Article 40

The Dynamics of Youth Justice & the Convention on the Rights of the Child in South Africa

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Article 40(4)

"A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

The Child Justice Act 75 of 2008

Previous editions of* Article 40 *have consistently reported on the progress made on the Child Justice Bill as it made its way through the parliamentary processes since it was reintroduced into Parliament in November 2007. The last progress report on the Bill indicated that the National Assembly had passed the Bill on 19 November 2008 at its second reading and that it was to be sent to the President for his assent. Since then, the Bill was translated into Setswana, a second official language.

In this edition of *Article 40*, we are pleased to report that the Act was signed by the President on 7 May 2009 and published in Government Gazette No. 32225 on 11 May 2009 as the Child Justice Act 75 of 2008. This marks the end to a long process of law reform which dates back to the mid-1990s and South Africa's transition to a new democracy. This Act is therefore a culmination of efforts by both civil society and government to establish a

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EDITORIAL

This year has so far indeed been a progressive one in relation to child justice, in that not only has the President of South Africa signed the Child Justice Act, but the judiciary has also been active in building on the current South African jurisprudence relating to key issues concerning child justice. A victory for convicted children was achieved in the recent Constitutional Court judgment handed down in July which declared that minimum sentences are invalid for 16- and 17-year-olds. Ann Skelton's article succinctly summarises how the court addressed this issue. In addition, Ronaldah Ngidi's article demonstrates how the Supreme Court of Appeal has set new rules for when children aged 7 or older but under the age of 14 years, enter a plea of guilty. All these developments contribute to a new era of justice for children in conflict with the law in South Africa.

On the other hand, at an international level, developments on child justice are ongoing with the most recent being the United Nations Human Rights Council commenting on the need for separate systems of justice for children in conflict with the law. Jacqui Gallinetti's piece elaborates on this by going into detail on the resolution drafted in this regard.

In keeping with the momentum of new developments, we take this opportunity to urge our readers to share with us any information on good practice in the area of child justice so that we may feature these in Article 40.

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child justice system appropriate to the needs of children who come into conflict with the law.

As set out in its preamble, the Act aims to:

- Establish a criminal justice system for children who are in conflict with the law, in accordance with the values underpinning the Constitution and South Africa's international obligations by creating, among others, as a central feature of this new criminal justice system for children, the possibility of diverting matters involving children who have committed offences away from the criminal justice system in appropriate circumstances, while children whose matters are not diverted are to be dealt with in the criminal justice system in child justice courts;
- Expand and entrench the principles of restorative justice in the criminal justice system for children who are in conflict with the law, while ensuring their responsibility and accountability for crimes committed;
- Recognise the present realities of crime in the country and the need to be proactive in crime prevention by placing an increased emphasis on the effective rehabilitation and reintegration of children in order to minimise the potential for re-offending;
- Balance the interests of children and those of society, with due regard to the rights of victims;
- Create incrementally, where appropriate, special mechanisms, processes or procedures for children in conflict with the law, that in broad terms take into account: the past and sometimes unduly harsh measures taken against some of these children; the long-term benefits of a less rigid criminal justice process that suits the needs of children in conflict with the law in appropriate cases; South Africa's obligations as a party to international and regional instruments relating to children, with particular reference to the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child; and in specific terms by: raising the minimum age of criminal capacity for children; ensuring that the individual needs and circumstances of children in conflict with the law are assessed; providing for special processes or procedures for securing attendance at court of children, as well as their release or detention and placement; creating an informal, inquisitorial, pre-trial procedure, designed to facilitate the disposal of cases in the best interests of children by allowing for the diversion of matters involving children away from formal criminal proceedings in appropriate cases; providing for the adjudication of matters involving children which are not diverted in child justice courts; and providing for a wide range of appropriate sentencing options specifically suited to the needs of children.

The Act will come into operation on 1 April 2010 and will create a new era for child justice in South Africa. In the meantime, government departments and civil society organisations working in the field of child justice are preparing themselves for the implementation of the Act to ensure that children who come into conflict with the law are managed in an appropriate manner which takes into account their age and respects their constitutional rights.

