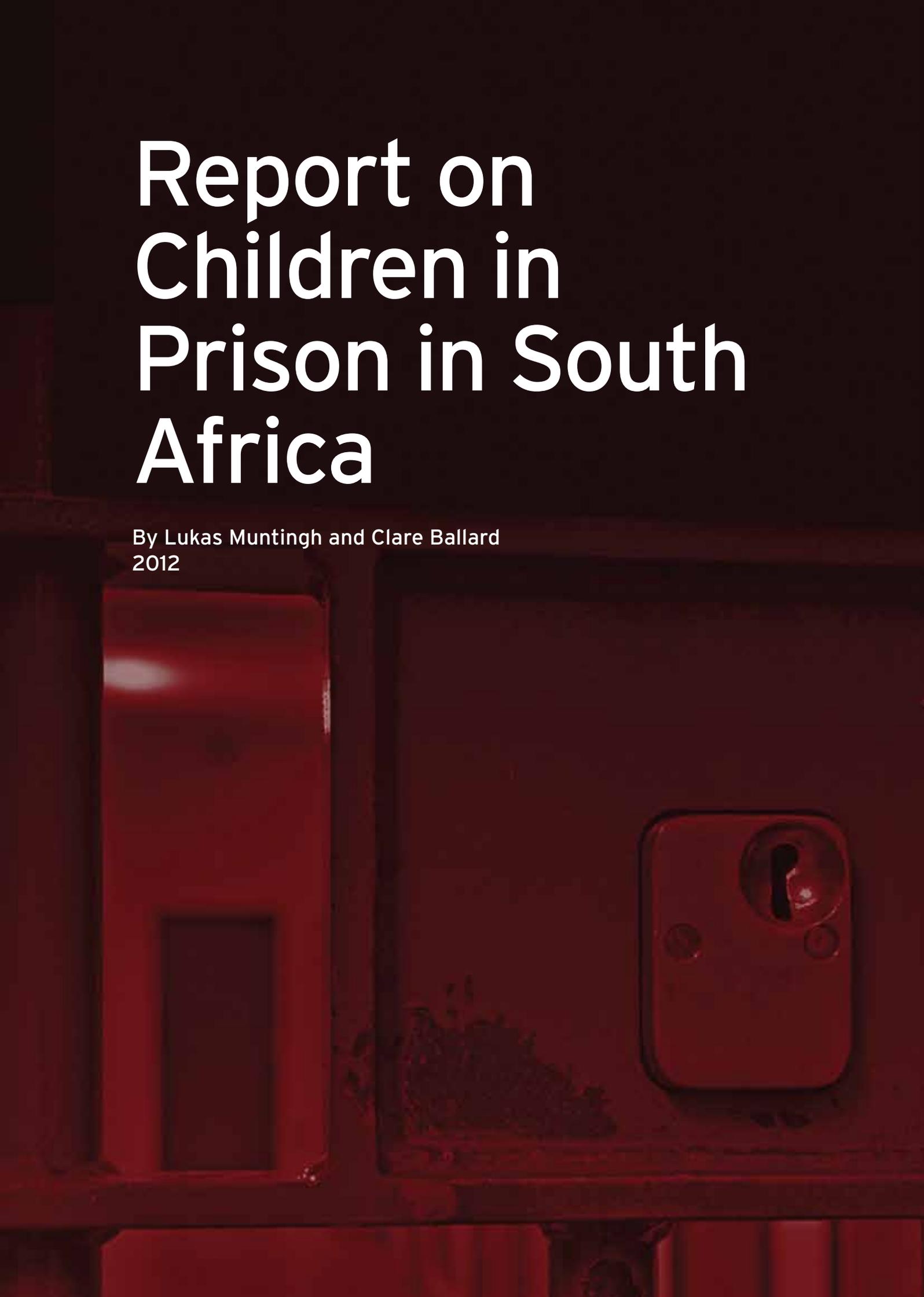


Report on Children in Prison in South Africa

By Lukas Muntingh and Clare Ballard
2012



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The aim of CSPRI is the advancement of human rights norms in relation to prisoners and persons deprived of their liberty, through research-based lobbying and advocacy and collaborative efforts with civil society structures. The key areas that CSPRI examines are developing and strengthening the capacity of civil society and civilian institutions related to corrections; promoting improved prison governance; promoting the greater use of non-custodial sentencing as a mechanism for reducing overcrowding in prisons; and reducing the rate of recidivism through improved reintegration programmes. CSPRI supports these objectives by undertaking independent critical research; raising awareness of decision makers and the public; disseminating information and capacity building.

ACKNOWLEDGMENTS

The following institutions and individuals are acknowledged for their contributions to this report:

- Judicial Inspectorate for Correctional Services: Murasiet Mentoor, Carmen Low-Shang and the Independent Visitors who assisted with data collection.
- Department of Correctional Services: Ntombikayisa Sambo, Heads of Centres and the officials who assisted during the fieldwork.
- Community Law Centre: Keathélia Sapiro.
- NICRO: Pretoria, Kroonstad, Rustenburg and Port Elizabeth offices.
- Thohoyandou Victim Empowerment Programme.
- We express our sincere appreciation to the children we interviewed and who were willing to share their experiences and insights.



EXECUTIVE SUMMARY

This report is an update to the situational analysis of children in prison in South Africa prepared by the Community Law Centre in 1997. The Child Justice Act 75 of 2008 (Child Justice Act), promulgated on 1 April 2010, introduced a markedly different child justice regime than that which was previously regulated by the Criminal Procedure Act 51 of 1977 and the common law. This development, along with various others which have emerged since 1997 (e.g. child justice jurisprudence and government's renewed focus on children in conflict with the law), has changed the way in which South Africa's courts and correctional system deal with children in conflict with the law. Accordingly, an updated analysis on children in prison became necessary.

The findings in this report are based on both quantitative and qualitative data from 41 Department of Correctional Services (DCS) facilities. The type of data collected included: individual interviews with sentenced and unsentenced children, numerical data from the DCS Management Information System (MIS), and relevant literature. The report is structured according to a selection of "child justice indicators applicable to imprisonment" developed by Unicef and UNODC. The use of these standardised categorisations means that the international comparison of the data collected can be conducted in a more efficient way.

An important finding of the study is that the policies in respect of the services and activities available to children across the centres surveyed, are varied and inconsistent. These include, but are not limited to, information provided at admission, orientation of new admissions, conditions of detention, the segregation of children from adults, access to education, access to recreation and preparation for release. The DCS should make all efforts to identify such inconsistencies and align the services rendered with the requirements of the Correctional Services Act 111 of 1998 (Correctional Services Act), subsidiary legislation and relevant policies.

Practices compliant with the relevant legislation were identified at certain DCS facilities, demonstrating that the required standards can be met in the current environment and context. In this regard Brandvlei Youth Correctional Centre should be used as a benchmark example.

Since 2003 the total number of children imprisoned in South Africa across all categories has declined rapidly from 4500 to 846 in February 2011. The substantial decline in total numbers does, to some extent, mask some of the shifts that have taken place in offence and sentence profiles. Children charged with and convicted of non-violent offences are now far less likely to be imprisoned. However, sentence tariffs for children have increased slightly; a trend reflected in the total prison population. The child imprisonment rate in South Africa (4.6/100 000) compares favourably with other developing countries (Argentina 39.3/100 000) and even some developed countries (USA 11.9/100 000).

Based on snapshot data, children remain awaiting trial in DCS facilities for an average of 70 days. This is a considerable length of time. Moreover, the general lack of services available to such children (educational, social work, therapeutic, developmental and recreational) exacerbates the situation considerably. Of particular concern is the fact that children of compulsory school-going age in awaiting trial facilities are excluded from educational programmes and that conditions of detention are wanting in many regards in several facilities surveyed due to limited infrastructure, overcrowding and "staff shortages".

The situation in respect of sentenced children is noticeably better compared to their unsentenced counterparts, but there is room for significant improvements, particularly in relation to conditions of detention, the range and accessibility of services and programmes, and access to education for all children, especially those of compulsory school-going age.

Child safety inside prisons is another reason for concern. Although difficult to determine if the mortality rate of children is of itself reason for concern, reports of violence (including sexual violence) and intimidation were received. The authors also found that the overwhelming majority of DCS officials working with children (sentenced and unsentenced) have not received specialist training on working with children, anti-bullying strategies, suicide prevention or conflict management.

There was very little evidence that DCS take any specific measures to promote contact between children and their families, despite the legislative duty to do so. The children must purchase phone cards from their own funds and it is only at a few centres that children are supplied with stationery to write letters to their families. Children, without the necessary funds, are effectively cut off from their families. It was found that 40% of children had not had any visitors in the three months preceding the fieldwork.

Information on aftercare services rendered to children after their release from prisons is scant. Thus, more rigorous data collection from the DCS as well as the Department of Social Development will be required.

Generally, children have access to complaints mechanisms in DCS facilities. However, despite the Independent Visitors from the Judicial Inspectorate being well distributed across the prisons surveyed, few children knew about them and what their functions are.

Interviews with children revealed that many of them had found their court appearances and trials very confusing. Thus, the extent to which the DCS provides new admissions with information and a proper orientation regarding their rights and responsibilities (in accordance with their legislative mandate), could be vastly improved.

The report does not deal with the quality of the programmes rendered by the DCS to sentenced offenders in any particular depth. Nevertheless, the accessibility of programmes is a cause for concern as is the consistency with which they are rendered across the prisons surveyed.

A number of information-recording problems are identified in both the DCS MIS and other government departments. DCS should ensure that its MIS is able to extract information on children across all variables. It is regrettable, therefore, that the Department of Justice and Constitutional Development is unable to provide information on the sentences imposed on children for the 2010 period.

SUMMARY RESULTS

NR.	INDICATOR	DEFINITION	RESULT
Quantitative indicators			
1	Children in conflict with the law	Number of children arrested during a 12 month period per 100,000 child population	75 453 children charged by the police from April 2010 to March 2011
2	Children in detention	Number of children in detention per 100,000 child population	4.63/100 000 (using 2009 population statistics and 2010 custody figures)
3	Children in pre-sentence detention	Number of children in pre-sentence detention per 100,000 child population	1.67/100 000 (using 2009 population statistics and 2010 custody figures)
4	Duration of pre-sentence detention	Time spent in detention by children before sentencing	Average = 120 days (based on current in custody) Median = 70 days (based on current in custody)
5	Duration of sentenced detention	Time spent in detention by children after sentencing	Average = 284 days (based on current in custody) Median = 164 days (based on current in custody)
6	Child deaths in detention	Number of child deaths in detention during a 12 month period, per 1,000 children detained	8.3/1000 (using annual average in custody, covers age cohort up to 19 years old)
7	Separation from adults	Percentage of children in detention not wholly separated from adults	There are minor deviations in respect of the transportation of children to and from some hospitals.
8	Contact with parents and family	Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months	39% had received no visits in the 3 months preceding the fieldwork (August 2011). Problems are, however, noted in record-keeping of visits and this figure may be higher. The median value for visits in the past three months is 1 visit, meaning that half of children received no visits in the preceding 3 months.
9	Custodial sentencing	Percentage of children sentenced receiving a custodial sentence	110 children were sentenced to a reformatory in 2010/11. Limitations in the data recording system prevent further analysis to determine the number of children admitted to serve prison sentences.
10	Pre-sentence diversion	Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme	16 462 children diverted in 2010/11
11	Aftercare	Percentage of children released from detention receiving aftercare	In 2009/10 there were on average 981 children placed under community corrections (correctional supervision and parole). Limitation in the data recording system prevents further analysis to determine what proportion this constitutes of total releases.
Policy indicators			
12	Regular independent inspections	Existence of a system guaranteeing regular independent inspection of places of detention Percentage of places of detention that have received an independent inspection visit in the last 12 months	The total number of Independent Visitor (IV) posts is 279 of which 221 are filled and 58 are vacant (August 2011). IVs visit prison on weekly basis. The Correctional Services Act mandates a number of other individuals to also visit prisons, such as judges, magistrates, members of the National Council on Correctional Services and Members of Parliament.
13	Complaints mechanism	Existence of a complaints system for children in detention Percentage of places of detention operating a complaints system	Complaints and Requests (G365) register is available on daily basis. 100%. All inmates can also lodge complaints with IVs and any of the national Human Rights institutions (so called Chapter 9 institutions).

NR.	INDICATOR	DEFINITION	RESULT
14	Specialised juvenile justice system	Existence of a specialised juvenile justice system	The Child Justice Act (75 of 2008) came into operation on 1 April 2010. It establishes a separate and distinct procedure for children in conflict with the law, providing numerous safeguards to limit the exposure of children to the possible harmful effects of prosecution and detention. The Correctional Services Act (111 of 1998) also deals with children as a distinct category of inmates and sets certain minimum standards in this regard.
15	Prevention	Existence of a national plan for the prevention of child involvement in crime	DCS Social Work Services Policy on Child Offenders.

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GLOSSARY

Child

Child, as defined in the Child Justice Act 75 of 2008, is any person under the age of 18 years.

Compulsory school-going age

According to the South African Schools Act 84 of 1996, schooling is compulsory for all South Africans from the age of seven (grade 1) to the age of 15, or the completion of grade 9.

Diversion

Diversion, defined in the Child Justice Act 75 of 2008, means the diversion of a matter involving a child away from the formal court procedures in a criminal matter. Diversion can occur at the following stages in criminal proceedings against the child: First, a prosecutor may decide to divert a child who has been charged with an offence. Second, a child may be diverted at the preliminary enquiry (an informal enquiry in which the assessment report of a probation officer is considered). Third, a child may be diverted by the child justice court at any state prior to the finalisation of the case.

Community corrections

Community corrections mean a non-custodial sentence which is to be served within the community. This includes correctional supervision and parole. Section 52 of the Correctional Services Act 111 of 1998 lists a range of conditions which a sentencing officer can attach to such a sentence.

Prisons and correctional centres

The Correctional Services Act refers to all the Department's facilities used for detention as "correctional centres" although the Constitution (section 35(2)) and the international instruments (e.g. UNSMR) refer to prisons and prisoners. A further definitional problem arises when reference is made to unsentenced persons who would consequently not have access to correctional programmes. In view of these definitional problems, the terms prison, facility and centre are used interchangeably.



INTRODUCTION

In 1997 the Community Law Centre published a situational analysis on children in South African prisons, which, until the publication of this report, remained the only comprehensive review of the situation of children in South Africa's prisons.¹ Subsequent to the publication of the 1997 report, important changes have taken place. These include the promulgation of the Child Justice Act in April 2010, the full promulgation of the Correctional Services Act 111 of 1998, and a growing body of constitutional jurisprudence dealing with children in conflict with the law. Additional research on children in conflict with the law since 1997 has dealt with children in prison indirectly or in a somewhat perfunctory manner.²

The authors are of the view that research of this nature should make a timely and valuable contribution to informing the debate on the sentencing and pre-trial detention, and, more specifically, the conditions of detention. This research was therefore undertaken with the following aims in mind:

- to provide an update on the 1997 situational analysis and enable comparisons reflective on the implementation of the Correctional Services Act;
- to establish baseline information in respect of the imprisonment of children with a view to monitor the implementation of the Child Justice Act; and
- to provide stakeholders with reliable information to be used in advocacy for prison and sentencing reform.

The research therefore focussed on but was not limited to:

- investigating the legislative and policy framework pertaining to children in prison with particular reference to the Correctional Services Act and the Child Justice Act;
- the conditions in which children are detained;
- services rendered to sentenced and unsentenced children in prison;
- statistics on children in prison in respect of age, gender, race, sentence profile, and offence profile.

¹ Community Law Centre (1997) *Children in Prison - a situational analysis*. Bellville: Community Law Centre.

² Muntingh L (2008) *A Quantitative Overview of Children in the Criminal Justice System*, Community Law Centre, Bellville.



1. METHODOLOGY

Overview

The authors set out to collect data on children in prison in South Africa according to the fifteen juvenile justice indicators developed by Unicef and UNODC.³ According to the *Manual for the measurement of juvenile justice indicators*:

“the fifteen indicators have been chosen because they are feasible to measure and because doing so assists local and national officials to assess the extent to which juvenile justice systems for which they are responsible are in place and functioning. The indicators do this by providing information on what happens to children who come into conflict with the law, as well as by providing a means to assess the policy environment needed to ensure the protection of such children.”⁴

In addition, where available, information in respect of the indicators not directly relevant to the prison system, is presented. However, indicators 1 and 10 are excluded from the analysis although data on both are presented in the summary table on pages 6-7.

The 15 indicators are listed in Table 1 below:

Table 1

NR.	INDICATOR	DEFINITION
Quantitative indicators		
1	Children in conflict with the law	Number of children arrested during a 12 month period per 100,000 child population
2	Children in detention	Number of children in detention per 100,000 child population
3	Children in pre-sentence detention	Number of children in pre-sentence detention per 100,000 child population
4	Duration of pre-sentence detention	Time spent in detention by children before sentencing
5	Duration of sentenced detention	Time spent in detention by children after sentencing
6	Child deaths in detention	Number of child deaths in detention during a 12 month period, per 1,000 children detained
7	Separation from adults	Percentage of children in detention not wholly separated from adults
8	Contact with parents and family	Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9	Custodial sentencing	Percentage of children sentenced receiving a custodial sentence
10	Pre-sentence diversion	Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11	Aftercare	Percentage of children released from detention receiving aftercare
Policy indicators		
12	Regular independent inspections	Existence of a system guaranteeing regular independent inspection of places of detention Percentage of places of detention that have received an independent inspection visit in the last 12 months
13	Complaints mechanism	Existence of a complaints system for children in detention Percentage of places of detention operating a complaints system
14	Specialised juvenile justice system	Existence of a specialised juvenile justice system
15	Prevention	Existence of a national plan for the prevention of child involvement in crime

³ United Nations (2006) *Manual for the measurement of juvenile justice indicators*. Unicef and UN Office on Drugs and Crime, New York.

⁴ United Nations (2006) *Manual for the measurement of juvenile justice indicators*. Unicef and UN Office on Drugs and Crime, New York, p.5.

Data collection

Three main sources of data were used in compiling this report:

- Individual interviews with 19 children from a select number of prisons where children (sentenced and unsentenced) were detained. These prisons are: Brandvlei, Cradock, Emthonjeni, Kroonstad, Pollsmoor, Port Elizabeth, Rustenburg and Westville. Interviews were conducted by means of a semi-structured interview schedule. A copy of the interview checklist is attached as Appendix 1
- A checklist on infrastructure, conditions of detention and services to children were administered by Independent Visitors of the Judicial Inspectorate for Correctional Services (JICS) at 41 prisons. The full list is attached as Appendix 2 and a copy of the checklist as Appendix 3.
- Quantitative data on children in the correctional system was extracted from the DCS MIS with the assistance of the JICS.

In addition to these data sources, the extant literature was also reviewed in order to contextualise the data collected and supplement it, where appropriate.

The report is structured according to the indicators listed in Table 1 as they apply to imprisonment and presents quantitative and qualitative data as these are available and applicable in respect of each indicator. As far as possible the most recent data is provided.

Ethics

Permission for the research was obtained from the DCS (Directorate Research) and the Research Ethics Committee of the University of the Western Cape. Individual interviews with children were conducted confidentially and with guarantees of anonymity. All names mentioned in the report referring to children in custody are fictitious. All children interviewed gave written consent and were provided with an information sheet on the research; copies of these are attached as Appendices 4 and 5.



2. CHILDREN IN DETENTION

International Law norms

- [States Parties shall ensure that] No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; Convention on the Rights of the Child (CRC), Article 37(b).
- The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period. Beijing Rules, Article 19(1).
- Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL), Article 2.

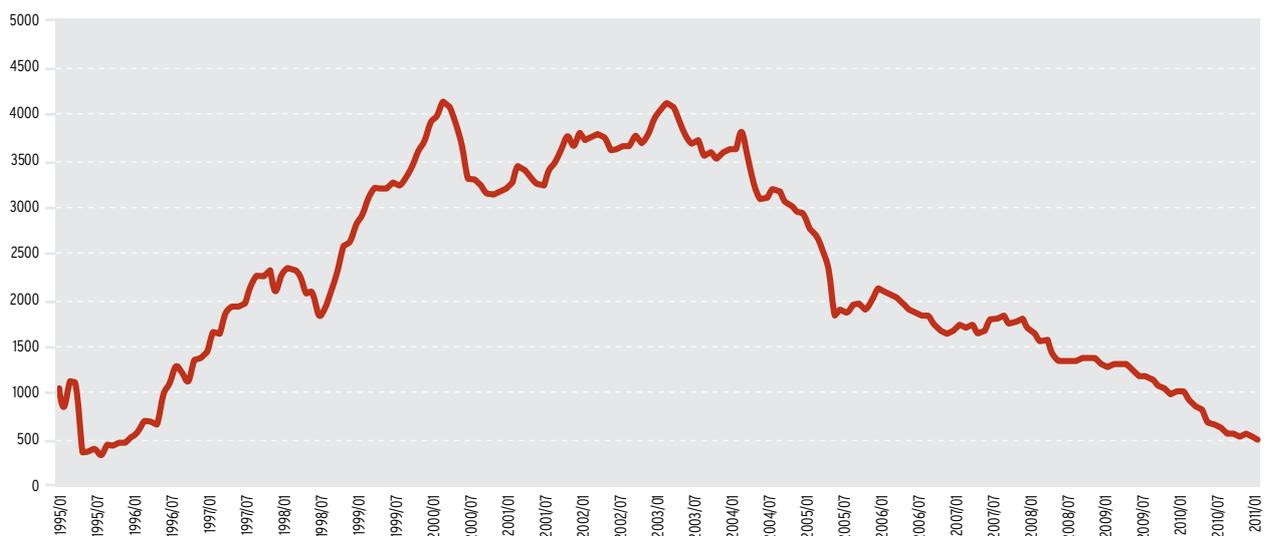
Domestic Law

- Every child has the right not to be detained except as a measure of last resort, in which case...the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years and treated in a manner, and kept in conditions, that take account of the child's age. The Constitution, Section 28(1)(g).
- [t]he objectives of sentencing in terms of [the Child Justice Act] are ...to use imprisonment only as a measure of last resort and only for the shortest appropriate period of time. Child Justice Act 75 of 2008, Section 69(1)(d).
- When considering the release or detention of a child who has been arrested, preference must be given to releasing the child...Child Justice Act, Section 21(1).

Totals

The total number of children in South African prisons decreased drastically between the mid-1990s up until 2003, where after a gradual decline commenced and has since been sustained. See Figure 1 below for the period January 1995 to February 2011.

Figure 1: Total number of children in prison



Expressed as a ratio per 100 000⁵, the number of children in prison per 100 000 of all South African children increased from below 5/100 000 in 1995 to 24/100 000 in March / April 2000 and again to this same level in March to April 2003. Since the most recent peak, there has been a gradual decline and by February 2011 the figure was 4.63/100 000. The imprisonment rates for four other countries were calculated based on data from International Centre for Prisons Studies (World Prison Brief)⁶ and Unicef.⁷ The findings are presented in Table 2 below. Data from the table show that notably, South Africa's imprisonment rate of children per 100 000 of the child population is more than five times that of Denmark but well below that of the USA and nearly ten times lower than that of its neighbour Botswana.

Table 2

COUNTRY	IMPRISONMENT RATE
Denmark	1.0
South Africa	4.6
USA	11.9
Botswana	37.5
Argentina	39.3

Figure 2: Number of children in prison / 100 000 children (2009)



Offence profile

Table 3 below presents the offence profile of children in custody, recorded as the average number per year for the period 1995 to 2010. While the overall number of children in custody has declined drastically, there have also been substantial shifts in the offence profile of children detained (sentenced and unsentenced) in prisons. In 1995 the majority of children (51.5%) detained in prison (sentenced and unsentenced) were either charged or convicted of property offences. This figure had dropped to 28% by 2010. Aggressive and sexual offences had, however, increased by roughly 12% respectively. The remaining two categories (Narcotics and Other) had remained stable at around 1% and 3.5% respectively. The statistics should not be understood to mean that children are committing more aggressive and sexual offences, but rather that the likelihood that a child will be remanded in prison or sentenced to imprisonment for a property crime has decreased substantially.

