

ARTICLE 40

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

Volume 5 - Number 1 - March 2003



Article 37(b)

"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."

Public hearings by the Justice and Constitutional Development Portfolio Committee on the Child Justice Bill

By Godfrey O Odongo

Introduction

February 20th 2003 marked the beginning of the departmental briefings and public hearings by the Justice and Constitutional Development Portfolio Committee on the Child Justice Bill. In the days that followed, the Committee considered both oral and written submissions from NGOs, individuals, experts and children. The submissions were either in support of the various provisions of the Bill or proffered various alternatives to contentious provisions. The government departments of Justice,

Social Welfare, Education, Police and Correctional Services all presented their views on the Bill with an emphasis on the feasibility of the provisions, the practical constraints they envisaged and the plans put in place for implementation. The report on the Bill's costing was also considered.

The Committee resumed its hearings from 10 to 14 March, when it engaged in discussions with the legal drafters from the Department of Justice and Constitutional Development on the technical aspects of the provisions.

The general issues during the hearings

Overall, while retaining the Bill's main thrust on protecting the rights of the child in trouble with the law, in line with the Constitution and international law, the Committee's emphasis was also on the need for a law that is feasible and affordable. Beyond this pragmatic concern, the difficulties that exist in the attempt to balance the rights of the child in the justice system against the political imperatives of crime control featured prominently.

The Committee also remained alive to the fact that all the provisions of the proposed law should be in conformity with the provisions of the Constitution.

Diversion and other restorative justice proposals

Generally, all those making submission supported the Bill's provisions on diversion. However, a number of issues that came to light included the constitutionality of diversion, particularly in relation to serious offences.

In the attempt to provide for diversion programmes in legislation, it was noted that this process must involve a balance between the rights of the child on the one hand and the rights of victims on the other. The Committee raised the question of whether diversion is appropriate as a general rule for all cases. The desirability of excluding certain categories of offenders from the possibility of diversion was examined. This was particularly in relation to the more serious offences, where it was widely felt by the Committee that the exclusion of the process of a full criminal trial would not be proportional to the gravity of these offences. It is thus a possibility that the final Bill will reflect provisions totally excluding certain categories of serious offences from the purview of diversion while retaining the discretion of the prosecutor to divert certain other matters.

At a practical level, the Committee emphasised the need for enhanced monitoring mechanisms to measure the success or failure rates of diversion and restorative justice programmes. This was quite separate from the need for standard guidelines on the content of programmes.

Age and criminal capacity

The Bill's provision that increases the minimum age of criminal capacity from the age of seven to ten years was considered potentially contentious. The Committee required an explanation for the decision to fix this age at ten years. Because of the political ramifications of the issue and the lack of a clear-cut age under the CRC and the Beijing Rules, the issue of age and criminal capacity is not an easy one. Both instruments require only that States must set a minimum age of criminal capacity, and that such age must not be so low as to disregard the level of a child's emotional, mental and intellectual maturity.

Civil society's response in this regard found support in the views of the CRC's Committee on the Rights of the Child, which has consistently criticised countries with a minimum age fixed at less than ten years. More compelling to the Portfolio Committee was the submission by one of the individual experts, who brought statistical evidence that tended to cogently illustrate that a relatively low proportion of children aged between seven and 13 years are actually arrested, tried and convicted in criminal courts. Evidence that other jurisdictions of comparative standing to South Africa had similarly raised the minimum age to that of ten years or more also seemed instructive.

Other specific issues

A number of other issues were also prominent in the debates during the public hearings. These included the blanket provision prohibiting the imprisonment of children under the age of 14 years (clause 69(1)). In this regard, the Committee has asked for statistics to justify the inclusion of this provision and evidence of examples from other jurisdictions of compar-

ative standing.

The next issue was the Committee's recognition of the need for expedited trials, which lies behind the provision that calls for the release of an accused child who has been placed in detention for six months (or more) before the conclusion of a trial (clause 58 (3)). The Committee remained concerned with situations where the delay in proceedings is not the State's fault.

The Committee drew attention to the possible unintended consequences of the provision on the separation of trials where a child offender is co-accused with an adult offender (clause 57). It was noted that this provision might lead to the violation of the due process rights of both the adult accused and the child offender in so far as the application of different criminal and evidentiary procedures for the separated proceedings was concerned.