- ***A copy of the Child Justice Act 75 of 2008 can be downloaded at www.childjustice.org.za***

Minimum sentences declared invalid for 16- and 17-year-olds

A Summary of *Centre for Child Law v Minister of Justice and Constitutional Development and Others*

by Ann Skelton

Background to minimum sentences for children

On 15 July 2009, the Constitutional Court handed down a judgment declaring minimum sentences invalid for 16- and 17-year-olds. The judgment is the culmination of efforts that started a few years ago when the Criminal Law Amendment Act 105 of 1997 was introduced into Parliament. The initial version of the Act did not exclude children from being subject to minimum sentences. However, lobbying from civil society advocates saw the exclusion of children below the age of 16 from its operation. Nevertheless, 16- and 17-year-olds were included in the ambit of the Act, though the procedure for them was different from the procedure for adults.

The courts have over the years debated the interpretation of the provisions relating to 16- and 17-year-olds.[1] The question of the applicability of minimum sentences was finally resolved by the Supreme Court of Appeal

1 *S v N* [2000] (1) SACR 209 (W); *S v S* 2001 (1) SACR 79 (W); *S v Blaauw* [2001] 3 All SA 588 (C); *S v Malgas* [2001] 3 All SA 220 (SCA); S v Nkosi (supra); *Direkteur van Openbare Vervolgings, Transvaal v Makwetsja* [2003] 2 All SA 249 (T).

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in *S v B*[2] which held that minimum sentences did not apply to 16- and 17-year-olds. This case involved a 17-year-old boy who had been convicted of murder. The court *a quo* had applied the minimum sentence of life imprisonment. His appeal against this sentence was upheld on the basis that, in the opinion of the court, minimum sentences do not automatically apply to persons below the age of 18 years. A constitutional argument was invoked, namely that the Constitution provides that children should not be detained except as a measure of last resort, and that a minimum sentence implies a first resort of imprisonment. The court held that the traditional aims of punishment for child offenders have to be reappraised in the light of international instruments. Any sentencing court must have discretion when sentencing a child, in order to give effect to the requirements of international law for individualisation and the need for proportionality to be applied to the young offender, as well as the crime and circumstances surrounding it. The sentencing court should thus start with a "clean slate" when sentencing a child offender. The court found that minimum sentences do not accord with the principle of "detention as a measure of last resort". The court added, however, that when dealing with 16- and 17-year-olds the fact that the legislature has ordained minimum sentences for specific offences should be taken as a weighting factor when the court exercises its discretion in the sentencing process.

Following this case however, the Criminal Law (Sentencing) Amendment Act 38 of 2007 was passed. This Act ensured that minimum sentences applied unambiguously to 16- and 17-year-olds, and could only be departed from on the same basis as in adult cases – namely, if the court could find substantial and compelling reasons. This move was indeed retrogressive and it seemed to invite constitutional challenge.

The High Court challenge

The Centre for Child Law brought such a challenge to the High Court during 2008.[3] The High Court found that the Amendment Act was aimed at reintroducing minimum sentences for application to 16- and 17-year-old offenders. As a result of the Amendment Act, minimum sentences would have to be applied as a first option and could only be departed from if the court found substantial and compelling circumstances to impose a different sentence. The court reaffirmed the correctness of the "clean-slate" approach which requires a sentencing court to apply the usual sentencing criteria to 16- and 17-year-old offenders (which includes a possible long-term sentence) and not to start by first considering the minimum sentences. The court accordingly declared the offending provisions to be unconstitutional.

The Constitutional Court confirms the order of invalidity

In the *Centre for Child Law v Minister of Justice and Constitutional Development and Others*[4] the Constitutional Court ruled that the South African Constitution prohibits minimum sentencing legislation from being applied to children aged 16 and 17. The court confirmed the order of

2 [2009] (1) SACR 311 (SCA); [2005] 2 All SA 1 (SCA).

3 *Centre for Child Law v Minister of Justice and Constitutional Development and Others* [2008] JOL 22687 (T).

4 CCT 98/08 [2009] ZACC 18.

constitutional invalidity handed down by the High Court, declaring the relevant sections of the Criminal Law Amendment Act (as amended by Act 38 of 2007) invalid. The majority of the Constitutional Court found that the minimum sentencing regime limits the discretion of sentencing officers by orienting them away from non-custodial options; by interfering with the individualisation of sentences and by giving rise to longer prison sentences. This breaches the young offenders' rights in terms of section 28(1)(g) of the Constitution, and the court found that no adequate justification had been provided for the limitation. The judge had the following to say regarding why children should be treated differently from adults:

> "The Constitution draws this sharp distinction between children and adults not out of sentimental considerations, but for practical reasons relating to children's greater physical and psychological vulnerability. Children's bodies are generally frailer, and their ability to make choices generally more constricted than those of adults. They are less able to protect themselves, more needful of protection, and less resourceful in self-maintenance than adults. These considerations take acute effect when society imposes criminal responsibility and passes sentence on child offenders. Not only are children less physically and psychologically mature than adults: they are more vulnerable to influence and pressure from others. And, most vitally, they are generally more capable of rehabilitation than adults. These are the premises on which the Constitution requires the courts and Parliament to differentiate child offenders from adults. We distinguish them because we recognise that children's crimes may stem from immature judgment, from as yet unformed character, from youthful vulnerability to error, to impulse, and to influence. We recognise that exacting full moral accountability for a misdeed might be too harsh because they are not yet adults. Hence we afford children some leeway of hope and possibility."[5]

The court went on to acknowledge that children can and do commit very serious crimes, and that the legislator has legitimate concerns about violent crimes committed by children under 18. The court points out that the Constitution does not prohibit Parliament from dealing effectively with such offenders. The fact that detention must be used only as a last resort in itself implies that imprisonment is sometimes necessary. However, the Bill of Rights mitigates the circumstances in which such imprisonment can happen – it must be as a last (not first or intermediate) resort, and it must be for the shortest appropriate period.

> "If there is an appropriate option other than imprisonment, the Bill of Rights requires that it be chosen. In this sense, incarceration must be the sole appropriate option. But if incarceration is unavoidable, its form and duration must also be tempered, so as to ensure detention for the shortest possible period of time."[6]

The order

The order declared sections 51(1) and (2) of the Criminal Law Amendment Act (as amended by Act 38 of 2007) invalid in as far as they refer to 16- and 17-year-olds. To remedy the defect, the court declared that section 51(6) of the Criminal Law Amendment Act (as amended by Act 38 of 2007) is to read as though it provides as follows: "This section does not apply in respect of an accused person who was under the age of 18 years at the time of the commission of an offence contemplated in subsection (1) or (2)".

Detention must be used only as a last resort … and it must be for the shortest appropriate period

It must be noted that the order does not work retrospectively to invalidate sentences already handed down (except in cases where there are currently appeals or reviews). However, any person who was below 18 at the time of the commission of the offence and who was sentenced under the regime set up by the second Amendment Act will be able to have his or her case taken on appeal or review so that the sentence can be reconsidered in the light of the court's finding of constitutional invalidity. In order to assist with this, the court ordered the Minister of Justice and Constitutional Development and the Minister of Correctional Services to provide the names, case numbers and sentence details of such sentenced children to the Centre for Child Law. ●

5 Paras 26-28.

6 Para 31.

The United Nations Human Rights Council has its say on child justice

by Jacqui Gallinetti

The Human Rights Council is the latest United Nations (UN) body to comment on the need for separate systems of justice for children in conflict with the law when in March 2009 it drafted a resolution entitled "Human rights in the administration of justice, in particular juvenile justice".[1]

In its resolution 2004/43, the Commission on Human Rights requested the Secretary-General to submit a report to the Commission at its sixty-third session on "system-wide practical measures taken and planned activities to assist countries in strengthening their systems of administration of justice, in particular juvenile justice, including in post-conflict situations, with special focus on the need to strengthen the role of judges".

This report is significant as it forms the basis for the most recent international resolution dealing with child justice.

United Nations Secretary-General's Report

On 12 March 2007 the UN Secretary-General submitted his report to the new Human Rights

1 A/HRC/10/L.15, 20 March 2009.

Every child … in conflict with the law must be treated in a manner consistent with his or her rights

Council,[2] entitled "Report of the Secretary-General on human rights in the administration of justice, including juvenile justice".[3]

The report provides practical examples of assistance rendered by the Office of the High Commissioner on Human Rights (OHCHR) to various countries in order to strengthen their system of administration of justice including child justice. Some of the countries included Angola, Burundi, Iraq and South Africa. These activities included:

- providing knowledge on human rights standards through training, workshops and seminars;
- assistance in the context of legal reform;
- specific technical cooperation projects; and
- monitoring of the judiciary, prisons and police.

With regard to training materials on child justice, the report specifically acknowledges the notable amount of materials produced by UNICEF, including a manual on "Adolescents and the Law" published for use in police academies; training modules on the United Nations Minimum Standards on Juvenile Justice published for use in training judges, and the development of a manual for pilot projects on child justice alternatives.