5 The total number of children in South Africa according to Unicef is 18 285 000. http://www.unicef.org/infobycountry/southafrica_statistics.html Accessed 17 August 2011.

6 <http://www.prisonstudies.org/info/worldbrief/> Accessed 1 September 2011

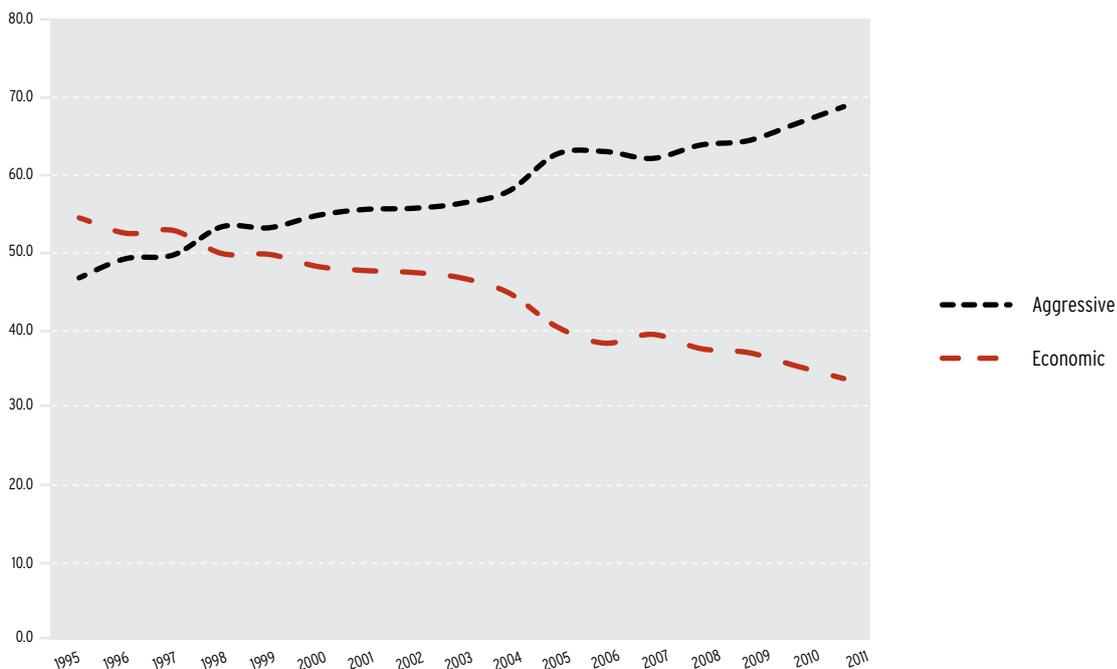
7 <http://www.unicef.org/infobycountry/> Accessed 1 September 2011

Table 3

YEAR	ECONOMICAL	AGGRESSIVE	SEXUAL	NARCOTICS	OTHER	TOTAL
Average for 1995	51.5	32.6	10.0	1.5	4.3	100
Average for 1996	49.1	33.5	12.0	1.1	4.3	100
Average for 1997	49.5	32.2	13.8	1.3	3.2	100
Average for 1998	46.2	33.9	16.1	1.1	2.7	100
Average for 1999	46.0	35.0	15.0	0.8	3.2	100
Average for 2000	44.3	37.5	14.2	0.9	3.1	100
Average for 2001	43.7	39.2	13.4	0.8	2.9	100
Average for 2002	43.4	39.6	13.2	0.8	3.0	100
Average for 2003	42.6	41.2	12.3	0.8	3.1	100
Average for 2004	40.4	42.6	12.6	1.0	3.3	100
Average for 2005	35.5	46.4	14.2	0.9	2.9	100
Average for 2006	33.1	47.7	13.4	1.0	4.9	100
Average for 2007	34.4	46.7	13.3	1.2	4.3	100
Average for 2008	32.3	46.0	16.0	1.3	4.4	100
Average for 2009	31.7	45.2	17.4	1.3	4.4	100
Average for 2010	29.8	46.0	19.1	1.2	3.9	100
Average for 2011	27.9	44.7	22.9	1.1	3.3	100

Figure 3 below shows the proportional shift between economic crimes, aggressive and sexual crimes. In the graph the figures for aggressive and sexual crimes are added since both are violent crimes.

Figure 3: Offence profile - economic vs aggressive crimes



Age

Table 4 below presents the age profile of children in prison according to sentence status as well as the average age of detained children for the period January 1995 to February 2011 and for the year 2010. The data shows that there has been a notable shift in the age profile of unsentenced children but that the profile for sentenced children has remained virtually the same. The age profile of unsentenced children shows a marked reduction in the younger age categories (7-16 years) in 2010 compared to the full term profile and a proportionate increase in 17 year-old children. This suggests that the legislative efforts at keeping very young children out of prison have been effective. General advocacy in child justice as well as actions aimed specifically at finding alternatives to the imprisonment of children have been particularly effective. For example, there are 28 Child and Youth Care Centres (CYCC) nationally with a total capacity of 3272 beds. During 2010/11 a total of 8879 children were admitted to CYCCs.⁸ A further example is home-based supervision⁹ - another alternative to placing children in custody. During 2010/11 4664 children were placed under home-based supervision.¹⁰

Table 4

Age	UNSENTENCED					SENTENCED				
	7-13 yrs	14 yrs	15 yrs	16 yrs	17 yrs	7-13 yrs	14 yrs	15 yrs	16 yrs	17 yrs
1995-2011	0.8	5.1	14.0	31.3	48.8	0.4	1.7	8.0	26.4	63.5
2010	0.2	1.5	7.9	25.6	64.8	0.1	1.9	8.3	25.4	64.4

Gender

In February 2011 there were 833 male children and 13 female children in custody. Put differently, females constituted 1.5% of all children in custody. The proportion of female children in custody fluctuated between 0.9% and 3.4% between January 1995 and February 2011.

⁸ Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 49.

⁹ Home-based supervision is defined in terms of section 1(c) of the Probation Services Amendment Act, 2002 (Act No. 35 of 2002) as supervision under certain conditions where an arrested, accused, or sentenced child in the care of his or her parents or guardians or in the custody of any other person, is monitored by an Assistant Probation Officer. It applies to children at risk and those who allegedly have committed a criminal offence. This program plays an important role in the notion of family preservation and children staying with their families in their communities while being monitored. [Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 52]

¹⁰ Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 52.



3. CHILDREN IN PRE-SENTENCE DETENTION

International Law norms

- Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time." Beijing Rules, Article 13(1).
- Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Beijing Rules, Article 13(2).
- Each case shall from the outset be handled expeditiously, without any unnecessary delay. Beijing Rules, Article 20(1).
- Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim. United Nations Standard Minimum Rules for Non-Custodial Measures (RNCM), Article 6(1).

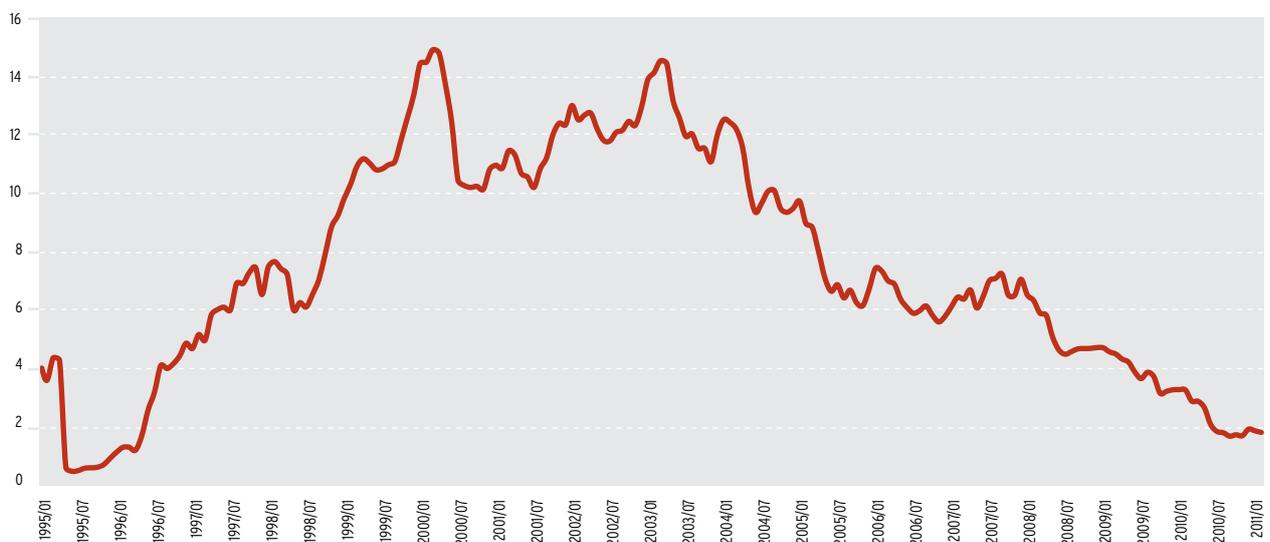
Domestic Law

- Every child has the right not to be detained except as a measure of last resort, in which case...the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years and treated in a manner, and kept in conditions, that take account of the child's age. The Constitution, Section 28(1)(g).
- When considering the release or detention of a child who has been arrested preference must be given to releasing the child. Child Justice Act, Section 21(1).
- Sections 22 - 25 of the Child Justice Act detail the circumstances in which a presiding officer must consider the release of a child in pre-trial detention, and requires, in general, that a child be released into the care of a parent or appropriate adult as soon as possible.
- Section 28 of the Child Justice Act stipulates the conditions in which a child in police detention should be held. The section provides, amongst others, that a child be detained in conditions which take into account their particular vulnerability and will reduce the risk of harm to that child, including the risk of harm caused by other children.

Totals

Figure 4 below presents the ratio of children in pre-sentence detention in prisons expressed as a ratio per 100000 of all children in South Africa using 2009 population figures. The graph mirrors the data presented above in respect of the total child prison population, showing an increase peaking in 2000 and 2003 respectively, where after the numbers declined steadily to reach levels approximating 1995 figures.

Figure 4: Children in pre-trial detention in prison per 100 000 children in SA



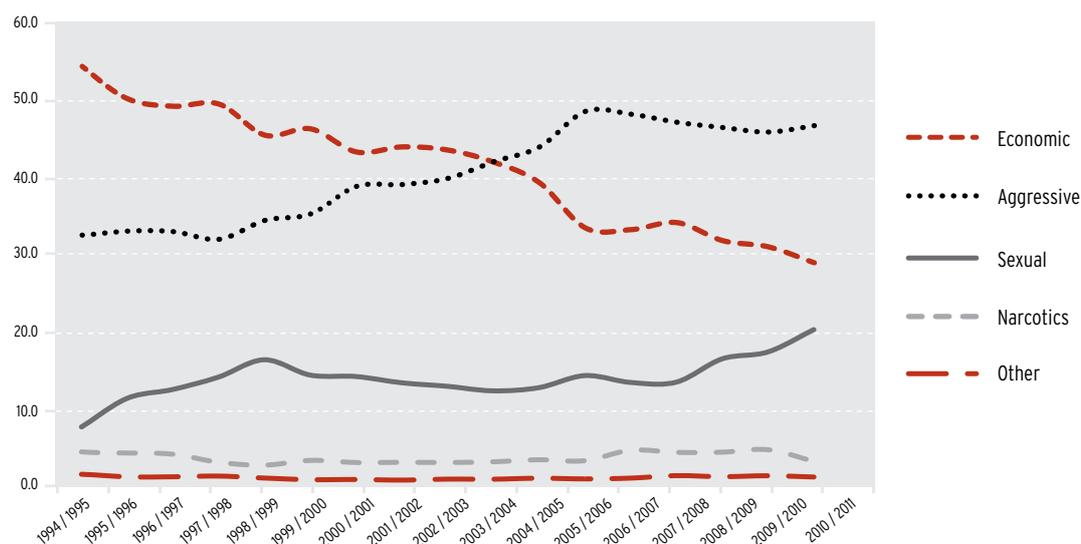
Offence profile

The data from 1994/5 to 2010/11 shows a marked shift in the offence profile of children awaiting trial in prisons. Similar to the profile shown in Figure 3 above, the proportional share of children charged with economic crimes has declined significantly, whilst the proportional share of children charged with aggressive and sexual crimes has increased as shown in Figure 5 below. This should not be interpreted to mean that children are committing more aggressive and sexual crimes, but rather, that fewer children are detained in prisons awaiting trial in general and that courts appear to be less willing to remand children who have been charged with economic crimes in prison, as shown in Table 5 below. Other research has found that the offence with which a suspect is charged is a strong determinant in the granting of bail.¹¹ The profile presented here confirms this.

Table 5

YEAR	ECONOMICAL	AGGRESSIVE	SEXUAL	NARCOTICS	OTHER	TOTAL
1994/1995	734	443	103	21	58	1359
1995/1996	436	289	99	10	37	871
1996/1997	768	518	196	18	64	1564
1997/1998	1232	803	353	31	76	2495
1998/1999	1244	944	449	27	73	2737
1999/2000	1788	1364	557	30	127	3866
2000/2001	1627	1451	534	30	113	3755
2001/2002	1709	1511	521	28	118	3887
2002/2003	1804	1641	536	35	125	4141
2003/2004	1705	1690	501	34	126	4056
2004/2005	1346	1484	436	33	115	3414
2005/2006	809	1147	344	21	78	2399
2006/2007	720	1020	289	21	99	2149
2007/2008	714	965	280	27	90	2076
2008/2009	552	788	284	20	75	1719
2009/2010	462	668	257	19	69	1475
2010/2011	287	451	199	11	31	979

Figure 5



¹¹ Karth V (2008) *Between a Rock and Hard Place*. Cape Town: Open Society Foundation.

Gender

The gender profile according to the average number of children awaiting trial in prison per year is presented in Table 6 below. Over the 17-year period the proportion of female children held awaiting trial fluctuated between 1.2% (2010/11) and 2.7% (2007/8). This variation is extremely small and it would be difficult to ascribe any clear reasons for this.

Table 6

YEAR	MALES	FEMALES
1994/1995	97.9	2.1
1995/1996	98.4	1.6
1996/1997	97.5	2.5
1997/1998	97.5	2.5
1998/1999	98.0	2.0
1999/2000	98.1	1.9
2000/2001	98.1	1.9
2001/2002	98.0	2.0
2002/2003	97.8	2.2
2003/2004	97.8	2.2
2004/2005	98.0	2.0
2005/2006	97.6	2.4
2006/2007	97.6	2.4
2007/2008	97.3	2.7
2008/2009	97.5	2.5
2009/2010	97.8	2.2
2010/2011	98.8	1.2



4. DURATION OF PRE-SENTENCE DETENTION

International Law norms

- Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Beijing Rules, Article 13(1).
- Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Beijing Rules, Article 13(2).
- Each case shall from the outset be handled expeditiously, without any unnecessary delay. Beijing Rules, Article 20(1).

Domestic Law

- A presiding officer ordering the detention of a child in prison...must direct that the child be brought before him or her or any other court every 14 days to reconsider the order. Child Justice Act, Section 30(4).
- A child justice court must conclude all trials of children as speedily as possible and must ensure that postponements...are limited in number and in duration. Child Justice Act, Section 66.
- If a child is in detention in prison, a child justice court may, prior to the commencement of a trial, not postpone proceedings for a period longer than 14 days at a time... Child Justice Act, Section 66(2).
- Every child has the right to be kept separately from detained persons over the age of 18 years, and to be treated in a manner and kept in conditions that take account of the child's age. The Constitution, Section 28 (1)(g).
- Every inmate who is a child and is subject to compulsory education must attend and have access to such educational programmes. Where practicable, all children who are inmates not subject to compulsory education must be allowed access to educational programmes. Correctional Services Act, Section 19(1).
- The National Commissioner must provide every inmate who is a child with social work services, religious care, recreational programmes and psychological services as well as ensure that inmates remain in contact with their families through additional visits and by other means. Correctional Services Act, Section 19(2) and (3)

Duration of pre-sentence detention

Data on children detained in prisons in South Africa as on 14 August 2011 was used to calculate the duration of pre-trial detention. Since this is 'snapshot' data, some of the children would have continued to be detained, and the information presented below should be interpreted accordingly. On 14 August 2011 there were 196 children awaiting trial in South African prisons. The shortest period spent in custody was one day and the longest period was 34 months and 18 days (two years, ten months and 18 days).¹² From this sample it was calculated that the average duration in pre-trial detention is 120 days and the median is 70 days. Table 7 below presents further analysis, linking the duration of detention with the charge against the child. Importantly, certain categories have low numbers and generalisations based on such data should therefore be made with caution. A small number of categories were omitted as the numbers were too low. For example there was only one child being detained on an indecent assault charge.

¹² This 17-year old boy was being detained on a murder charge at the Pietermaritzburg prison.

Table 7

OFFENCE	(N=) NUMBER OF CHILDREN	MEDIAN DURATION CUSTODY (DAYS)
Theft Other	11	21
Assault Serious	5	46
Robbery Common	30	51
Assault Common	4	52
Robbery Aggravating	32	53
Economic Crimes Other	17	74
Murder	26	83
Rape	43	100
Burglary / House-breaking	7	185
Murder Attempted	7	217
All	196	70

Table 7 above shows that children detained on attempted murder charges (N=7) had already spent the longest time in custody with the median at 217 days (a little over seven months). Children detained on Theft Other (N=11) had already spent 21 days in custody. From the data it appears that the seriousness of the alleged offence has a bearing on the period of time spent in custody, with the exception of Burglary/Housebreaking, which is the third highest median value.

Table 8 below presents data on duration in custody according to the categories determined by Unicef. One third of children had spent less than one month awaiting trial in prison. A further 27% had already been in custody for between one and three months, 19% for three to six months, and 17% for six to twelve months.

Table 8

DURATION	N	%
Less than 1 month	63	32.3
1-3 months	52	26.7
3-6 months	37	19.0
6-12 months	34	17.4
12-24 months	7	3.6
24-60 months	2	1.0
+60 months	0	0.0

Access to legal representation

In general, upon admission into prison, children are informed of their right to legal representation. At a number of prisons it was reported that representatives of the Legal Aid Board (LAB) visit and interact with unsentenced and sentenced inmates (e.g. Boksburg) on a regular basis. It was also reported that the LAB is informed by DCS staff of the detention of children. There were, however, a number of prisons (e.g. Pollsmoor) where it was reported that it is not the duty of DCS to inform inmates of their right to legal representation and that this duty rests with the courts.

79% of the centres surveyed reported that children are able to consult with their legal representative in private, or at least out of earshot of DCS officials. The consultation facilities at Port Elizabeth North End can only be described as most unsatisfactory. Fortunately this centre is due to be renovated soon and the problem should hopefully be addressed.

Bail

The majority of children interviewed indicated that they had spent one to four months awaiting trial, although one boy charged with rape (Port Elizabeth) spent 18 months awaiting trial before being sentenced to five years imprisonment.

Through the interviews with children it was apparent that the quality and accessibility of legal representation had been insufficient and that this has resulted in the unnecessary detention of children in prison. Michael (aged 15 years and held at Cradock and who had been in custody for one week at the time of the interview) explained that although a Legal Aid attorney has been appointed for him, he had not met the attorney and was thus not in a position to apply for bail. His case was also being tried in Aliwal North, approximately 220 km from Cradock, which made it difficult for him to contact his lawyer and he would therefore only be able to see him at the next court appearance. The case of Neville (aged 17 years) is of particular concern. He had not yet applied for bail but had reportedly appeared in court 30 times already without the trial having yet commenced. Bongani (aged 17 years) explained that he had received free bail but because his co-accused could not provide proof of his identity to the court, they were both being detained and had been in custody for three months. Whether this version of events was factually correct may be questioned, but it nonetheless indicates that there is at least some uncertainty as to the true state of affairs.

The Correctional Services Act requires that certain information be provided to sentenced and unsentenced inmates upon admission to a prison. In addition to the general information pertaining to the rules of the facility, the Act specifically requires that a newly admitted inmate must be informed of his or her right to legal representation.¹³ Of the children interviewed, only one reported that a DCS official had informed him of his right to legal representation and how to access the Legal Aid Board's services. Other children reported that police or their families had informed them of their right to legal representation. The overall impression of the authors is that the DCS, in failing to inform children of their right to legal representation, is breaching the statutory obligation in section 6(3) of the Act.

Information provided upon admission

Section 6 of the Correctional Services Act requires that a newly admitted inmate be provided with information regarding their rights and responsibilities:

6(4) (a) On admission a prisoner must be provided with written information in a language which he or she understands about the rules governing the treatment of the prisoners in his or her category, the disciplinary requirements, the authorised channels of communication for complaints and requests and all such other matters as are necessary to enable him or her to understand his or her rights and obligations. (b) If a prisoner is illiterate, a correctional official must explain this written information to the prisoner, if necessary through an interpreter. (c) The prisoner must confirm that he or she has understood the information so conveyed.

The majority of children interviewed stated that they had not received any information about their rights and responsibilities and had to learn about prison rules, regulations and routines by observing other children. At the centres where information had been provided, this appears to have been done in a perfunctory manner, emphasising security aspects, as illustrated in the following quotes:

We were told that we mustn't be rude to the "chiefs" (referring to correctional officers) and that we must respect each other. They said we mustn't stab each other and that we must be quiet and have respect.

They said we mustn't fight and that we must work together. They said no bullying and things like that. And they said no 'numbers' here.¹⁴

Daily programme (unsentenced)

The daily routine described by the unsentenced children interviewed revealed that no educational programmes were being provided. In general, the children wake up between 5am and 6am and eat breakfast at 7am. Children who are attending court, however, will eat breakfast earlier. Lunch is served between 11am and 12pm. At some prisons (e.g. Cradock) dinner is served at 5 pm. At others, however, such as Pollsmoor, six extra slices of bread are provided at lunch, which are to be consumed for dinner later. This is in violation of section 8(5) of the Correctional Services Act.¹⁵

Apart from the meals provided, there appears to be little variation to the children's routine and a very limited array of constructive activities. Most of the day is spent watching television in the cells or wandering around the courtyard area of the section. Some prisons (e.g. Cradock) do provide board games for entertainment. Others, however (Port Elizabeth), had nothing with which the children could amuse themselves or pass the time. The data from Pollsmoor indicated that a religious counsellor (Christian) would, from time to time, visit in the late morning and conduct a service.

At the majority of prisons surveyed children are let out of their cells, usually into a courtyard for one hour per day, thus amounting to seven hours per week. At two centres (Barberton Town and Johannesburg) it was reported that unsentenced children are permitted outside for exercise for five hours per week, which amounts to less than one hour per day. This is a violation of section 11 of the Correctional Services Act. It must be emphasised that one hour per day is the absolute minimum and not the desirable norm.

¹³ s 6(3)

¹⁴ "Numbers" refer to the powerful prison gangs, known by their numbers - 26, 27 and 28.

¹⁵ S 8(5) Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast.

The overall impression from the information collected is that children awaiting trial in prison sit around for most of the day, either in their cells or in the courtyard, with very few constructive activities available to them. It is also apparent that they spend considerable periods of time locked in the cells. This is, at least in some prisons, a consequence of maintaining the segregation between children and the so-called juveniles (18-21 years) when they are let out of the cells.

Access to educational services

The Correctional Services Act requires that all children of compulsory school-going age must attend education programmes.¹⁶ This means that children up to the age of 15 years or upon attaining the ninth grade of education¹⁷ who are awaiting trial in a prison must attend educational programmes.

The survey data found that with the exception of a few prisons (e.g. Pretoria Local, Estcourt and King William's Town) unsentenced children are not provided with access to any educational services despite the requirement in the Correctional Services Act that all children of compulsory school-going age must have access to education.