Conclusion

While we await the outcome of the debates by the Committee on the above and many other issues, it is clear that a number of the provisions of the Bill will be changed in line with the deliberations before the Bill is debated by the National Assembly. It is, however, heartening to note that the essential core elements of the Bill, namely assessment, diversion, the preliminary inquiry and alternative sentences, appear to have been accepted by the Committee as processes ensured at providing children with a legal framework to protect their rights.

The Committee resumes later in 2003 for the conclusion of the discussions with the legal drafters on the technical aspects of the few provisions not yet considered (Chapters 9 to 13), as well as for the consideration of the revised draft.

EDITORIAL

The first few months of 2003 brought with them the long-awaited public hearings on the Child Justice Bill before the Justice and Constitutional Development Portfolio Committee. This issue examines some of the debates and submissions that emerged from the hearings and the departmental briefings to the Portfolio Committee. In addition, we feature some reactions to the proceedings from children who attended the public hearings.

Nicro's submission to the Portfolio Committee included some statistical analyses. The Committee was informed that in 2002:

- 170 000 children were arrested countrywide;

- 85% of these arrests were for property offences, and
- the number of children who were being arrested has grown at a rate of 16% since 1999.

We provide some more statistics compiled by Nicro on aspects of the child justice system.

Some of the pivotal provisions in the Child Justice Bill are centred around assessing and determining a child's age. It is therefore fitting that our review of recent cases has revealed a matter involving the determination of the age of the child accused. It is clear from this example what serious consequences an age determination has, as the child in question was charged

with an offence that fell into the minimum sentences category, which applies to children aged 16 and 17 years.

The article on conditions of children in custody in Lesotho brings the brutal realities of children who are institution-alised to the fore. It emphasises the need to ensure that minimum standards for the treatment of children are set, disseminated to those working with children, and adhered to.

We include a letter to the editor on the plight of a young Tibetan child, dubbed the "world's youngest political prisoner". We encourage our readers' participation in *Article 40*, and again call for written comments and information on child justice issues.

LETTER TO THE EDITOR

I am writing from the University of Natal Durban. I thought it may be of interest for you to learn about the "Youngest Political Prisoner" in the world. He is a young Tibetan boy who, since 1995, has been held incommunicado by the government of China.

On 27 April this year, South Africans will be celebrating Freedom Day, followed by World Children's Day on 28 April. While we are all concerned about the innocent children of Iraq suffering the horrors of war, let us not forget a young Tibetan boy who has endured eight years of intense psychological torture and bondage at the hands of the Chinese government.

Gedhun Choekyi Nyima, who was born in Tibet in 1989, was kidnapped along with his parents by the Chinese authorities after

being proclaimed the 11th Panchen Lama by the exiled Dalai Lama in 1995. Since then, Gedhun Nyima has lived under house arrest, isolated from the world and deprived of all the rights of a normal childhood.

Where are the cries of concern for this boy by the peace activists? Where is the condemnation by the media of the mistreatment of this child and of the Chinese authorities' ongoing refusal to allow any international humanitarian or human rights group to ascertain the boy's welfare? Where are the prayer vigils by faith-based organisations? Where is the outcry from children's rights organisations?

On the morning of 25 April, when Gedhun Nyima turns 14, remember him, as he will have no other children with whom to celebrate his birthday. When we celebrate

Freedom Day, let us remember the young Panchen Lama and the people of Tibet, who have no freedom or international voice. On the morning of 28 April let us call to mind all those young Tibetan children who flee on foot every year across the freezing, treacherous Himalayan mountain passes in the hope of freedom in exile. And let us remember daily the thousands of children inside Tibet who have no rights, simply because they are Tibetans.

If you are interested in receiving more information please contact me.

Yours

Renato Palmi

Media/Resource Consultant

University of Natal Durban

Tel: (031) 260-2975

Cell: 083 943 0235

E-mail: palmir@nu.ac.za

(This letter has been shortened – Editor.)

