

Child Justice Alliance:
A quantitative overview of children in
the criminal justice system: 2007

Lukas Muntingh



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**childjustice
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PART 1

Introduction

1. Introduction

In 2003 the Child Justice Alliance developed a Child Justice Statistics Compendium.¹ This turned out to be a lengthy and detailed report on statistics available at the time about children in the criminal justice system. In view of feed-back received on the Compendium it was decided to update it with more recent information and also to adjust the structure of the report to provide information in line with the United Nations Convention on the Rights of the Child (CRC) reporting requirements. The key indicators developed by Unicef on Juvenile Justice for reporting on the CRC are therefore used as the basis for the structure of this updated report.² The full list of key indicators is attached as Appendix 1.

A report of this nature is as much about what is available as about what is not available. There remain significant information deficiencies in the criminal justice system as it relates to children. For example, it is unknown how many children are arrested annually by the police or what the full sentence profile of children is. The lack of quantitative data for critical components of the criminal justice system presents enormous problems in respect of planning and equally important, monitoring. At the moment we do not have the ability to monitor whether more or less children are prosecuted, convicted and sentenced. We also do not know what sentences convicted children are receiving on a national level.

All efforts were made to obtain quantitative data on children in the criminal justice from SAPS and the Department of Education for this report, but these were unfortunately unsuccessful.

A further limitation in developing quantitative data is the fragmented nature of the 'system' dealing with children in the criminal justice system. The absence of legislation consolidating a child justice system proper (as envisaged in the Child Justice Bill 49 of 2002) will bring a vast improvement to the current situation in the criminal justice system by setting out uniform procedures, minimum standards and ensuring monitoring of the child justice system.

The structure of government presents a further challenge. Whereas SAPS, the Department of Justice and Constitutional Development and the Department of Correctional Services operate on a national level, the Departments of Social Development and Education mainly function on a provincial level. Regarding the latter departments, different provinces emphasise different aspects of child justice resulting in lack of uniformity in how systems and services are developed.

The relative importance of accessible quantitative data as a management objective also leaves much to be desired. The need for such data was already identified in the mid-1990s when civil society organisations and government started discussing the transformation of the child and youth care system. The Department of Correctional Services stands out as the only department who is able to provide accurate, reliable and accessible quantitative information on the people (children and adults) placed in its care. This department has also continued to improve its information management system and is now able to provide quantitative information in real time.

1 Available on www.childjustice.org.za.

2 Indicators for juvenile justice as developed by UNICEF in November 2003 in New York, *Article 40*, Volume 5, No. 4, December 2003, http://www.communitylawcentre.org.za/children/2003art40/vol5_no4_unicef.php#unicef.

At the other end of the spectrum, it appears that where quantitative information is collected, it is done manually and using unsuitable computer software. Much of the information sourced for this report, came through as text reports, indicating that the ability to mine data in order to monitor and improve management of services is lacking.

The type of information being collected also presents a problem, as this is often focused on the outputs of officials as opposed to the outcomes for the children concerned. What is lacking is a child rights orientation in the type of data being collected. If we are to collect information, it should, amongst others, be done with the aim to protect the rights of children.

This report therefore provides an overview of the available quantitative data and also identifies where data is lacking or is incomplete.

1.2 The importance of child justice statistics

The collection of quantitative and statistical data on child justice is not an end itself - it contributes to three important objectives aimed at protecting children's rights:

- It promotes transparency by describing what is happening to children in the criminal justice system
- It enables accountability structures (domestic and international) to hold government accountable in respect of services to and treatment of children in the criminal justice system
- It informs the development and review of policy to ensure that policy is based on knowledge and not perceptions.³

The United Nations Committee on the Rights of the Child (CROC), in a recent commentary, lamented the absence of comprehensive and reliable statistical information on children in conflict with the law in country reports, and commented as follows:

*The Committee is deeply concerned about the lack of even basic and disaggregated data on inter alia the quantity and the nature of offences committed by children, the use and the average length of duration of pre-trial detention, the number of children dealt with by the use of measures without resorting to judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. The Committee urges the States Parties to systematically collect disaggregated data relevant for the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at prevention and at effective responses to juvenile delinquency in full accordance with the principles and provisions of the CRC.*⁴

Without accurate and reliable quantitative information it is difficult, if not impossible, to measure progress. Realising the difficulties in this regard Unicef in cooperation with UN Office on Drugs and Crime (UNODC) developed a user-friendly and detailed guide for states parties to develop the system and collect the right information on children in the criminal justice system: *Manual for the Measurement of Juvenile Justice Indicators*.⁵ It is therefore recommended that South Africa uses this manual as a basic structure to facilitate the collection of quantitative information on children in the criminal justice system.

3 See Bullock H (2001) *Better Policy Making*, Centre for Management and Policy Studies, <http://www.policyhub.gov.uk/docs/betterpolicymaking.pdf>.

4 Committee On The Rights of the Child *General Comment No. 10 (2007) Children's rights in Juvenile Justice*, Forty-fourth session, Geneva, 15 January-2 February 2007, para 34.

5 UNODC & Unicef (2007) *Manual for the Measurement of Juvenile Justice Indicators*, United Nations, New York, 2007. The manual is also available on-line at http://www.unodc.org/pdf/criminal_justice/O6-55616_ebook.pdf.

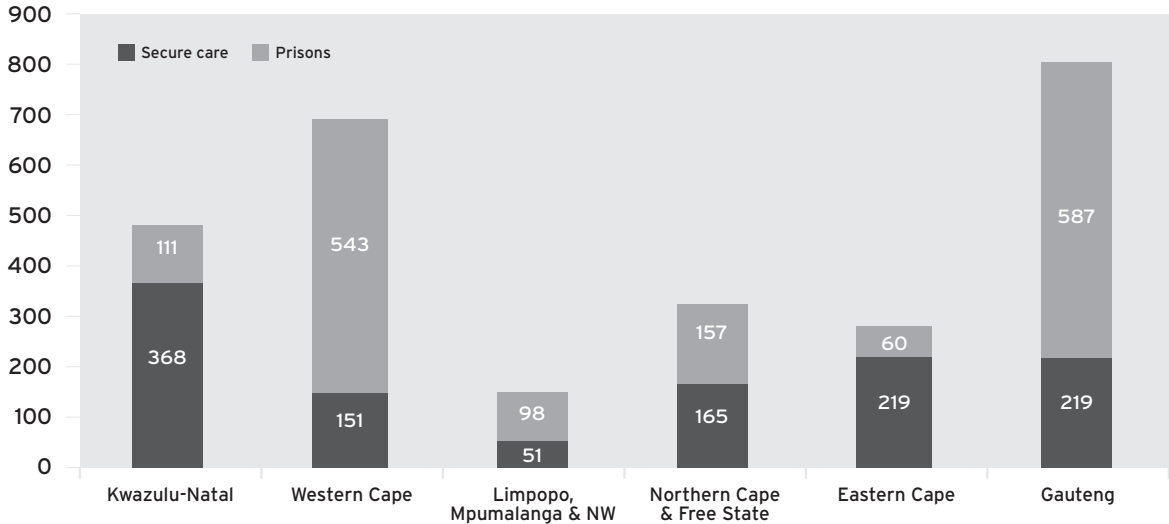
PART 2

Children in Detention

2.1 Total number of children in detention

The CRC requires that if a child is to be detained that the least restrictive measures be used and it therefore follows that places of safety and secure care facilities run by the Department of Social Development are preferable to prisons. The Department of Correctional Services is strongly in favour of removing all children from the prison system,⁶ although it has to be acknowledged that this may indeed not be possible. Data collected at the end of February 2006 for secure care facilities and at the beginning of March 2006 for prisons, show that there were a total of 2729 unsentenced children in custody of whom 57% (1556) were held in secure facilities and 43% (1173) in prisons.⁷ The use of secure care space compared to prison detention is not evenly distributed across the country as shown in Chart 1.⁸

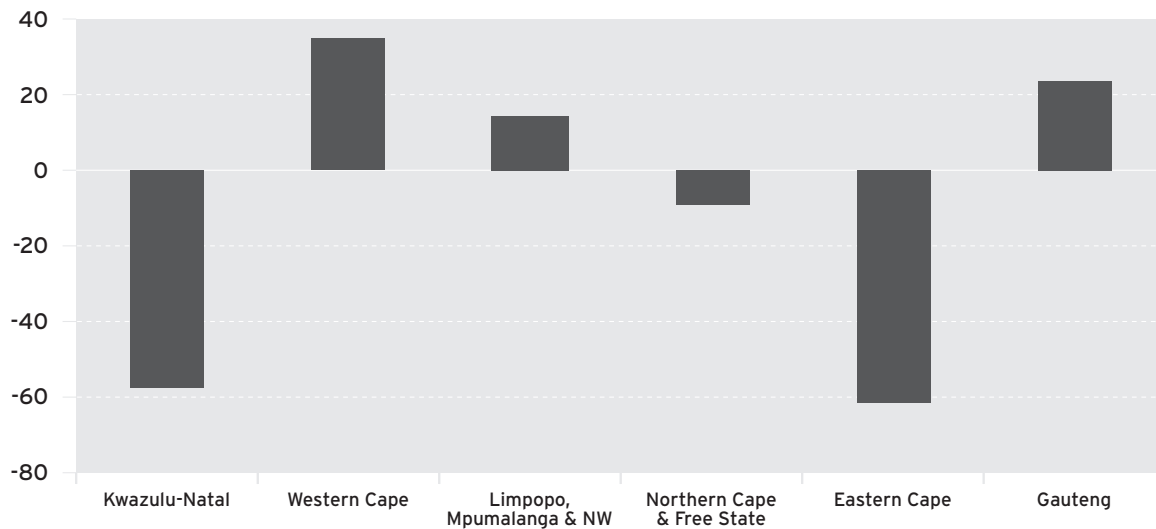
Chart 1: Use of secure care and prison space



As noted above, nationally 42.5% of unsentenced children in detention are detained in prisons. Chart 1 indicates that the provinces differ significantly and Chart 2 expresses this variation as a standard deviation from the national norm. Both KwaZulu-Natal and Eastern Cape are approximately 60% below the national norm, whereas Gauteng and the Western Cape are more than 25% above the national norm.