Access to social work and psychological services

The survey found that there is little consistency in practice across the centres surveyed. At some centres unsentenced children have access to DCS social workers (e.g. Oudtshoorn) while at other centres it was reported that DCS social workers only provide services to sentenced inmates. Social workers from the Department of Social Development (DSD) provide services to detained children in some instances but this is also not a consistent practice. Social work services by NGOs are also provided at some prisons (e.g. Port Elizabeth North End). The more consistent response was that social work services were available upon request, although it was not always clear whether the services would then be rendered by DSD or DCS social workers.

From Durban (Male) it was reported that there is a dedicated team of two to three DSD social workers assigned to the juvenile/ awaiting trial section. Estcourt also reported a similar setup. For the majority of prisons it appears that social workers are available occasionally and/or upon request.

Poor record-keeping or at least the inaccessibility of records made it difficult to obtain an accurate description of the number of unsentenced children accessing social work services. At some prisons there are no social workers and/or the authors or researchers were told that it was not the Department's policy to render social work services to unsentenced children (e.g. Johannesburg and Oudtshoorn). However, at Durban (Male) it was reported that all new admissions (unsentenced) saw a social worker and that on the day of the fieldwork all 30 children awaiting trial had been seen by a social worker. From Cradock it was reported that access to a social worker is arranged upon request and the Complaints and Request Register (G365) indeed indicated that five such requests had been recorded between 1 April 2011 and 14 July 2011. From King William's Town it was reported that DSD social workers visit once a week and consult with the children but there were no accessible records against which this could be verified. In conclusion, therefore, despite the requirement in the Correctional Services Act that all children have access to social work services, the consistency with which this service is rolled out varies considerably.

Access to psychological services for unsentenced children is restricted in a number of ways. Firstly, there are a limited number of psychologists in the Department. Second, social workers, who may refer an unsentenced child to a psychologist, are limited in number. Third, although entitled to request to see a psychologist, it is unlikely that a child will be aware of this resource or have the insight to self-diagnose the need for psychological services.

Where psychological services are reportedly rendered, this is done by the DCS and/or the Department of Health. Again there does not appear to be a consistent policy or practice in this regard. The overall impression from the survey data is that psychological services are available or could be accessed upon request by an unsentenced child but that this could present a number of delays and stumbling blocks. No records were found at any of the prisons surveyed of an unsentenced child who had consulted a psychologist.

According to a report presented to Parliament, a number of services are rendered to unsentenced children by DCS and external stakeholders.¹⁸ Table 9 below lists the service, service provider and number of children benefitting from the service during the period April 2010 to March 2011. The data presented broadly confirms the description above, namely, that DCS is involved on a limited scale in services to unsentenced children. What is perhaps more worrying is that there is no record of services rendered by DSD social workers to unsentenced children in DCS facilities. This data is presumably recorded by DSD and not on the DCS information system.¹⁹

¹⁶ s 19(1)(a)

¹⁷ s 3(1) South African Schools Act 84 of 1996

¹⁸ Department of Justice and Constitutional Development (2011) Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008). Pretoria. p. 65.

¹⁹ The 2009/10 annual report of the Western Cape Department of Social Development was consulted to establish if these services are indeed reported on there. It was found that this is not the case.

Table 9

PROGRAMMES AND SERVICES PRESENTED	SERVICE PROVIDER	NUMBER OF CHILDREN
Life Skills	Dr [Name of person] (NGO)	9
Crisis Intervention	DCS Social Workers	3
Mirror Programme	Khulisa Social Solutions	11
Crisis Intervention.	DCS Social Workers	20
Drug Awareness Programme.	Youth Advisory Forum	26
Crime Prevention Awareness Programme	SAPS	16
Family Care, Supportive Services, Orientation, Crime Prevention Awareness Campaign Community Project	DCS Social Workers	64
Crime Prevention Awareness	SAPS	6
Mirror Programme	Khulisa	21
Total		176

Access to recreational services

Children awaiting trial are generally not permitted to go out to, for example, the sports field. Their physical exercise is thus limited to the internal courtyards, where available. These are often extremely small (e.g. Cradock). A variety of board games are available at most centres, but some are better stocked in this regard than others. For example, in addition to a variety of board games, Cradock Centre has a snooker table. Across all prisons surveyed, it was reported that although soccer is available, it is restricted to the availability of a soccer ball and the availability of staff to accompany children to the sports field.

The suitability of available recreational infrastructure also varies greatly. Of the total number of prisons surveyed, 34% reported that the infrastructure was not suitable and 46% were described as suitable (the balance being unknown). The situation at Durban (Male) was described as follows: "The children seem to have access to the 'open' area around the four main cells. They have not been allowed into the courtyard due to 'staff shortage.' The open area, while fairly large, is not really suitable for sporting activities."

At some prisons the responsibility of arranging recreational activities for unsentenced children had been assigned to different individuals, institutions or individual officials (e.g. Grootvlei and Caledon). At others, the provision of recreational activities was ascribed to the officials on duty (e.g. Estcourt and Hawequa). At a number of prisons the responsibility rested on external agents such as NGOs (e.g. Pretoria Local) and the Department of Sport and Recreation [e.g. Durban (Male)].

In conclusion, the unstructured nature of recreational services, the dispersed responsibility of this function and a lack of record-keeping made it difficult to obtain accurate and reliable information on how many unsentenced children participate in recreational activities.

Suitability of supportive infrastructure

Even though very limited educational services are provided for awaiting trial children, only three of the 41 centres surveyed had classrooms. At some prisons, a variety of other facilities are used as classrooms, such as the kitchen (Johannesburg) and dining halls (Modderbee).

Of the centres surveyed that accommodated unsentenced children, 68% reported that they have a library and 17% reported that they did not. However, the existence of a library at a prison does not necessarily mean that it is available to all unsentenced children. For example, at Port Elizabeth (North End) it was reported that although there is a library at the female section of the prison, the unsentenced children cannot access it. Similarly, at St Albans, the library is only accessible to adult sentenced offenders and at Brandvlei, the library can only be accessed by sentenced offenders. From Cradock, it was reported that the facilities are in a less than satisfactory state and plans to upgrade them are afoot.

Half of the centres surveyed reported that they have multi-purpose halls. It is also the case that the dining halls are used for a variety of purposes, such as classrooms and programme facilities.

The majority (59%) of centres reported that they have a sports field but that this is not used by unsentenced children.

The overall impression from the survey data is that sports equipment is, in general, in short supply, even for sentenced children. Unsented children have even more limited access to sports equipment and this is normally limited to soccer balls that the children use to play soccer within the courtyards during unlock-time.

The majority of centres (68%) reported that children are able to consult the social worker/psychologist/lawyer in private. This should, however, be regarded with circumspection, for at some centres children consult professionals in the unit office [e.g. Port Elizabeth (North End)] and this is by no means private as officials and prisoners on cleaning duties constantly move through this office. However, at Cradock, for example, the social workers have their offices inside the centres and children can consult there in private.

Conditions of detention

Reliable information on available floor space per inmate was obtained from 18 prisons. The average available floor space per unsentenced child was 3.3m². The available floor space at the following centres was recorded as being well below the required norm of 3.344m² per inmate:

- King William's Town;
- Boksburg;
- Barberton Town;
- Johannesburg Centre A;
- Johannesburg Centre A (C1 Section);
- Oudtshoorn;
- Port Elizabeth (North End);
- Cradock;
- Drakenstein Medium - B;
- Hawequa, and
- Grahamstown.

The least available floor space was recorded at King Williams Town, at 0.9m² per inmate. The most available floor space per inmate was recorded at Pollsmoor Med A, at 9.5m².

The following centres reported that the cell(s) for unsentenced children had been occupied above capacity for 30 days over the preceding 30 days: Bethal; Caledon; Cradock; Estcourt; Johannesburg; King Williams Town and Port Elizabeth (North End). Witbank reported that the cells had been occupied above capacity for five days in the preceding 30 days.

The overwhelming majority of cells (73%) where unsentenced children are detained were described as clean, well ventilated and free of insects. Nonetheless, Caledon centre reported periodic cockroach infestations and the Port Elizabeth North End cells were described as in a state of poor repair with blocked drains and rubbish lying on the floor. The cells at Grootvlei were also noted for being unclean.

No problems were noted in respect of water supply except at Durban Westville where there had been a problem for a two-day period and alternative arrangements had been made. Similarly, no problems were noted in respect of the hot water supply systems at any of the centres surveyed.

At all the centres every unsentenced child had a bed, except for Estcourt. It was explained that due to overcrowding the beds had been removed and the children were required to sleep on mattresses as this occupied less space. In general, inmates had sufficient bedding and the Department was generally able to provide additional blankets in winter (e.g. Cradock allows each inmate five blankets). At Mossel Bay, however, it was reported that inmates had complained about the lack of bedding. At Johannesburg, it was reported that although the Department supplied blankets, unsentenced children had to arrange for their own sheets. Given that many unsentenced children do not receive visitors who, in turn, may provide them with additional bedding, many of Johannesburg's unsentenced children were without sheets. This is contrary to the Department's policies.

All the centres reported that natural light in the cells was sufficient during daylight hours for the purpose of reading. In addition, all the centres reported that there was sufficient artificial light available after sunset save for two centres. At King Williams Town it was reported that some of the single cells are occasionally without light. In Port Elizabeth (North End) it was found that the lights in the cells inspected were out of order and had been for the preceding three weeks but that the ablution area had working lights and this illuminated the rest of the cell.

Table 10 below presents the ratio of one toilet per number of inmates from the centres at which accurate data was collected. The norm established by the International Committee for the Red Cross (ICRC) is a maximum of 20 inmates per toilet.²⁰

²⁰ ICRC Health in Detention Practical Guide (2004) p. 25.

Table 10

CENTRE	NUMBER OF INMATES PER TOILET
Pollsmoor (Female)	1.0
Johannesburg (Female)	2.0
Kroonstad - Centre D	2.0
Boksburg	3.0
Hawequa	3.0
Worcester (Males)	3.0
Sasolburg	4.0
Ekuseni Youth	5.5
Pollsmoor Medium A	7.0
Durban (Male)	8.5
Mosselbay	10.0
Barberton Town	12.0
Oudtshoorn	12.0
Grahamstown	15.0
Pretoria Local	15.0
Pretoria Local	15.0
Cradock	16.0
Port Elizabeth (North End)	17.0
Estcourt	20.0
Modderbee	20.0
Bethal Centre	30.0
St Albans	30.0
Umzinto	35.0
Durban: Westville	42.0
King Williams Town	48.0
Johannesburg Centre	50.0

Table 11 below presents the ratio of one basin per number of inmates from the centres at which accurate data was collected.

Table 11

CENTRE	NUMBER OF INMATES PER BASIN
Pollsmoor (Female)	1
Jhb Female	2
Kroonstad - Centre D	2
Boksburg	3
Hawequa	3
Worcester Males	3
Sasolburg	4
Port Elizabeth (North End)	8
Durban (Male)	8.5
Ekuseni Youth	11
Barberton Town	12
Oudtshoorn	12
Pollsmoor Medium A	14
Grahamstown	15
Pretoria Local	15
Cradock	16
Estcourt	20
Modderbee	20
Johannesburg Centre	25
Bethal Centre	30
St Albans	30
Umzinto	35
Durban: Westville	42
King Williams Town	48

Table 12 below presents the ratio of one shower per number of inmates from the centres at which accurate data was collected.

Table 12

CENTRE	NUMBER OF INMATES PER SHOWER
Kroonstad - Centre D	2
Drakenstein Medium - B	3
Hawequa	3
Worcester (Male)	3
Sasolburg	4
Ekuseni Youth	6
Pollsmoor Medium A	7
Port Elizabeth (North End)	8
Johannesburg(Female)	9
Barberton Town	12
Oudtshoorn	12
Grahamstown	15
Pretoria Local	15
Cradock	16
Durban (Male)	17
Estcourt	20
Modderbee	20
Vereeniging	20
Bethal Centre	30
Grootvlei	30
St Albans	30
Mosselbay	34
Umzinto	35
Durban: Westville	42
King Williams Town	48
Boksburg	75

Table 13 below presents the ratio of one rubbish bin per number of inmates from the centres at which accurate data was collected.

Table 13

CENTRE	NUMBER OF INMATES PER RUBBISH BIN
Drakenstein Medium - B	3
Hawequa	3
Sasolburg	4
Kroonstad - Centre D	6
Barberton Town	12
Ekuseni Youth	12
Oudtshoorn	12
Pollsmoor Medium A	14
Grahamstown	15
Pretoria Local	15
Cradock	16
Durban (Male)	17
Estcourt	20
Bethal Centre	30
St Albans	30
Umzinto	35
Durban: Westville	42
King Williams Town	48
Grootvlei	60
Port Elizabeth (North End)	There is no rubbish bin, just a rubbish bag lying on the floor with rubbish spilled on floor.
Worcester (Males)	There is no rubbish bin in the cell. Inmates are given a rubbish bag, which is removed every morning.

In general it appears that the ablution areas in cells are screened off from the rest of the cell, even if only by a low wall. At a small number of the centres surveyed the ablution areas were not screened off. These were: Cradock, Durban, Port Elizabeth (North End) and Worcester Male. In the case of Port Elizabeth (North End), the cell could only be accessed through the ablution area, which is fully visible to passers-by.

At the majority of centres it was reported that all windows were well maintained and in working order. At the following prisons it was reported that more than 50% of the windows in the cell visited were broken and/or out of order: Durban Westville; Johannesburg Centre; Port Elizabeth (North) End; and St Albans.

Staff skills levels

It was reported from 85% of the centres surveyed that the staff working in the unsentenced children's section had not received any training to work with children.



5. DURATION OF SENTENCED DETENTION

International Law norms

[States Parties shall ensure that] No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. CRC, Article 37(b).

The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period. Beijing Rules, Article 19(1).

Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. JDL, Article 2.

Domestic Law

Every child has the right not to be detained except as a measure of last resort, in which case...the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years and treated in a manner, and kept in conditions, that take account of the child's age. The Constitution, Section 28(1)(g).

The objectives of sentencing in terms of the [Child Justice Act]...are to use imprisonment only as a measure of last resort and only for the shortest appropriate period of time. Child Justice Act, Section 69.

A child justice court imposing a sentence of imprisonment must antedate the term of imprisonment by the number of days that the child has spent in prison or child and youth care centre prior to the sentence being imposed. [N]o law or sentence of imprisonment imposed on a child, including a sentence of imprisonment for life, may directly or indirectly, deny, restrict or limit the possibility of earlier release of a child sentenced to imprisonment. Child Justice Act, Section 77(5) and (6).

Every inmate who is a child and is subject to compulsory education must attend and have access to such educational programmes. Where practicable, all children who are inmates not subject to compulsory education must be allowed access to educational programmes. Correctional Services Act, Section 19(1). The National Commissioner must provide every inmate who is a child with social work services, religious care, recreational programmes and psychological services as well as ensure that inmates remain in contact with their families through additional visits and by other means. Correctional Services Act, Section 19(2) and (3).

The provisions of section 41 of the Correctional Services Act require that the Department of Correctional Services must provide as full a range of programmes and activities, including needs-based programmes, as is practicable to meet the educational and training needs of sentenced offenders. Sentenced offenders, who are children, must be compelled to take part in the education programmes offered. In addition, the Department must provide social and psychological services in order to develop and support sentenced offenders by promoting their social functioning and mental health.

Case Law

Brandt v S [2005] 2 All SA 1 (SCA)

In considering the appeal of a child offender sentenced to life imprisonment, the principal issue in this case was the application of the minimum sentence legislation to offenders under 18. The Court found that the traditional aims of punishment of child offenders had to be re-appraised in light of constitutional values and international instruments such as the United Nations Convention on the Rights of the Child, the Beijing Rules, and the African Charter on the Rights and Welfare of the Child. The Court held that unlike adult offenders for whom the starting point is the minimum sentence prescribed by the legislature, for child offenders, the sentencing court has discretion. It was thus not obliged to impose the statutorily prescribed minimum sentence.

The Court took into consideration that the appellant was raised in an atmosphere of social and emotional deprivation and that during his childhood he had been neglected, abused substances, and had tried to commit suicide twice. In light of these mitigating factors, the court replaced the sentence of life imprisonment with a sentence of 18 years imprisonment.

In 2009, the Constitutional Court in *The Centre for Child Law v Minister of Justice and Constitutional Development*²¹ considered the constitutionality of the Criminal Law Amendment Act 105 of 1997, which made certain mandatory minimum sentences (including life imprisonment) applicable to 16 and 17 year olds for certain offences.) The Court held that the impugned legislation was an unjustifiable infringement of children's constitutional rights, particularly their rights to imprisonment as a last resort and for the shortest period of time. These rights, Justice Cameron stated, have a bearing "not only on whether prison is a proper sentencing option, but also on the nature of the incarceration imposed... if there is an appropriate option other than imprisonment, the Bill of Rights requires that it be chosen." The legislation, insofar as it was applicable to 16 and 17 year olds, was therefore declared unconstitutional.

21 2009 (2) SACR 477 (CC); 2009 (6) SA 632 (CC); 2009 (11) BCLR 105 (CC).

Sentence profile

Tables 14 and 15 present the full sentence profile for the period 1995 to 2011. It should be noted that the 2011 figure is the average calculated for January and February 2011 data and does not include the other months of the year.

Table 14

SENTENCE	AVERAGE FOR 1995	AVERAGE FOR 1996	AVERAGE FOR 1997	AVERAGE FOR 1998	AVERAGE FOR 1999	AVERAGE FOR 2000	AVERAGE FOR 2001	AVERAGE FOR 2002	AVERAGE FOR 2003
0 - 6 Months	77	136	184	155	189	204	200	199	200
>6 - 12 Months	114	159	252	231	264	240	213	232	239
>12 - <24 Months	58	72	104	89	158	195	184	168	177
>2 - 3 Years	166	160	232	292	384	439	428	434	447
>3 - 5 Years	159	183	233	258	259	262	303	361	385
>5 - 7 Years	47	56	91	105	111	123	126	126	111
>7 - 10 Years	27	32	53	79	104	117	115	114	113
>10 - 15 Years	13	12	21	17	34	56	70	87	70
>15 - 20 Years	5	4	8	7	16	16	22	19	24
>20 Years	3	5	6	8	8	14	18	20	18
Life Sentence	2	3	3	1	1	4	5	5	6
Habitual Criminal	0	0	0	0	2	0	1	1	1
Ordered by Court as Dangerous	0	3	1	1	2	0	0	0	0
Corrective Training	0	0	0	0	0	0	0	0	0
Prevention of Crime	0	0	0	0	0	1	0	0	0
Other Mental Instability	0	0	1	0	2	0	0	0	0
Corporal Punishment	0	0	0	0	0	0	0	0	2
Security Offender	0	0	0	0	4	0	0	0	0
Reformatory	3	6	11	13	17	21	34	39	21
Day Parole	0	1	1	1	0	0	0	0	0
Periodic	2	1	1	0	1	1	0	1	1
State Patient	1	1	0	2	1	0	0	0	2
Judgement Debtor	0	2	0	0	0	0	0	0	0
Fine	0	5	0	2	1	4	1	0	0
TOTAL	677	841	1202	1261	1558	1697	1720	1806	1817

Table 15

SENTENCE	AVERAGE FOR 2004	AVERAGE FOR 2005	AVERAGE FOR 2006	AVERAGE FOR 2007	AVERAGE FOR 2008	AVERAGE FOR 2009	AVERAGE FOR 2010	AVERAGE FOR 2011
0 - 6 Months	175	122	92	88	77	69	39	26
>6 - 12 Months	219	133	138	103	102	90	60	48
>12 - <24 Months	187	113	112	98	77	71	112	78
>2 - 3 Years	470	331	283	228	207	212	127	77
>3 - 5 Years	339	271	237	203	231	235	216	183
>5 - 7 Years	105	91	94	77	79	76	58	62
>7 - 10 Years	103	94	85	59	54	54	51	46
>10 - 15 Years	54	44	39	24	26	26	29	26
>15 - 20 Years	21	15	8	5	8	10	8	7
>20 Years	11	6	3	3	5	3	2	4
Life Sentence	5	2	2	2	2	4	4	1
Habitual Criminal	0	1	0	0	0	0	0	0
Ordered by Court as Dangerous	120	0	1	2	2	0	0	0
Corrective Training	0	1	0	0	0	0	0	0
Prevention of Crime	0	0	0	0	0	0	0	0
Other Mental Instability	0	3	2	0	0	0	1	0
Corporal Punishment	1	0	0	2	0	0	0	0
Security Offender	0	2	0	0	0	0	0	0
Reformatory	12	14	7	3	2	4	2	1
Day Parole	0	0	0	0	0	0	0	0
Periodic	0	1	1	1	0	0	0	0
State Patient	1	1	1	0	0	0	0	0
Judgement Debtor	0	0	0	0	0	0	0	0
Fine	0	0	0	0	0	0	0	0
TOTAL	1823	1245	1105	898	872	854	709	559

Table 16 presents the proportional selected sentence profiles for two time periods, 1995 to 2002 and 2003 to 2011. The respective time periods were selected in light of the coming into force of the minimum sentences legislation in 1998, the effect of which only became visible in 2001.²² From Table 16 it is clear that there was a small but not insignificant decrease in the proportional share of sentences less than 12 months whilst the proportional share of longer sentence categories increased slightly. The 3-5 year category showed the most marked increase (4.5%). These trends are in line with other research findings indicating a general increase in sentencing tariffs as a result not only of the minimum sentences legislation but also the increase in sentencing jurisdiction of the district and regional courts.²³

22 For example, from 2000 to 2005 the proportion of prisoners serving sentences of between 10 and 15 years increased by 122%. [Giffard C and Muntingh L (2006) *The effect of sentencing on the size of the South African prison population*, Cape Town: Open Society Foundation.]

23 Giffard C and Muntingh L (2006) *The effect of sentencing on the size of the prison population*. Open Society Foundation, Cape Town.

Table 16

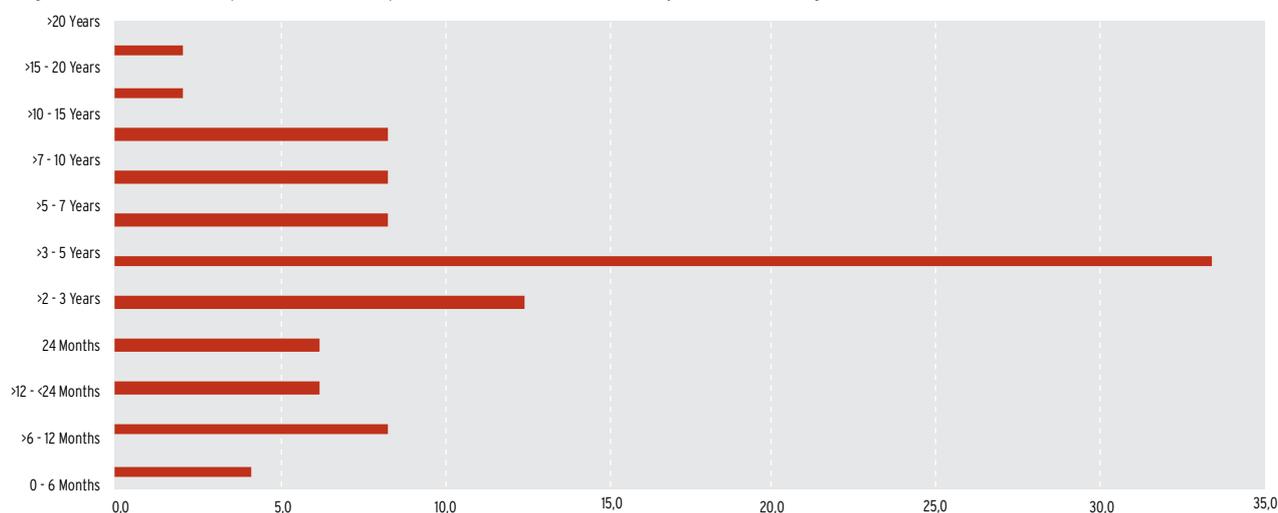
SENTENCE	AVERAGE 1995-2002	AVERAGE 2003-2011	CHANGE
0 - 6 Months	12.5	9.0	-3.5
>6 - 12 Months	15.8	11.5	-4.4
>12 - <24 Months	9.6	10.4	0.8
>2 - 3 Years	23.6	24.1	0.5
>3 - 5 Years	18.8	23.3	4.5
>5 - 7 Years	7.3	7.6	0.3
>7 - 10 Years	6.0	6.7	0.7
>10 - 15 Years	2.9	3.4	0.5
>15 - 20 Years	0.9	1.1	0.2
>20 Years	0.8	0.6	-0.2
Life Sentence	0.2	0.3	0.1

Duration in detention after sentencing

Data on sentenced children in custody on 14 August 2011 was used in this analysis. Ten per cent of a total of 474 sentenced children were drawn as a random sample in order to calculate the average and median time spent in detention after sentencing. The median time in custody was 164 days (3 months and 14 days) and the average was 284 days (9 months and 14 days). The substantial difference between the median and the average is the result of a small number of very high values. For example four children had already spent more than two years in custody serving their sentences.