Age determination considered by High Court

S v Mbelo 2003(1) SACR 84 concerned a matter that frequently bedevils child justice practitioners, both from a justice perspective and from the point of view of social development. This is the question of determining the age of young people who are in conflict with the law. As is often the case, this was indeed a material issue in *Mbelo's* case. The accused had been convicted on a plea of guilty for the rape of a 14-year-old girl, a conviction that could render him subject to the prescribed sentences provided for in the Criminal Law Amendment Act, No 105 of 1997. Two ages were relevant: the alleged age of the victim (since a prescribed life sentence applies where a rape victim is aged under 16 years) and the age of the convicted child offender (allegedly 17 years old), since the sentences prescribed by Act 105 of 1997 do not apply in respect of a child offender who was under the age of 16 years at the time of the commission of the relevant offence.

Hearsay evidence

As regards the age of the victim, the accused's legal representative admitted that the child victim was 14 years old as part of the written explanation of plea furnished to the court in terms of section 112(2) of the Criminal Procedure Act. In addition, a baptismal certificate confirming her age was submitted to the court. (It is worthy of note, though, that the baptismal certificate was handed in as an exhibit as part of an agreement between the State and the legal representative). Noting that where the determination of age is of material

importance and hearsay evidence is inadmissible, the court was of the view that "a baptismal certificate is not sufficient proof of age".

Similarly, the age of the accused was established during the plea proceedings by questioning the accused himself as to his age and by asking the father of the accused to confirm this. The information furnished by both the accused and his father was untested (ie not given under oath), and hence did not constitute evidence. The accused's baptismal certificate was also entered into the record as an exhibit by agreement, with the attorney confirming the contents of the certificate and, finally, the age of 17 was confirmed in a probation officer's pre-sentence report. The probation officer, however, ascertained the information from the accused himself, and admitted that she did not have documentary proof to support his assertion.

The court again found that a baptismal certificate is hearsay, and is not sufficient proof of age where age is a material issue in the case. Also, the information contained in the probation officer's report relating to the accused's age was viewed as "nothing other than hearsay". In short, it might appear at first glance that neither the victim's nor the accused's ages were sufficiently proven.

Admissions by the legal representative

However, the accused's legal representative had made admissions conceding the truth of the alleged age on behalf of the accused. As with any other admission, an

accused would be bound by admissions properly furnished on his or her behalf by a legal representative, more especially when the correctness of the admissions has been further confirmed on enquiry from the accused.

This case is not merely relevant in so far as the finding that admissions concerning the ages of both accused and victim may properly be made by defence counsel. Rather, its importance lies in the warning that baptismal certificates may not be regarded as sufficiently weighty to provide adequate proof of age where this is necessary for a key aspect of the case (eg which sentencing provisions apply). The Child Justice Bill, No 49 of 2002, which is currently being debated by Parliament, does permit the use of statements by the child, the child's parents or other persons likely to have direct knowledge of the age of the child, as well as baptismal certificates and even school reports. These can, in terms of clause 24, be utilised by the probation officer in the estimation of age, which would accompany the assessment process.

In many instances, these sources will be the only ones available to the probation officer, and certainly the Bill should not cut off access to potentially useful supplementary information. What the finding in *S v Mbelo* cautions, however, is that when a specific age becomes a material matter in juvenile proceedings, hearsay evidence may not suffice, and proper identity documents, medical assessments or judicial determinations may have to be sought.

Statistics on children under 14 years of age in prison

Professor Julia Sloth-Nielsen of the Faculty of Law, UWC and member of the National Council on Correctional Services, presented the following preliminary statistics to the Justice and Constitutional Development Portfolio Committee during the public hearings on the Child Justice Bill:

Over the five-year period from 1998 to 2003, a total of 74 children between the ages of seven (inclusive) and 14 (exclusive) years were sentenced to prison. Of these, 40 were 13 years old at time of sentencing, 18 were 12 years old and 16 were between the ages of seven and 11 years old. In 2001, a 12-year-old was sentenced to imprisonment for 0 – 6 months on a charge of reckless or negligent driving and a nine-year-old was sentenced to 0 – 6 months' imprisonment for malicious damage to property. The statistics also indicated that two girls aged 11 years were sentenced to imprisonment during this time – one in 1998 and one in 2001.

