



THE TREATMENT OF CHILDREN IN SOUTH AFRICAN PRISONS – A
REPORT ON THE APPLICABLE DOMESTIC AND INTERNATIONAL
MINIMUM STANDARDS

By

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The Treatment of Children in South African Prisons – A Report on the Applicable Domestic and International Minimum Standards

By

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1. Introduction

The purpose of this report is to describe the compliance requirements in terms of domestic and international law for the Department of Correctional Services as it pertains to the treatment of children in prison. International law is replete with normative standards applying to the treatment of children in prison. In the first instance, a number of general standards apply as contained in a host of international and regional human rights treaties. In relation to children, two such human rights treaties are the *UN Convention on the Rights of the Child* (CRC), adopted in 1989 and the *OAU African Charter on the Rights of the Welfare of the Child* (1990), both of which are binding on South Africa by virtue of them having been ratified in 1995 and 2000 respectively. At a more general level, human rights instruments such as the *UN International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* which are legally binding on all states which have ratified or acceded to them contain reference to the treatment of persons, including children, who are deprived of their liberty. The standards contained in these instruments are supplemented by norms contained in regional general treaties such the *OAU African Charter on Human and Peoples' Rights* and the international *United Nations Convention Against Torture*.

The broad principles contained in the above-mentioned human rights treaties are given more detail through a number of principles, minimum rules and standards which specifically deal with prisoners and conditions of detention. Prominent in this regard are the *Standard Minimum Rules for the Treatment of Prisoners* (UNSMR) adopted in 1957 and the *UN Standard Minimum Rules on the Administration of Juvenile Justice* (Beijing Rules) adopted in 1985. Of further specific reference to the treatment of children deprived of their liberty in prisons or other places of detention is the *UN Rules for the Protection of Juveniles Deprived of their Liberty* (UN JDL Rules), adopted in 1990. International standards, however, move beyond an exclusive focus on the human rights of prisoners and contain significant detail on the standards applicable regarding prison staff working with children deprived of their liberty. Firstly, all the above listed instruments make elaborate provisions in relation to staff recruitment and qualification, training, welfare and many other aspects, all in the affirmation that staff competence and moral conduct is an integral part of compliance with these standards. International standards

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further include codes of conduct and principles such as 1979 *Code of Conduct for Law Enforcement Officials (1979)* and the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)*. These relate to pro-active measures and measures to create an appropriate institutional environment for detainees.

As this research paper focuses on children in prison, the emphasis will be placed on the relevant provisions of the CRC and the UN JDL Rules, which relate to standards on the treatment of children deprived of their liberty, as well as some of the provisions of the UNSMR.

A number of standards and principles contained in the array of international instruments listed above have been domesticated in South Africa through legislation and policy provisions. The South African Constitution (1996), particularly in section 28 which describes the rights of the child and section 35 which describes the rights of arrested, detained and convicted persons, reflects the internationally accepted standards. Section 12 of the Constitution provides for the Freedom and Security of the Person:

1. *Everyone has the right to freedom and security of the person, which includes the right*
 - a. *not to be deprived of freedom arbitrarily or without just cause;*
 - b. *not to be detained without trial;*
 - c. *to be free from all forms of violence from either public or private sources;*
 - d. *not to be tortured in any way; and*
 - e. *not to be treated or punished in a cruel, inhuman or degrading way.*
2. *Everyone has the right to bodily and psychological integrity, which includes the right*
 - a. *to make decisions concerning reproduction;*
 - b. *to security in and control over their body; and*
 - c. *not to be subjected to medical or scientific experiments without their informed consent.*

Together these sections provide the overall framework within which to consider the treatment of children in prison. Further, the Correctional Services Act of 1998 is an important legal framework in the administration of prisons and the treatment of all prisoners, including children.² The White Paper on Corrections, released in March 2005 by the Department of Correctional Services, constitutes a comprehensive blueprint augmenting the legal framework in the Act. The White Paper goes to considerable lengths in providing a policy framework to bring the treatment of prisoners into line with the relevant human rights standards, and in Section 11.3.2 states the UN Rules for the Protection of Juveniles Deprived of their Liberty should be adopted as the minimum standard.

² It should be noted that the Correctional Services Act was promulgated in parts in 1999, 2000, and 2004.

This research paper discusses the existing South African standards (and domestic law) in relation to the treatment of children in prison in the light of the international legislative framework. This discussion will be divided into several parts with reference to areas drawn from the international standards. Where appropriate, gaps in the respective areas (both in terms of policy and practice) will be highlighted with suggestions on areas in need of further legal, policy and practical reform. The study will further incorporate a practical aspect by identifying key areas of risk for children in prisons as has been documented by previous reports and studies on children in South African prisons. Where possible, examples of good and promising practice are highlighted in the different sectoral areas discussed. In conclusion suggestions are made on key indicators for monitoring children in prisons.