The sentence profile of this sample is shown in Figure 6 below. One third of children in custody are serving sentences of between 3 and 5 years. A further 21% are serving sentences of longer than 7 years and will in due course find their way to adult prison.

Figure 6: Sentence profile of sample of children in custody as on 14 August 2011



Orientation of new admissions

When officials were asked to explain the orientation programme for newly admitted children, a wide range of responses were recorded, indicating a lack of uniformity in the content of information provided. The first category of responses emphasised therapeutic aspects, such as, for example “Personal counselling and behaviour orientation”. The second category reflected the more desirable situation in which children are provided with information on the Correctional Services Act and they receive a comprehensive orientation process:

[They are informed of] Act 111 of 1998[Correctional Services Act] - they are told about the procedures of lodging complaints and requests, about their rights, their education as a right, medical, social workers, psychologist.

There is a comprehensive orientation process based on the guide developed by the department. [We] Use guide available on intranet.

Children spend about 21 days in the admissions block of the section. Here they are assessed and if sentenced to a period longer than two years they are given a sentence plan. During this period they also receive information about what rehabilitative programmes are available and the rules of the section.

A third category of responses describes the process as dispersed among different officials, e.g. “During admission every official who has contact with the child explains the situation, their responsibilities and how the system works. I [unit head] also explain to them the rules of unit management”. One centre reported that a video is used during the orientation process but this was not reported from any of the other sites.

A fourth category of responses emphasised discipline and the rules of the centre, e.g.

[They are informed about] the unit and do's and don'ts at the unit.

Admission orientation including rights; discipline; incarceration procedure; and threats.

[They are informed about] Contraband, register [of] complaints and requests, gangsters, discipline, visits, etc.

Despite the fact that the CSA is clear about the manner and form of information that must be conveyed to newly admitted children,²⁴ the practice in the prisons surveyed varies greatly.

69% of the prisons surveyed reported that there were structured orientation programmes in place. However, the responses listed immediately above contradict this assertion, at least at some centres.

Assessment and sentence plans

Section 38(1) of the Correctional Services Act requires that all sentenced offenders, including sentenced children, must be assessed to “determine his or her:

- (a) security classification for purposes of safe custody;
- (b) health needs;
- (c) educational needs;
- (d) social and psychological needs;
- (e) religious needs;
- (f) specific development programme needs;
- (g) work allocation;
- (h) allocation to a specific prison; and
- (i) needs regarding reintegration into the community.
- (j) restorative justice requirements; and
- (k) vulnerability to sexual violence and exploitation.”

Section 38(1A)(a) further requires that if the offender is serving a sentence of longer than 24 months that a “correctional sentence plan” be developed.

The survey data showed that sentenced children at all centres, with the exception of Caledon, had been assessed within 30 days of admission. Two centres reported incidents where children had been in custody for longer than 60 days but had not yet been given a sentence plan. These were Pollsmoor and Caledon.

²⁴ S 6

The daily programme (sentenced)

In respect of unsentenced children, as described above, very little is done by way of providing children with activities in order to distract them from the monotony of “unlock”, counting, meal times and “lock-up.” The daily programme of sentenced children appears to be very similar to that of their unsentenced counterparts. At Brandvlei and Kroonstad there are functional education programmes and sentenced children attend school for four or more hours per day during the week. At the other centres interviews were conducted there appeared to be a very narrow range of constructive activities in which sentenced children could partake. The main reason for this appears to be a lack of adequate staff supervision. The following excerpts illustrate this:

I wake up very early, about 4:30am. Unlock is at 6am. Then we are counted and there is inspection. Then we clean up, shower or bath. When the warder unlocks he asks us if we have any complaints or problems. Then we have breakfast here in the courtyard. School is from 8 - 12. After that we have lunch. Sometimes after lunch I see the social worker or my case officer. Then, depending on how many members are on duty, we go into the courtyard after lunch. Sometimes we are there for 30 minutes, sometimes 2 hours, before we are locked up again. Everything depends on how many warders are on duty. We have supper at 3:30. Then it is lock up at 4:30. When we are in our cell after lock up, we watch TV sometimes. There are no books or magazines for us to read - we just sleep and chat to each other. (Simba, age 17)

Unlock is at 6am. Then we line up for food. After we have eaten we clean up the section. Then we just hang around the cell area and watch TV. Lunch is from 3-4. Then it is lock up. It is hard being alone in my cell. There is nothing to do, no magazines, no books. (Bongani, age 16)

After unlock at 6am, we are counted and eat breakfast. Then we are locked up again until about 10. Then we are let out for one hour of exercise in the courtyard, but there is nothing to exercise with, so we just sit around. After our lunch we are sometimes locked up again while the officials eat lunch. Sometimes we are let out in the afternoon into the courtyard, but it depends on how many officials are on duty. We eat dinner at 4:30 and then its lock down at 5pm. After lock down we watch TV, and sometimes we play finger-board. We don't have any books or things to do. It is hard. It gets very boring. If there are any programmes to go to, we do that in the afternoon, but it is not that often. (Peter, age 17)

The monotony of the daily programme during the week varies little over weekends, save for visits, telephone calls and church services:

At weekends they sometimes play a movie for us but otherwise we spend the time in the cells over weekends. We are only allowed to play in the courtyard. (Thomas, age 17)

Weekends are exactly the same as the week; the only difference is that sometimes my family comes to visit. (Sam, age 16)

Unlock is at 7am on weekends. We go to church on Sundays. Otherwise we just stay in our cell. I phone my parents sometimes on Saturdays. Maybe we have a couple of hours outside in the courtyard. (Simba, age 17)

Weekends are exactly the same as the week. (Bongani, age 17)

Unlock is at 7am on weekends. We have inspection and are counted. We also clean our cell. We go to church on Sundays. Otherwise we just stay in our cell. Maybe we have a couple of hours outside in the courtyard. (Nathi, age 17)

Weekends we play soccer on the field - it is only on the weekends that we play on the field. We also go to church on the weekends. (Donald, age 17)

Weekends are just the same as the week, except we get to go to the field on Saturday for an hour or so. And on Sunday we go to church. (Peter, age 17)

Access to education

The survey data indicates that although the majority of centres accommodating sentenced children provide either daily or weekly educational programmes, there are nevertheless some deviations:

- **Brandvlei:** All children are in school except those facing further charges. For security purposes, these children must leave the prison building to get to the school. School is in session from 0830 to 1515 Monday to Friday. There are different periods for different classes but, on average, each child is in school for two hours per day at least.
- **Durban (Male):** Children go to school daily. However, only those children who are serving sentences of longer than a certain period receive education. The cut-off appears to be two years but this was not confirmed.

- **Emthonjeni:** Only one of the four sections, Section C, is for juveniles²⁵ going to school. There are about seven (out of a total of 18) children in C block going to school every day.
- **Kroonstad:** The official answer is 'daily.' But on the (Monday) morning the researcher visited, none of the children were in attendance or in any of the classrooms.
- **Pollsmoor Medium A:** No educational services are provided to sentenced children. The warders explained this by saying that their periods of confinement were too short to warrant organising education.
- **Port Elizabeth (North End):** Due to the planned closure of the prison in September 2011 all educational services stopped approximately two weeks prior to the fieldwork.
- **Rustenburg:** Daily. There are classrooms and teachers, however, the officials noted that attendance among children was very low. They reportedly do not enjoy going to class as it's not 'school' subjects. They're doing ABET (Adult Basic Education and Training) classes.

The data collected indicate inconsistent practices and it can be concluded that not all sentenced children have access to educational services as required by the Correctional Services Act. The following centres were recorded as having educational services for sentenced children: Barberton Town; Brandvlei; Cradock; Ekuseni Youth; Grahamstown; Mosselbay; Pollsmoor Female; Umzinto; and Vereeniging. The following centres were noted as not having educational services for sentenced children: Worcester Males; Sasolburg; Port Elizabeth (North End); Pollsmoor Medium A; Hawequa; Johannesburg Female; Emthonjeni (Baviaanspoort); Drakenstein Medium B; Caledon; Durban (Male); and Estcourt. In the case of Emthonjeni it was explained that the remaining 11 children are in D, B or E block and that none of these blocks send inmates to school. In the case of Port Elizabeth (North End) the education services have been terminated in anticipation of the renovation of the prison building which is to commence in September 2011. At Durban (Male) it was reported that only children serving sentences longer than two years are admitted to the education programme. At Estcourt it was reported that children serving long term sentences are transferred to Ekuseni where they can access education services. The exclusion of any children who are of compulsory school-going age from education is in contravention of the Correctional Services Act and the South African Schools Act.

Social work and psychological services

All the centres reported that social work services are available to sentenced children and provided by DCS. At some centres social workers are permanently assigned to the section whilst at other centres it appears that access to a social worker is only gained upon request.

While it was generally reported that social workers are available every day, this should not be interpreted as being immediate and unrestricted access to social work services. In practice it appears that access to a social worker is gained upon request and that this may take several days. From Brandvlei it was reported that social workers are available especially after weekends when the boys had received visits from their families and have a need to consult a social worker. From Kroonstad it was reported that "there is a social worker on duty from Monday to Friday. If a child puts in a request to see a social worker in the morning, he can usually see her the same day. There may be a day or two wait at times, depending on how busy the social worker is." Where social workers run programmes (e.g. Cradock) the children participating in the programmes will also have access to a social worker, although this may be in a less structured manner. Record-keeping in respect of accessing social work service appear to vary. At some centres accurate information was readily available, whilst at others this was not the case. Where social workers run structured group programmes, these were recorded and reported on.

Of the centres surveyed, 81% reported that psychological services are available to sentenced children but this should be seen within the context of the availability of psychologists in general. Given the shortage of psychologists, access is regulated through the social workers although a request to see a psychologist can be made at any stage. Where psychological services are available, an appointment will be made and it will take at least a week before consulting a psychologist. From Baviaanspoort, Rustenburg, Cradock, and Brandvlei it was reported that there is a psychologist but serves the entire prison complex or even management area. Psychological services may also be rendered through external service providers and requires a referral, as is the case in Bethal. The following centres noted that there were no psychological services: Kuruman; Modderbee; Oudtshoorn; Pollsmoor Medium A; Thohoyandou (Female); and Vereeniging. In general, psychological services are rendered by DCS although a few centres reported that NGOs are also available, or that psychologists are accessed through the Department of Health. The number of children accessing psychological services appears to be very low to none. This may indeed be a function of the shortage of psychologists in the DCS and as a result referrals to a psychologist are indeed rare.

Recreational services

In general there appears to be available a wide variety of sport activities, board games and other recreational activities available to sentenced children. Some centres stand out in this regard, namely Brandvlei and Cradock. The following was reported from Brandvlei: "There is a wide range

²⁵ Aged 18 to 21 years.

of sport and recreational activities available: games, table tennis, pool table; soccer, rugby, cricket. Sport is also part of school and on Tuesdays and Thursdays the period after lunch is for sport. On Saturdays they also go out for sport. There is also a choir and a band."

Of the centres surveyed, 81% stated that the infrastructure for recreational activities was sufficient. The following centres noted problems in this regard: Durban (Male); Johannesburg; Modderbee; Rustenburg; and Witbank. Compared to their unsentenced counterparts, recreational services for sentenced children appear to be substantially better organised. Designated DCS officials are assigned to arrange recreational activities and are in some instances assisted by NGOs (e.g. Pollsmoor).

The times that children are engaged in recreational activities appear to vary between 7 and 14 hours per week. Over weekends most centres allow additional time but the overall impression gained is that recreational time is fairly limited. The situation, as reported at Kroonstad, summarises this well: "Children have access to the courtyard for a few hours in the afternoon, depending on how many officials are on duty and are able to monitor them. Average is 2 hours per day and thus 14 hours per week. But this is not strictly 'recreational' time. There is only one table tennis unit, and one soccer ball." From Rustenburg the following was reported: "About 3 hours per week. On Saturdays the children are taken to the sports field to play soccer and cricket. There are no formal recreational activities for the children to enjoy during the week, besides a couple of board games which they can play in their cell." The situation at Brandvlei is more positive and was described as follows: "When they are not in school they are busy with recreational activities; either organised or equipment is available in the section."

The overall impression gained from the interview data is that access to sport and recreation is limited. Access to sport fields appears to be frequently determined by the number of officials on duty in order to provide adequate supervision. The majority of children interviewed reported that they are restricted to "playing soccer in the courtyard", but even this may be limited:

In the afternoons, if there are enough members on duty, we can play table tennis in the court yard. Sometimes we can kick a soccer ball around in the courtyard. But we don't always get to use the courtyard. Sometimes we get locked up after lunch if there are not enough members on duty to watch us in the courtyard. There is a soccer field somewhere, but we don't go there. (Simba, age 17 years, sentenced)

As was the case with access to education, it was reported that certain categories of children are excluded from accessing the sports field, namely children in the special needs section (Emthonjeni) as well as those in new admissions (Rustenburg). The reasons for this are not clear.

Rule 40 of the UN Standard Minimum Rules for the Treatment of Prisoners (UNSMR) requires that: "Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it." The Constitution in section 35(2)(e) requires that prisoners should have access to "adequate reading material". Access to reading material is therefore not a nice-to-have or a privilege: it is a right afforded to every single prisoner under all conditions of detention and not limited to certain categories of prisoners.

With the exception of Brandvlei, none of the prisons where interviews were conducted provided access to a library. From Kroonstad it was reported that there is a library but that the children cannot access it and similar reports were made from Port Elizabeth (North End).

With limited access to education, limited access to recreation and sport, and generally no access to a library (the exception being Brandvlei), the overall impression gained is that the children are confined in idleness with the televisions in the cells being the main source of distraction. This is by all accounts an unnatural and undesirable state of affairs and cannot be considered as addressing the developmental needs of children, especially not children who have been found to be in need of additional care and support. Detaining children without access to appropriate recreational facilities and then also denying them access to the means to occupy themselves with reading material places their well being in great jeopardy and borders on negligent and irresponsible behaviour on the part of the state.

Suitability of supportive infrastructure

Of the centres housing sentenced children, 77% reported that there are classrooms and 23% reported that there are not. Of the applicable centres, 81% reported that there is a library and 19% reported that there is not. The library at Brandvlei is exemplary in this regard and was described as follows: "Well stocked and living library. Books are received from the provincial library service; the library subscribes to newspapers and magazines. There is very good cooperation from all inmates and there is seldom damage to books. Inmates have access to the library twice per week."

Of the applicable centres, 66% reported that there is a multi-purpose hall and 34% reported that there is not.

Of the applicable centres, 75% reported that the centre has a sports field. Of the applicable centres, 87% reported that there is sports equipment. However, sports equipment for inmates, where available, appears to be limited and there are problems to replace damaged and worn-out equipment. The following responses reflect this:

- Very little funds have been made available for the past two years, R10 000 only.
- It is basic and a request has been submitted for more, R206 000 in total.
- There are a few balls lying around the open area outside the cells.

- All the centres except one (Port Elizabeth North End) reported that there is a private consultation room. However, a designated room is not always available and already occupied offices may be used for private consultations, e.g. Rustenburg.

Conditions of detention

The average available floor space per child was measured to be 3.65m², with a minimum of 0.75 m² (Barberton) and a maximum of 7m² (Emthonjeni). The average is just above the minimum floor space norm of 3.344 m².

The following centres reported that the cells for sentenced children were occupied above capacity for 30 days of the past 30 days: Cradock; Ekuseni Youth; Estcourt; Pollsmoor (Female); and Port Elizabeth (North End).

In the survey, the overwhelming majority of responses indicated that the cells where sentenced children are kept are clean, well ventilated, free of odour and insects. Problems were, however, noted at the following centres: Caledon; Cradock; Ekuseni Youth; Port Elizabeth (North End); and Pretoria Local.

All the centres reported that clean drinking water is always available. It was only at Westville where repairs were done and the water supply was interrupted for two days, and alternative arrangements were made.

All the centres reported that hot water is always available save from three centres that reported some problems in this regard, namely Durban Westville; Ekuseni Youth; and Emthonjeni.

All sentenced children were reported to have a bed and mattress.

All sentenced children were reported to have at least one blanket and two sheets. At Ekuseni these were reported to be old and worn though.

All the centres, except Pretoria Local, reported that natural light in the cell was sufficient to read by.

All the centres except three reported that electrical lighting was available in the cells. The following centres reported problems in this regard:

- Boksburg Medium B: without lights for 30 days of the past 30 days.
- Emthonjeni: Each cell has its own ceiling light. Approximately 70% were non-functional, but unclear as to how many nights per month the inmates in these cells had gone without light. Apparently they have 'given up' fixing these lights because inmates just keep breaking them.
- Kroonstad: There were no complaints of this nature, but some of the lights in the smaller cells had been broken.

Table 17 presents the ratios of number of sentenced inmates per functioning toilet. It is reason for concern that at six of the centres, the ratio was above 1:20.

Table 17

CENTRE	NUMBER OF INMATES PER TOILET
Pollsmoor (Female)	1
Emthonjeni	2
Kroonstad - Centre D	2
Drakenstein Medium B	3
Hawequa	3
Worcester (Female)	3
Pollsmoor Medium A	3.5
Brandvlei	4.5
Bethal	7
Estcourt	8
Cradock	10
Kroonstad	10
Rustenburg	10
Thohoyandou (Female)	10
Oudtshoorn	12
Port Elizabeth (North End)	13
Grahamstown	15
Ekuseni Youth	17
Pretoria Local	19
Barberton Town	20
Durban (Male)	22
Boksburg Medium B	25
Umzinto	30
Mosselbay	34
Durban Westville	42

It was generally reported that ablution areas are screened off from the rest of the cells and/or entrance. The following centres did, however, not allow for private use of the ablution facilities: Durban (Male); Emthonjeni; Pollsmoor Female; Port Elizabeth (North End); and Worcester (Males). It is especially when single cells are shared that privacy is not possible.

Table 18 presents the ratios of number of sentenced inmates per functioning basin.

Table 18

CENTRE	NUMBER OF INMATES PER BASIN
Pollsmoor (Female)	1
Emthonjeni	2
Kroonstad - Centre D	2
Mosselbay	2
Drakenstein Medium B	3
Hawequa	3
Worcester (Males)	3
Bethal Centre	3.5
Brandvlei	4.5
Rustenburg	5
Thohoyandou (Female)	5
Boksburg Medium B	6
Port Elizabeth (North End)	6.5
Pollsmoor Medium A	7
Estcourt	8
Cradock	10
Kroonstad	10
Oudtshoorn	12
Umzinto	15
Ekuseni Youth	17
Pretoria Local	19
Barberton Town	20
Durban (Male)	22
Durban: Westville	42

Table 19 presents the ratios of number of sentenced inmates per functioning shower.

Table 19

CENTRE	NUMBER OF INMATES PER SHOWER
Boksburg Medium B	2
Drakenstein Medium B	3
Hawequa	3
Worcester Males	3
Bethal Centre	3.5
Pollsmoor Medium A	3.5
Brandvlei	4.5
Thohoyandou (Female)	5
Port Elizabeth (North End)	6.5
Estcourt	8
Ekuseni Youth	8.5
Cradock	10
Kroonstad	10
Rustenburg	10
Oudtshoorn	12
Grahamstown	15
Umzinto	15
Pretoria Local	19
Barberton Town	20
Mosselbay	34
Durban: Westville	42
Durban (Male)	44

The overwhelming majority of centres reported that windows were undamaged and in good working order. The following centres did, however, report that the majority of window panes were broken and/or windows were not fully functional in the cells inspected: Boksburg Medium B; Durban Westville; Ekuseni Youth; Emthonjeni; Kroonstad; and Port Elizabeth (North End).

Staff skills levels

Apart from basic training during recruitment into DCS, it was reported that none of the staff currently working with sentenced children received training to work with children.



6. CHILD DEATHS IN DETENTION

International Law norms

States Parties recognize that every child has the inherent right to life. CRC, Article 6(1).

[States Parties shall ensure that:] No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." CRC, Article 37(a).

Every juvenile shall receive adequate medical care, both preventative and remedial JDL, Article 49.

Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. JDL, Article 53.

The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. JDL, Article 56.

Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. JDL, Article 64.

Domestic Law

Every child has the right to be protected from maltreatment, neglect, abuse and degradation, to appropriate alternative care when removed from the family environment, to basic nutrition, shelter, basic health care services and social services. The Constitution, Section 28(1)

Everyone has the right to freedom and security of the person, which includes the right not to be tortured in any way, and not to be treated or punished in a cruel, inhuman or degrading way. The Constitution, Section 12(1)(d) and (e). A child who is detained in police custody must be detained in conditions which take into account their particular vulnerability and will reduce the risk of harm to that child, including the risk of harm caused by other children, cared for in a manner consistent with the special needs of children, including the provision of immediate and appropriate health care in the event of any illness, injury or severe psychological trauma. Child Justice Act, Section 28(1).

Force may only be used when authorised by the Head of the Correctional Centre, and then only when it is necessary for self-defence, the defence of any other person, to prevent an inmate from escaping or the protection of property. The Correctional Services Act, Section 32(1)(c) and 32(2).

Any death in a correctional centre must be reported forthwith to the Inspecting Judge who may carry out or instruct the National Commissioner to conduct any enquiry. The Head of the Correctional Centre must also inform the next of kin of the inmate who has died. Correctional Services Act, Section 15(2) and (3).

Number of child deaths

Data relating to deaths in custody is grouped in age categories on the MIS. A particular category covers the age cohort 15 to 19 years old. The data presented below therefore includes 18 and 19 year old people together with children aged from ten years and older. A distinction is made between deaths due to natural causes and unnatural causes, the latter referring to murders, accidents and suicides.

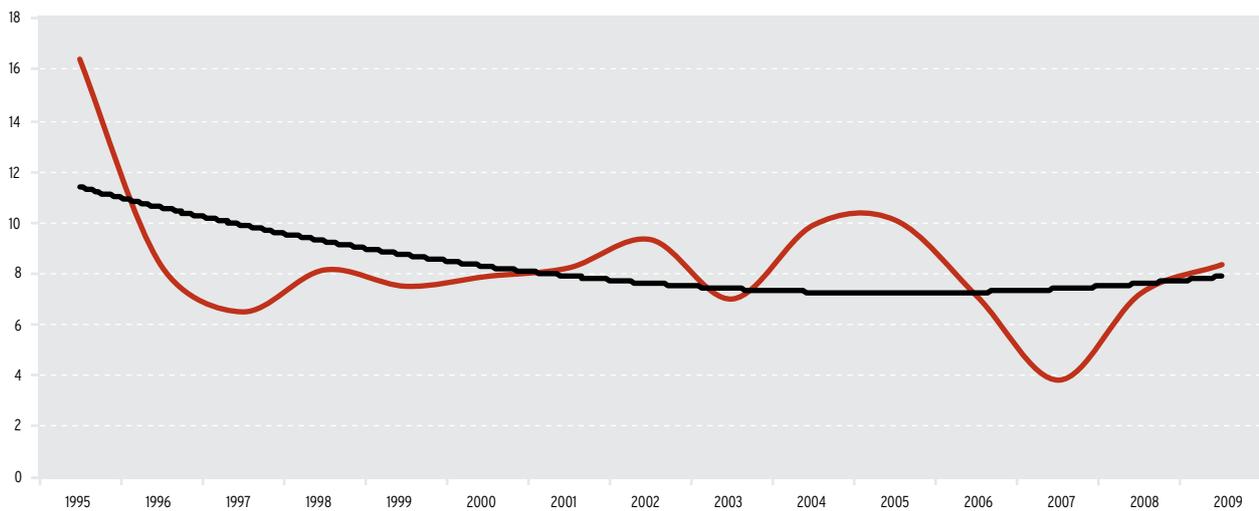
Table 20 below presents the deaths due to natural and unnatural causes as well as the per 1000 children in custody for the period 1995 to 2009. The highest total number of child deaths recorded is 38 in the year 2002, and the lowest recorded is 8 in 2007. The highest per 1000 children custody rate was in 1995 when the number of children in custody was at its lowest for the period that data is available.