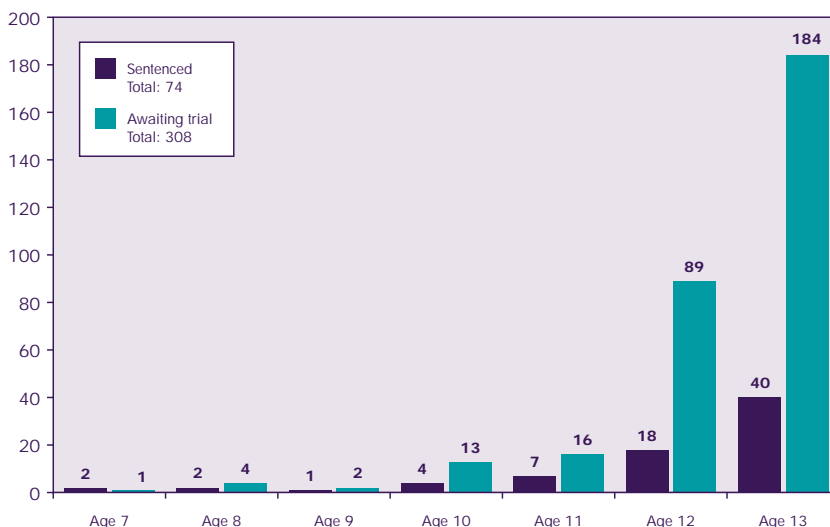
Shockingly, statistics showed children under the age of 14 years were awaiting trial in prison, in

contravention of section 29 of the Correctional Services Act, which states that only children above the age of 14 may be held in prison awaiting trial. Over the same five-year period, 89 children aged 12 were kept in prison awaiting trial, while 36 children between the ages of seven and 11 years were detained in prison awaiting trial.

The presentation to the Portfolio Committee emphasised the following points:

- Over four times more children under 14 years spend time in prison awaiting trial than serving a sentence.
- The pre-trial detention in prisons of children aged under 14 years is currently unlawful, and constitutes wrongful detention.
- The data provides strong evidence supporting raising the minimum age of criminal responsibility.
- The comparison between the figures of children awaiting trial and sentenced children shows that where convictions are recorded, alternative sentences to imprisonment are employed in the majority of cases.

Children aged 7 to 13 in prison between 1998 and 2003



Resource manual

The Children's Rights Project at the Community Law Centre is presently compiling a resource manual on juvenile justice best practices. The overall aim is to produce a resource book for use by policy-makers, non-governmental organisations and persons concerned with the implementation of juvenile justice reforms. The manual will contain chapters on the following themes:

- Introduction and international law context
- Prevention of youth crime
- Police practice
- Probation practice
- Diversion: programmes
- Diversion: community-based options
- Community and youth participation in juvenile justice
- Sentencing and alternative sentences
- Restorative justice
- Innovations and changes within child justice systems
- Reintegration
- The role of NGOs, INGOs and technical assistance.

In order to establish a comprehensive study of practices in South Africa, the Children's Rights Project requests any information on examples or case studies based on the above themes. It is thought that there is a wealth of knowledge on these practices that needs to be accessed and profiled. Any information in this regard can be forwarded to the project by contacting Jacqui Gallinetti or Julia Sloth-Nielsen at (021) 959-2950.



Children's views on the Child Justice Bill hearings

In the process of drafting the Child Justice Bill and Report on Juvenile Justice, the South African Law Commission undertook a comprehensive consultation with children. Their responses were used to shape the Bill and this was the first time that children's voices were accessed in the drafting of legislation that affects their lives. The Child Justice Alliance followed this ground-breaking consultation with further investigations into the views of children on the final Bill and the present criminal justice system. It is therefore fitting that at the public hearings on the Bill before the Justice and Constitutional Development Portfolio Committee, a group of Grade 8 pupils from a Cape Town school were present to witness part of the process of finalisation of the Bill in Parliament. The following excerpts are taken from their notes:

“This is an important Bill in South Africa which requires a great deal of attention and it was handled very well by the speakers.”

Matthew

“I am interested in human rights in general so children’s rights was a fascinating topic ... Seeing both sides giving educational points around a certain issue, such as the age a child can be arrested at, helped me form more educated opinions. I was very impressed with the people’s understanding of and sympathy for the children who are committing crimes. I think diversion programmes are a very good idea ...”