6 Department of Correctional Services (2005) *White Paper on Corrections in South Africa*, Pretoria, pp. 161 - 162.
 7 Nevill C and Dissel A 'Children awaiting trial in prison', *Article 40*, Vol 8 No. 1.
 8 Ibid.

Chart 2: Deviation from standard per province



2.2 Proportion of sentenced and unsentenced children in detention

Unsentenced children in prisons⁹

Chart 3 shows the number of unsentenced children in prisons, indicating the substantial increase (358%) in the wake of the section 29 amendment to the Correctional Services Act from 1996 till 1999.¹⁰ An inter-sectoral team set up in that year to address this trend affected a steady decline from a high of 2934 on 31 December 1999 to the latest level of 1165 by 28 February 2007.¹¹ The February 2007 figure is up on the 31 December 2006 figure of 1034.¹²

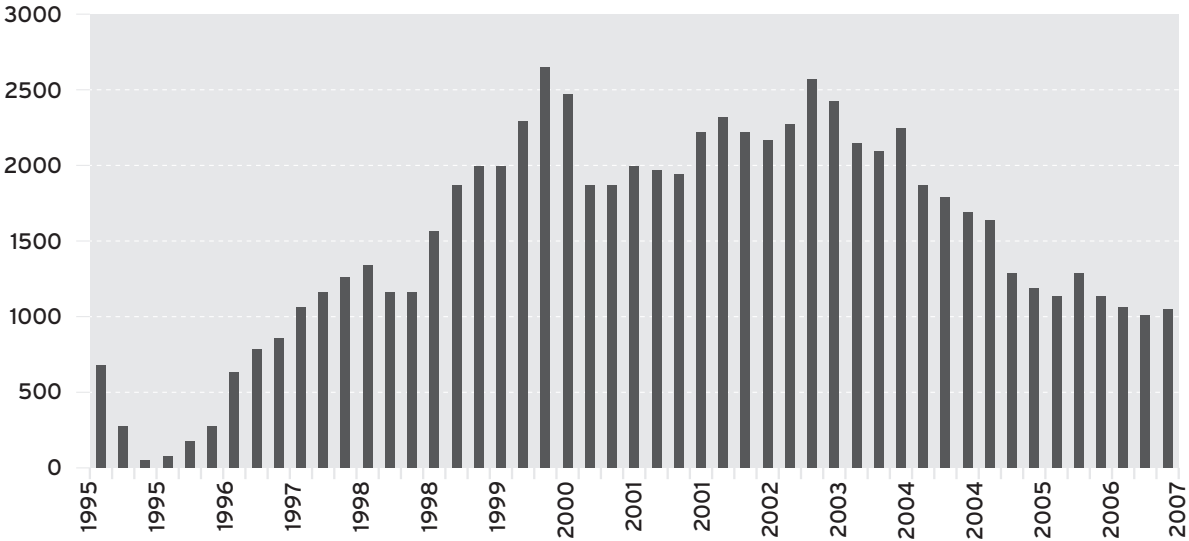
9 Unsentenced children in prison are aged from and including 14 years to and including 17 years.

10 In 1995, section 29 of the Correctional Services Act was amended to allow for the release from detention of all children in prison awaiting trial except in certain limited circumstances. Due to the fact that welfare facilities could not cope with the sudden influx of children, the implementation of this provision was not successful and section 29 was amended again. This amendment, which came into effect in May 1996, provided for the detention in prison of children awaiting trial who were 14 years of age and older and who were charged with certain offences. Although it was only intended to be in force for a maximum period of two years, due to a drafting error the provision still remains on the statute books.

11 Nevill and Dissel, Note 7 and CSPRI Newsletter No. 22 'SA prisons at a glance'.

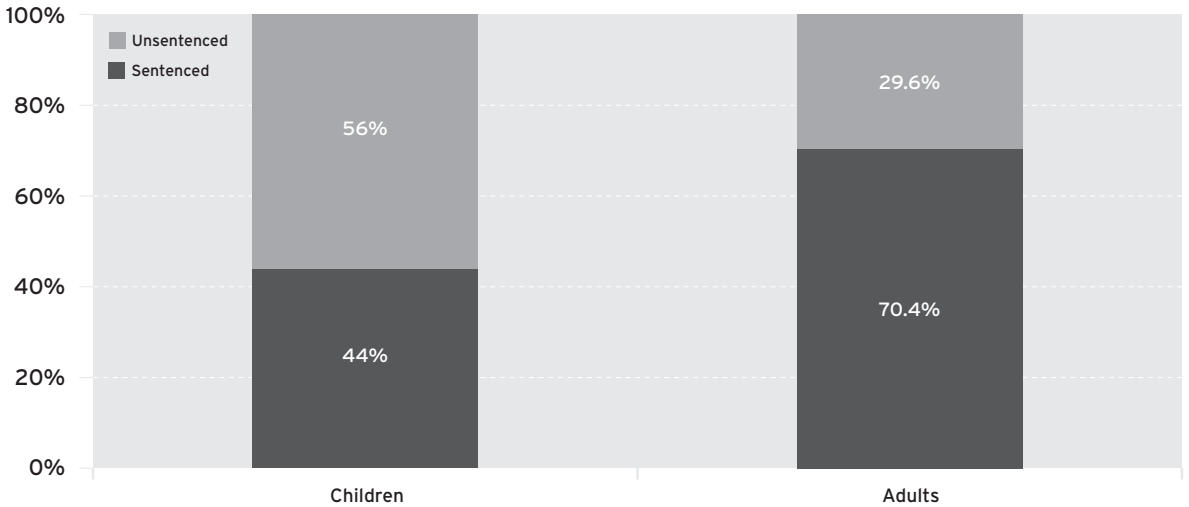
12 All statistics in this report regarding children in prisons were supplied by the Department of Correctional Services unless otherwise indicated.

Chart 3: Number of unsentenced children in prison, 1995 to 2007, quarterly average



Despite the significant improvement from especially 2002 onward, it is of concern that there are more unsentenced children in prison (56%) than sentenced (44%) as on 28 February 2007, as indicated in Chart 4.¹³ This figure is indicative of the excessively long periods it takes to finalise regional and high court cases. Comparatively, only 29.6% of the adult prison population is unsentenced as at end February 2007.

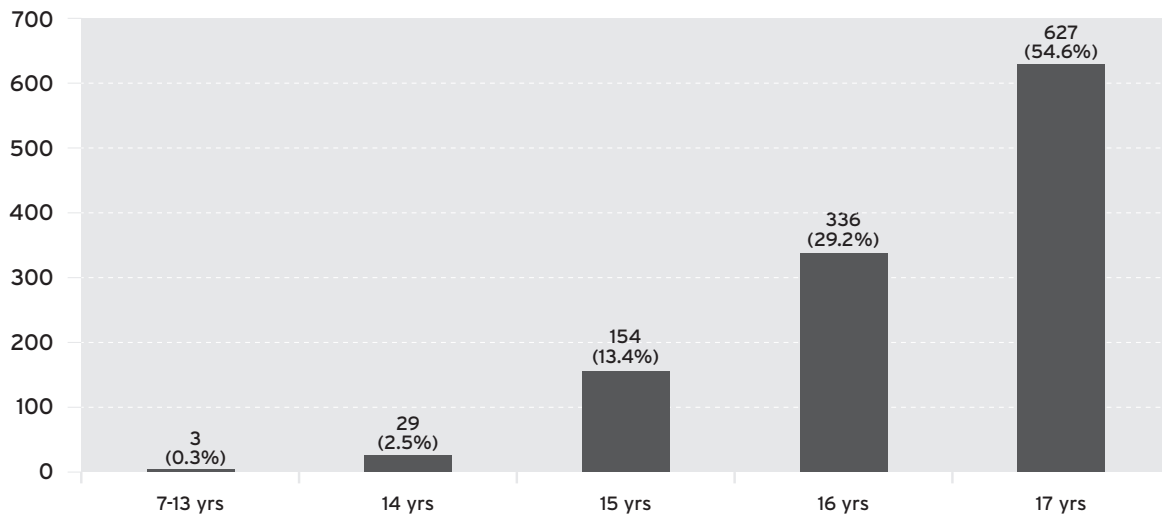
Chart 4: Proportions of children and adults, sentenced and unsentenced in prison



Whilst the section 29 amendment prohibits the detention of a child under the age of 14 years awaiting trial in prison, it does occur. The overall age profile of unsentenced children is presented in Chart 5.

13 CSPRI Newsletter No. 22 'SA prisons at a glance'.

Chart 5: Age profile of unsentenced children, average for 2006



Over the eleven year period, 1995 to 2006, females constituted on average 2.6% of the total number of unsentenced children in prison. In the third quarter of 1995 it was at its highest level of 8.1% of the total and in the second quarter of 1996 at its lowest level of 1.5% of the total.

Unsentenced children in other facilities¹⁴

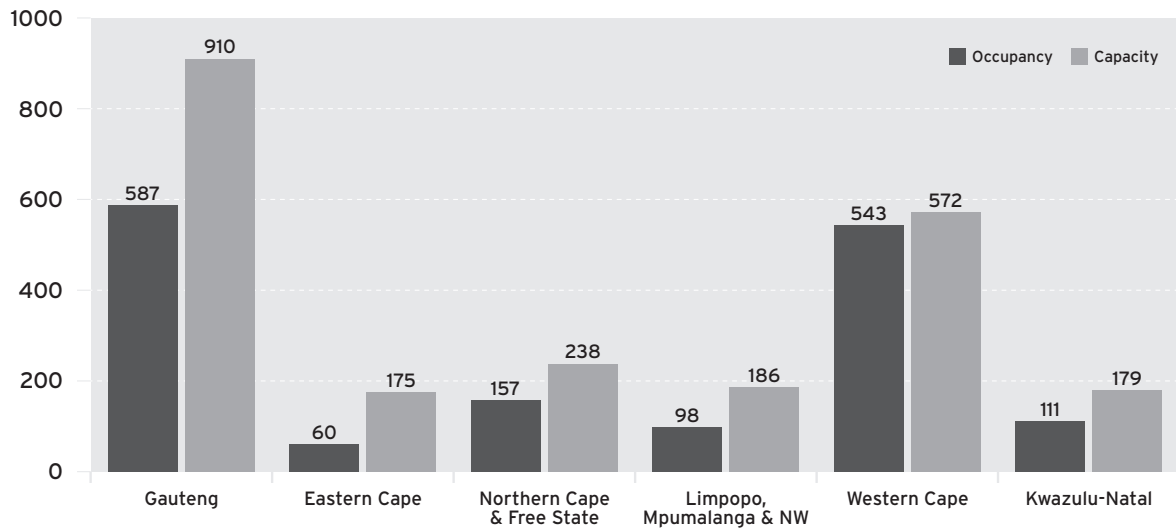
In the past decade the Department of Social Development (DSD) has significantly increased its capacity to provide secure care to children. In principle, such facilities are more suitable to detain unsentenced children than prisons. The point has, however, been made by several observers that despite the high number of children in prison, secure care facilities run by the Department of Social Development are under-utilised and often have available space to accommodate children currently detained in prisons.¹⁵ Chart 6 below presents the capacity of secure care facilities per province, as well as the occupancy as on 28 February 2006. The Western Cape has the highest occupancy rate at 95% and the Eastern Cape the lowest at 34%. Staff and infrastructural problems appear to be the reasons why the Eastern Cape facilities are so significantly under utilised.¹⁶ The average occupancy rate is 63%.