Table 20

YEAR	NATURAL	UNNATURAL	TOTAL	IN CUSTODY	PER 1000 CHILDREN IN CUSTODY
1995	11	5	16	976	16.4
1996	10	1	11	1321	8.3
1997	12	3	15	2310	6.5
1998	15	6	21	2581	8.1
1999	24	3	27	3601	7.5
2000	28	3	31	3931	7.9
2001	26	5	31	3770	8.2
2002	34	4	38	4073	9.3
2003	25	4	29	4143	7.0
2004	31	5	36	3633	9.9
2005	24	2	26	2577	10.1
2006	13	3	16	2254	7.1
2007	6	2	8	2097	3.8
2008	11	2	13	1804	7.2
2009	12	1	13	1557	8.3

Figure 7 presents the deaths per 1000 rate for the period 1995 to 2009. As illustrated, there was a general decline in the mortality rate of children over the period, but a slight increase from 2008 onwards. This may be a function of the extremely low number of children in custody and that even one death may influence the per 1000 rate.

Figure 7: Number of child deaths in custody per 1 000 children



Mandatory reports

Section 15(2) of the Correctional Services Act requires that all deaths in detention must be reported without delay to the Judicial Inspectorate for Correctional Services (JICS). The same applies in respect of segregation for disciplinary purposes²⁶; the use of mechanical restraints²⁷ and the use of force.²⁸ These reports constitute the so-called mandatory reports to the JICS. It was reported that these are being complied with but closer investigation may be necessary to verify this with the Office of the Inspecting Judge. The Inspecting Judge did, however, in his 2009/10 annual report note some discrepancies in the unnatural deaths recorded by his office and the numbers reported by the DCS.²⁹

Assessment by nurse or medical practitioner

It was reported from all the centres holding unsentenced children that the assessment by a nurse or doctors is done. There was, however, some confusion amongst officials whether unsentenced children are subject to the same type of assessments as sentenced children. It was explained at Brandvlei that Worcester is the admission centre and the assessment is done there and thus not repeated at Brandvlei when a child is transferred there.

The assessment appears to cover mostly physical health although it was reported from some centres (a minority) that the social worker also does an assessment. This, however, appears to be more aimed at sentenced children. It could not be confirmed from the officials interviewed whether the assessment also covers substance abuse and addiction. The extent to which the assessment covers the mental health of unsentenced children is also questionable.

Notification of the Dept of Social Development

While all the centres reported that the DSD is informed when a child is taken into custody, the descriptions provided clarified that it is in general not the DCS that informs the DSD, as required by section 13(6)(c)(i) of the Correctional Services Act, but rather that there is an assumption on the part of DCS officials that because the child has come from court, he/she had been seen by a social worker or probation officer and the DSD will therefore be aware of the child's custody in prison.

Gang activity, contraband and suicide prevention

Only one centre (Boksburg) reported high levels of gang activity and the others described it as none, low or medium levels of activity.

Of the centres surveyed 64 reported that they do not have a problem with contraband entering the centre. This was, at least in part, ascribed to the limited contact that the children have with adult inmates. At a few centres it was noted that children do on occasion fashion weapons from materials found inside the centre, e.g. glass or metal.

From 70% of the centres it was reported that staff working with children had not received training on suicide prevention, conflict resolution, or child protection.

Personal safety and vulnerable groups

The majority of the children interviewed reported that there is frequent fighting in their cells and that the threat of violence is omnipresent. While these fights seldom, according to several children interviewed, result in serious injuries, it does not detract from the fact that the lack of active supervision by DCS officials contribute to the lack of personal safety, as explained by Neville (aged 16, Pollsmoor):

Interviewer: Is there ever any fighting?

Neville: No - only sometimes maybe.

Interviewer: Then what happens?

Neville: No, it's OK, I call the chief [DCS Official]. But after 3pm it is difficult. You have to be lucky enough to find the chief who is patrolling outside. It can get dangerous here in the cell. Most of us we are stressed. We want to go home. We are sad.

One boy, Bongani (aged 16, Rustenburg), who is open about the fact that he is gay expressed his appreciation to the officials for placing him in a single cell for his own safety:

²⁶ Section 30(6)

²⁷ Section 31(3)(d)

²⁸ Section 32(6)

²⁹ Office of the Inspecting Judge (2010) *Annual Report of the Judicial Inspectorate for Correctional Services 2009/10*. Cape Town. p. 29.

Yes, there is lots of fighting here. And there are lots of gangs and the different gangs fight with each other. I am in a cell by myself because I am gay and worried that I will be raped. I am also very scared that one of the other boys will stab me. Boys here can be very violent, but I have not been hurt yet.

The survey found that at 68% of the centres detaining sentenced children it was reported that the staff working with the children had not received any training on sexual victimisation or anti-bullying. It was reported (from Durban Male) that “staff are aware that they must monitor those who are ‘sexually vulnerable’ and try and keep such children / juveniles from threatening situations.”

It should be noted that the amended section 38 of the Correctional Services Act requires that the assessment of sentenced offenders also requires an assessment in respect of sexual vulnerability.³⁰ While this is a positive development, it only applies to sentenced offenders and not unsentenced inmates. There is reason to believe that it is specifically in the remand sections of prisons where the majority of sexual violence incidents take place since sexual victimisation is profile driven and that sexual predators will exploit the particular vulnerability of a new admission.³¹

Register for communicable and reportable diseases

At 86% of the centres surveyed it was reported that there is a register for recording communicable diseases. At 89% of the centres surveyed it was reported that there is a register for recording reportable diseases. This was, however, not verified at all the centres surveyed.

³⁰ Section 38(1)(k) Correctional Matters Amendment Act (5 of 2011)

³¹ Muntingh L and Satardien Z (2011) Sex in prisons -part 1, SA *Journal for Criminal Justice* Vol 24 No.1.



7. SEPARATION FROM ADULTS AND PERSONAL SAFETY

International Law norms

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so. CRC, Article 37(c). Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults. Beijing Rules, Article 26(2).

Domestic Law

Every child has the right to be kept separately from detained persons over the age of 18 years and treated in a manner, and kept in conditions that take account of the child's age. The Constitution, Section 28(1)(g). A child who is in detention in police custody must be detained separately from adults, and boys must be held separately from girls. Child Justice Act, Section 28(1)(a).

A child held in a police cell or lock-up while waiting to appear at a preliminary inquiry or child justice court must be kept separately from adults and be treated in a manner and kept in conditions which take account of his or her age. Child Justice Act, Sections 33(2)(a).

Where a child is transported to or from a preliminary inquiry or child justice court, the child must be transported separately from adults. If this cannot be complied with, a police official must, within 48 hours, submit a prescribed written report to the presiding officer, furnishing reasons for non-compliance. Child Justice Act 33(2)(c).

Children must be detained separate from adults and kept in accommodation appropriate to their age. Correctional Services Act, Section 7(2)(c).

Legal framework

Section 7(2)(c) of the Correctional Services Act requires that children must be detained separate from adults and kept in accommodation appropriate to their age. A deviation from this is permitted if authorised by the head of centre and then under the supervision of correctional officials and then only for the purpose of providing development or support services or medical treatment, but never in respect of sleeping arrangements.³² It should be noted that the separation requirement applies to all aspects of the correctional system as well as to the transportation of inmates.

Observations

In the majority of instances it appears that the segregation of children from adults is maintained. However, some deviations were reported. From Cradock it was reported that children and juveniles (18 to 21 year old) sleep in separate cells, but that they do mix during the day when they are unlocked for outside exercise in the courtyard. From Emthonjeni it was reported that children and juveniles are mixed and that they are not detained separately nor do they sleep in a separate cell. The situation at Emthonjeni was described as such: "The entire facility houses sentenced males under 21. There is no separation between boys 14-17 and boys over 18-21 years. The section is made up of 4 blocks, B, C, D and E. Block C is for inmates going to school, D is for inmates who are attending workshops and various rehabilitative programmes. E is for those in 'pre-release' programmes. D is divided into 2 sections: new admissions and 'special needs'. The Special Needs Unit is for inmates facing further charges, who are being disciplined or are violent or problematic. There are 18 children spread out over all 4 blocks." From Emthonjeni it was reported that there are "boys" in custody who are much older than 18 years and even 21 years. According to Sam (aged 16) there are some inmates in the section at Emthonjeni that are 23 years old.

³² S 7(3)

From Estcourt it was reported that it is “a challenge” to maintain segregation due to the old corrugated infrastructure, but no further information was provided. At other centres, the practice is also inconsistent. At some centres the 14 to 15 year old children are at all times (even during exercise period) segregated from the 16 to 17 year old children [e.g. Port Elizabeth (North End)] whereas at other they are mixed during this time. From Durban Male it was reported that at the hospital segregation is not always maintained and described as follows: “The hospital is, however, shared by the sentenced and awaiting trial children. The sentenced offender section houses males under the age of 25, so it is foreseeable that they could come into contact with ‘adult’ prisoners in the hospital area.” The segregation of children from adults has already in the past been identified as a problem and the events at Durban Westville prisons is described in the accompanying news report from May 2008 and reported by IOL.

Boy, 15, ‘sold’ for jail rape

A 15-year-old boy who is alleged to have been repeatedly raped by an inmate while detained in an adult cell in Westville prison has become a living “zombie”.

Barely able to walk or eat, he stares into the distance, not reacting when spoken to.

He had been arrested for not appearing in court to face charges of shoplifting a R49 pair of trousers from Woolworths in West Street - but ended up in a prison cell with hardened criminals.

The prisoners’ organisation that discovered the boy’s plight has accused prison guards of “selling” the Grade 8 pupil to an inmate for sex.

The mother of the teenager, from Folweni, South Durban, said she was worried he might have HIV.

Although he was put on anti-retroviral treatment after the rape, his medication had run out and his mother was struggling to find a clinic to prescribe more pills.

The teenager spoke to the Sunday Tribune about his ordeal after he was finally released on a warning on Friday after pleading guilty to the theft.

Warders had taken him to the Medium B cell after he had fallen ill and had been treated at the hospital.

“While at the Medium B cell one prisoner came up to me and raped me. I screamed but felt very weak.

“He raped me until I lost consciousness. I woke up at the prison’s hospital,” said the boy, whose mouth was filled with sores.

“I wanted to go home, to be with my mother, but was told I would have to stay in jail until my next court appearance,” he said.

Civil groups, outraged at the incident, are also planning to launch a R1, 25-million lawsuit against the ministers of Justice, Correctional Services, and Safety and Security, and Social Development MEC MeshackRadebe.

Justice for Prisoners and Detainees Trust provincial chairperson Derrick Mdluli was alerted to the boy’s plight this week and pushed for the boy to be released.

The teen’s unemployed mother said she had struggled to locate her son in prison as she had been told he was being kept in Medium D.

“I looked for him all over, but I couldn’t find him. I was about to leave when one warder told me he had seen a young boy in Medium B cell,” she said.

“When he told me he had been raped I was shocked beyond belief. I want authorities to explain to me why my son was placed with men who know they will never see the light of day again.

“I have not been able to sleep at night and fear my boy may have contracted Aids,” said the mother.

Excerpt from article published by IOL News, 18 May 2008, Reported by Nomfundo Mcetywa,
<http://www.iol.co.za/news/south-africa/boy-15-sold-for-jail-rape-1.400901>

From 38% of the centres it was reported that separation in vehicles cannot always be maintained or is indeed not possible. From Pollsmoor it was reported that children and adults are mixed when they are transported to court or to the hospital. The following extract describes the risk of non-compliance with the legal requirements clearly and in this case Donald (aged 17) had to join a gang in order to protect him from adult prisoners:

Interviewer: Have you been to the hospital here in Pollsmoor?

Donald: Yes - when my leg is paining I go to the hospital here.

Interviewer: And you ever see any of the adult prisoners there?

Donald: Yes I have seen them there.

Interviewer: When you saw the adult offenders, in the hospital, in the court, did they ever bother you?

Donald: They tried to rob me but I didn’t let them. And I joined the gang so now it’s safer for me. They don’t take anything from you if you are in a gang.

Interviewer: So you are in a gang?

Donald: Yes.

Interviewer: Which gang?

Donald: 26

Interviewer: And before you were in the gang did anyone ever try to hurt you, any of the adults?

Donald: Yes. They took my clothes. When I was in court they took my things.

Interviewer: Was it an adult who took your clothes?

Donald: Yes - he was a 28.

Neville (aged 16 years, Pollsmoor) reported that being transported to court the adults and children are mixed in the back of the vehicle and that adult prisoners have tried to steal his clothes and shoes. He explained that he defends himself by fighting back.

The overall impression is that while adults and children are generally separated that there are a number of areas that are poorly managed, such as at hospitals and during transportation. The situation at Emthonjeni where juveniles and children are mixed is in need of urgent rectification to bring it in compliance with the prescripts of the Correctional Services Act.



8. CONTACT WITH FAMILIES

International Law norms

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. *CRC, Article 9(3)*.

[States Parties shall ensure that:] a child shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; *CRC, Article 37(c)*.

In the interest and well-being of the institutionalised juvenile, the parents or guardian shall have a right of access. *Beijing Rules, Article 26(5)*.

Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. *JDL, Article 30*.

Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel. *JDL, Article 60*.

Juveniles should be allowed to leave detention facilities for a visit to their home and families. *JDL, Article 59*.

Domestic Law

- Everyone who is detained, including every sentenced prisoner has the right to communicate with, and be visited by that person's spouse or partner, next of kin, chosen religious counsellor and chosen medical practitioner. The Constitution, Section 35(2)(f).
- The National Commissioner, must, if practicable, ensure that inmates who are children remain in contact with their families through additional visits and by other means. Correctional Services Act 111 of 1998, Section 19(3).
- A child who is in detention in police custody must be permitted visits by parents and appropriate adults. Child Justice Act, Section 28(1)(c).

Legal framework

The Correctional Services Act, in sections 13 and 19, makes provision for inmates to remain in contact with the community and in particular their families and next of kin. Section 19(3) requires the DCS to ensure, if practicable, that children remain in contact with their families through additional visits or "by any other means". The Act further stipulates that there are no limitations placed on the number of visits that unsentenced inmates may receive, save for what is necessary for the good management and order of the prison.³³ The number and duration of visits to sentenced inmates are regulated by the security classification and privilege group of the inmate.³⁴ Neither the Correctional Services Act nor the subordinate legislation make a distinction between adults and children in respect of the number and duration of visits that children may receive, save for the rather vague reference in section 19(3) to "additional visits". It is generally the practice that remand detainees receive visits and are permitted to make phone calls during the week and that sentenced inmates do this over weekends.

³³ s 46(1-2)

³⁴ B-Order 1 Chapter 16

Maintaining contact

Several of the children interviewed explained that they are imprisoned far away from home and that it is not possible for their families to visit on a regular basis, or visit at all. Neil (aged 17, Cradock) explained that his family lives near Port Alfred which is 240 km away and they are unable to afford the transport costs. Thomas (aged 17, Cradock) also explained that his family is in Kareedouw (380 km from Cradock) and that they are unable to visit him. His father died in 2008 and his mother the following year, and he is now reliant on his aunts and uncles to support him. For some children it was not a case that their families are unable to visit them, but it appears that they choose not to visit them.

Given the challenges of distance and cost, it is hardly surprising that a telephone card is one of the most important resources in any prison. The DCS does not provide telephone cards to children or adult inmates. They are reliant on their own resources for this, or on their families to supply them a phone card, or pay money into their account at the prison that they can then use to buy a phone card from the prison shop. However, several children reported that they have no money as their families are unable (or unwilling) to support them) and they can therefore not buy a phone card. They therefore rely on friends to give them a phone card. Gavin (aged 17, Brandvlei, member of the 28 gang) explained it as follows:

My family says that they will come, but they never do. They also don't pay money in on my property.³⁵ I depend on my tjommie³⁶ to give me a phone card.

It was also apparent that several children have lost contact with their families and did not have phone numbers for them. From Emthonjeni it was reported that the phone card telephones do not work in the section and inmates are not able to make phone calls even if they had phone cards. It was also reported from some prisons (e.g. Emthonjeni and Brandvlei) that officials will allow inmates to use official phones in the event of an emergency.

The overall impression is nonetheless that many imprisoned children do not receive visits from their families because they are imprisoned far away from home or had lost contact with their families. Many are also without the financial resources to purchase phone cards. Despite the provisions of section 19(3) of the Act, it appears that little effort is being made to facilitate contact between children and their families. For example, if the DCS were to provide every imprisoned child (846 as at February 2011) with a R50 phone card per month, it would cost R507 600 per year, a cost that can easily be absorbed by the DCS's R15 billion budget.

Monitoring children's visitors

Seven of the centres surveyed reported that there is no register maintained for recording visitors to children. The practice also appears to be inconsistent in that it was reported that such a register is only maintained for sentenced prisoners (Vereeniging). It was later confirmed that visits are indeed recorded on the MIS for sentenced offenders only.

While there are problems with keeping records of visits as noted above, a number of centres were able to provide more accurate information and based on this, it is concluded that significant proportions of children in centres do not receive visits from friends or family. The following extracts illustrate this:

- Brandvlei: 65% of children had not received visits in the last three months
- Johannesburg: 75% of children had not received visits in the last three months
- Rustenburg: 50% of children had not received visits in the last three months

Number of visits received

Data was obtained on sentenced children in custody as on 14 August 2011 and a random sample of 32 was drawn to investigate the number of visits received. Unsentenced children were excluded as their visits are not recorded electronically on the DCS MIS. From the sample of 32 children, reliable data was recorded for 18 children. The data on this group showed the following profile in respect of visits received in the preceding three months as shown in Table 21 below. Of the sample, 7 children or 38.9% received no visits; 4 (22.2%) received 1 visit and so forth. While this sampling did not yield a sufficiently large quantum of data, it is nonetheless demonstrated that this data can be collected.

³⁵ The "property" is the inmates account.

³⁶ Slang for friend.

Table 21

NUMBER OF VISITS IN PRECEDING 3 MONTHS	FREQUENCY	PERCENTAGE
0	7	38.9
1	4	22.2
2	2	11.1
3	1	5.6
4	1	5.6
5	0	0.0
6	1	5.6
7	1	5.6
8	0	0.0
9	0	0.0
10	1	5.6
Total	18	100.0

In respect of 14 children in the selected sample, the MIS reflected "no data available". Further enquiries revealed two possible explanations. Firstly that there were indeed no visits and thus none recorded, and secondly, that the particular centre does not record visits on the MIS. In view of these two possible reasons, all cases reflecting "no data available" were excluded from the analysis. The conclusion drawn from this is that the proportion of children who had received no visits in the preceding three months may indeed be higher than 39%, as noted above in respect of the survey data for Brandvlei, Johannesburg, and Rustenburg.

Infrastructure for contact and non-contact visits

The greater majority of centres (84%) reported that the infrastructure for non-contact visits is suitable and that intercoms are working. The following centres reported problems in this regard: Drakenstein Medium - B; Ekuseni Youth; Johannesburg; Hawequa; and St Albans.

The greater majority of centres (82%) of centres reported that the infrastructure for contact visits is suitable. The following centres reported problems in this regard:

- Estcourt and Worcester (Male) have no facilities and at Estcourt an office is used for this purpose.
- Port Elizabeth (North End) uses a hallway
- Mossel Bay has no facility and it is being constructed
- Johannesburg does not have suitable facilities.

Telephones and letter writing

A total of 83% of the centres reported that there are sufficient phones for the number of prisoners. However, the phones at C and D blocks at Emthonjeni were not working at the time of the fieldwork. The ratios of phone to prisoners is also extremely high at some centres, for example 1:58 at Port Elizabeth North End and 1:550 at Johannesburg.

The majority of centres (82%) reported that children are supplied with paper, envelopes and pens to write letters but the additional descriptions provided placed these responses into question. At some centres it was explained that the children are "allowed to phone their parents" (Estcourt) or "buy phone cards" (Oudtshoorn) and by implication do not need stationery. Two centres reported that writing material is only provided to those children attending school (Emthonjeni and Kroonstad). Some centres reported that DCS carries the postage cost (Cradock) whilst others (Port Elizabeth North End) stated that DCS does not. There is thus great variation in how this extremely simple operation is administered in the Department.

Access to a phone at the cost of the Department appears only to happen if the child does not have a phone card or cannot afford one and there is an urgent need that he contacts his family. Apart from these exceptions, children are required to purchase their own phone cards. Children without the necessary funds will therefore not be able to contact their families on a regular basis.

Special events

Just more than half of the centres (53%) reported that special events (e.g. family days) are arranged for children in custody. However, some centres exclude unsentenced children from such events (e.g. King Williams Town and Modderbee).



9. PERCENTAGE OF CHILDREN RECEIVING CUSTODIAL SENTENCES

International Law norms

- The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." CRC, Article 37.
- Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum." Beijing Rules, Article 17(1)(b).
- Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response. Beijing Rules, Article 17(1)(c).
- A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible. Beijing Rules, Article 18(1).

Domestic Law

- Every child has the right not to be detained except as a measure of last resort, in which case...the child may be detained only for the shortest appropriate period of time. The Constitution, Section 28(1)(g).
- When considering the imposition of a sentence involving imprisonment...the child justice court must take the following factors into account...the previous failure of the child to respond to non-residential alternatives, if applicable and the desirability of keeping the child out of prison. Child Justice Act Section 69(4).
- The objectives of sentencing in terms of the [Child Justice Act] are to encourage the child to understand the implications of and be accountable for the harm caused, promote an individualised response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society, promote the reintegration of the child into the family and community, ensure that any necessary supervision, guidance, treatment or services which form part of the sentence, assist the child in the process of reintegration, and use imprisonment only as a measure of last resort and only for the shortest appropriate period of time. Child Justice Act, Section 69(1) In order to promote the objectives of sentencing ... and to encourage a restorative justice approach, sentences may be used in combination. Child Justice Act, Section 69(2)

Custodial sentences imposed

While the DCS Management Information System (MIS) can provide data on children who are currently serving prison sentences, or who have done so in the past, it cannot provide data on admissions of children to serve prison sentences.

The Department of Justice and Constitutional Development did, however, report that during the period April 2010 to March 2011, 110 children were sentenced to Child and Youth Care Centres (formerly reformatories).³⁷ In general, data on the sentencing of offenders of all ages is scant.

Assistance with appeals

Section 6(3) of the Correctional Services Act reads "On admission, an inmate must be informed promptly of his or her right to- (a) choose and consult with a legal practitioner; or (b) have a legal practitioner assigned by the State, at state expense, if substantial injustice would otherwise result." Section 17(3) of the Act reads "The Head of the Correctional Centre must take reasonable steps to enable prisoners to exercise the substantive rights referred to in section 6 (3)." Reading these two sections together with section 35(3)(o) of the Constitution, it places a duty on the DCS to inform sentenced offenders, including children, on their right to appeal their conviction and/or sentences.

There appears to be great variation in the extent to which DCS officials provide information to or assist children in appealing their convictions and sentences.

³⁷ Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 31.