Anonymous

“I now have a clearer understanding of how children are tried in court as opposed to adults. Children can get away with a lot more than adults and receive very reduced sentences.”

Anonymous

“The visit showed me what actually happens to kids when they are arrested and what the course of the law is. It was really interesting listening to how the different members of the Committee responded to different issues and to each other.”

Jessica

“The visit was very interesting and informative. The Child Justice Bill is a relevant subject to all of us ... some more than others.”

Anonymous

“Hearing about the Child Justice Bill and the reformations made to it showed the real consequences for juvenile criminal activity. Altogether it was a rich, rewarding experience.”

Anonymous

“The Child Justice Bill has shown me how to help other kids in problem areas and to teach what kind of things could happen to them if they commit crimes ... the chairperson wasn’t biased in his whole control of the debate ...”

Sikhu

“I thought that some of the things that are going on, such as children getting tried in adult court and having to go to adult prisons, were very wrong ... It made me realise how serious the consequences of juvenile crimes are.”

Anonymous

Thank you to history teacher Debbie Yeo for organising the parliamentary visit for the learners.

Nicro's submission to the Portfolio Committee

Introduction

Nicro, commissioned by the Child Justice Alliance, has produced a compendium of statistics relating to children in conflict with the law for the period 1995 – 2001. This was presented to the Justice and Constitutional Development Portfolio Committee on 25 February 2003 in support of Nicro's submission on the Child Justice Bill.

The report reflects interesting statistics on a range of matters including arrests, assessments, diversion, children awaiting trial, prosecutions, convictions and sentencing.

Excerpts from the report indicate the following:

ARRESTS AND ASSESSMENTS

National and provincial arrest figures

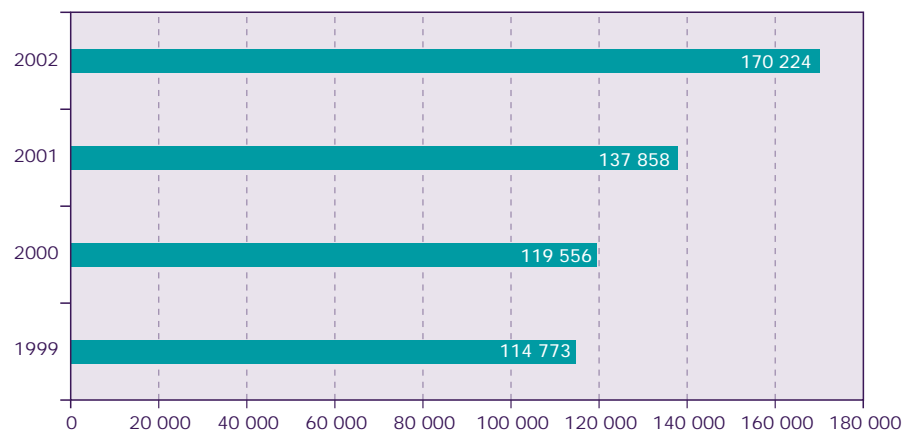
It is important to know how many children are being diverted compared with how many are being prosecuted, and to compare this with the total number of arrests in order to plan for the future devel-

opment of the system.

Figure 1 on arrests shows an increase each year in the number of arrested children. Most probably the year 2002 will also show an increase, given the trends from previous years. All the provinces showed an increase in the number of arrested children, except the Western Cape, where a decrease can be detected from 1999 to 2000 as shown in Table 1. It should also be noted that the increase in annual arrest figures is partly a

product of the continuous roll-out of the CAS system. As more police stations are linked up, more data is recorded. As can be expected, the Western Cape, Gauteng and KwaZulu-Natal account for the highest number of arrests. These three provinces, based on the figures for 2001, account for 66,2% of all arrests of children. Owing to the roll-out of the CAS system and the annual increases in the number of arrests, these figures should not be taken at face value.

Figure 1: Total number of arrests of children in 1999, 2000, 2001 and 2002



Source: SAPS Crime Information and Analysis Centre (2002).

