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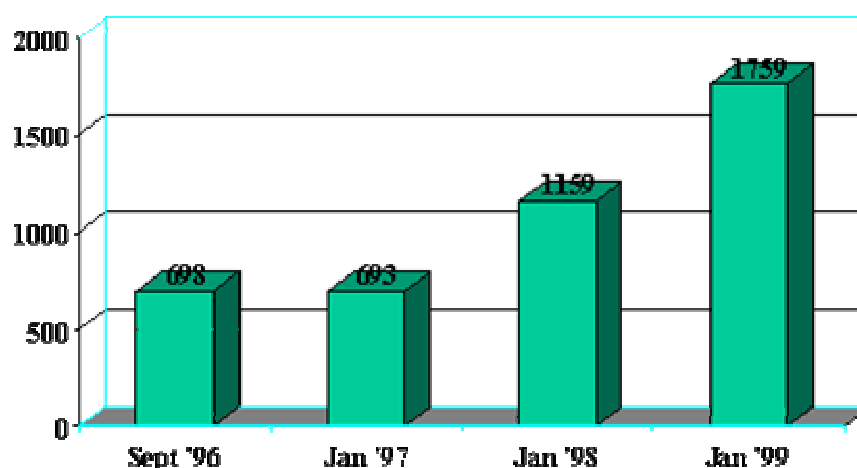
Statistics: Children Awaiting Trial in Prison

Statistics: Children Awaiting Trial in Prison

Lukas Muntingh - Director: Research and Programme Development, NICRO

The number of children awaiting trial in prisons has been monitored actively by non-governmental organisations as well as government departments since 1996. It was in fact the plight of these children that gave the initial impetus to the juvenile justice campaign that started in the early 1990s in South Africa. It is therefore with deep concern that we are observing a steady increase in the number of children awaiting trial in prisons. Numerous efforts and mechanisms have been put in place to prevent children from awaiting trial in prisons but their numbers continue to rise as shown in Figure 1.

Figure 1:
Number of children awaiting trial in Prisons, Sept '96 - Jan '99



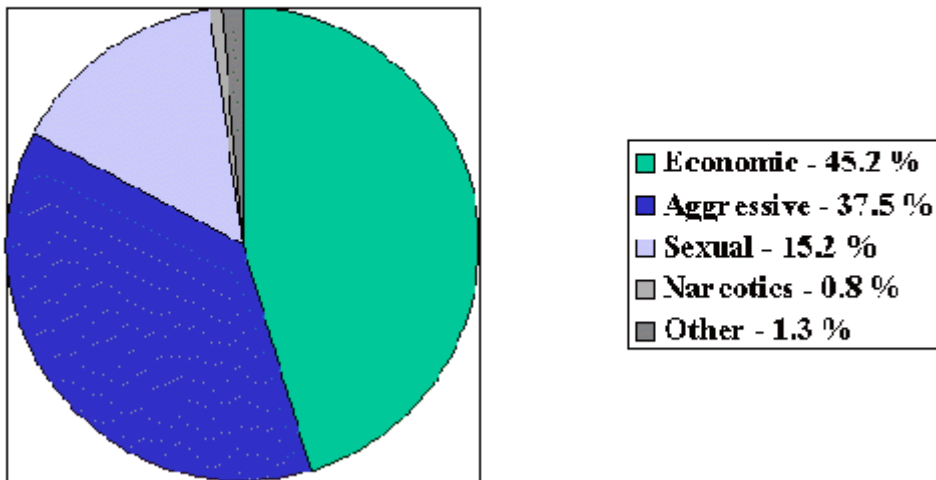
There are in all likelihood more children now in prison than there were in the early 1990s. The figures from September 1996 to January 1999 show an increase of 152%. It is indeed perplexing that the numbers are increasing despite a

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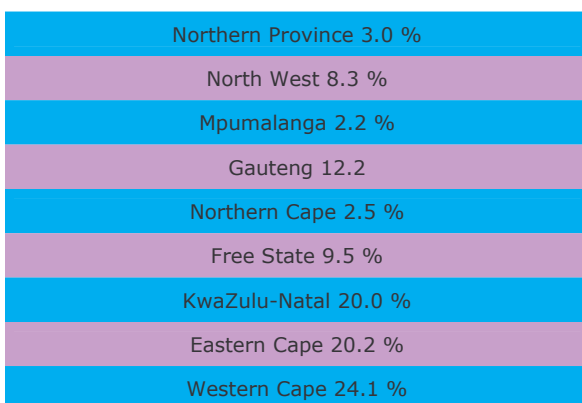
campaign since 1991 to move children out of prisons and use options that are more suitable for children.

Some argue that children are committing more serious offences and this may in some parts of the country be the case. In terms of the charge profile of children as at 31 January 1999, we see that 45.2% are charged with economic offences and 37.5% with aggressive offences as shown in Figure 2. In overview, it appears that 47.3% of children awaiting trial in prison are not charged with violent offences

Figure 2: Charges 7-17 years awaiting trial in prisons



Children awaiting trial in prisons are also not evenly spread across the country and nearly three quarters of the total are held in only three provinces. The Western Cape, Eastern Cape and KwaZulu-Natal account for nearly 65 % of all children being held awaiting trial in prisons. Figure 3 provides in more detail.



It is interesting to note that Gauteng has substantially fewer children in custody than any of the larger provinces such as KwaZulu-Natal or the Western Cape. The Western Cape has the highest number of children awaiting trial in prisons.