14 These children are aged from and including 7 years to and including 17 years.

15 Nevill and Dissel, Note 7.

16 For more information in this regard on the Eastern Cape, see 'Update on Eastern Cape Probation Unit', *Article 40*, Vol 8 No. 1.

Chart 6: Occupancy and capacity of secure care facilities per province

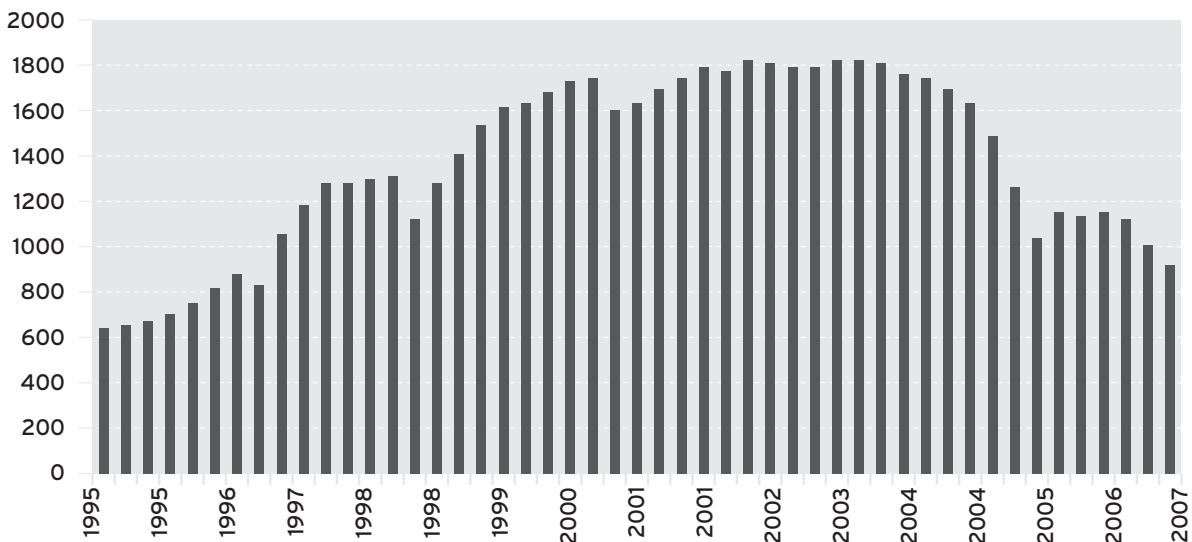


Sentenced children in prisons¹⁷

The number of sentenced children in prison increased rapidly from 1995 to mid-2002, reaching an all time high of 1830, as shown in Chart 7. From this point the figures declined rapidly to just above 1000 by the end of 2006, the same it was in 1997.¹⁸ Children also benefited significantly from the 2005 remissions programme implemented by the Department of Correctional Services and an estimated 500 sentenced children were released between June and October 2005.

The number of sentenced female children has remained low during the eleven-year period, with a high of just below 40.

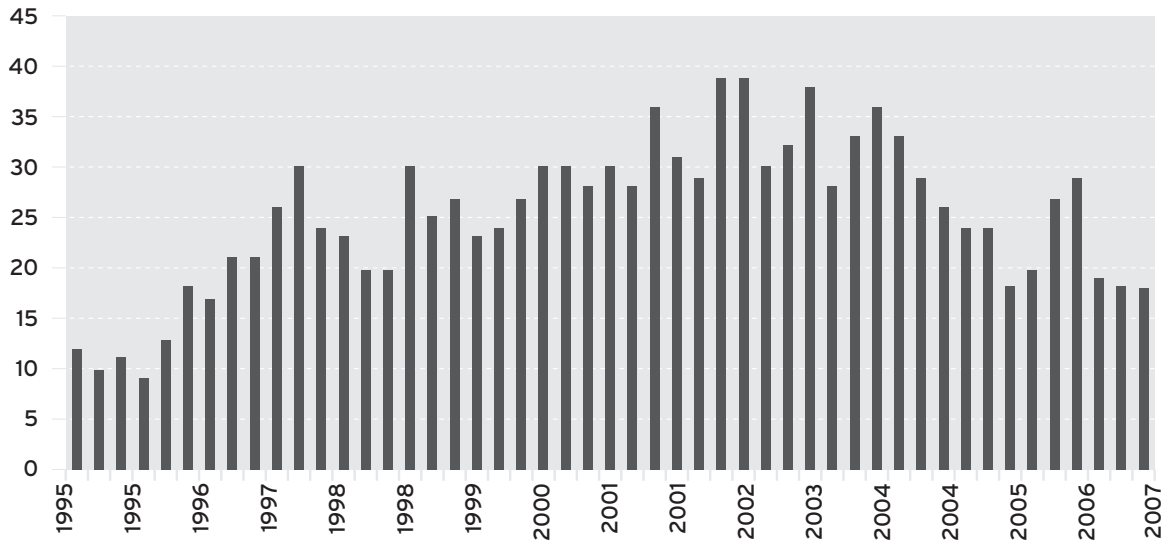
Chart 7: Number of sentenced children in prison, quarterly averages, 1995 - 2007



17 Unlike the age restrictions on unsentenced children in prison, children aged 7 years until and including 17 years may be sentenced to imprisonment.

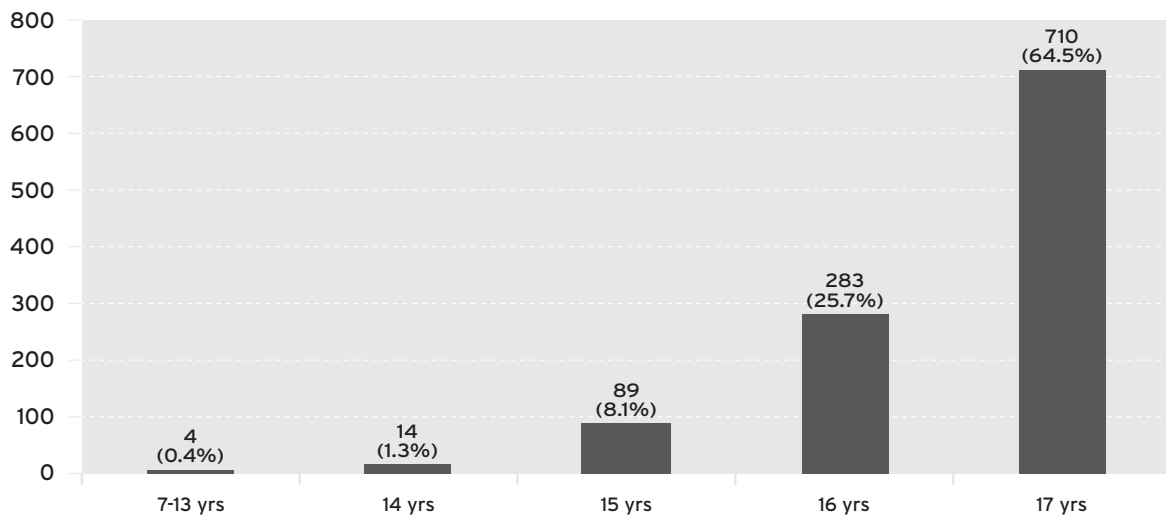
18 All figures supplied by DCS.

Chart 8: Number of sentenced females in prison, quarterly averages, 1995 - 2007



The age profile of sentenced children is presented in Chart 9 and shows a similar profile to the unsentenced children. It is cause for concern that in 2006 there were more than 100 children under the age of 16 years serving prison sentences.

Chart 9: Age profile of sentenced children in prisons, average for 2006



Sentenced children in other facilities

As noted above in the introduction, despite efforts to obtain information on children detained in facilities managed by the Department of Education and Department of Social Development, this information was not available.

Sentenced children under community corrections

The DCS is in process of switching over to a new management information system which will be able to extract this information as the current system is not able to do so. The new system came on line in January 2007.

PART 3

Duration of Detention

3.1 Sentenced to imprisonment

Table 1 presents the average number of children serving prison sentences annually for the period 1995 to 2006 as per sentence length category.