Table 1: Children arrested per province per year for 1999, 2000, 2001 and 2002

PROVINCE	1999	2000	2001	2002	(6 months)
Eastern Cape	10 291	11 285	12 270	7 497	(14 994)
Free State	8 214	8 635	9 259	5 299	(10 598)
Gauteng	19 886	23 213	31 017	19 311	(38 622)
KwaZulu-Natal	21 647	24 235	27 275	16 072	(32 144)
Limpopo	3 277	4 495	5 864	3 916	(7 832)
Mpumalanga	4 550	5 370	6 606	4 025	(8 050)
Northern Cape	6 551	7 092	7 153	4 010	(8 020)
North West	3 592	4 122	5 460	4 076	(8 152)
Western Cape	36 765	31 109	32 954	20 906	(41 812)
TOTAL	114 773	119 556	137 858	85 112	(170 224)

Source: SAPS Crime Information and Analysis Centre (2002).

CHILDREN SENTENCED TO PRISON

The following provides an overview of children admitted to prison to serve sentences over a three-year period from 1999 to 2001. The data was made available by the Department of Correctional Services (DCS) through the UNDP Child Justice Project.

Some basic definitions are required for the correct interpretation of the data. All data relates to the total number of prison admissions and should not be confused with daily averages

or date-specific counts. As far as could be established, these figures refer to children admitted to serve a prison sentence and do not include sentences to correctional supervision, which are administered by the DCS.

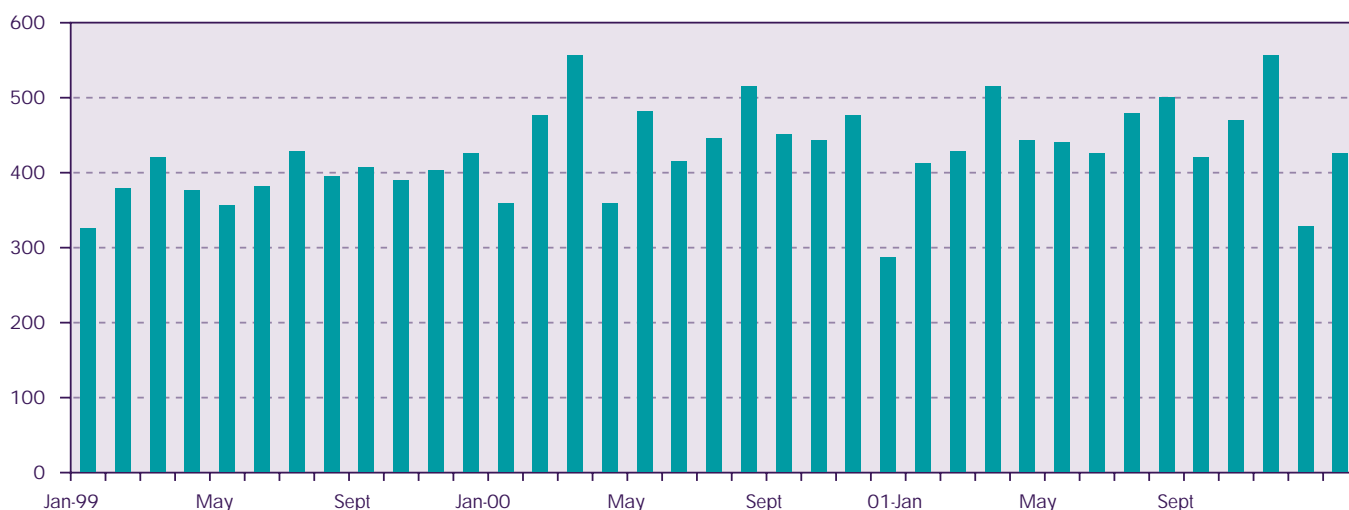
During the period under review an average of 427 sentenced children were admitted to South African prisons per month. When averages are calculated for each year, they are 390,8 for 1999, 438,5 for 2000 and 451,6 for 2001. This reflects an increase of nearly 16% in the monthly average number of sentenced

children admitted to prison from 1999 to 2001.

The highest number of children admitted in a single month was in March 2000, a total of 557, and the lowest was in December 2000, a total of 287.

Over the three-year period the total highest number of admissions to prisons was in the Eastern Cape, followed by the Western Cape and then Gauteng and KwaZulu-Natal. These four provinces account for 63,5% of all admissions between 1999 and 2001.

Figure 2: Number of children admitted per month



Source : LM Muntingh, Nicro National Office, August 2002.