The first set of responses indicated that some officials do not regard it as the responsibility of DCS to inform children (or any other sentenced offenders) of their right to appeal their conviction and sentence. A typical response in this regard was:

[It is] Not considered a DCS function. Children not informed as a matter of policy. If children enquire about it, the DCS staff at the section tries to make contact with Legal Aid[Board].

Also broadly falling in this category of responses were responses that other institutions or individuals are responsible for informing sentenced children of their right to appeal. These responses indicated that it is the responsibility of the court, the Case Management Committee or the parents of the children to inform them of their right to appeal.

The second broad category of responses indicated that it is the responsibility of DCS to inform sentenced children of their right to appeal and that this is consistently done upon admission or subsequently. However, the consistency of the actual information provided is cause for concern as indicated in the first two responses below: the first indicating that the time limit for lodging and appeal is seven days and the second 14 days. The following responses are examples in this regard:

On admission they are informed that they can appeal and they are informed that the time limit for appealing is 7 days.

Yes, they are told that they can appeal within 14 days from the date of sentence

On admission children are informed of legal assistance and appealing against sentence or conviction and a period to appeal as well

Yes, they are always informed.

A member working at the reception area was appointed to assist children.

In the light of the inconsistency in informing children of their right to appeal as well as the inconsistency in the type of information provided, it would be hardly surprising if few children appealed their convictions and sentences. This is indeed what the survey data found and children appealing their sentences are rare and five cases were identified at Ekuseni and 19 at Durban Westville centres.



11. CHILDREN RECEIVING AFTERCARE

International Law norms

- “All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.” JDL, Article 79.
- “Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration.” JDL, Article 80.
- “Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.” Beijing Rules, Article 29(1).

Domestic Law

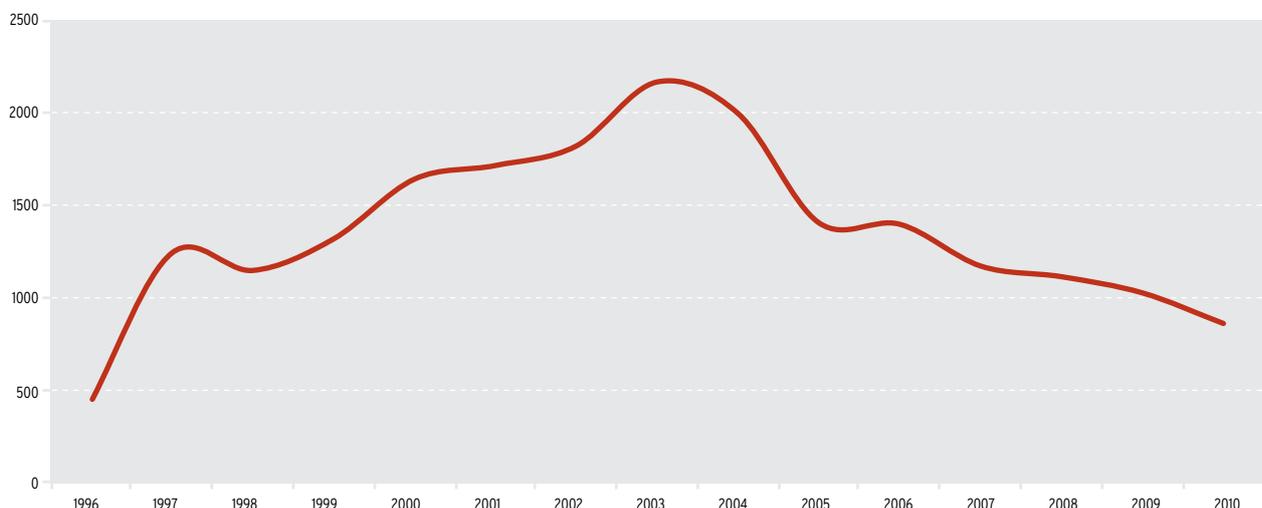
The objectives of sentencing in terms of the [Child Justice Act] are to... promote the reintegration of the child into the family and community, ensure that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration. Child Justice Act, Section 69(1)

The DCS MIS is unfortunately not able to release data according to children and adults, and lumps all releases under the age of 20 years together. For this reason it is therefore excluded from this analysis.

Sentenced prisoners, including children, can be released after serving the full term of their sentence (referred to as release on Sentence Expiry Date - SED) or they can be released earlier on parole as provided for in section 73(4) of the Correctional Services Act. Depending on the sentence imposed by the court, a proportion of the prison sentence may also be converted to correctional supervision. Correctional supervision and parole are collectively referred to as community corrections.

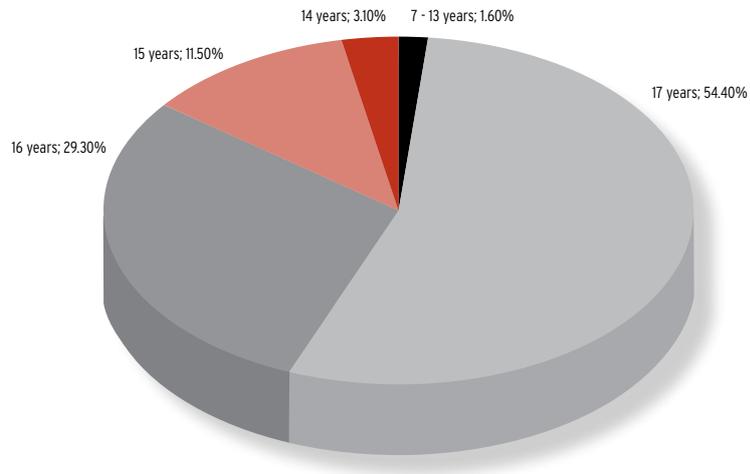
For the purposes of the report and the specific indicator “children receiving aftercare” children released under community corrections are deemed to receive aftercare. However, the extent and rigour of aftercare services require further research. Figure 8 shows the total number of children under community corrections for the period 1996 to 2010. The graph mirrors the overall trend of the total number of children imprisoned in South Africa during the period under review, showing a rapid increase until 2003/4 and then a steady decline to a level approximating 1996/7 levels.

Figure 8: Children placed under community corrections



The average age profile of children under community corrections for the period 1996 to 2010 is presented in Figure 9 below, showing that more than half of children under community corrections were 17 years old.

Figure 9: Age profile of children under community corrections



Predictably the offence profile of children under community corrections mirror the offence profile of imprisoned children.

Table 22 below presents the average number of children placed under correctional supervision and under parole supervision. The number of children placed under either option relates to the total number of children in custody and thus mirrors the general increase to 2003/4 and the subsequent decline. During the period under review (excluding 1994/5 and 1995/6) 84% of children placed under community corrections were placed under correctional supervision and 16% under parole supervision. When comparing the number of children placed under correctional supervision with the number of children serving prison sentences, it appears more likely that correctional supervision is used as a non-custodial sentencing option for children on a significant scale. The low number of children placed under parole supervision requires further investigation as it appears that, on average, less than 25% of sentenced children are placed under parole supervision. It is also possible that a significant proportion may be placed under correctional supervision once they had served the specific proportion of their sentences; for example one-sixth as provided for under section 276(1)(i) of the Criminal Procedure Act.

Table 22

YEAR	CORRECTIONAL SUPERVISION	PAROLE SUPERVISION	TOTAL	% CORRECTIONAL SUPERVISION	% PAROLE SUPERVISION
1994/1995	0	0	0	0	0
1995/1996	0	0	0	0	0
1996/1997	645	155	800	80.6	19.4
1997/1998	989	300	1289	76.7	23.3
1998/1999	869	222	1091	79.7	20.3
1999/2000	1140	269	1409	80.9	19.1
2000/2001	1305	378	1683	77.5	22.5
2001/2002	1387	330	1717	80.8	19.2
2002/2003	1515	357	1872	80.9	19.1
2003/2004	1784	430	2214	80.6	19.4
2004/2005	1638	296	1934	84.7	15.3
2005/2006	1134	145	1279	88.7	11.3
2006/2007	1228	147	1375	89.3	10.7
2007/2008	1033	88	1121	92.1	7.9
2008/2009	990	116	1106	89.5	10.5
2009/2010	853	128	981	87.0	13.0
2010/2011	736	100	836	88.0	12.0

Apart from the quantitative data presented above, it is apparent that very little information is available on the scope and quality of aftercare services provided to children released from prison. This is an area in urgent need of further research to assess not only the rate of re-imprisonment, but also the effectiveness of programmes rendered by DCS Community Corrections and the accessibility of services rendered by non-governmental organisations. Other research has identified significant concerns in this regard, albeit this focussed on adult former prisoners. These concerns related to the trend that parole supervision has become a policing function and that very few supportive services assisting in successful prisoner re-entry were being rendered; obstacles and lack of information in accessing NGO-based services, and general lack of planning in assisting former prisoners in negotiating the risks associated with re-entry.³⁸

38 Muntingh L (2009) *Ex-prisoners' views on imprisonment and re-entry*. CSPRI Research Report, Bellville: Community Law Centre, pp. 22-24.



12 & 13. INDEPENDENT INSPECTIONS AND COMPLAINTS

International Law norms

29(2) A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*

Qualified inspectors or an equivalent duly constructed authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and should enjoy full guarantees of independence in the exercise of this function. *JDL, Article 72.*

After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. *JDL, Article 74.*

Domestic Law

(1) An Independent Correctional Centre Visitor shall deal with the complaints of prisoners by- (a) regular visits; (b) interviewing prisoners in private; (c) recording complaints in an official diary and monitoring the manner in which they have been dealt with; and (d) discussing complaints with the Head of Prison, or the relevant subordinate correctional official, with a view to resolving the issues internally. *s 93(1) Correctional Services Act.*

29(1) In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

General treatment

The Correctional Services Act in Chapter 3 describes the requirements for the general treatment of inmates and is by and large derived from the second objective of the correctional system, namely to ensure safe custody and human dignity of all inmates.³⁹

Children interviewed were asked how they are generally treated by officials. The feed-back received was in general positive and the overwhelming majority of children interviewed stated that they are treated well and that they feel free to discuss problems with the officials. The following responses reflect this:

In general we are treated well by the officials. I feel free to lodge a complaint or request with an official. They respond well to requests and complaints. If there is a fight, the officials do not just beat up everyone but try to resolve it in a good way.

Generally, the officials treat us well. When we complain I can see that they do their best to try and help us even if sometimes they can't.

They are ok. They understand that I am gay and have put me in my own cell. They also put me in the cell closest to the "watch tower" so they can help me if I get into trouble.

I think they treat us fine. Most of the time they treat us with respect.

They come to us every day, they talk to us. If we do something wrong they come and they talk to you. They don't fight with us.

39 s2(b)

There were, however, a smaller number of responses indicating ill treatment, if not amounting to torture:

The treatment by officials is OK. They don't hit us. They only hit me once with an iron pipe. The Head (of Centre) asked me if I want to lay a charge but I said no - I knew I was wrong. We were running around in the cell late at night and they told us to keep it quiet - the next morning one hit me. I had a nightmare, so I woke the boy next to me up and he woke up another one - we were playing. (Gavin, age 17)

Some of the officials cause problems, especially the B-Division shift (who was not on duty at the time of the interview). They are the ones who beat us. Not all officials listen to our complaints. I requested to see a social worker but this only happened the next day - it is supposed to be the same day. (Neil, age 17)

In general we are treated well, but when there is fighting or the prison is not cleaned properly then the warders will threaten a beating. It also happens that the prisoners are sometimes beaten but this does not happen often. They use a broomstick. (Xolani, age 18)

Visitors to prisons

The Correctional Services Act, in section 99, mandates Judges of the Constitutional Court, Supreme Court of Appeal or High Court, and a magistrate within his or her area of jurisdiction, to visit a prison at any time. The visiting judge or magistrate has access to all persons, documents and places during a visit and may interview inmates who then have the opportunity to lodge any complaint or request with the visiting judge or magistrate. The visiting magistrate or judge may bring any matter to the attention of the Commissioner. The Act also affords members of the Parliamentary Portfolio Committee on Correctional Services, members of the relevant committees of the National Council of Provinces, and the members of the National Council on Correctional Services the same unrestricted access to prisons, prisoners and documents.⁴⁰

Independent visitors

Independent Visitors to prisons were created by the Correctional Services Act and resort under the Judicial Inspectorate for Correctional Services. An Independent Visitor must be appointed for every prison in the country and the task of an Independent Visitor is to conduct regular visits to a designated prison, undertake inspections and conduct confidential interviews with inmates regarding their treatment and any complaints they may have. It is then the task of the Independent Visitor to discuss any problematic issues with the Head of Centre with a view to resolve them.

The most recent data indicates that there are 242 active prisons in South Africa (February 2011). The total number of Independent Visitor posts is 279 of which 221 are filled and 58 are vacant.⁴¹ Independent Visitors visit prisons on a weekly basis.

From Brandvlei it was reported that the Independent Visitor position had been vacant since the second half of 2010 and that inmates have not had access to an Independent Visitor as required by the Act. The overwhelming majority of the children interviewed had no knowledge of the Independent Visitor and did not understand what such a person would do. A small number of interviewed children had heard of the Independent Visitor or have seen the Independent Visitor at the prison, but have not lodged a complaint with the Independent Visitor. It was only one boy at Rustenburg who said that he does discuss problems with the Independent Visitor and he receives feed-back and trusts the Independent Visitor to deal with the issues in the correct manner. He did, however, add that they are not able to speak to the Independent Visitor in a confidential manner and out of earshot from officials.

It appears then that the Independent Visitors and their functions are not known by many children and that this valuable avenue for dealing with problems is under-utilised.

⁴⁰ Hettinga B, Mandlate A and Muntingh L (2011) *Survey of detention oversight mechanisms provided for in the laws of SADC countries*. CSPRI Research Report. Bellville: Community Law Centre. p. 15.

⁴¹ Personal communication to the author from the Director of the Office of the Inspecting Judge. 22 August 2011.

The surveyer enquired into the number of hours the Independent Visitor spent in the section for children at the particular centre during the preceding month and the responses are reflected in Table 23 below.

Table 23

CENTRE	NUMBER OF HOURS IN CHILDREN'S SECTION BY INDEPENDENT VISITOR IN THE PAST MONTH
Caledon	0
Pollsmoor Medium A	0
Johannesburg (Female)	1
Vereeniging	1
Grahamstown	3
Bethal Centre	4
Port Elizabeth (North End)	4
Pretoria Local	5
Durban (Male)	8
Hawequa	8
Sasolburg	8
Witbank	10
Modderbee	12
Kroonstad - Centre D	13
Durban: Westville	15
Ekuseni Youth	31
Boksburg Medium B	40
Barberton Town	41
Pollsmoor (Female)	2 hours on public holiday (16/6/2011). Not possible to see children during the week as they attend school.
Emthonjeni	Although the Independent Visitor had been visiting the section, it is not clear from the visitors' book how many hours he had spent there. But anecdotally, he is there every week.
Kroonstad	Although the Independent Visitor had come to visit 'several times' in the last month, I couldn't find his name in the visitors register so couldn't ascertain exact number of hours.
Drakenstein Medium - B	Independent Visitor goes there twice a week
Rustenburg	The actual hours were not recorded, but based on the visitors register, the Independent Visitor had been to the section at least 2-3 times every week for the last month.
Cradock	The Independent Visitor is there nearly every day according to Head of Centre.
Brandvlei	Vacant since 2010
Mosselbay	Vacant since 2010
Worcester Males	Vacant since 2010

In a number of instances the Independent Visitor position was vacant at the time of the visit or the Independent Visitor was not available at the time of the visit. DCS officials interviewed also do not have access to the Independent Visitor register of complaints. Despite these limitations only three centres reported that there were unresolved complaints of three months or older with the Independent Visitor.

Frequency of visits by the DCS Inspectorate

The frequency with which the DCS Inspectorate⁴² visits prisons was not known at all the centres surveyed. Table 24 below reflects the number of visits by the Inspectorate that were reported for the preceding 12 months.

Table 24

CENTRE	NUMBER OF VISITS
Brandvlei; Durban (Male); Kroonstad; Oudtshoorn; Rustenburg	0
Bethal Centre; Caledon; Mosselbay	1
Drakenstein Medium - B; Hawequa; Johannesburg (Female); Kroonstad - Centre D; Kuruman; Pollsmoor Female; Port Elizabeth (North End); Pretoria Local; Witbank	2
Vereeniging	4
Ekuseni Youth	6
Sasolburg	7
Cradock; Estcourt	"Regularly"
Modderbee	"Sometimes"
Durban Westville	No clear response from officials

Internal complaints mechanism

The Correctional Services Act requires that all inmates must have access on a daily basis to an internal complaints and requests procedure.⁴³ The Act further requires that all complaints and requests must be recorded, dealt with promptly and feed-back provided to the inmate. Only one centre reported that there was an unresolved complaint lodged on the G365 Register that was unresolved for three months or longer.

In general, the children interviewed stated that their complaints are taken seriously, acted upon and that they receive feed-back. These views are supportive of the conclusions drawn in respect of general treatment reflected on above. Typical of these views are the following extracts from the interviews:

I feel comfortable about taking my problems to most of the warders that I see here in the section. Every morning at un-lock the warders ask us whether we have any problems or complaints. If I want to talk about something, I speak then. (Simba, age 17)

I have already expressed some of my fears about being gay in prison and I think they have taken my problems seriously. I feel I can talk to my case manager or section head. (Bongani, age 16)

I feel as though I can speak to the warders here if I have a problem. I prefer to speak to the social worker. (Nathi, age 17)

Apart from the complaints and requests procedure, it is important that a child has a confidante, a person who they can share their feelings and plans with. The following excerpt describes an interesting dynamic at this particular prison:

Donald: I don't go to anyone - I leave my problems inside. But sometimes Mr. [name of head] can see when there is a problem inside and he will come talk to you. He will say what's wrong, and I will tell him that I don't have a phone card and I need to phone my parents. But some of the other warders, they don't want to take me to hospital when I am sick, and then sometimes we don't get the exercise.

Interviewer: And do you have these problems with the other warders here in your section?

Donald: Yes.

Interviewer: Now when you talk to Mr. [name of head] do you feel better?

Donald: Yes.

Interviewer: Does he help you?

42 S 95(1-3)

43 S 21

Donald: Yes - but when Mr. [name of head] is here on duty the other warders don't talk bad to us when he is here. It is only when he's gone. The other warders don't let us exercise sometimes when he is not here. And they say to us that we mustn't talk about our rights. And then I think, "Hey, I must not complain here."

The apparently differential treatment that children receive at this particular prison must create a confusing situation for the children there. On the one hand, the head is much liked for his empathy and understanding and is able to instil a particular management approach when on duty. On the other hand, when he is not there, the situation reportedly changes quickly to one that sounds reminiscent of past practices. In such a situation, it will be difficult for prisoners to develop confidence in the correctional system, thus aggravating the legitimacy deficit, and will at best trust individual officials.

Despite these concerns several children spoke highly of the social workers and other staff they interact with:

They do listen to you. However, I did wait for a week to see a doctor.

I have asked to see a social worker before, and the warders set up the appointment. I can see that they try and help.

It was a good experience. They took my fears about being gay seriously and put me in a separate cell.

It's been fine. I've asked to see the social worker before. The warders write down the request in the book and then I get taken to the social worker later in the day, or sometimes the next day.

It always gets resolved some way or another, at least for a while when it comes to fighting and theft. But I can see the officials at least try and help me with the problem.

Other visitors

While medical practitioners visit the centres to consult patients, it does not appear as if the medical doctors actually visit and inspect the sections where inmates are held. Such inspections may provide valuable inputs to the centre management in respect of conditions of detention and preventive health care.

Only three centres reported that they had been visited by a magistrate recently, being Barberton, Kroonstad and Port Elizabeth (North End).

The following centres reported that they had been visited by a judge in the past six months: Kroonstad; Kuruman; Mosselbay; Pollsmoor; Rustenburg; and Thohoyandou (Female).

Inmate representative structures

Just less than half of the centres from which reliable responses were obtained (N=28) reported that there were inmate structures in place. The aim of such structures would be to represent general interests of inmates and engage with centre management on issues of concern.

Complaints mechanism for families of inmates

There does not appear to be a formal complaints mechanism in place and family members are reportedly welcome to discuss issues with the Head of Centre or senior official in command. From Estcourt it was reported that there is an anonymous complaints box available to families. Establishing a register in this regard may assist in ensuring that complaints are followed up.

Disciplinary actions and segregation

Disciplinary actions are recorded on case files and there does not appear to be a central register. From Brandvlei it was reported: "The G308 and G362 records infringements and sanctions. The record reveals a significant number of children placed in solitary confinement for tattooing, sodomy, assaults and gang activity." Cradock Centre also reported that the register had fallen into disuse but is being revived.

The following centres reported the placement of children in segregation (formerly solitary confinement) as a result of disciplinary actions: Barberton Town; Boksburg Medium B; Drakenstein Medium - B; Hawequa; Modderbee; Mosselbay; Sasolburg; and Witbank. Further investigation is required to establish if this was indeed necessary and whether it complied with the requirements of the Correctional Services Act.



14. EXISTENCE OF A SPECIALISED JUVENILE JUSTICE SYSTEM

International Law

States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law. *CRC, Article 40(3)*.

Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules, and provisions specifically available to offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
- (b) To meet the needs of society;
- (c) To implement the following rules thoroughly and fairly. *Beijing Rules, Article 2(3)*.

There should be a comprehensive child-centred juvenile justice process. *Guidelines for Action, Article 14(a)*.

Special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending. *CVWC, Article 38*.

States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate. *Guidelines for Action, Article 14(d)*.

Overview of the system and legislation

The Child Justice Act 75 of 2008, promulgated on 1 April 2010, introduced a markedly different child justice regime than that which was previously regulated by the Criminal Procedure Act 51 of 1977 and common law. Prior to the Act's promulgation, however, the Constitution was, and remains, a clear enunciation of the principles applicable to both the detention and sentencing of children. Section 28(1)(g)(i) and (ii) states that:

"Every child has the right - not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be . . . kept separately from [from adults] and treated in a manner, and kept in conditions, that take into account the child's age."

The Child Justice Act established a legislative framework in which the principle of restorative justice is the overarching theme. The Act, while ensuring that children who commit crimes are held accountable, nevertheless recognizes the need to implement "effective rehabilitation and reintegration of children in order to minimize the potential for re-offending."⁴⁴ The Child Justice Act does the following:

- raises the age of criminal capacity from 7 years of age to 10 years of age;
- requires that the individual needs and circumstances of all children in conflict with the law be assessed by a probation officer after arrest;
- provides for a number of alternative procedures, other than arrest and custody, for the purpose of securing the attendance of the child accused at court;
- establishes the 'preliminary inquiry,' a pre-trial, inquisitorial procedure in which the diversion of the child accused from the formal criminal justice system is considered; and
- introduces a wide range of sentencing options other than imprisonment, the latter to be imposed as a measure of last resort and for the shortest possible period of time;

44 Badenhorst, C (2011) 'Overview of the Implementation of the Child Justice Act, 2008' Open Society Foundation for South Africa, p 9.

The Child Justice Act requires that the child be accused of having committed a schedule 3 offence before they can be considered for detention in a prison. In addition, the following criteria must have been met:

- an application for bail has been postponed or refused or bail has been granted but one or more conditions have not been complied with;
- the detention is necessary in the interests of the administration of justice or the safety or protection of the public or the child or another child in detention; and
- there is a likelihood that the child, if convicted, could be sentenced to imprisonment.

Section 30(5)(a) and (b) of the Act states that a presiding officer can detain a child accused of a schedule 1 or 2 offence in prison only if, in addition to the above, the presiding officer finds 'substantial and compelling reasons, including serious previous convictions against the child' to do so.