The growing number of children awaiting trial in prisons is more than likely the result of a number of factors which include the following:

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- there are limited secure care facilities available to accommodate high risk children
cases take exceedingly long to be finalised due to congestion in the criminal justice system
- magistrates do not always comply with the requirements of the law pertaining to the custody of children
- alternatives to custody are not always thoroughly explored
- Legal Aid defence councils allegedly request unnecessary postponements.

Towards a New Child Justice System

Julia Sloth-Nielsen

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- The draft Bill includes a series of principles which apply generally to children subject to this proposed legislation
- The proposed Bill applies to all children under 18, with no exceptions for older youth or those accused of serious offences
- The draft legislation provides for innovative diversion options which do not require an expensive new infrastructure
- A dramatic new procedure is proposed: the Preliminary Inquiry
- The thrust is towards promoting existing initiatives, rather than an entirely new infrastructure

The release by the Law Commission in December 1998 of Discussion Paper 79 (Juvenile Justice) Marks a significant step forward in the process of creating a new procedural system for children who conflict with the law. The body of the Discussion Paper contains an examination of comparative law, an analysis of the prevailing legal provisions in South Africa, and a presentation of the responses received to the Issue Paper on Juvenile Justice (released in May 1997). Appended to the Discussion Paper is a draft Bill, which would lay the basis for a new criminal procedure for children alleged to have offended. Arguments explaining and substantiating the choices made by the Project Committee are to be found in the main text of the Discussion Paper (see the chapters on age and capacity, legal representation and sentencing, for example). The Discussion Paper is an interim document, pending the preparation of a final Report during the latter half of this year.

Numerous workshops and seminars with Government departments, NGO's and other stakeholders have already been held. Engaging with relevant government sectors has been crucial: aspects of the draft Bill's provisions apply variously to police, probation services, justice personnel, legal representatives, as well as diversion service providers. The proposals span the procedures that must be followed from when a child is apprehended for offending, until sentencing. A dedicated chapter of the Bill sets up a new monitoring system to oversee the implementation and continued development of the new legislation. Included are also proposals relating to the expungement of records, and a separate chapter on legal representation has been drafted. The draft Bill does not regulate the position of children once they are in institutions on remand, or serving a sentence. Where children are sentenced to imprisonment, their rights have been recently addressed in the Correctional Services Act 111 of 1998; as regards children in institutions linked to the Child Care Act (74 of 1983), comprehensive amendments to the regulations under the Act were effected in 1998.

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This feature focuses on three central issues that characterise the proposed legislation. First, the framework of international children's rights principles that underpin the legislation. Apart from the UN Convention on the Rights of the Child (1988), there are further and more detailed international guidelines to be found in the 1985 Beijing Rules (concerning the administration of juvenile justice) and the UN Rules for the Protection of Juveniles Deprived of their liberty. Perhaps unusually, the draft Bill includes a series of principles which apply generally to children subject to this proposed legislation. Examples in point are: "All responses to children accused of crimes must be proportionate to both the circumstances of the child and the nature of the offence, and a child must not receive a sanction more severe than an adult would have received in the same circumstances" (section 3(a)) and "No child should be detained in residential facility for the sole purpose of gaining access to services" (section 3(h)).

Also derived from principles is the idea that the legislation should apply to all children. The framework has thus been designed to separate those who have committed less serious offences, from those charged with more serious offences.

A second innovation is the chapter on Diversion. Since diversion has been growing rapidly in South African juvenile justice practice a statutory framework for diversion was needed; the drafters were persuaded that future development could be encouraged with enabling legislative provisions. However, diversion cannot depend solely on the availability of formal programmes. The draft legislation provides for a range of innovative diversion options which do not require an expensive new infrastructure. A series of orders for new diversion options have been drafted. The Forms (ultimately Regulations) are conveniently attached to the draft Bill. For example, the proposed compulsory school attendance order (section 34 and Form K3), requires a child to attend a specified school, during specified school hours; this would be monitored by a parent, teacher, probation officer, or other suitable person.

Third, a dramatic departure from conventional criminal procedure is contemplated in the proposal for a Preliminary Inquiry. This (mandatory) inquisitorial meeting, presided over by a specialised magistrate, would be held within 48 hours of arrest. Most centrally the magistrate would consider, if the child acknowledges guilt, whether the matter can be diverted. This magistrate will have to fully appraise of the child's general background and previous convictions; clearly such magistrate could not preside at any trial that might eventuate. Where a case cannot be diverted, this judicial officer will decide whether the child should be held pending trial. Because these proposals envisage reshaping the role of judicial officers, they are controversial, and have formed a focus point of consultations thusfar.

The draft Bill emphasises the contribution that an innovative magistrate can play in developing diversion. The legislation mandates the formation of local child justice committees to draw in welfare agencies, communities and other potential diversion providers at grass- roots level; this is intended to advance the expansion of diversion.

The project committee has tried to opt for an affordable child justice system. Many of the provisions are underpinned by fiscal realities. The thrust is towards promoting the development of existing initiatives, rather than creating an entirely novel infrastructure. However, it is unavoidable that some measure of provisioning will have to occur if a distinctive child justice system is to emerge. but it should also be recognised that are ultimate benefits to society at large that

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will derive from processes which promote early intervention, speedy resolution of less serious matters, and restorative justice alternatives that encourage true accountability.

Copies of the Discussion Paper, as well as a plain language summary, are available from:

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