Table 1: Sentence profile of children in prison, 1995 to 2006

Sentence	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
0 - 6 Months	78	136	184	156	190	204	201	199	200	176	122	93
> 6 - 12 Months	115	159	253	232	264	240	214	234	240	218	134	140
> 12 - < 24 Months	58	72	106	91	158	195	185	170	176	196	115	113
2 - 3 Years	167	161	233	293	385	439	429	435	447	470	331	284
> 3 - 5 Years	160	183	233	258	259	262	304	361	386	338	272	238
> 5 - 7 Years	48	56	92	106	112	126	126	126	112	107	92	96
> 7 - 10 Years	28	32	54	80	104	117	115	116	114	103	96	86
> 10 - 15 Years	13	13	22	17	35	57	76	88	71	55	47	39
> 15 - 20 Years	6	4	8	7	17	17	22	19	25	21	16	8
> 20 Years	3	6	8	8	10	15	18	21	19	12	6	3
Reformatory	5	8	13	15	20	23	35	40	22	13	15	8
Ordered by Court as Dangerous ¹⁹	0	3	1	1	2	0	0	0	0	120	0	1
Corrective Training	0	0	0	0	0	0	0	0	0	0	1	0
Prevention of Crime	0	0	0	0	0	1	0	0	0	0	0	0
Habitual Criminal	0	0	0	0	2	0	1	1	1	0	2	0
Life Sentence	2	3	3	1	1	4	5	5	7	5	2	2
Other Mental Instability	0	0	1	0	2	0	0	0	0	0	3	2
Corporal Punishment	0	0	0	0	0	0	0	0	2	1	0	0
Security Offender	0	0	0	0	4	0	0	0	0	0	2	0
Day Parole	0	1	1	1	0	0	0	0	0	0	0	0
Periodic	2	1	2	0	2	1	0	1	1	0	1	1
Fine	0	5	0	2	1	4	1	0	0	0	0	0
All Sentence Groups	685	843	1214	1268	1568	1705	1732	1816	1823	1835	1257	1114

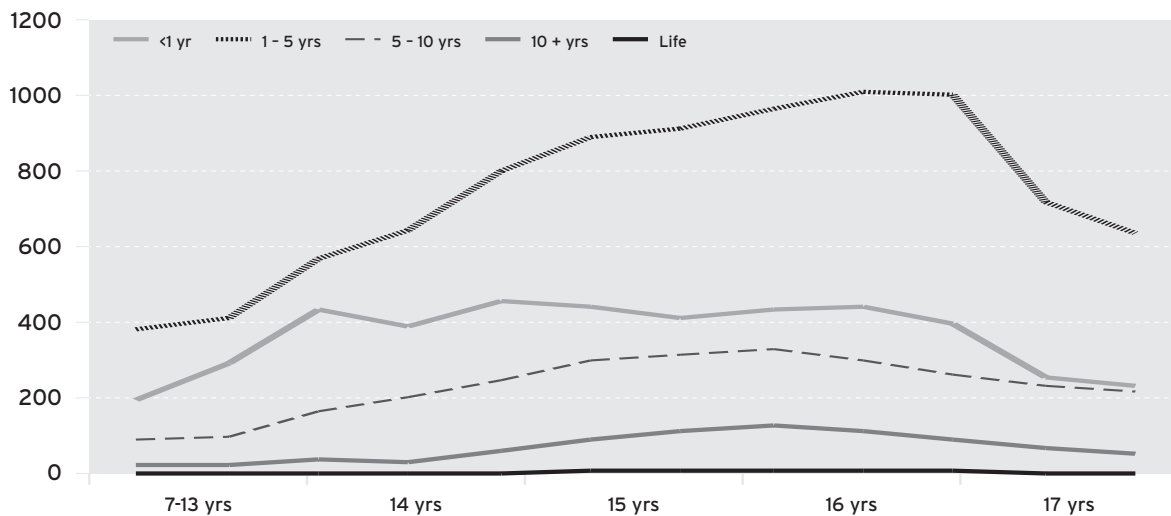
19 It will be noted that in 2004 a total of 120 children were recorded for the category "Ordered as dangerous by the Court". This is contrary to trends for all other years and is most likely a data error. Likewise, the entry for corporal punishment indicates that 3 children between 2003 and 2004 were sentenced to this sentence, whereas the sentence had already been abolished for a number of years.

When the most frequently used sentences are grouped a clearer picture emerges, as indicated in Table 2, and Charts 10 and 11. Table 2 and Chart 10 show trends reflecting the overall increase in the number of sentenced children from 1995 to 2004 and then the subsequent decline. The actual numbers do, however, not reveal how the sentence profile for children has changed during the 12 year period under review. Chart 11 shows clearly how the proportion of children sentenced to less than one year's imprisonment has declined from nearly 40% in 1997 to 20% by 2006. From 1998 to 2002 children serving sentences of 5-10 years and 10 years and longer increased their proportional share significantly. Since 2003, these two categories have declined slightly, but the 5-10 years category has shown a more aggressive increase since then. Throughout this period the majority of sentenced children have been serving sentences of between 1 and 5 years' imprisonment. That the duration of sentences have in general (inclusive of adults) increased is without doubt and is thoroughly described by Giffard and Muntingh.²⁰ The trends observable in respect of children mirror those for the total prison population albeit not in such a pronounced manner.

Table 2: Grouped sentenced profile of children in prison, 1995 to 2006

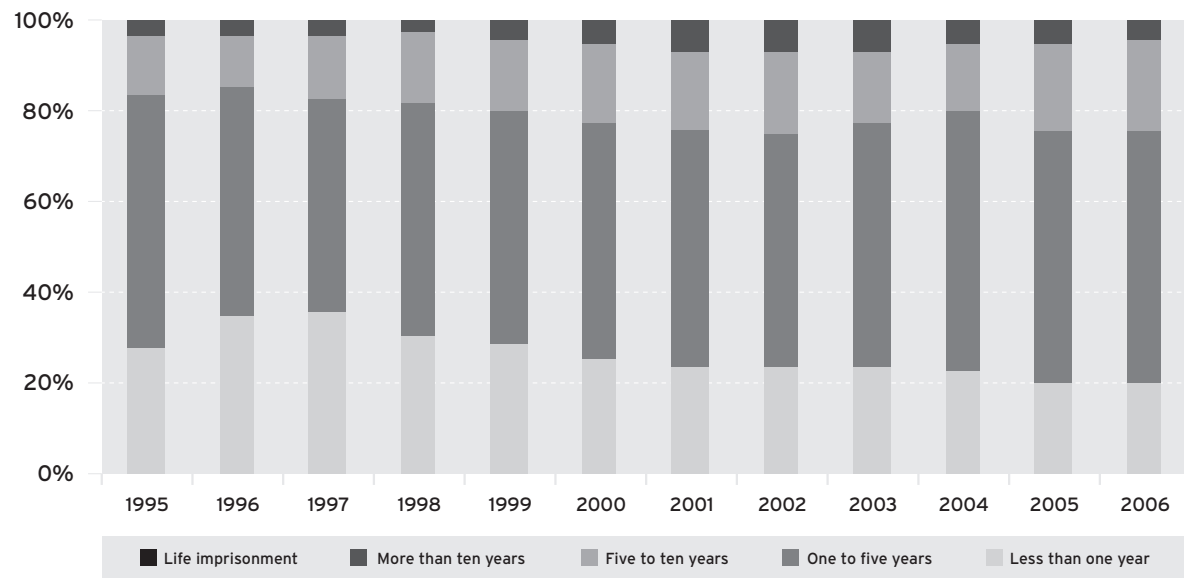
Category	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
<1 yr	193	295	437	388	454	444	415	433	440	394	256	233	4382
1 - 5 yrs	385	416	572	642	802	896	918	966	1009	1004	718	635	8963
5 - 10 yrs	89	101	168	203	251	300	317	330	297	265	235	221	2777
10 + yrs	22	23	38	32	62	89	116	128	115	88	69	50	832
Life	2	3	3	1	1	4	5	5	7	5	2	2	40

Chart 10: Sentenced children in custody, grouped sentences, 1995 - 2006



20 Giffard C and Muntingh L (2006) *The Effect of Sentencing on the Size of the Prison Population*, Report Commissioned by the Open Society Foundation (SA), Available at <http://www.communitylawcentre.org.za/Projects/Civil-Society-Prison-Reform/publications/cspri-publications/>.

Chart 11: Sentence profile of children in prison



A further factor to bear in mind is the remissions programme of 2005, which resulted in the release of prisoners primarily serving shorter sentences for non-violent offences. Prisoners serving sentences of less than a year would in all likelihood have benefited immediately and this is reflected in the drop in proportional share of this sentence category in 2005 and 2006.

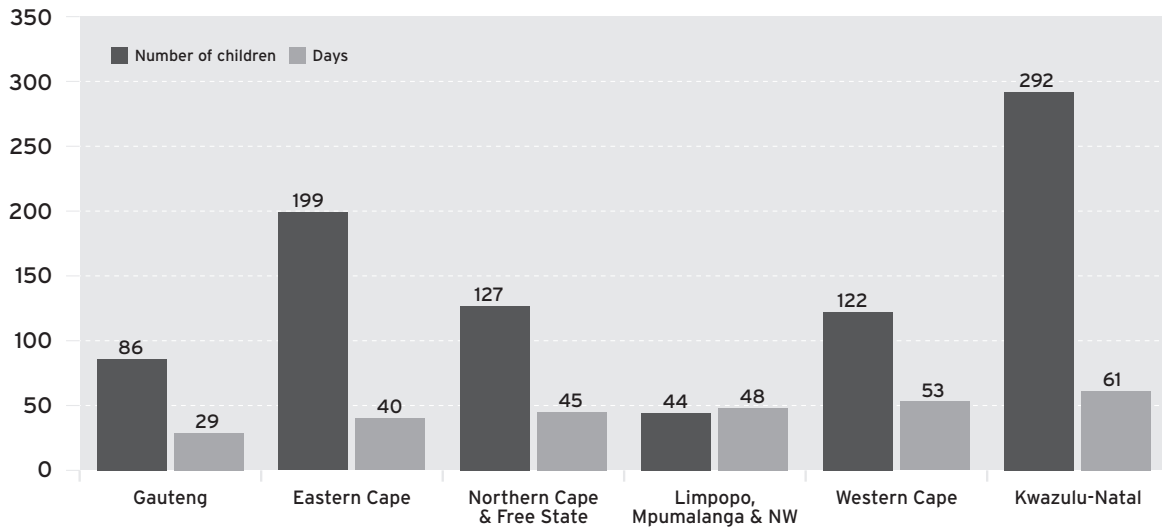
3.2 The average length of pre-sentence detention in prisons

Children can spend very long periods awaiting trial. Based on a sample, Nevill and Dissel found that the average awaiting trial period is 48.8 days or seven weeks. They also reported that on the same date as the sample was drawn, there were 21 children who had been awaiting trial for more one year and one child who had been awaiting trial for 1922 days or five years.²¹ Chart 12 illustrates that there is significant regional variation in respect of the average detention period for unsentenced children in prison.²² From Chart 12 it appears that there is not a correlation between the number of children awaiting trial in custody and the average length of detention.