2. The position of children in prisons

(a) The principle of detention as a last resort

(i) International standards

Article 37 of the CRC stipulates that children should be detained only as a measure of last resort and for the shortest period of time. This is reiterated in the UN JDL Rules³. The Beijing Rules direct that deprivation of liberty shall not be imposed unless the young person is adjudicated of committing a serious offence or is persistent in committing other serious offences and unless there is no other response appropriate to the situation.⁴ The UNSMR, although not dedicated to child detainees, do refer to children in prison and make the broad statement that young persons who fall within the jurisdiction of juvenile courts should not be sentenced to imprisonment.⁵

The international standards are further explicit that pre-trial detention should only be used in limited circumstances and for the shortest period of time.⁶ The Beijing Rules recommend alternative measures such as close supervision, intensive care or placement with a family or in an educational setting or home whenever such measures are possible.⁷ The UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)⁸ describe the alternatives to custodial sentences and lists the following such sentences in Rule 8.1:

- Verbal sanctions, such as admonition, reprimand and warning

³ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Adopted by General Assembly resolution 40/33 of 29 November 1985, Rules 1 & 2.

⁴ As above.

⁵ Preamble, section 5(2).

⁶ Article 37(c) CRC; Rule 13, Beijing Rules and Rule 17, UN JDL Rules.

⁷ Rule 13, Beijing Rules.

⁸ Adopted by General Assembly resolution 45/110 of 14 December 1990

- Conditional discharge
- Status penalties
- Economic sanctions and monetary penalties, such as fines and day-fines
- Confiscation or an expropriation order
- Restitution to the victim or a compensation order
- Suspended or deferred sentence
- Probation and judicial supervision
- Community service order
- Referral to an attendance centre
- House arrest
- Any other mode of non-institutional treatment
- A combination of the listed measures

The international law is thus clear that a prison is not a suitable place for children, and should only be used as a last possible resort for the shortest possible period. There is thus an obligation created for States to explore and make available options other than imprisonment for child offenders.

(ii) South African law and policy

The South African Constitution (1996) domesticates the above principles by the provision in section 28(1) (g) to the effect that detention of children in trouble with the law (whether pre-trial, on trial or after trial) should be used as a last resort and for the shortest possible period of time. The extent to which prisons, places of safety and reform schools comply with these standards is reflected in the individual laws, policies and regulations that govern them and further by the practices in these institutions. Also relevant here is whether courts order the detention of children as a measure of last resort.

Presently, section 29 of the Correctional Services Amendment Act 14 of 1996 applies in relation to pre-trial detention (having not been repealed by the new Correctional Services Act 111 of 1998).⁹ The first amendment to section 29 of the Correctional Services Act had put a blanket ban on pre-trial detention in prison of any person under 18 years of age.¹⁰ Apart from a few limited concessions, this first amendment was intended to prohibit pre-trial detention in prison of all children under the age of 18 years, irrespective of the offence with which the child had been charged or prior criminal history. More child-friendly institutions, such as places of safety, were therefore envisaged for children who required secure care whilst awaiting trial. Subsequent chaos ensued due to the sudden promulgation of this amendment coupled with a lack of planning and provisioning. A huge number of

⁹ The sections in the 1998 Correctional Services Act applying to children only came into force in July 2004.

¹⁰ Correctional Services Amendment Act 17 of 1994.

children were released from prisons into society due to the lack of space in places of safety and other alternatives. A few children who had committed serious and violent crimes took advantage of this chaotic situation and there ensued a cycle of arrests (second and further arrests) and releases without the completion of the resulting criminal proceedings.¹¹ The government was forced to backtrack in light of a fervent public backlash backed by a media campaign against the amendment.¹²

The above developments led to the second amendment to the Correctional Services Act by means of the Correctional Services Amendment Act (14 of 1996). This took effect in May 1996 and remains applicable to this day having been left untouched by the new Correctional Services Act (1998). This second amendment provides for limited circumstances where children over 14 years of age can be detained in prisons while awaiting trial. The section further provides that if a child is so detained in prison, he or she must be brought before the court every 14 days for the court to reconsider the order detaining the child in prison awaiting trial.¹³

The second amendment has resulted in the gradual diminishing of numbers of children awaiting trial in places of safety in South Africa and a considerable increase in the number of these children detained in prisons.¹⁴ In 1999 it was recorded that in the intervening two years since the promulgation of this amendment, the average number of children in prison had slowly increased.¹⁵ The February 2005 figures tend to provide some good news in that the numbers of children in prison awaiting trial show a decrease since May 2004. However, the overall trend of large numbers of children awaiting trial in prison continues to date on account of the law remaining in force. The continued application of this second amendment negates the principle of detention as a last resort enacted in the South African Constitution and contained in international standards in that the wording of section 29 gives a presiding officer wide discretion to allow a child to be held in prison awaiting trial, instead of prescribing limited situations when detention in prison should be a last resort.