In addition, the report notes that the OHCHR's Manual on Human Rights for Judges, Prosecutors and Lawyers contains a chapter on "The rights of the child in the administration of justice", which sets out the normative human rights framework and addresses key questions from a human rights perspective.

Although not a comprehensive list of recent materials on child justice, the report nevertheless serves as a useful source of what has been developed by UN agencies in relation to implementing child justice systems on a national level.

In addition, the report provides a useful overview of practical measures that have been put in place to assist countries in strengthening their systems of child justice. These include:

- training on the Juvenile Code in Afghanistan and the establishment of monitoring visits to detention facilities for children in conflict with the law, as well as other detention centres where such children might be placed with other detainees, by using a generic monitoring checklist;
- advocacy on child justice in Angola, including organising a conference on access to justice where the rights of children in conflict with the law were considered; and
- the development of a human rights strategy for police-community relations in Nicaragua to address growing public insecurity and child gang activity, as well as to improve conditions of pre-trial detention.

Human Rights Council Draft Resolution

Following the submission of the Secretary-General's report, the Human Rights Council drafted a resolution entitled "Human rights in the

2 In 2006 the Human Rights Commission was replaced by the Human Rights Council. The Council is responsible for strengthening the promotion and protection of human rights around the globe.

3 A/HRC/4/102.

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administration of justice, in particular juvenile justice". In this resolution, the Council underscores the importance of rights-based systems of justice for children in conflict with the law. In particular, the resolution states in paragraph 7 that the Human Rights Council recognises:

> "that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, including relevant international standards on human rights in the administration of justice, and calls on States Parties to the Convention on the Rights of the Child to abide strictly by its principles and provisions and to improve the status of information on the situation of juvenile justice."

This is a significant statement, as it not only reaffirms the UN approach to children in conflict with the law as clearly provided for in the UN Convention on the Rights of the Child, but it links this issue with the importance of the administration of justice generally, which falls under the purview of the Council.

The Council goes on to state that it encourages States that have not integrated children's issues in their overall legislation to "develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency as well as with a view to promoting, *inter alia*, the use of alternative measures, such as diversion and restorative justice". In addition, the resolution calls on States to ensure the principle that detention should be a measure of last resort and for the shortest appropriate period of time. It further states that this principle should be included in the legal frameworks of State Parties, and that pre-trial detention should be avoided as far as possible. Further on in the resolution, in paragraph 11, the Council urges States "to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment without the possibility of release is imposed for offences committed by persons below 18 years of age".

In this manner, the Council emphasises two key elements of an effective child justice system: the use of alternative dispositions to the formal criminal justice system, and the avoidance of detention of children unless as a last resort and for the shortest appropriate time. This corresponds with the approach of the UN Committee on the Rights of the Child, which the Council commends for its work in making concrete recommendations concerning the improvement of national juvenile justice systems.

Importantly, the Council highlights the plight of women and girls in prison, "including issues relating to the children of women in prison, with a view to identifying and addressing the gender-specific aspects and challenges related to this problem".

The Council should be commended for its decisive stance on child justice and for identifying the critical issues that pose challenges for criminal justice systems across the world.

Although not binding, this resolution adds to the increasing amount of international jurisprudence on children in the criminal justice system, and is welcomed as another clear statement on the need for domestic compliance with international norms and standards, as well as the proper implementation thereof. ●

… detention should be a measure of last resort and for the shortest appropriate period …

The Supreme Court of Appeal lays down rules concerning children under 14 years

By Ronaldah Ngidi

The Supreme Court of Appeal (the "SCA") recently handed down a judgment in SPM v State [2009] ZASCA 65 wherein the requirements of a plea of guilty in terms of section 112 of the Criminal Procedure Act 51 of 1977 were restated. This judgment followed an appeal by a 17-year-old boy (the "appellant") who was 13 years old when he was charged and convicted for the murder of a 14-year-old. According to the section 112(2) statement (a statement admitting guilt) handed in at the Regional Court, the appellant had stabbed the deceased once in the chest, which resulted in the death of the deceased. The Regional Court sentenced the appellant to 8 years imprisonment. The appellant appealed against both the conviction and the sentence in the Pietermaritzburg High Court. However, only the sentence (and not the conviction) was set aside by the High Court. The matter was sent back to the Regional Court for a fresh sentence to be handed down – upon which the Regional Court sentenced the appellant to 3 years imprisonment, wholly suspended on certain conditions.