21 Nevill and Dissel, Note 7.

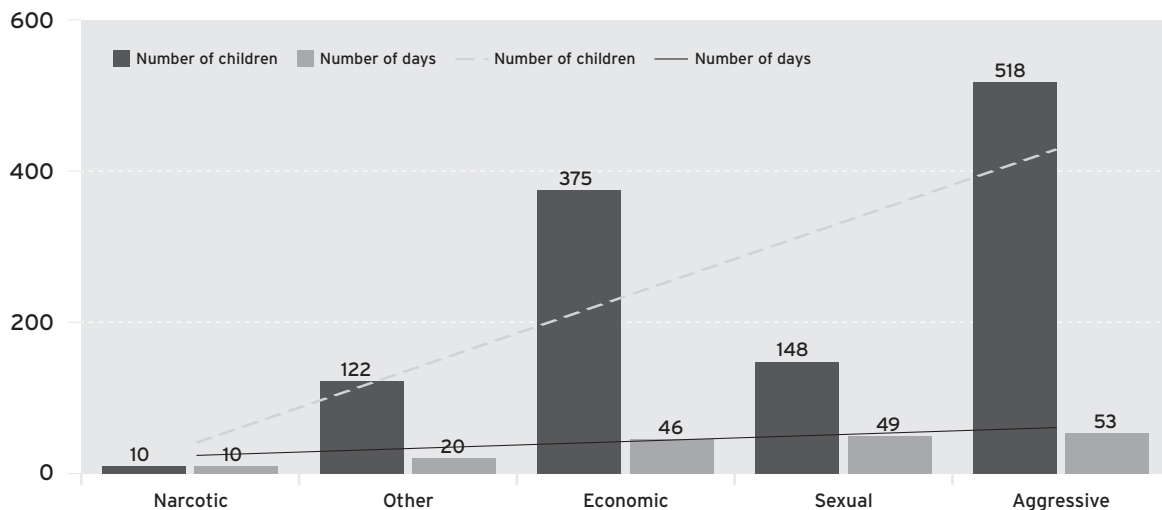
22 The Department of Correctional Services data is structured according to six regional commands as indicated in Chart 12 and not according to the nine provinces.

Chart 12: Average pre-sentence detention period in prison



There appears to be stronger correlation between the charge against the child and the average period of pre-trial detention, as shown in Chart 13. On average it appears that children charged with aggressive and sexual crimes spend longer periods awaiting trial than children charged with the economic, other and narcotics related crimes. Nevill and Dissel ascribe this trend to several possible reasons. Firstly, these cases can be more complex and secondly, they may be heard in the regional and High Courts, where there are larger case backlogs. A further reason is that that bail may be denied as provided for in section 29 in the case of serious offences.²³

Chart 13: Pre-sentence detention period and crime category



23 Nevill and Dissel, Note 7.

PART 4

Children coming into contact with the juvenile justice system

4.1 Number of children arrested

SAPS does not make available statistics on the number of children arrested and the most reliable estimate to date is that of Barberton and Stuart²⁴ which was done in 2001 for the re-costing of the Child Justice Bill. The estimate makes a number of assumptions that are debatable but these assumptions will not be questioned here. Table 3 sets out the Barberton and Stuart estimate and then revises this using 2006 data as indicated. The assumptions underlying the estimates, as developed by Barberton and Stuart are given in footnotes 25 to 28. As the calculations are essentially based on the reported crime and not, for example, on the size of the child population, it appears that the estimated number of children arrested annually has remained stable at approximately 101 000 from 2001 to 2006.

Table 3: Barberton-Stuart estimate for number of children arrested and revised estimate

Calculation process	2001	2006
Total crimes reported	2,224,000	2,266,073
Crimes attributed to children % ²⁵	15%	15%
Number of cases attributed to children	333,600	339,911
Percentage of cases unfounded/untraced ²⁶	60%	60%
Nr of cases untraced or unfounded	200,160	203,946
Nr of cases allegedly involving children	133,440	135,964
% of cases involving arrest	75%	75%
Number of cases involving immediate arrest ²⁷	100,080	101,973
% of cases involving dockets initially	25%	25%
Number of cases only involving docket initially ²⁸	33,360	33,991

24 Barberton C and Stuart J (2001) Re-Costing the Child Justice Bill - Updating the original costing taking into consideration changes made to the Bill, Afrec, University of Cape Town, Cape Town, p. 13.

25 It is estimated that 15% of the total number of cases reported in South Africa for the period January to December 1998, namely 2,224,000 cases, are attributable to children (Department of Safety and Security, *pers. com.*). This is comparable to the percentage of cases attributed to children in other countries: England and Wales (25%), New Zealand (23%), Canada (22%), Netherlands (20%), USA (19%), France (18%), Swaziland (16%), Poland (15%), Austria (14%), Germany (13%), Korea (12%), Chile (6%). (Interpol, 1996).

26 According to data from the Department of Safety and Security 56% of all cases reported to the police in 1998 were either untraced (54%) or unfounded (2%). Given that children are more likely to be involved in offences that go untraced (such as breaking into cars) 60% probably slightly underestimates the number of cases involving children that go untraced.

27 Barberton C and Stuart J (2001).

28 These 'docket cases' do not involve immediate arrest. The police open a docket and forward it to the Director of Public Prosecutions for a decision as to whether to proceed with it. In most instances an alternative to arrest (e.g. summons) is used should a decision be taken to take the case further.

4.2 Number of children referred to pre-trial diversion measures

There is no central register for cases referred to diversion programmes. Such a register, to be maintained by the Department of Social Development, is envisaged in the Child Justice Bill.²⁹ While the National Prosecuting Authority does keep a register of diverted cases, the age of the accused is not recorded and it is consequently not possible to extract cases involving children from this data.

It is commonly accepted that NICRO is the largest provider of diversion programmes and that the majority of diverted cases are referred to them. Using their statistics therefore does not provide the complete picture but one fairly close to it. During the period April 2005 to March 2006 a total of 21 975 diversion cases were referred to NICRO.

Chart 14: Diversion programme referrals to Nicro, 2005/06

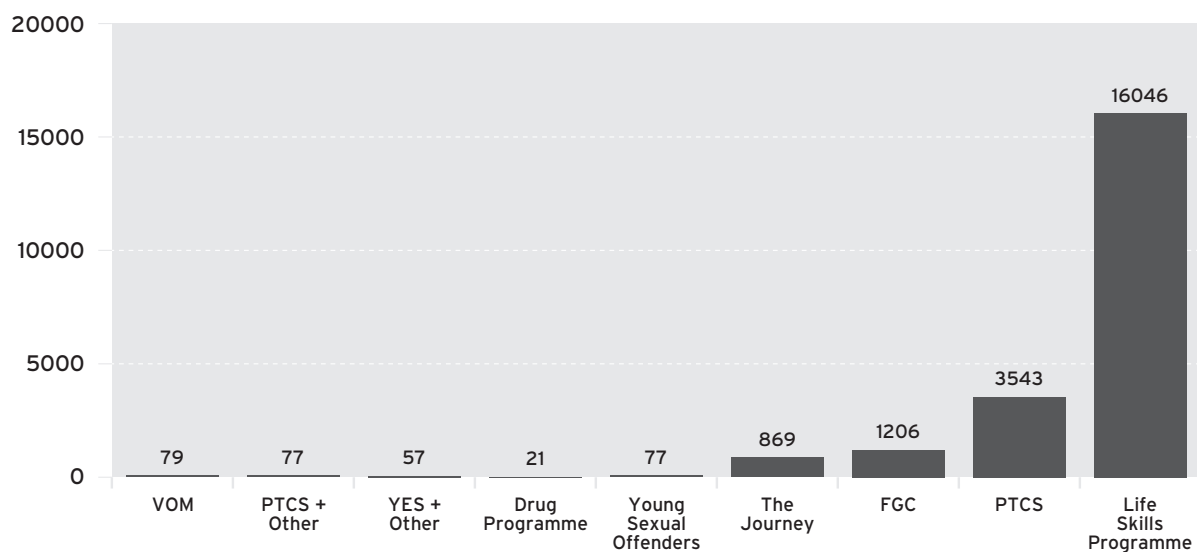


Chart 14 above provides a breakdown of the referrals per programme, as operated by NICRO. Of the total number of cases referred to NICRO during this period, 73% are referred to the YES Life skills programme, 16.6% to the Pre-trial Community Service (PTCS), 5.5% to Family Group Conferences (FGC). The other programmes, such as Victim Offender Mediation (VOM) make up a very small proportion of total cases.

Compliance rates per programme, age and gender breakdowns, geographical distribution of participants, and offence profiles were, however, not available. For more detail in this regard the previous compendium should be consulted.

4.3 Number of children tried

There is at present no central record or even easily accessible decentralised data available on the number of children prosecuted, convicted, acquitted and sentenced. This is a general problem in the criminal justice information management system and not restricted to children.

²⁹ Child Justice Bill clause 48(3).

4.4 Number of children sentenced to custodial measures and non-custodial measures

In respect of children being sentenced to imprisonment, this data is readily accessible as reflected in the number of children serving prison sentences, and was presented in the above. As with regard to other forms of custodial sentences, statistics are not available for the same reasons. Similarly, statistics on children sentenced to non-custodial options are not available. The Department of Correctional Services is, however, updating its Management Information System and will in future be able to provide statistics on children under correctional supervision and parole.

PART 5

Existence of a juvenile justice system

5.1 Existence of specialised courts and/or procedures and/or dispositions or measures applicable to children

At the time of writing the much awaited Child Justice Bill had still not been promulgated and a designated child justice system is thus not yet developed.

A by-product of the work done by government and civil society on child justice reform is the concept of a one-stop centre for children in conflict with the law. There are at present three specialised centres dedicated to dealing with children coming into conflict with the law. Based on a 'one-stop model' these centres concentrate the necessary services, being probation, prosecution, police, diversion and magistracy, in one locality. The three centres are located in Port Elizabeth, Bloemfontein and Port Nolloth.

The centres were able to provide statistics on arrests, assessments, prosecutions and diversion. Data on sentencing was not available. The established procedure at the one stop centres requires that all arrested children must be assessed by a probation officer as soon as possible after arrest. The assessment should gather information on the personal circumstances of the child and his/her family and also on the suitability of the child for diversion, amongst others. The following sections will provide some key statistics from these centres.