Table 2: Provincial distributions of admissions to prison

PROVINCE	1999	%	2000	%	2001	%	TOTAL
W Cape	833	17,8	835	15,9	913	17,3	2 581
E Cape	740	15,8	1 038	19,7	998	18,9	2 776
KZ-Natal	674	14,4	714	13,6	717	13,6	2 105
Free State	462	9,9	602	11,4	659	12,5	1 723
N Cape	251	5,4	309	5,9	209	4,0	769
Gauteng	683	14,6	763	14,5	760	14,4	2 206
Mpumalanga	296	6,3	289	5,5	244	4,6	829
N West	461	9,8	434	8,2	442	8,4	1 337
Limpopo	290	6,2	278	5,3	332	6,3	900
Total	4 690		5 262		5 274		15 226

Source: LM Muntingh, Nicro National Office, August 2002.

The treatment of children in custody in Lesotho

Mamoqeli Malea and Brian Stout (University of Fort Hare)

Introduction

As South Africa is poised to introduce new legislation dealing with child justice, it is an opportune time to consider how children in another Southern African country, Lesotho, are dealt with by the criminal justice system.

In 2001 Mamoqeli Malea, the first author of this article, carried out research into the treatment of child offenders in her home country of Lesotho. The project was undertaken as part of a practice placement at the Juvenile Training Centre, Maseru (hereinafter referred to as the JTC). This is the only such centre in Lesotho and services all ten districts of the country. The aim of the research was to find out more about what really happened in the institution with regard to living conditions, rehabilitation, family involvement and the discipline of the child offenders in detention.

The researcher held semi-structured interviews with 19 children detained in the JTC. Lesotho criminal justice legislation defines a child as being under 18 and the

children interviewed ranged in age from 12 to 18 years. Fourteen of the children were sentenced prisoners, the other five were on remand. Sixteen of the children were either charged with or convicted of theft or house-breaking with intent to steal (16 children). Of the other children one was charged with possession of an illegal firearm and the other two were charged with sexual offences against younger children.

Lesotho legislation adheres to the rules of United Nations instruments, which require that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

Living conditions

The Constitution of Lesotho indicates that every person in the country is entitled, irrespective of his or her race, colour, sex, language, religion, political or other opinion, nation, or social origin, property, birth, or other status, to fundamental human rights and freedom. The Lesotho Prison Service itself explicitly

stipulates, in its statement on the fundamental human rights of prisoners, that the constitutional rights should apply equally to prisoners, regardless of their crimes.

The living conditions in the JTC examined by the researcher include the standard of accommodation, hygiene, bedding and clothing, food, medical care and cell conditions. When children were asked about their health they indicated that they often became ill and pointed out coughing, fever and stomach ache as the most troubling illnesses. They attributed this to the fact that they lacked appropriate clothing. One of the children described the blankets and jerseys that they were provided with as "dilapidated". Children who are ill are sent to the institutional clinic, which has a doctor, a nurse and a pharmacist.

The children indicated that they are obliged to wear institutional uniforms, which they said tore quickly and offered little protection against the cold Lesotho winter. They said that shoes were not issued to them.

The children noted that although their cells were not in good condi-

tion they were clean, as they themselves clean them. They described their mattresses as torn, the walls as dirty and the floors as dilapidated. They also noted that they share cells with between seven and 15 other inmates. The children did not object to sharing cells, although some cells are overcrowded.

With regard to food, the children felt that it was poorly prepared and unappetising, and that their diet was not balanced. They eat three meals per day. For breakfast they eat bread and tea or soft porridge, and for lunch *pap* and beans, rice or samp, vegetables and either pork or beef on Sundays.

The inmates also indicated that the environment is not conducive to their health. The cells are not warm in winter, they bath with cold water and the toilet, bath and washing basin for dishes are located in the same place.

Education and rehabilitation

The children at the JTC indicated that they receive vocational training and basic literacy education. Programmes are not sensitive to their age, gender, prior criminal record or rehabilitative needs.

All of the children were attending school before their conviction. Their educational status ranged from standard two to form B (the equivalent of South African standard 9). They indicated that at primary level (standard one to standard seven) they go to class and sit for school-leaving examinations at government expense, but when they reach secondary school level their parents are required to pay. If their parents fail to pay then the children are trained in vocational programmes, which are free of charge.