Appellant's argument in the Supreme Court of Appeal

Since success in the appeal to the High Court was only achieved on the sentence, the Centre for Child Law (the "Centre") approached the High Court on behalf of the appellant for leave to appeal against the conviction in the SCA. Upon being granted leave to appeal, the appellant argued in the SCA that the conviction should be set aside for the following reasons:

- Criminal capacity is linked to culpability. It is an aspect of liability, and a court must be satisfied prior to convicting any person that he or she had criminal capacity at the time of the commission of the offence;

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- In the case of a child who is 7 years or older, but below the age of 14 years at the time of the commission of an offence, there is a rebuttable presumption that such a child lacks criminal capacity;
- The State bears the onus of proving that the child has criminal capacity;
- In this matter, a plea of guilty was tendered in terms of section 112(2) of the Criminal Procedure Act on behalf of the appellant by his legal representative. However, the process followed by the court amounted to a serious irregularity in that the onus on the State was not discharged;
- The section 112(2) statement contained insufficient information to allow the court to be satisfied that the appellant had criminal capacity;
- The fact that the appellant was legally represented does not mean that the court should automatically accept that the words "unlawfully and intentionally" included in the section 112(2) statement implied that the appellant had criminal capacity;
- The legal representative should not have conceded that the accused had criminal capacity. If he was at liberty to make such a concession it should have been done in an explicit manner, and should not merely have been assumed in the words "unlawfully and intentionally";
- The Regional Court failed to use its powers to put questions to the accused which might have assisted the court in having sufficient information about the appellant's criminal capacity prior to the conviction;
- The court's failure to ask questions and its decision to accept the section 112(2) statement as it was, without paying any specific attention to the issue of criminal capacity and without making any finding in that regard, amounted to an irregularity resulting in a failure of justice;
- The reliance by the High Court, when dismissing the appeal on the merits, on the fact that the child was legally represented was misplaced. The insufficiency of the admissions contained in a section 112(2) statement cannot be supplemented or rectified by the mere fact that the accused was legally represented when making the statement;
- The High Court also failed to sufficiently take into account the imperatives of section 28(2) of the Constitution that the child's best interests are to be considered paramount in all matters concerning the child. This requires a court to take extra care when dealing with matters pertaining to children, even if that means that streamlined procedures such as those provided for in section 112(2) take longer; and
- These failures and errors made by the High Court amount to a failure of justice.

The State's argument

In response, Counsel for the State argued that even though the issue of the appellant's criminal capacity was not overtly canvassed in the trial court, the appellant appreciated the wrongfulness of his conduct. According to the State, this conclusion could be made by taking the whole record into consideration and therefore no miscarriage of justice had occurred. However, it was also argued that if the SCA was of the opinion that an injustice had occurred, the matter should be remitted to the trial court to determine the appellant's criminal capacity at the time of the commission of the offence.

The Supreme Court of Appeal's findings

The SCA identified two issues arising from the matter. The first issue concerned the question whether the appellant's statement, in view of his age, complied with section 112(2) of the Criminal Procedure Act and secondly, if the statement did not comply with section 112(2), whether the matter should be remitted to the trial court.

With regard to the section 112(2) statement, the court stated that:

- The primary purpose of a section 112(2) statement is to set out the admissions of the accused and the factual basis supporting his or her guilty plea. Therefore legal conclusions will not suffice;
- The presiding officer can only convict if he or she is satisfied that the accused is indeed guilty of the offence in respect of which a guilty plea has been tendered. If not, the provisions of section 113 have to be invoked;
- The accused in this matter is presumed to be rebuttably criminally non-responsible, therefore the prosecution has the burden to rebut this presumption;
- An important step in the proceedings was to ascertain whether the appellant's development was sufficient to rebut this presumption, and this plainly did not occur;
- Although the prosecution would have been relieved of this burden had the accused made an appropriate admission, this also did not occur and no evidence rebutting the presumption was placed before the magistrate;
- Taking the whole record into account, none of the parties involved in the trial were alive to the presumption of criminal non-responsibility that was in operation in respect of the appellant; and
- The statement told the magistrate nothing about the state of mind of the appellant at the time the stabbing took place or of his level of perception then, nor if he was mature enough to answer for his behaviour.

For these reasons, the court found that the conviction had to be set aside.