Port Elizabeth: Stepping Stones One Stop Child Justice Centre

The Stepping Stones One Stop Centre is situated in Port Elizabeth in the Eastern Cape and was the first centre of its nature. Chart 15 below presents the number of arrests and assessments that were handled by the Stepping Stones Centre during 2006.³⁰ The graph shows that towards the end of the year, from August 2006, that there were an increasing number of arrested children who were not being assessed. This is a worrying trend, indicating that children could be processed through the criminal justice system without having the benefit of a probation officer's assessment. It is also clear that during November to December 2006 there was a sharp decline in the number of arrests and concomitantly in the number of assessments taking place.

30 Information supplied by Ms M Burrell from the Stepping Stones Centre, Port Elizabeth.

Chart 15: PE Stepping Stones, 2006, arrests and assessments per month

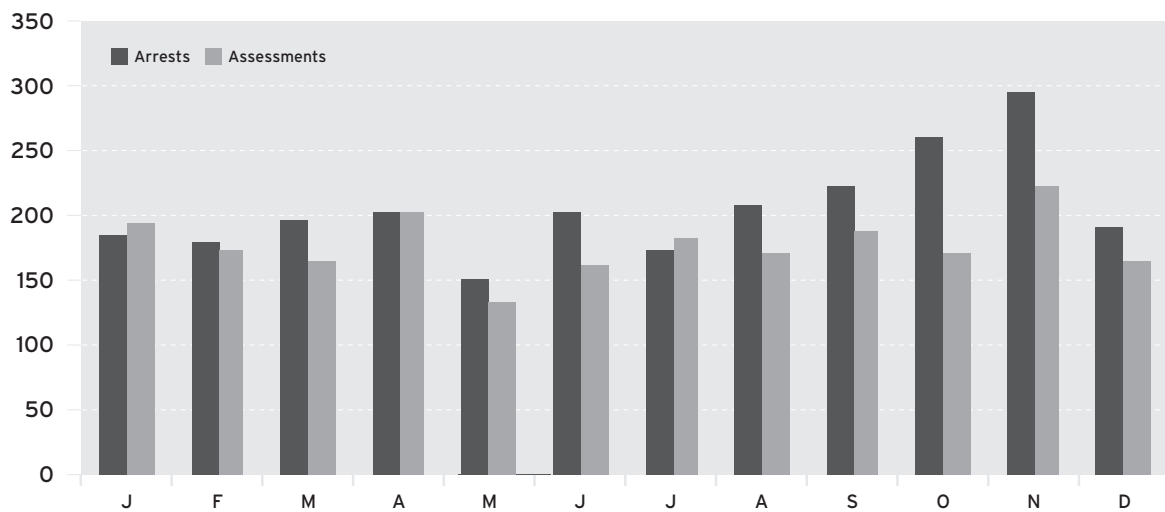


Chart 15 indicates that on average 177 assessments are done per month at Stepping Stones. However, on average only 18% are recommended for diversion by the probation officers following the assessments, as indicated in Chart 16.

Chart 16: PE Stepping Stones, percentage of assessments recommending diversion, 2006, per month

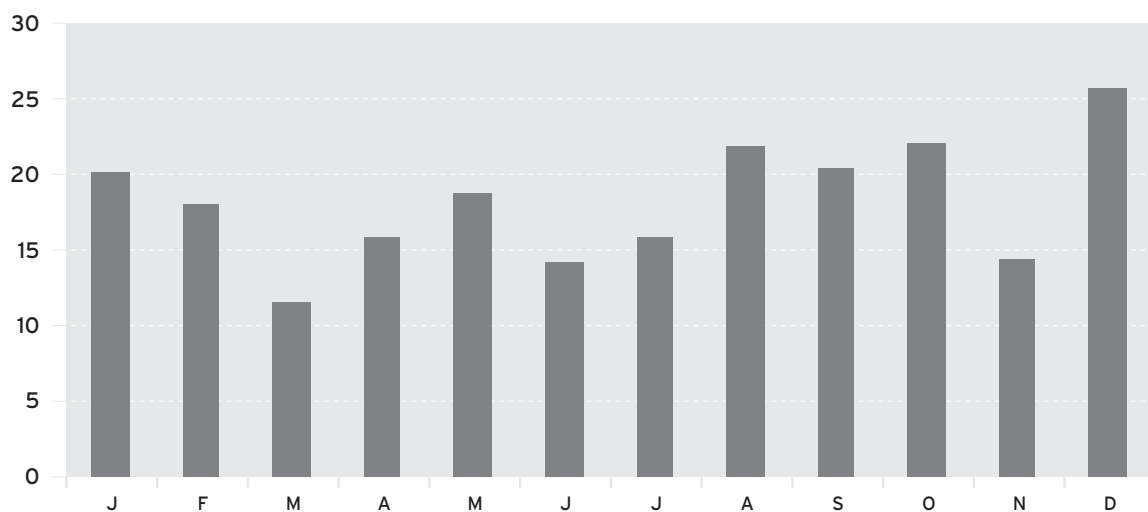


Table 4: PE Stepping Stones: number of cases per month that have complied with the diversion conditions of per programme

CATEGORY	J	F	M	A	M	J	J	A	S	O	N	D	Total
Youth Empowerment Scheme	29	33	25	13	23	24	24	32	34	22	22	12	293
Pre-trial Community Service	12	4	11	11	15	13	13	4	10	13	11		117
Family Group Conference		2	7		10	3	3	3	7	5	1		41
TOTAL	41	39	43	24	48	40	40	39	51	40	34	12	451

Table 4 presents the number of cases per month that have complied with the conditions of the diversion per programme. There are some concerns about the accuracy of these figures as there were substantially more cases that complied with the conditions for diversion than what were recommended for diversion.

Bloemfontein: Mangaung One Stop Child Justice Centre

Mangaung One Stop Centre is situated in the city of Bloemfontein in the Free State province. The Centre operates along the same lines as the Stepping Stones Centre. Information on services is, however, not collected in the same format, making comparisons with the Stepping Stones Centre difficult. Chart 17 presents the arrest and assessment figures for the Centre.³¹ The arrests and assessments mirror each other closely, except for March 2006, when significantly fewer assessments were done than arrests made. It is not evident from the statistics what the reasons are but it may be related to human resources capacity.

Chart 17: Mangaung - arrests and assessments per month, 2006

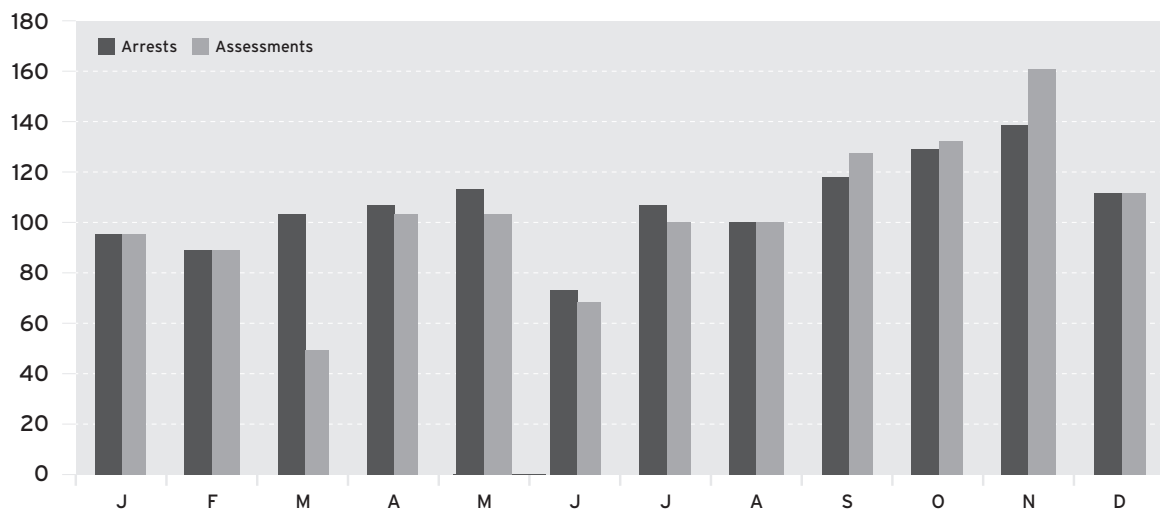


Table 5 presents further information on the Mangaung Centre and attention is drawn to the following:

- On average 50% of cases assessed are referred to diversion programmes.
- During 2006 no cases were converted to Children's Court Inquiries.
- A large volume of assessment reports are submitted to the Court on a monthly basis but the figures are sometimes different from the number of assessments done in that month.
- Pre-sentence reports are presented in respect of just more than 10% of total arrests.
- Diversion non-compliance reports were only recorded from July onwards and it appears that these were required in 16% of cases referred to diversion. If this is indicative of the compliance rate, it is similar to what has been found in other studies in South Africa.³²

31 Information on the Manguang centre was supplied by Mr. R Du Plessis of the Mangaung Centre.

32 See Muntingh L (2001) *The effectiveness of diversion programmes in South Africa*, Nicro, Cape Town.

Table 5: Mangaung: Case profile, 2006

Category	J	F	M	A	M	J	J	A	S	O	N	D	Total
Arrested	95	89	103	106	113	73	106	100	118	129	59	112	1203
Assessed	95	89	49	104	104	69	101	100	127	132	161	112	1243
Placed in diversion	56	36	27	68	68	31	48	45	40	50	64	84	617
CCI conversion	0	0	0	0	0	0	0	0	0	0	0	0	0
Withdrawn due to diversion	33	27	18	15	15	20	52	15	31	35	46	20	327
Report to court - Assessment	95	89	66	147	147	73	112	86	106	120	160	122	1323
Report to court - Diversion feed-back	49	27	24	15	15	40	68	22	32	36	56	24	408
Report to court - Pre-trial	2	4	4	5	5	4	3	3	2	8	12	5	57
Report to court - Pre-sentence	2	4	12	13	13	7	10	35	0	20	9	10	135
Report to court - Non-compliance	0	0	0	0	0	15	3	4	14	8	10	4	58

Port Nolloth One Stop Centre

The Port Nolloth One Stop Centre is situated in the rural coastal town of Port Nolloth in the Northern Cape. The Centre does not yet fully function as a one-stop centre, as it only provides the probation service. It is nonetheless included here to bring a rural perspective.