Family involvement

The children indicated that members



of their families are allowed to visit and are given some time to talk to them. These visits are neither private nor confidential, as prison guards accompany the children to meet their relatives. They said their parents are allowed to bring them basic necessities. Some children indicated that their parents were not able to visit them, as they were detained far from their homes and their relatives could not afford transport costs.

Discipline

The JTC has rules and regulations necessary to administer the centre. There are administrative provisions guiding workers in the institution on dealing with the young people kept there. The warders are empowered to impose punishment when children break the institution's rules.

All the children indicated that they were harshly punished. The boys indicated that when they broke rules, they were whipped severely with sjamboks by more than one "caregiver". One inmate described it as being beaten "like dogs that have eaten eggs."

The girls reported that they engaged in negotiations to resolve conflicts arising among themselves. However, if they repeated a breach of the rules they were also whipped by one female "caregiver".

Examples of breaches of the rules

that led to such punishment included children quarrelling among themselves, fighting or assaulting one another.

Conclusion

There are many strengths in the treatment of child offenders in Lesotho. The management of the Centre should be commended for their commitment to the education of the children.

However, the most disturbing finding of the research was the regular use of whipping with sjamboks as a disciplinary measure. This practice is contrary to Lesotho's own universal correctional mission statement. This states that correctional services should contribute to the safety and prosperity of the society they serve through safe, secure and humane control of incarcerated offenders by actively assisting them to live law-abiding lives upon their return to their communities.

Lesotho's intention to create a fair and just regime can be seen in the Prison Service mission statement and in the country's commitment to international instruments. It is hoped that the same pressures that have led to child justice reform in South Africa will also be brought to bear on Lesotho, so that child offenders there can also benefit from international obligations being translated into domestic legislation.

NOTICE-BOARD



NEWS

RECENT UPDATES NOW AVAILABLE ON THE CHILD JUSTICE ALLIANCE WEB SITE – www.childjustice.org.za

- **Departmental Briefing Documents**

These documents were compiled and copied onto a CD by the Department of Justice and Constitutional Development.

The documents on the CD include:

- All the PowerPoint presentations by the Department to the Portfolio Committee, including the introduction to the Bill by the Director-General of the Department of Justice and Constitutional Development
- UNDP Child Justice Project's Reports
- Statistics
- Important legislation
- And much more!

- **Public Submissions** (for the public hearings, which were held from 24 to 27 February 2003)

- Oral and written submissions

- **Research Reports**

These include:

- Children's Perspectives on the Child Justice Bill
- Children Sexual Offences: an analysis of some custody, arrest and reporting trends
- Lessons from Innovative Child Justice Initiatives
- Nicro's Compendium of Statistics

- **Success Stories on Child Justice and Restorative Justice**

These stories were taken from the July, October and December 2002 issues of *Article 40*

- **Fact Sheets on the Bill**

What is a preliminary inquiry? What are the issues around the age of a child? What does the Child Justice Bill expect of the police? What is diversion? What about sex offenders? These, and other questions, are answered in these easy-to-read Fact Sheets.

Prepared by Jill Claassen, documentalist.



**COMMUNITY
LAW CENTRE**

Editorial board

Ann Skelton – Child Justice Project

Joyce Matshego – Department of Correctional Services

Lukas Muntingh – Nicro

Francois Botha – Consultant

Pieter du Randt – Department of Justice

Johanna Prozesky – Department of Social Development

Coenie du Toit – Department of Social Development

Julia Sloth-Nielsen – Faculty of Law, UWC

Editor

Jacqui Gallinetti

Published by the Children's Rights Project, Community Law Centre, University of the Western Cape

Tel: (021) 959-2950/1

Fax: (021) 959-2411

E-mail: jgallinetti@uwc.ac.za

This publication was made possible by the generous funding of the Swedish International Development

Agency (SIDA).

The views expressed in this publication are in all cases those of the writers concerned and do not in any way reflect the views of SIDA or the Community Law Centre.

Layout and design

Out of the Blue Creative Communication Solutions

Tel: (021) 947-3508

Fax: (021) 947-3648

E-mail: lizanne@outoftheblue.co.za