A child justice court can only impose a sentence of imprisonment on a child who is over the age of 14 years and only as a measure of last resort and for the shortest appropriate period of time.⁴⁵ In addition, a sentence of imprisonment may only be considered where a child has been convicted of a schedule three offence, a schedule two offence, if substantial and compelling reasons exist that justify imprisonment, and a schedule one offence if the child has a record of relevant previous convictions and substantial and compelling reasons exist.⁴⁶ Given the Act's reluctance to subject children to sentences of imprisonment, there exist a range of sentencing options open to a child justice court. These include: community corrections, 'restorative justice' sentences, correctional supervision and compulsory residence in a child and youth care centre.⁴⁷

Implementation

In June 2011 the Parliamentary Portfolio Committee on Justice and Constitutional Development received a briefing from the Department of Justice and Constitutional Development⁴⁸ regarding the implementation of the Child Justice Act since it became operational in April 2010.⁴⁹ Figure 10 below attempts to quantify the flow process based on the numerical data presented to Parliament. From this it is evident that there are either significant problems in how cases are managed or significant problems in how data is collected, or both. Perhaps the most worrying aspect is the high number of children charged by the police, 75 435 from April 2010 to March 2011. While it is required by the Child Justice Act that every arrested child should be assessed by a probation officer, this happened in only 43% of arrests. Of assessed children 7 869 were diverted prior to enrolment and 14 471 enrolled for a preliminary inquiry. However, nearly 60% of enrolled cases were diverted and 22% proceeded to trial. However, 18% or 2 662 of cases that went to preliminary enquiry are unaccounted for in the data presented. It is possible that charges were withdrawn. Of the 3216 trials in child justice courts, 1889 resulted in a non-custodial sentence and the balance either acquitted or receiving a custodial sentence. In overview it appears that of every four children charged by the police one resulted in a diversion or a trial. More comprehensive screening may improve this ratio, but it remains a valid observation that the police appear to charge a significant number of children unnecessarily.

The data presented to Parliament on the implementation of the Child Justice Act raises serious concerns about the quality of record-keeping and consequently the validity of conclusions drawn based on this information. It may indeed be the case that the data presented says more about the inadequacies in record-keeping than about the implementation of the Child Justice Act.

45 Section 77(1)(a) and (b)

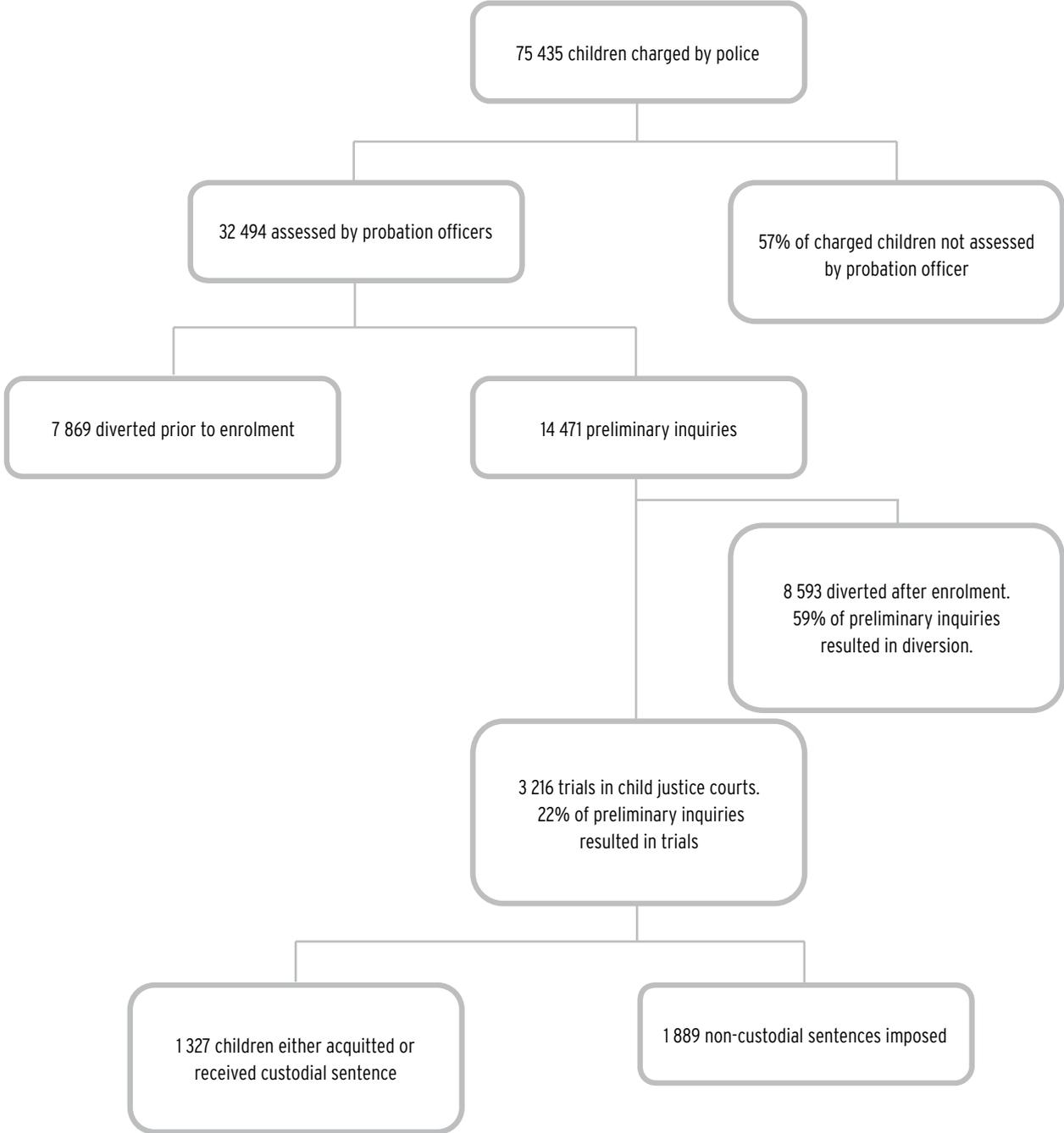
46 Section 77(3)

47 Sentencing options are detailed in Part 2 of the Child Justice Act.

48 PMG Report on the meeting of the Portfolio Committee on Justice and Constitutional Development, 22 June 2011, <http://www.pmg.org.za/report/20110622-joint-meeting-implementation-child-justice-act> Accessed 1 September 2011.

49 Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria.

Figure 10



Access to a social worker

The Child Justice Act requires that all arrested children be seen by a probation officer following arrest⁵⁰ and also that a pre-sentence report be compiled by a social worker.⁵¹ The Correctional Services Act also places a specific duty on the DCS to provide social work and psychological services to all inmates who are children; no distinction is made between sentenced and unsentenced children.⁵²

From the interview data it appears that all but one of the children had contact with a social worker at some stage; either at arrest, or prior to sentencing, or after sentencing at a DCS facility. Contact with a social worker immediately after arrest appears to have happened in very few instances and most children had contact with a social worker prior to sentencing and once they were admitted to a DCS facility.

50 Chapter 5, Child Justice Act.
 51 s 71 Child Justice Act
 52 s 19(2) Correctional Services Act

The trial

The Child Justice Act, in section 64, sets out the requirements for the conduct of a trial in a child justice court. Much emphasis is placed on ensuring that the best interests of the child are served and that the child understands the proceedings in the court. In this regard the presiding officer has a specific duty to:

- inform the child of the nature of the allegations against him or her;
- inform the child of his or her rights; and
- explain to the child the further procedures to be followed in terms of this Act.⁵³

Despite the right to have one's trial commence and concluded without undue delay, the children interviewed reported that their trials took between three months and two years to complete. It may indeed be argued that when stretched out over such a long period that it is more than likely that a child will lose interest and feel more the victim than the offender. Of more concern is the fact that they were in custody during this time and it seems unjustifiable to keep a child for two years awaiting trial in prison. The particular child whose trial took two years ultimately received a prison sentence of two years.

The children interviewed were asked about their experience of the trial, whether they understood what was happening and if somebody explained to them what was happening. The greater majority of children stated that they found the trial confusing and did not properly understand what was happening. This they described in a variety of ways as indicated in the excerpts below:

I had a private attorney and was tried in the High Court in Grahamstown. I did not really understand what was happening; the judge and the interpreter are all talking at the same time - "Die ding by die hof was deurmekaar." (It was very confusing at the court.) (Neil, age 17)

I can't remember how long the trial lasted. And there were two charges against me and I can't remember how long each trial lasted. It was all very 'deurmekaar.' I was first arrested in 2006, but I can't remember how long it took to get to court. I was at the court very often. (Simba, age 17)

The trial took 2 years. It was a very difficult time, and very confusing for me. (Bongani, age 16)

The confusion around and lack of understanding of the trial process is not only borne out of it being a complex process, but may also relate to a language issue, as described by Xolani (age 17 years):

Interviewer: How did you feel during the trial and about what was happening?

Xolani: I felt like I just wanted to go home. I did not really understand what was happening at the trial and the lawyer spoke English (Xolani's mother tongue is isiXhosa). There was no interpreter.

Interviewer: Did you know you can ask for an interpreter?

Xolani: No, I didn't know that I can ask for an interpreter.

A recurring theme from the interviews was that the children saw their lawyers only at court, leaving very little time to discuss their cases in detail. The interviews also revealed that some legal representatives made little effort to explain the court process and what was happening with the trial.

My lawyer didn't explain everything to me, and I only saw her at court, we did not consult at any other time. Sometimes the magistrate would explain to me what was going on. (Sam, age 16)

My lawyer only saw me when I went to court and she didn't ever explain to me what was happening. She only asked me questions sometimes about the offence. (Simba, age 17)

The following excerpt sketches a confusing situation leaving one guessing as to what was really happening. It is evident that the child concerned is not clear on this.

The magistrate came to our cell and said to us that we are guilty in this case and we must plead guilty. He said that the police found us inside the house and that we are guilty. If we plead guilty then we get a small sentence. But he sent me here to Pollsmoor because my younger brother got many sentences before, but he wrote down my name - so they say now that I did all those other crimes and that is why I am here at Pollsmoor. But my lawyer also said I could appeal my case. (Donald, age 17)

53 S 64(3) Child Justice Act 75 of 2008

Whilst some of the children reported that they experienced the trial as confusing and received little information about what was happening, the opposite was also true. A number of children reported that their parent, lawyer, the magistrate or social worker explained to them what was happening:

My lawyer explained to me what was happening. I also saw a social worker before the trial started.(Bongani, age 16)

My lawyer tried very hard to explain to me what was going on. We consulted both in her office and at court. (Nathi, age 17)

Besides my mom, the lawyer and the social worker tried to help me to understand what the magistrate was saying and what was happening in the court. The magistrate also explained the parole and non-parole period during sentencing.(Peter, age 17)

It is nonetheless cause for concern that in such a small sample of children, that there had such vastly different experiences of the criminal justice system.

The regulations to the Child Justice Act spell out in detail the steps to be undertaken by the presiding officer to ensure that the child being tried understands the proceedings, as described in section 63(3) of the Child Justice Act, with specific reference to the following:

- information should be provided in the language of the child's choice or through an interpreter;
- information should be presented in plain language, using simple vocabulary and avoiding technical words; and
- information should be given in a manner appropriate to the age, maturity, stage of development of the child and the special needs of the child.⁵⁴

As a more general approach aimed at creating a child-friendly environment the Regulations require the presiding officer to do the following:

- treat the child with care;
- set the child and the parent, appropriate adult or guardian at ease;
- give enough detail about the matters;
- allow sufficient time so that the child can absorb the information;
- encourage and allow the child to ask questions; and
- elicit responses from the child by asking questions in order to ensure that the child understands the information.⁵⁵

Appeal

Those children already sentenced were asked if they were informed by any person (e.g. magistrate, lawyer, DCS official) that they may appeal the conviction and sentence. The majority stated that they were not informed of this possibility. Those who were informed explained that their lawyers advised them against this as their sentences were relatively short and appealing the sentence may in fact attract a harsher punishment. Below are some of the responses on this issue:

No-one told me about being able to appeal. When I got here (prison) I asked the Case Management Official, but he said that if I appealed they would just double my sentence, so I was too afraid to appeal.(Joe, age 16)

My lawyer told me about my right to appeal. But I decided not to appeal because I was scared of getting a worse sentence. (Peter, age 17)

Staff training and assignment

From the centres where accurate responses were obtained, it was reported that at 66% of centres that staff working with sentenced children had not received any training of the new policies regarding children.

From the centres where accurate responses were obtained, it was reported that at 83% of centres that staff working with sentenced children had not received any training on working with children. Where the information was available (N=22), it was reported that 73% of Independent Visitors had not received any training working with children.

Of the centres holding sentenced children, 81% reported that the staff members are permanently assigned to the unit with sentenced children. However, from Rustenburg it was reported that "since the new shift system, even the 'permanent' members rotate frequently among themselves which causes a lot of frustration generally." This requires further investigation to establish the impact of the two-shift system on services rendered to sentenced children.

⁵⁴ Regulation 37, Child Justice Act, 2008 Regulations Relating to Child Justice, No. 33067, Government Gazette, 31 March 2010

⁵⁵ Regulation 37, Child Justice Act, 2008 Regulations Relating to Child Justice, No. 33067, Government Gazette, 31 March 2010



15. PLAN FOR THE PREVENTION OF CHILDREN BECOMING INVOLVED IN CRIME

International Law norms

Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible. Beijing Rules, Article 1(2).

Comprehensive prevention plans should be instituted at every level of Government and include the following: (a) In-depth analyses of the problem and inventories of programmes; (b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventative efforts; (c) Mechanisms for the appropriate coordination of prevention efforts; (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated; (e) Methods for effectively reducing the opportunity to commit delinquent acts; (f) Community involvement through a wide range of services and programmes; (g) Close interdisciplinary cooperation; (h) Youth participation in delinquency prevention policies and processes; (i) Specialized personnel at all levels. PJD, Article 9.

Domestic Law

- Every inmate who is a child and is subject to compulsory education must attend and have access to such educational programmes. Where practicable, all children who are inmates not subject to compulsory education must be allowed access to educational programmes. Correctional Services Act, Section 19(1).
- The National Commissioner must provide every inmate who is a child with social work services, religious care, recreational programmes and psychological services as well as ensure that inmates remain in contact with their families through additional visits and by other means. Correctional Services Act, Section 19(2) and (3).
- The provisions of section 41 of the Correctional Services Act require that the Department of Correctional Services must provide as full a range of programmes and activities, including needs-based programmes, as is practicable to meet the educational and training needs of sentenced offenders. Sentenced offenders, who are children, must be compelled to take part in the education programmes offered. In addition, the Department must provide social and psychological services in order to develop and support sentenced offenders by promoting their social functioning and mental health.
- The Child Justice Act - sections 72 - 77 - provide for a range of sentencing options in addition to the option of imprisonment. These are: Community-based sentences, Restorative Justice sentences, Fine or alternatives to a fine, Correctional Supervision and a sentence to the compulsory residence in a Child and Youth Care Centre. These sentencing options may be used in combination.
- Chapter six of the Correctional Services Act regulates Community Corrections, the objectives of which, according to the Act, are, amongst others, to afford sentenced offender an opportunity to serve their sentences in a non-custodial matter and to enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in future. Examples of community corrections include house detention, community service and day parole. A court, or any body statutorily authorised to do so, may impose a range of conditions on the serving of community corrections, such as, for example, attending a drug treatment and support programmes. Additional conditions for children subject to community corrections are that they may be required to attend educational programmes whether or not subject to compulsory education. In addition, the National Commissioner must ensure that if the child requires support he or she has access to adequate social work services, religious care, recreational programmes and psychological services.

Overview

The DCS has a policy on child offenders, under its Directorate: Social Work Services.⁵⁶ According to the executive summary of this policy it "seeks to facilitate transformation and guide the distribution of resources, services and programmes aimed at ensuring reasonable, fair and humane treatment of child offenders."⁵⁷ The following policy objectives are articulated:

- To ensure that the incarceration of child offenders is the last resort for rehabilitation and service delivery.
- To provide guidelines on the development of need based programmes appropriate for the special needs of the child offender.
- To ensure the creation and sustainability of an environment that is conducive for rehabilitation of a child offender.
- To ensure the establishment and maintenance of partnerships with other government departments and Non-Governmental Organisations that provide services that will enhance the growth and development of the child offender.
- To develop capacity to deal with child offenders within the correctional facilities.
- To ensure availability and accessibility of resources and services specific to the needs of the child offender.
- To ensure the provision of efficient and effective services that caters for the unique needs of the child offenders.
- To protect child offenders against abuse, exploitation and neglect as is required by the Child Care Act.
- To support and promote legislation protecting the rights of child offenders.

The policy further articulates a number of principles:

- *Accountability:* The department shall comply with all relevant legislation, policies and regulations aimed at the development and protection of child offenders.
- *Availability and accessibility:* Child offenders shall have access to available child friendly resources and services relevant for their physical, emotional, intellectual, spiritual and social development. Services shall be made available to child offenders at all correctional centres.
- *Restoration of family ties and social re-integration:* The involvement of the parents, family or community in the preparation of the child offender for reintegration shall be encouraged early in the rehabilitation process. Services shall accommodate the reintegration and restoration of family relationships. Services and programmes shall be rendered to promote social justice and reintegration of child offenders into the community.
- *Parental involvement:* The right of parents to be informed about any action or decision taken in matters concerning the child shall be taken into consideration.
- *Protection:* The incarceration of children shall be regarded as the last resort, in accordance with the Constitution and the White Paper on Corrections. Upon incarceration, the child offender shall be kept separately from the adult offenders. Child offenders shall be protected from exploitation, neglect and abuse. Child offenders shall be protected from child labour, or any work that put their lives in danger or at risk. Allocated manual work shall be age appropriate to facilitate skills development and training.
- *Confidentiality:* Personal information of the child offender shall be protected and treated with necessary levels of confidentiality. No part of the child offenders' information shall be disclosed to family, victims and other professionals without the consent of the child offender.
- *Children's rights:* The rights of the child shall be taken into consideration in all accounts. Special attention shall be given to children with disabilities to ensure that they are treated humanely.
- *Acceptance:* Child offenders shall be accepted as individual human beings with special needs and the potential to change.
- *Participation:* Child offenders shall be given an opportunity to participate in activities intended for their protection, care and development.
- *Quality services:* The department shall strive to render effective, efficient, relevant, prompt and sustainable services to child offenders. Services shall be rendered competently and according to the set standards. There shall be need-based assessment process to detect the developmental needs of the child offender. Child offenders shall receive family-centered interventions that seek to strengthen the development and capacity of the child within the family system.
- *Empowerment:* There shall be capacity building to equip personnel with appropriate skills to meet the required standard of service delivery in addressing the needs of child offenders.
- *Partnership:* The department shall liaise with external service providers to promote personal development, well-being and correction of the offending behaviour of child offenders. Services to child offenders will include the involvement of NGOs, CBOs in preparation for their release into the community as responsible and law abiding citizens.⁵⁸

⁵⁶ Copies of the full policy and the executive summary are on file with the authors.

⁵⁷ Department of Correctional Services (undated) Policy on child offenders - Executive Summary, p. 4.

⁵⁸ Department of Correctional Services (undated) Policy on child offenders - Executive Summary, p. 4.

Results

Based on information available in the public domain it is difficult to assess the extent to which the DCS is able to implement the Policy on Child Offenders described above.

According to information presented to Parliament by the DCS, it renders a number of “therapeutic programmes to child offenders in terms of their identified needs”. According to this information a total of 1 674 sentenced child offenders were involved in Social Work Services and programmes from April to December 2010.⁵⁹ A breakdown of this is provided in Table 25 below. It must be assumed that some children benefited from more than one programme and from the available data it is not clear how many children participated in each of the programmes listed in Table 25.

Table 25

PROGRAMMES AND SERVICES PRESENTED	TOTAL CHILDREN
Life Skills, Supportive services, Family Care, Crime Prevention, Placement Preparatory, Alternative Placement, After Care Services, Substance Abuse and Sexual Offender Programmes.	532
Substance Abuse, Family Care, Support Services, Assessment, Crime Prevention, Sexual Offender Programme, Youth Resilience Programme, Placement Preparatory, Reconstruction Services, Life Skills, Family Care and Anger Management.	475
HIV& AIDS Awareness, Substance Abuse, Family Care, Support Services, Assessment, Crime Prevention, Sexual Offender Programme, Youth Resilience Programme, Placement Preparatory, Reconstruction Services, Life Skills, Family Care and Anger Management, Crime Prevention Awareness Campaign Community Project.	667
Total	1674

The DCS also reported to Parliament that external services providers also render services and programmes to children. The following social work services programmes are available to sentenced child offenders: Life Skills; Anger management; Substance Abuse; and an Orientation Programme, and Sexual Offender Treatment.⁶⁰ It was furthermore reported that the following individual interventions are available to sentenced child offenders: Counselling; Trauma debriefing; Supportive services; Marriage and Family Care; Placement preparation; and HIV and AIDS counselling (support services to the affected).⁶¹ The following correctional programmes are, according to the DCS, also available: Pre-Release; New Beginnings; Cross Roads; Sexual Offences Programme; Anger Management; Substance Abuse; Orientation on Restorative Justice; and Behaviour Modification on Gangsterism.⁶² While the DCS reported that the above programmes are available, very few of the children interviewed indicated that they had participated in any of these programmes and only a limited number were identified. A closer investigation may reveal more results.

Preparation for release

The children interviewed were asked if they participate in education and training, therapeutic programmes, and also if they have access to recreational programmes. Despite the low number of children in South African prisons and the duties placed on the DCS to provide education, training, and therapeutic services to children in prison, the overall impression is that practices are extremely varied. This ranges from a well-developed school and other supportive interventions at Brandvlei Youth to literally no services at Port Elizabeth (North End).

Based on the interview data it appears that certain categories of children are excluded from access to education. Firstly, unsentenced children do not have access to education even though the Correctional Services Act requires that they should have if of compulsory school-going age. Secondly, from Brandvlei it was reported that sentenced inmates with further charges are not permitted to attend school as they pose a security risk and the school building is less secure than the lock-up section. Thirdly, at Emthonjeni it was found that children in the “Special Needs Section” are also excluded from education. Fourthly, from Pollsmoor it was reported that only children serving sentences longer than two years are allowed to attend education programmes. These exclusions are not permitted by the Correctional Services Act or any other legislation and are a violation of the right to basic education articulated in section 29(1) of the Constitution.

There is little doubt that the ample idle time that children have in prison affords them the opportunity for introspection and this has reportedly had some positive consequences, as articulated in the following responses:

I have lots of time to think because nothing happens in my section, no programmes, no school. So I feel ready to leave here now, but I don't feel like I am being rehabilitated here in prison. I don't do anything. (Sam, age 16)

⁵⁹ Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 61.

⁶⁰ Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 62.

⁶¹ Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 62.

⁶² Department of Justice and Constitutional Development (2011) *Annual report on the implementation of the Child Justice Act, 2008 (Act No 75 of 2008)*. Pretoria. p. 63.

I think so. Even though I don't like it here, there is lots of time to think about things and my family. It makes me want to go home and behave better this time. (Simba, age 17)

A small number of the children interviewed attended school in prison, but some were not entirely satisfied with the quality of education they were receiving, as described below:

I'm in school but would have preferred some technical training like plumbing or welding. (Fikile, age 17)

I don't really like school here, so I look forward to going back to a proper school. I'm ready to go home. I am a different person now. (Nathi, age 17)

I think I am ready to go back to the community now. I get out on parole next month and I look forward to going back to school. I hate the school here. It's not like 'real' school. They don't teach the same things. (Joe, age 16)

There appears to be a range of other programmes available to sentenced offenders, such as anger management, substance abuse, restorative justice and sex offender programmes. It was, however, not within the scope of this survey to assess the quality of these programmes.

A number of the children interviewed admitted that they belong to one of the number gangs, even when gang activities are strictly prohibited at some facilities (e.g. Brandvlei). Whether these children fully comprehend the nature of gang membership is debatable and no programme was identified that deals specifically with gang membership and how to extricate oneself from the duties imposed by gang membership, as illustrated in the following excerpt:

Interviewer: Do you feel like you will be ready to go back into the community? Back to [name of community]?

