the part of the child's legal representative are concerned, this would only be a possible exception to the time limit if the child offender refused to instruct the attorney properly and should not be an exception if the delay was occasioned by fault of the legal representative himself or herself. Therefore a condition to the time limitation might be deliberate delaying tactics solely attributable to the child accused.

CLAUSE 69(1):

CJ 56 (Community Law Centre)

Community Law Centre is firmly of the view that there should be a blanket prohibition on imprisonment under the age of 14 years of age. In the course of the public hearings questions were raised regarding comparable jurisdictions. The Community Law Centre has provided an overview of sentencing practices in various countries that indicate that life imprisonment is not applied and in fact a maximum capped sentence is often applied to children found guilty of offences. In addition in countries where the minimum age of criminal capacity is above **14 this automatically means that there is no imprisonment for** children below that age. Where the age of criminal capacity is younger than 14, most of the jurisdictions examined provide for alternative residential care other than imprisonment, such as in England where secure care is used, and Australia where training centres are used. Uganda, which has a minimum age of criminal capacity of 12 does not allow children younger than 16 to be held in a prison, and the length of sentence does not exceed 3 years.

CLAUSE 72(1):

CJ 56 (Community Law Centre)

The Community Law Centre is of the view that it is very important to have a ban on life imprisonment for children. They provide international comparative information to show that most countries do not have life imprisonment and in fact many limit imprisonment to a specific number of years such as, 3 years (Uganda), 6 years (Netherlands) and 10 years (Russia, Hungary, Austria and Germany).