Table 6 provides the arrest, assessment, diversion and prosecution data for Port Nolloth for 2006.³³ In addition to dealing with cases referred through the criminal justice system, the Centre also deals with a significant number of cases referred by local schools. These cases do not involve criminal charges but rather engagement in risk behaviour or transgression of school rules by the children involved. These cases form the bulk of cases handled by the Centre.

Table 6: Port Nolloth: Case profile, 2006

Category	J	F	M	A	M	J	J	A	S	O	N	D	Total
Arrested	7	1	2	3	6	3	4	4	3	4	0	16	53
Assessed	6	2	0	5	5	2	4	3	1	2	0	15	45
Diverted	6	1	0	3	6	2	3	2	0	2	0	6	31
Prosecuted	1	0	2	0	1	1	1	1	2	2	0	9	20
Schools	0	21	29	20	20	20	20	20	9	0	0	0	159

The table shows that nearly all children arrested are assessed and that more than 70% of assessed cases are referred to a diversion programme.

33 Information on the Port Nolloth Centre was supplied by Ms L Swartbooi of the Port Nolloth Centre.

5.2 Ratio per 1 000 arrested children of trained specialised professionals

The total number of probation officers in the country has increased rapidly from levels in the early 1990s and in 2003 it was reported that there were more than 750 probation officers countrywide.³⁴ Although these probation officers do not work exclusively with children, they are required to perform duties related to children in conflict with the law. Probation officers have also over the years received a significant amount of training in dealing with children in conflict with the law and the University of the Cape Town presents an honours course in probation. A further example is the training that apparently all probation officers received on restorative justice in 2005/6.³⁵

Given that South Africa still does not have a designated child justice system, and that personnel and courts are often dedicated on an ad hoc basis to deal with children's cases, it is not possible to estimate the number of judges, magistrates, prosecutors and police officers dealing with children's cases.

34 Frank C (2006) *Missed Opportunities - the role of Education, Health and Social Development in preventing crime*, ISS Monograph No. 126, Pretoria, p. 101.

35 Government Communications Information Service, *South Africa Year Book 2005/6*, Government Communications Information Service, Pretoria, p. 547.

PART 6

Separation from adults

6.1 Proportion of children in detention who are not separated from adults

Although legislation and policy states that children must at all time be separated from adults in prisons and police cells, anecdotal evidence suggests that this is not always the practice. Difficulties with age determination do result in young adults being detained with children in prisons and police cells. A further area of concern is the transportation of prisoners from prisons to court by the SAPS whose vehicles are often not fitted to effect the necessary segregations. There is no statistical information available on the extent of the problem and specific research will be required to determine this.

A noteworthy case in this regard is the *Centre for Child Law & Another v Minister of Home Affairs and Others*,³⁶ which focussed on the fact that children were being detained with adults at the Lindela Repatriation Centre. The case also addressed the fact that children were being repatriated unaccompanied by adults and 'dumped' at the nearest police station in their country of origin.³⁷ The Court ordered that the children be removed from Lindela and be detained at a place of safety for children. The court also appointed a curator ad litem to investigate the broader issues of the case and make recommendations.

³⁶ Case No: 22866/04, Transvaal Provincial Division.

³⁷ For a summary of the pertinent facts of the case, please see Dutshke M (2006) *Defining children's constitutional right to social services*, Project 28 Working Paper, Children' Institute, University of Cape Town, pp. 61 -64.

PART 7

Conditions for control of quality of services for children in detention

7.1 Existence of a system guaranteeing mandatory visits by magistrates or judges

Magistrates and judges have the authority, in terms of section 99 of the Correctional Services Act (111 of 1998), to visit prisons. This is, however, not undertaken on a systematic basis. Reports on *ad hoc* visits to prisons are apparently forwarded to the Office of the Inspecting Judge of Prisons (see below). In addition to judges and magistrates, Members of the Parliamentary Portfolio Committee on Correctional Services, the relevant committee of the National Council of Provinces, and members of the National Council on Correctional Services have unrestricted access to prisons.³⁸

It is generally accepted that judges and magistrates can visit police cells although there does not appear to be specific legislative provision for this, nor does it appear to happen on any systematic and regular basis.

7.2 Existence of a system guaranteeing regular visits by external, independent persons and bodies

Prisons

Nearly all prisons are visited by Indent Prison Visitors (IPVs) from the Office of the Inspecting Judge and in 2005/6 there were on average 205 IPV's employed for the 238 prisons in South Africa. The IPV system was established by Chapters 9 and 10 of the Correctional Services Act and IPV's are mandated to hear complaints from prisoners regarding their treatment. They have unrestricted access to prisoners, any documentation on prisoners, and also carry out weekly inspections of all sections of a prison. The Annual Reports of the Office of the Inspecting Judge do not reflect specific complaints lodged by children in prison but have on several occasions lamented the high numbers of unsentenced and sentenced children in prisons.³⁹

The Parliamentary Portfolio Committee on Correctional Services has in the past 12 months undertaken a number of oversight visits to specific prisons, although the focus was not specifically on children. These visits are nonetheless important in facilitating a culture of active parliamentary oversight.⁴⁰

Police cells

The Independent Complaints Directorate has authority to visit cells but it does not appear as if this is being done on a proactive and regular basis. The 2005/6 Annual Report of the ICD does not report on any matters specifically pertaining to children or on the regular inspection of cells. It appears that there are of late efforts by the ICD to be more proactive and visit cells.

38 Section 99 of Act 111 of 1998.

39 Office of the Inspecting Judge (2006) *Annual Report of the Judicial Inspectorate of Prisons*, Cape Town, p. 16.

40 Reports on the visits are available from the Parliamentary Monitoring Group website at www.pmg.org.

Places of safety, secure-care facilities and schools of industry

The Regulations to the Child Care Act⁴¹ provide very specific guidance on the rights of children (see Regulation 31) and the duties of care of facility managers. In fact, Regulation 32(3) lists the particular activities and management practices that are expressly forbidden.⁴²

Regarding oversight, section 31 of the Child Care Act provides for the inspection of facilities established under the Act and mandates the responsible Director General to delegate such inspections to a member of his or her staff.⁴³ Regulation 34A provides for the inspection of a facility should there be reason to believe that the facility and its management are not in compliance with the Act. The Director General may then institute a formal investigation in accordance with the procedures set out in the Regulations. The emphasis of this investigation is clearly on ensuring that the institution is run according to policy guidelines and the requirements of the Act and Regulations. Should all proactive measures fail, the Director General may decide to have the facility deregistered. The approach therefore leans strongly towards problem-solving as opposed to holding perpetrators of abuse, ill-treatment and assault criminally liable.

A recent matter involving the George Hofmeyer School of Industry (female children) in Standerton (Mpumalanga) illustrates a number of shortcomings in the current approach⁴⁴ and highlights a number of failings in the current oversight and protection system. In the first instance, it took a non-governmental organisation to apply to the High Court (Transvaal Division) to seek immediate relief on a number of rights violations that had taken place at the behest of the school principal. Secondly, the organisation further asked the Court to instruct the Department of Education to conduct an assessment (Developmental Quality Assurance (DQA)) of the school. Thirdly, the process thus far has not sought to bring criminal charges against the staff of the facility for assaulting or torturing the children placed in their care.

41 GK R416 (SK 18770), Issued on 31 March 1998.

42 The following prohibited behaviour management practices shall not be used by any person in a children's home, place of safety, school of industry, shelter or by a foster parent:

- a) group punishment for individual behaviour;
- b) threats of removal, or removal from the programme;
- c) humiliation or ridicule;
- d) physical punishment;
- e) deprivation of basic rights and needs such as food, clothing, shelter, bedding;
- f) deprivation of access to parents and family;
- g) denial, outside of the child's specific development programme, of visits, telephone calls or correspondence with family or significant others;
- h) isolation from service providers and other children admitted to the children's home, place of safety, school of industry, shelter or in the custody of a foster parent; other than for the immediate safety of such children or such service providers in the children's home, place of safety, schools of industry, shelter or in the custody of a foster parent, as the case may be, only after all other possibilities have been exhausted, and then under strict adherence to policy, procedure, monitoring and documentation;
- i) restraint, other than for the immediate safety of the children or service providers in the children's home, place of safety, schools of industry or shelter, as the case may be, and only as an extreme measure: Provided that such a measure is governed by specific policy and procedure, can only be undertaken by service providers trained in this measure, and must be thoroughly documented and monitored;
- j) assignment of inappropriate or excessive exercise or work;
- k) undue influence by service providers regarding their religious or personal beliefs including sexual orientation;
- l) measures which demonstrate discrimination on the basis of cultural or linguistic heritage, gender, race, or sexual orientation;
- m) verbal, emotional or physical harm;
- n) punishment by another child; and
- o) behaviour modification such as punishment, reward systems, or privilege systems, other than as a treatment or development technique within a documented individual treatment or development programme which is developed by a team which the child is part of and monitored by an appropriately trained multi-disciplinary team.

43 The purposes of such inspections are to:

- a) inspect that children's home, place of care, shelter or place of safety and the books and documents appertaining thereto;
- b) observe and interview any child therein, or cause such child to be examined by a medical officer, psychologist or psychiatrist.

44 Initial Report of the curator ad litem in the application of *The Centre for Child Law and Eleven Others v The Minister of Justice and ten others*, Transvaal Provincial Division of the High Court, Case No. 8523/2005.

The Court ordered that a Developmental Quality Assurance investigation be conducted, which the Department of Education (Mpumalanga) facilitated. The report following from the DQA raised some significant concerns about the treatment of children at the facility and there was strong evidence of ill-treatment and torture.⁴⁵

From this particular case it is apparent that effective independent oversight was severely lacking and that when problems were encountered, even if they were extremely serious, there was no provision in the Act that encouraged the Director General of Education to lay criminal charges against members of staff who may be guilty. Although the Regulations are clear on what activities and practices are prohibited, the types of punishment for transgressions relate to the licence of the institutions and not the individual who committed the acts, or gave the instructions and/or allowed the harmful practice to continue.

7.3 Proportion of children not being visited by parents or relatives over the last six months

Statistics in this regard could not be sourced and it will require research specifically aimed at this.