Donald: Yes. Now I see if I change I will never be back here. It's wrong to be here. It makes me sad to be here I feel like I could cry sometimes. I must not come back.

Interviewer: And what about the gang, the 26s. What will happen with that when you get back to the community?

Donald: No its fine they will help me.

Interviewer: They will leave you alone?

Donald: Yes. I won't work for them anymore.

Interviewer: They won't hurt you?

Donald: No.

Interviewer: Why do you say that?

Donald: Because they can see now that I am changing - they don't force you to go work for them anymore.

The survey data found that of the centres dealing with the release of sentenced children 63% reported that there is a structured release preparation programme in place and 31% stated that there was not. The responsibility for this programme seems to rest with the Case Intervention Officer and the programme appears to run over a few days. Senior officials interviewed appeared to lack knowledge and insight into the programme content. When it was enquired about the content of the release preparation programme, the following responses indicate the range of understandings of what the release preparation programme content focuses on:

- Crime management, problem solving, drug abuse, sexual offence programme, life orientation, life skills.
- Good behaviour, refrain from drugs, smoking, smuggling, assault, stealing others' property and cross roads and decision making
- Different officials contribute to the content but he [official being interviewed] was unsure. They also do address confirmation through Community Corrections.
- Life skills; rehabilitation; reception; restorative justice.
- How to find work. How to behave during parole. How to use a bank [ATM].
- A general preparation for reintegration into society. The onus then lies with parent / guardian and the inmate for social involvement.
- Substance abuse, new beginnings cross-roads and management of conflict.
- Those who are nearing their release date are able to attend a range of 'programmes' aimed at sustaining a 'crime free' life. These include how to draft a CV, attend a job interview, look for jobs, substance abuse programmes, and anger management.
- Key issues that will help the inmate to be a better person, to develop their sense of social responsibility and promoting the general development of inmates.
- How to behave when they are back in the community.



CONCLUSION

The report demonstrated that even with limited resources that a fairly comprehensive view can be obtained of children in the prisons system as guided by the relevant Unicef indicators. The methodology used here will therefore enable the DCS to submit the necessary information in respect of South Africa's periodic report required under Article 44(1) of the UN Convention on the Rights of the Child. By using different data sources of both quantitative and qualitative in nature, the validity and reliability of findings are increased.

It has also been shown that while the DCS MIS provides in general excellent information on the management and profile of inmates, that there are a few areas requiring improvement in order to meet the requirements of the Unicef indicators. Compared to other government departments in the criminal justice cluster, the DCS has a well established system and making amendments to the current MIS should not present insurmountable problems. Record-keeping in the other departments (e.g. Social Development and Justice) is more problematic and it remains an evasive goal to have an integrated electronic case flow management system that would be able to track cases and extract quantitative information. In respect of other custodial facilities (i.e. Child and Youth Care Centres) it may indeed be of benefit to the DSD to investigate the possibilities of adopting the DCS MIS in respect of inmate management.

While the overall number of children in prisons in South Africa has shown a rapid decline since 2003, there remain a number of issues raising concerns.

Firstly, there appears to be varied and inconsistent practices across the different centres surveyed in respect of nearly every service and activity related to children. These include, but are not limited to: information provided at admission, orientation of new admissions, conditions of detention, the segregation of children from adults, access to education, access to recreation and preparation for release.

The DCS should make all efforts to identify inconsistencies in practice and bring these into line with the requirements of the Correctional Services Act, subsidiary legislation and relevant policies.

Secondly, access to basic education is a constitutional right and this right is operationalised by the South African Schools Act and the Correctional Services Act requiring that all children of compulsory school-going age (age 15 years or Grade 9) have access to basic education. It was found that unsentenced children in prison are excluded from education and further that certain categories of sentenced children are excluded from access to education, frequently on arbitrary grounds. **This situation is in urgent need of attention to bring the practice in line with legal and constitutional requirements.**

Thirdly, while some centres surveyed are indeed able to engage children actively throughout the day, the overwhelming impression is that children are sitting idle in their cells for most of the day, and even if not in their cells, **structured recreational, educational and developmental services are limited.** In this regard, it is especially **unsentenced** children who are feeling the brunt of the idle monotony of daily prison life with little to engage them in constructive and meaningful activities. It is frequently stated by the DCS that these children are unsentenced and can thus not have access to rehabilitation services. While this may be the case, this does not exclude them from general educational, developmental and recreational services. This argument is further augmented by the claim that unsentenced children are "here today and gone tomorrow". This research found that unsentenced children spend on average 70 days in DCS custody. This is a considerable period in a child's life and should be used to their benefit. The DCS and its partners should make all efforts to ensure that **all children**, and unsentenced children in particular, are engaged in an active day programme that would contribute to their general development.

Fourthly, the exclusion of children serving sentences of less than two years from certain programmes and education in general must be regarded as a gross violation of their right to education and development. In 2008 the Correctional Services Act was amended and subsequently required that only offenders serving a sentence of longer than 24 months need to have a sentence plan. In practice it now appears that, at least at some centres this is also understood to mean that if there is no sentence plan then there is no access to education. This provision in the Act makes **no distinction between adults and children** and may indeed be in conflict with the Constitution. This was an extremely unfortunate amendment and the implication is that a child has to commit a more serious offence and thus receive a longer sentence in order to gain any benefits from the services rendered by DCS.

Fifthly, the Correctional Services Act requires in section 19(3) that the DCS should take all reasonable steps to ensure that **children remain in contact with their families through additional visits and by any other means**. Little evidence was found of this. Children are responsible for their own telephone cards and, generally, stationery to write letters. It was shown that providing phone cards to all children is affordable to the authorities and the provisioning of stationery and covering postage should be an **absolute minimum form of support**.

Lastly, it was found that the overwhelming majority of DCS officials working with children have received **no training to work with children in custodial settings**. Working with children in prisons, requires a particular level of skill and expertise and it cannot be assumed that the basic training provided by DCS is sufficient to provide this. DCS officials working with children should receive the necessary training in respect of legislative requirements applicable to children and on how to work with children in custodial settings.



APPENDICES

APPENDIX 1: INTERVIEW SCHEDULE FOR CHILDREN IN CORRECTIONAL CENTRES

4 Time spent in detention by children before sentencing.

- [UNSENTENCED] How long have you been in custody now?
- [UNSENTENCED] Have you applied for bail?
- [UNSENTENCED] Upon admission, were you informed that you are entitled to legal representation?
- [UNSENTENCED] What information regarding legal representation was given to you?
- [UNSENTENCED] Do you have a legal representative?
- [UNSENTENCED] What does your daily programme look like?
- [UNSENTENCED] When you were admitted to the correctional centre, were your rights and the rules of the centre explained to you? If so, did you understand it?

7 Percentage of children in detention not wholly separated from adults.

- [BOTH] Do you have any contact with the adult prisoners? [Check hospital, visitors' area, and vehicles to court].
- [BOTH] Are the children here ever bothered by adult prisoners?
- [BOTH] Do the smaller children get bullied by the older ones?

8 Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months.

- [BOTH] Do you have regular contact with your family?
- [BOTH] How often do they visit?
- [BOTH] How often do you call them on the phone?

12 Existence of a system guaranteeing regular independent inspection of places of detention.

- [BOTH] Do you know the Independent Visitor at the centre?
- [BOTH] Do you use the Independent Visitor when you have a problem?
- [BOTH] Are you able to speak to the Independent Visitor in private without warders listening in?
- [BOTH] Do you trust the Independent Visitor?

13 Existence of a complaints system for children in detention.

- [BOTH] How do the officials treat you in general?
- [BOTH] Do you feel free to lodge complaints about issues that bother you or if you have a problem?
- [BOTH] Do you use the G365 requests and complaints procedure ("Klagtes en Versoeke")?
- [BOTH] What has been your experience when you complain to a staff member about something?
- [BOTH] If you have a problem, is there someone you can speak to?

14 Existence of a specialised juvenile justice system.

- [BOTH] How did/do you experience the court process and your trial?
- [BOTH] Did/do you understand what was going on?
- [BOTH] Did someone explain to you the process?
- [BOTH] Were you seen by a social worker or probation officer?
- [SENTENCED] After you were sentenced, were you told that you can appeal the sentence and/or the conviction?

15 Existence of a national plan for the prevention of child involvement in crime.

- [SENTENCED] Do you think that you are being prepared properly to go back to your community?
- [BOTH] Are you involved in education or training?
- [SENTENCED] Is there a library that you can use?
- [SENTENCED] Are you involved in any sport?
- [BOTH] Are you able to see a religious counsellor if you want to?
- [SENTENCED] What does your daily programme look like here?
- [SENTENCED] What do you do over weekends?

APPENDIX 2: LIST OF PRISONS

1. Barberton Town
2. Bethal Centre
3. Boksburg
4. Boksburg Medium B
5. Brandvlei
6. Caledon
7. Cradock
8. Drakenstein Medium - B
9. Durban (Male)
10. Durban: Westville
11. Ekuseni Youth
12. Emthonjeni (Baviaanspoort)
13. Estcourt
14. Grahamstown
15. Grootvlei
16. Hawequa
17. Johannesburg Female
18. Johannesburg Centre A
19. Johannesburg Centre A (CI Section)
20. Kroonstad
21. Kroonstad - Centre D
22. Kuruman
23. Modderbee
24. Mosselbay
25. Oudtshoorn
26. Pollsmoor Female
27. Pollsmoor Medium A
28. Port Elizabeth - North End
29. Pretoria Local (sentenced)
30. Pretoria Local (unsentenced)
31. Qalakabusha
32. Rustenburg
33. Rustenburg
34. Sasolburg
35. St Albans
36. Thohoyandou (Female)
37. Umzinto
38. Vereeniging
39. Witbank
40. Worcester Females
41. Worcester Males

APPENDIX 3: SURVEY OF CHILDREN IN SOUTH AFRICAN CORRECTIONAL CENTRES 2011

Data Collection Tool For Independent Visitors

Name of Centre	
Name of Section where Children are Kept	
Date	
Time	
IV Name	
Head of Centre	
Head of Section	
Instructions	<ul style="list-style-type: none"> • A response must be recorded for each question. • Even if there are currently no children in the centre, all questions must be answered. • If a question does not apply, please note it as "NA"

NR	QUESTION	RESPONSE & MOTIVATION		
THEME A: Time spent in detention by children before sentencing.				
1	How are children assisted to access legal representation? (e.g. Are they informed that they are entitled to legal representation? Is the Legal Aid Board informed of their detention?)			
2	Can children consult their legal representative in private and out of earshot from warders?	YES	NO	
3	Are educational services available to unsentenced children?	YES	NO	
4	How frequently are educational services provided, e.g. every day, weekly or occasionally?			
5	Are unsentenced children of compulsory school-going age (15 years) attending education programmes or services?	YES	NO	
6	Are social work services available to awaiting trial children?	YES	NO	
7	Who renders social work services to awaiting trial children? (e.g. DCS, DSD or NGO)			
8	How frequently is a social worker available to awaiting trial children? (every day, weekly, monthly, occasionally)			
9	Are psychological services available to awaiting trial children?	YES	NO	
10	Who renders psychological services to awaiting trial children? (DCS, DoH, DSD or NGO)			
11	How frequently is a psychologist available to awaiting trial children? (every day, weekly, monthly, occasionally)			
12	What recreational services are available to awaiting trial children? (sport, games, reading, art, cultural etc)			
13	Is the available infrastructure suitable for recreational activities?	YES	NO	
14	Who is responsible for and facilitates recreational activities?			
15	How many unsentenced children have engaged in recreational activities in the past month?			

NR	QUESTION	RESPONSE & MOTIVATION		
16	How many children have in the past month benefitted from social work services?			
17	How many children have in the past month benefitted from psychological services?			
18	What is the average amount of time per week that unsentenced children are engaged in recreational activities?			
19	Does the centre have classrooms?	YES	NO	
20	Does the centre have a library?	YES	NO	
21	Does the centre have a multi-purpose hall?	YES	NO	
22	Does the centre have a sports field?	YES	NO	
23	Is there sports equipment available for awaiting trial children?	YES	NO	
24	Is there a consultation room for children to speak to the social worker/ psychologist/lawyer or legal representative?	YES	NO	
25	Available floor space per inmate in cell per current occupation [Select a communal cell or single cell where children are held awaiting trial.]	Length of cell in metres		
		Width of cell in metres		
		Number of children in cell		
26	Available cubic space per inmate in cell per current occupation	Length of cell in metres		
		Width of cell in metres		
		Height of cell in metres		
		Number of children in cell		
27	Number of days in the past 30 days that the cell was occupied above capacity.			
28	The cell is clean, well ventilated, free of odour and insects.	YES	NO	
29	Number of days in past 30 days that section was without clean drinking water			
30	Number of days in past 30 days that section was without hot water.			
31	Percentage of inmates who are without a bed and mattress.			
32	Percentage of inmates who are without at least one blanket and two sheets.			
33	Natural light is sufficient to read by (at that time of the year)	YES	NO	
34	Number of evenings in past 30 days that cell was without artificial light after sunset			
35	Ratio of inmates per functioning amenity in cell: Toilet			
36	Ratio of inmates per functioning amenity in cell: Urinal			
37	Ratio of inmates per functioning amenity in cell: Basin			
38	Ratio of inmates per functioning amenity in cell: Shower			
39	Ratio of inmates per functioning amenity in cell: Rubbish bin			
40	Ablution facility is screened off from rest of cell and entrance to cell			
41	Average number of hours per day in the past 7 days that the inmates of this cell were allowed out for outside exercise.			
42	Percentage of windows that are not in full working order (broken cracked panes; hinge & latch not working)			

NR	QUESTION	RESPONSE & MOTIVATION		
43	Have the staff working with awaiting trial children received any training to work with children? If so, who provided this training?	YES	NO	
THEME B. Number of child deaths in detention				
44	Are mandatory reports complied with in respect of deaths, use of force and mechanical restraints as these apply to children?	YES	NO	
45	Are children assessed by a nurse or doctor upon admission	YES	NO	
46	Does the assessment cover physical health, mental health, substance abuse and disabilities/vulnerabilities?			
47	Is the Dept of Social Development informed when a child is admitted to the centre?	YES	NO	
48	Is there high/medium/low levels of gang activity amongst the children?			
49	Does the centre have a problem with contraband coming in (drugs, weapons, cell phones etc)?	YES	NO	
50	Have staff working with children received any training on suicide prevention, conflict resolution, child protection etc)?	YES	NO	
51	Is there a register in place for recording communicable diseases?	YES	NO	
52	Is there a register in place for recording reportable diseases?	YES	NO	
	Percentage of children in detention not wholly separated from adults.			
52	Does the infrastructure (cells, open areas, hospital, recreational areas etc) ensure complete separation between adults and children at all times?			
53	Do the vehicles ensure complete separation between adults and children at all times?	YES	NO	
Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months.				
54	Is there a register available to record visits by family members to children in custody?	YES	NO	
55	Are there any children who have not received any visits in the past three months? If so, how many out of total?	YES	NO	
56	Is the infrastructure for non-contact visits suitable and in good functioning order?	YES	NO	
57	Is the infrastructure for contact visits suitable and in good functioning order?	YES	NO	
58	Are there sufficient working telephones in the section for the number of children in custody there?	YES	NO	
59	Are children supplied with paper, envelopes and pens to enable them to write letters?	YES	NO	
60	Are children supplied with telephone cards/free access to a telephone?	YES	NO	
61	Are there any special events arranged for families of child prisoners e.g. family day?	YES	NO	
Percentage of sentenced children receiving a custodial sentence.				
62	How does the DCS assist sentenced children with appealing their sentence and/or conviction? (e.g. Are children informed that they can appeal their sentence and/or conviction? Are they informed that they must appeal within certain time limits?)			
63	How many sentenced children appealed their sentences or convictions in 2010?			

NR	QUESTION	RESPONSE & MOTIVATION		
		YES	NO	
64	Are there any sentenced children in custody for longer than 30 days who have not yet been assessed?	YES	NO	
65	Are there any sentenced children in custody for longer than 60 days who do not yet have a sentence plan?	YES	NO	
66	How frequently are educational services provided, e.g. every day, weekly or occasionally?			
67	Are sentenced children of compulsory school-going age (15 years) attending education?			
68	Are social work services available to sentenced children?	YES	NO	
69	Who renders social work services to sentenced children? (e.g. DCS, DSD or NGO)			
70	How frequently is a social worker available to sentenced children? (every day, weekly, monthly , occasionally)			
71	Are psychological services available to sentenced children?	YES	NO	
72	Who renders psychological services to sentenced children? (DCS, DoH, DSD or NGO)			
73	How frequently is a psychologist available to sentenced children? (every day, weekly, monthly , occasionally)			
74	What recreational services are available to sentenced children? (sport, games, reading, art, cultural etc)			
75	Is the available infrastructure suitable for recreational activities?	YES	NO	
76	Who is responsible for and facilitates recreational activities?			
77	How many sentenced children have engaged in recreational activities on the past month?			
78	How many children have in the past month benefitted from social work services?			
79	How many children have in the past month benefitted from psychological services?			
80	What is the average amount of time per week that sentenced children are engaged in recreational activities?			
81	Does the centre have classrooms?	YES	NO	
82	Does the centre have a library?	YES	NO	
83	Does the centre have a multi-purpose hall?	YES	NO	
84	Does the centre have a sports field?	YES	NO	
85	Is there sports equipment available for sentenced children?	YES	NO	
86	Is there a consultation room for children to speak to the social worker/ psychologist/lawyer or legal representative?	YES	NO	
87	Available floor space per inmate in cell per current occupation. [Select a cell that is held for holding sentenced children.]	Length of cell in metres		
		Width of cell in metres		
		Number of children in cell		

NR	QUESTION	RESPONSE & MOTIVATION		
88	Available cubic space per inmate in cell per current occupation	Length of cell in metres		
		Width of cell in metres		
		Height of cell in metres		
		Number of children in cell		
89	Number of days in the past 30 days that the cell was occupied above capacity.			
90	The cell is clean, well ventilated, free of odour and insects.	YES	NO	
91	Number of days in past 30 days that section was without clean drinking water			
92	Number of days in past 30 days that section was without hot water.			
93	Percentage of inmates who are without a bed and mattress.			
94	Percentage of inmates who are without at least one blanket and two sheets.			
95	Natural light is sufficient to read by (at that time of the year)			
96	Number of evenings in past 30 days that cell was without artificial light after sunset			
97	Ratio of inmates per functioning amenity in cell: Toilet			
98	Ratio of inmates per functioning amenity in cell: Urinal			
99	Ratio of inmates per functioning amenity in cell: Basin			
100	Ratio of inmates per functioning amenity in cell: Shower			
101	Ratio of inmates per functioning amenity in cell: Rubbish bin			
102	Ablution facility is screened off from rest of cell and entrance to cell			
103	Average number of hours per day in the past 7 days that the inmates of this cell were allowed out for outside exercise.			
104	Percentage of windows that are not in full working order (broken cracked panes; hinge & latch not working)			
105	Have the staff working with awaiting trial children received any training to work with children? If so, who provided this training?			
Percentage of children released from detention receiving aftercare.				
106	What services are rendered to children placed on parole or correctional supervision?			
107	Who renders these services?			
Existence of a system guaranteeing regular independent inspection of places of detention.				
108	How many times has the section(s)/centre for children been inspected by the DCS Inspectorate in the past year?			
109	How many hours has an Independent Visitor spent in the section for children at the correctional centre in the past month?			
110	Has the section(s) for children been visited by a doctor in the past three months?	YES	NO	
111	Has the section(s) for children been visited by a magistrate in the past six months?	YES	NO	
112	Has the section(s) for children been visited by a judge in the past six months?	YES	NO	
113	Was a report on the visit (by judge, magistrate, doctor) submitted to the Head of Centre?			

NR	QUESTION	RESPONSE & MOTIVATION		
114	Has any of the above types of visits, if they took place, had a positive impact on the centre and the treatment of children?			
Existence of a complaints system for children in detention.				
115	Are there any structures in place to prevent the development of conflict/problems/frustrations? (e.g. inmates' committee)	YES	NO	
116	Are there any unresolved complaints lodged with the Independent Visitor 3 months ago or more?	YES	NO	
117	Are there any unresolved complaints lodged on the G365 more than 3 months ago?	YES	NO	
118	Is there a mechanism in place for parents/family of children to lodge complaints?	YES	NO	
119	Is there a register in place recording all disciplinary actions taken against children?	YES	NO	
120	Were any children placed in segregation as a result of a disciplinary process?	YES	NO	
Existence of a specialised juvenile justice system.				
121	Has the staff been trained on the new policies regarding children?	YES	NO	
122	Has the staff received training to work with children?	YES	NO	
123	Are staff working with children permanently assigned to the unit?	YES	NO	
124	Has the Independent Visitor received training on working with children?	YES	NO	
125	What type of orientation do children receive upon admission to the centre?			
126	What information is provided to children upon admission?			
127	Is there a structured orientation programme used when children are admitted?	YES	NO	
Existence of a national plan for the prevention of child involvement in crime.				
127	Is there a release preparation programme specifically for children?	YES	NO	
128	What is the content of this programme?	YES	NO	
129	Have the staff working at the centre received training on sexual victimisation?	YES	NO	
130	Have the staff working at the centre received training on anti-bullying?	YES	NO	

APPENDIX 4: CONSENT FORM

Civil Society Prison Reform Initiative, Community Law Centre University of the Western Cape

I, _____ hereby agree to participate in the research conducted by the Civil Society Prison Reform Initiative entitled "Survey of children detained in South African Prisons".

I have received a briefing on the project and understand the purposes and methods of the research.

I have been given the opportunity to ask any questions regarding the project before consenting to it.

I agree to participate in an individual interview with the researcher.

I reserve the right to withdraw from the project at any stage.

I was given the assurance that my identity will be protected and not made public without my consent in writing.

I do not expect any form of payment or other direct benefit from my participation in this project.

I have been provided with the contact details of the Director of the Community Law Centre in the event that I wish to lodge a complaint or raise any other matter related to the way in which the research is conducted. I understand that should I lodge a complaint, this will hold no negative consequences for me.

NAME (PRINT)

SIGNATURE

_____ 2011
DATE

APPENDIX 5: INFORMATION SHEET

SURVEY OF CHILDREN DETAINED IN SOUTH AFRICAN PRISONS

The Community Law Centre at the University of the Western Cape is conducting research on children being held in prisons in South Africa. This research is aimed at collecting quantitative and qualitative information on children held in prisons. A child is defined as a person under the age of 18 years.

The research will focus on, but is not limited to:

- investigating the legislative and policy framework pertaining to children in correctional centres with particular reference to the Correctional Services Act and the Child Justice Act;
- the conditions under which children are detained;
- services rendered to sentenced and unsentenced children in correctional centres;
- statistics on children in correctional centres in respect of age, gender, race, sentence profile, offence profile, and geographic distribution; and
- jurisprudence pertaining to the incarceration of children.

The research aims to update a 1997-report produced by the Community Law Centre with current information. Information will be collected from three sources:

- the management information system of the Department of Correctional Services;
- individual interviews with children detained in prisons,
- the available literature on children in prisons, including applicable court decisions.

The findings of the research will be published and disseminated to stakeholders. All children who participate in the project (i.e. through individual interviews) will do so voluntarily and remain anonymous. This project has been approved by the Research Ethics Committees of the Department of Correctional services and the University of the Western Cape.

Should you require any further information regarding this project or wish to lodge a complaint about the manner in which it is being done, you should contact the persons identified below.

<p>Mr. Lukas Muntingh PROJECT COORDINATOR</p> <p>Civil Society Prison Reform Initiative Community Law Centre University of the Western Cape Bellville, 7535</p> <p>Tel: 021 959 2950 Fax: 021 959 2411 E-mail: lmuntingh@uwc.ac.za</p>	<p>Prof Nico Steytler DIRECTOR: COMMUNITY LAW CENTRE</p> <p>University of the Western Cape Bellville, 7535</p> <p>Tel: 021-959 2950 Fax: 021-959 2411 E-mail: nsteytler@uwc.ac.za</p>
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