In addressing the issue of whether the matter should be remitted to the trial court, the court looked at the requirements of section 312(1) of the Criminal Procedure Act. Section 312(1) provides that where a conviction is set aside solely on the basis that section 112 was not complied with, the matter shall be remitted to the trial court for the necessary compliance in terms of section 112 to be met or otherwise proceed in terms of section 113. The question in this regard was whether or not section 312(1) was peremptory. Counsel for the appellant argued that it was not, while Counsel for the State contended that it was. The SCA, however, found that section 312(1) was not peremptory for the following reasons:

- Although the word "shall" favours the view that the section is peremptory, it does not by itself conclusively determine that a provision is peremptory;
- The court must construe the language of the provision in the context, scope and object of the Criminal Procedure Act. In addition, the section must be construed consistently with the Constitution and, if possible, be given a construction which will not be inconsistent with the accused person's fair trial rights;
- The purpose of section 312(1) is to prevent an injustice which may occur if an accused person were to escape punishment for his or her crime only because his or her conviction was set aside on a failure to comply with section 112 of the Criminal Procedure Act. But injustice cannot occur where the accused has served his or her entire sentence by the time the conviction is set aside on appeal, nor where a fresh conviction cannot be achieved following a remittal to the trial court; and
- Therefore, to construe section 312(1) in a manner that renders its provisions peremptory may result in an injustice or even an infringement of an accused person's right to a fair trial.

The SCA found that the court retains discretion not to order a remittal if the circumstances of the case are such that a remittal would be inappropriate. In this matter the appellant had served more than two years of the original sentence when he appeared before the trial court for purposes of resentencing. Since there had already been a remittal to the trial court, which found it appropriate to impose a non-custodial sentence, it would be unfair to order another remittal.

Conclusion

The Centre for Child Law had for a long time been concerned about the manner in which children who are 7 years or older but under the age of 14 years, and subject to the rebuttable presumption of *doli incapax*, are dealt with in the courts. A further concern relates to the unsatisfactory contents of the section 112(2) statements on which children are being convicted.[1] Hence this matter was argued with the hope that the court would address these issues in more detail and possibly provide guidelines as to how an inquiry into the rebuttal of the presumption of *doli incapax* should take place.

The fact that the appellant was legally represented does not mean that the court should automatically accept that the words "unlawfully and intentionally" … implied that the appellant had criminal capacity.

However, the SCA judgment did not go that far. This is seen as a drawback, since the courts will continue to deal with this aspect in an unguided manner, which is prejudicial for child offenders aged 7 or older but under 14 years, particularly in cases where children are accused of serious offences. Notwithstanding this, the Centre is hopeful that public prosecutors, legal representatives and presiding officers will be prompted by this judgment to take the extra time when dealing with a child offender within this age category. In particular, when a child pleads guilty to a serious offence, they should ensure that the plea of guilty complies with the requirements of section 112(2) of the Criminal Procedure Act, and specifically pay attention to the criminal capacity of the child concerned. ●

1 The Centre for Child Law took the conviction and sentence of an 11-year-old boy on appeal after he was convicted and sentenced in a Regional Court close to Mafikeng in North West Province. The appellant had been convicted of culpable homicide, but from his section 112(2) statement and the record of the proceedings it was clear that no one had applied their minds to the question of whether he was *doli capax* or not. Therefore the presumption was not rebutted. On 26 March 2009, the North West High Court set the conviction and sentence aside and stated that the fact that the appellant had been legally represented did not cure the irregularity of the statement and the court had the duty to properly evaluate the statement of the accused to determine whether, at the relevant time, the accused had the required criminal capacity. The matter was not remitted to the trial court.

NOTICE-BOARD

THE VICTORIAN OFFENDER TREATMENT ASSOCIATION'S FIFTH BIENNIAL CONFERENCE

The Victorian Offender Treatment Association (VOTA) will be holding its fifth biennial conference on 28–30 October 2009 at Sebel Albert Park in Melbourne. The conference will feature presentations and posters based on the following themes:

- Promoting research and skills to effectively manage and treat sex offenders, including early prevention strategies;
- Informing policy makers, aiding research and influencing practice related to offenders and survivors of sexual abuse;
- Collaborating as a broad and effective body of representation for all agencies/disciplines focused on the management of and interaction with offenders and survivors of sexual abuse; and
- Supporting the development of "self-care" awareness for persons interacting with offenders and survivors of sexual abuse.

For further information on the themes and the list of contents, visit www.vota.org.au.

research advocacy education human rights democracy

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