45 The following are some of the major concerns raised in the DQA Report:

- Some of the children have been threatened with regard to their school progress and possible removal from the school.
- Many children experience teachers and hostel staff being rude to them in terms of swearing at them and calling them humiliating names.
- Children have been denied telephone calls and visits to family on the basis of the hostel/level at which they have been placed.
- Restraint may only be used in extreme situations where a child may be a danger to him or herself and/or others and no restraint technique in child and youth care or education practice exists where either staff or children are permitted to sit on a child. Unfortunately, such forms of restraint has been employed by both the principal and some of the teachers in the recent past, resulting in serious injury to at least one child and humiliation to others. The team [conducting the DQA] has noted that this practice has been stopped, but is concerned that it only stopped as a result of a court order.
- Being a lesbian and behaving like a lesbian is punished through the withdrawal of points and transfer to a hostel which has fewer privileges. Children who choose this sexual orientation are labelled and humiliated.
- Children report that they live under constant threat of losing points and being transferred to a lower level in a hostel or to a hostel which has fewer privileges and where children in such hostels are seen as 'bad,' naughty', or 'vrot '[rotten]. Children are required to obey a long list of rules and ensure that they do not do anything which is on the list of unacceptable behaviours. If they make mistakes in this regard they lose points. While this does not appear to affect those girls who have managed to keep points and earn points so that they constantly receive more privileges and are in the 'good' hostels, those that are hurting emotionally and behaviourally troubled, live under constant threat of failure and 'demotion', which is in effect emotional abuse. This is of particular concern when punishment/loss of points is associated with behaviour (such as self-mutilation) that should [rather] be responded to with therapeutic and developmental interventions. (Initial Report of the *curator ad litem* in the application of *The Centre for Child Law and Eleven Others v The Minister of Justice and ten others*, Transvaal Provincial Division of the High Court, Case No. 8523/2005).

PART 8

Protection from torture, violence, abuse and exploitation

8.1 Existence of legal provisions prohibiting torture, inhuman and degrading treatment or punishment

There is at present no legislation criminalising torture in South Africa, despite the country ratifying the Convention against Torture in 1998. The first country report to the Committee against Torture was submitted in mid-2005 and discussed by the Committee in November 2006. The Concluding Remarks by the Committee acknowledged the progress that South Africa has made in promoting a human rights culture since 1994 but also noted that the lack of legislation criminalising torture as serious.⁴⁶ It urged the State Party to address this as a matter of priority as the criminalisation of torture in domestic legislation is a requirement of Article 4 of the Convention against Torture.

South Africa signed the Optional Protocol to the Convention against Torture (OPCAT) in September 2006 and discussions between civil society, government and the Human Rights Commission are currently underway on how the State Party will meet its obligation in respect of OPCAT.

The SAPS has a policy on the prevention of torture and is the only government department with such a policy. A review of existing protection mechanisms revealed that policies and standards in other departments responsible for the custody of persons are devoid of references to torture.⁴⁷

8.2 Existence of safe, accessible and child-sensitive complaints mechanisms for children

Prisons

Children detained in prisons have access on a daily basis to the internal complaints mechanism of the Department of Correctional Services known as the 'Complaints and Requests Register' (G365).⁴⁸ In addition, all prisoners have access to IPVs, as noted above. Research on whether the IPV mechanism is indeed child-friendly, has not been conducted.

Police cells

All persons detained by the police can, at any stage lay, a criminal charge against a member of SAPS at the station at which they are being detained. All heads of police stations are required to visit the holding cells at 07h00 every day and detainees can raise any matter with him or her during that visit. Throughout the day, cells should be monitored hourly and any incidents or complaints recorded in the Occurrence Book. The transfer of detained persons from police stations to court is further traced by means of the Body Receipt Form to ensure that the

46 UN Committee against Torture (2006) *Consideration Of Reports Submitted By States Parties Under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture - South Africa*, CAT/C/ZAF/CO/1, http://www.ohchr.org/english/bodies/cat/docs/37/cat_c_zaf_co_1.pdf.

47 Fernandez L and Muntingh L (forthcoming) *The Criminalisation of Torture in South Africa*, CSPRI Research Report.

48 Section 21 of the Correctional Services Act (111 of 1998).

correct person is transferred and returned, if necessary. The Body Receipt Form does, however, not report on the physical condition of the detainee, for example if he or she is sick or injured.

Complaints against the SAPS can also be lodged with the Independent Complaints Directorate (ICD), which provides an independent complaints and investigative procedure.

Facilities under the Department of Social Development

Children detained in places of safety and schools of industry have the right to report a rights violation to any nurse, social worker, child and youth care worker, dentist, medical doctor or other authorised person.⁴⁹ There does not appear to be any recent research conducted on whether or not the complaints mechanisms are child-friendly and whether these are indeed utilised by children. Statistics are also not available on the number of complaints recorded or the type of complaints. The Centre for Child Law has also in recent years litigated actively on conditions under which children are deprived of their liberty.⁵⁰ Given the extent of the litigation, it does not appear as if complaints mechanisms and proactive management of problems in facilities under the care of the Department of Social Development are achieving the desired results. Unlike prisons and police cells, there is no central or coordinated oversight mechanism monitoring the conditions of detention of children in facilities under the control of the Department of Social Development. The National Preventive Mechanism under OPCAT (see Article 19) should be able to address this shortcoming to some extent.

It should be noted that due to the new legislation being drafted (i.e. the Children's Act), new regulations will be formulated and this should, amongst others, review the current complaints mechanisms and oversight architecture.

8.3 The number of reported cases of violations

The notion of a central register where cases of violations against children will be recorded entered South African law only in 1998 when new regulations were promulgated under the Child Care Act (74 of 1983).⁵¹ However, the intended register did not get off the ground before May 2006 and in December 2006 it was reported that there were 13 228 names recorded.⁵² The register includes the names of both victims of child abuse and perpetrators of abuse against children. Information is at this stage not available to identify the number of cases of abuse reported within the context of the criminal justice system, e.g. at secure care facilities.

The Children's Act (38 of 2005), in Chapter 7, provides for the establishment of a National Child Protection Register. It provides for a Part A of the Register, which will record the names of victims, and Part B that will record the names of persons found unsuitable (as defined in S 120 of the Act) to work with children. A person can be found unsuitable to work with children by a children's court, any other criminal or civil court, and any forum established or recognised by law in any disciplinary proceedings against that person (e.g. Commission for Conciliation, Mediation and Arbitration).⁵³

It is hoped that the National Child Protection Register will be able to firstly protect children in the criminal justice system from persons found unsuitable to work with children, and secondly that quantitative data on trends will be available. It should further be noted that the register records the names of victims and perpetrators and not the

49 Regulation 31A of the Regulations to the Child Care Act (74 of 1983).

50 See a review of cases on the Centre for Child Law website at <http://www.childlawsa.com/cases.html>.

51 Sloth-Nielsen J "Chapter 7: National child abuse register" in Davel CJ and Skelton A (forthcoming) *A Commentary on the Children's Act 38 of 2005* Juta and Co, Cape Town.

52 Ibid.

53 For a more detailed description on the National Child Protection Register, see Davel T and Skelton A (forthcoming) 'National Child Abuse Registers' in Sloth-Nielsen J (ed) *Children's Rights in Africa*.

individual reports of violations. The Register is therefore not a complaints mechanisms but a mechanism to identify individuals and prevent them from working with children. As such this is a limitation, as the number of perpetrators placed on the register should be seen against the backdrop of the total number of violations.

8.4 Proportion of reported cases followed by penal or administrative sanctions

Although a National Child Protection Register was established as described above, information is at this stage not available on the sanctions imposed against violators, and more specifically against violators within the child justice system.

PART 9

Conclusion

Whilst there are many gaps in the current quantitative information system, government is, as part of the Integrated Justice System Programme, in process of setting up a system that will collect information on key indicators in the criminal justice system. Technically the process is complex as different departments are either lacking in information systems or have developed information systems in isolation of each other, and if such systems exist, they may not be collecting the correct information.

In respect of children in the criminal justice system, a task team has been set up in the Inter-sectoral Committee on Child Justice to look at quantitative information needs in this sector. The task team is using the Unicef indicators, as referred to in this report, to form the basis for data collection. The indicators and the information requirements emanating from these have been discussed with the relevant departments to ensure that the questions are valid and that there is agreement on core definitions. The next step is to verify if departments are in fact able to provide the required information, either from existing sources or new data collection processes.

The current planning is that the programme will be able to provide the necessary information by June 2007. It is thus expected that the quality and completeness of information will greatly improve in the next few years.

APPENDIX 1

Unicef indicators

1. Children in Detention
 - Total number of children in detention
 - Proportion of children in detention in the pre-trial stage, over the total number of children in detention
2. Duration of Detention
 - The number of children sentenced to detention for
 - less than one year
 - one to five years
 - five to ten years
 - more than ten years
 - life imprisonment
 - The average length of pre-sentence detention
3. Children coming into contact with the juvenile justice system
 - Number of children
 - arrested
 - referred to pre-trial diversion measures
 - tried
 - *dismissed*
 - *acquitted*
 - *convicted and*
 - sentenced to custodial measures
 - sentenced to non-custodial measures
4. Existence of a juvenile justice system
 - Existence of specialised courts and/or procedures and/or dispositions or measures applicable to children
 - Ratio per 1 000 arrested children of trained specialised professionals among:
 - judges
 - lawyers
 - prosecutors
 - police
 - social workers/probation officers

5. Separation from adults
 - Proportion of children in detention who are not separated from adults:
 - in police cells
 - in detention facilities/prisons
6. Conditions for control of quality of services for children in detention
 - Existence of a system guaranteeing mandatory visits by magistrates/judges
 - Existence of a system guaranteeing regular visits by external, independent persons and bodies
 - Proportion of children not being visited by parents or relatives over the last six months
7. Protection from torture, violence, abuse and exploitation
 - Existence of legal provisions prohibiting torture, inhuman and degrading treatment or punishment
 - Existence of safe, accessible and child-sensitive complaint mechanisms for children
 - The number of reported cases of violations
 - Proportion of reported cases followed by penal or administrative sanctions
8. Prevention
 - Existence of a national programme for the prevention of juvenile offending that has at least 3/5 of the following components:
 - Family support services
 - Community-based programmes for vulnerable groups
 - Programmes for prevention of drugs, alcohol abuse
 - Educational support programmes
 - Involvement of mass media in prevention
9. After-care
 - Proportion of children in detention benefiting from an after-care programme lasting at least six months following release.



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