Specific provisions in the Child Justice Bill (B 49 of 2002)¹⁶ are intended to replace the application of section 29 of the Correctional Services Act (8 of 1959 as amended). The Bill aims to introduce a comprehensive application of the principle of detention as a last resort from the moment of arrest and in the pre-trial, on trial and post-trial phases. One of the ways in which this will be achieved is through the promotion of diversion and restorative justice as fundamental processes in the proposed new child justice system.¹⁷

¹¹ See Sloth-Nielsen, J "The juvenile justice law reform process in South Africa: Can a Children's rights approach carry the day?" (1999) 18 (3) *Quinnipiac Law Review* 473-476.

¹² Sloth-Nielsen (as above) at p 475.

¹³ Section 5(a).

¹⁴ Inter Ministerial Committee on Young People at Risk (1996) *In whose best interests? Report on Places of safety, Schools of industry and reform schools* at pp 6-7.

¹⁵ Sloth-Nielsen (n 11 above) at p 476.

¹⁶ It should be noted that the Child Justice Bill was introduced in parliament in 2002, public hearings were held in early 2003 but that the Bill has subsequently not moved further in the legislative process.

¹⁷ The Child Justice Bill is still not final despite being introduced into Parliament in 2003. The original Bill, as introduced, intended to provide clear exceptional circumstances in which a child could be detained awaiting trial in order to encourage

The explicit enactment in the Child Justice Bill of a rule that outlaws the (prison) detention of children under the age of 14 years is a specific example of the attempt at reflecting the principle of detention as a measure of last resort in domestic law. This is also in line with the view espoused in the White Paper on Corrections (2005) in which the Department contends that "*Children under the age of 14 have no place in correctional centres. Diversion, alternative sentences, and alternative detention centres run by the Department of Social Development and the Department of Education should be utilised for the correction of such children*".¹⁸ However, during the initial parliamentary debates on the Child Justice Bill, the Portfolio Committee on Justice and Constitutional Development indicated that they did not agree with this proposal and would introduce the possibility of detention in prison for children under 14 years charged with serious (scheduled) offences (a position which does not even exist under present law).

(b) Children in South African Prisons

The number of children in prisons can be said to be an indicator as to whether the principle of detention as a measure of last resort and for the shortest period of time is being given practical effect. The fact that the number of children in prison (particularly those awaiting trial since the promulgation of the second amendment to the Correctional Services Act, 1959) has been on a sharp increase is a sad indictment of the reality in a country purporting to bring its laws and policy in line with international obligations.

In the first two years since the promulgation of the amendment in May 1996, there was a clear escalation of the number of children in prison. It is recorded that from a base of approximately 600 children awaiting trial in prison on any one day in prison in September 1996, the numbers slowly crept up to the point where, in October 1998, there were approximately 1600 children in prison on any given day.¹⁹ The latest figures indicate that on average 371 children are annually admitted to serve prison sentences ranging from under 6 months to more than 20 years and that the average number of children awaiting trial in prison in 2004 was 1921 (which has dropped from 2329 in 2003).²⁰

This is confirmed by the latest Annual Report of the Judicial Inspectorate of Prisons (2004/2005) released by the Office of the Inspecting Judge of Prisons, which records a decrease in the number of awaiting trial prisoners since the year 2000.²¹ The decrease has been attributed to the concerted efforts of *inter alia* the police, the

the release of children from custody awaiting trial. It still remains to be seen whether the final version of the Bill, as debated on in Parliament, will retain these original provisions.

¹⁸Department of Correctional Services (March 2005) *White Paper on Correctional Services* Para 11.2.3.

¹⁹Sloth-Nielsen (n 11 above) at p 476.

²⁰Muntingh, L. "Children in prison: Some good news, some bad news and some questions", *Article 40*, volume 7, No.2, p. 8.

²¹Citing the latest figure as 52, 326 (March 2005) from 63, 964 in April 2000. This however still falls well off the target of 20,000.

prosecutors, the magistrates and judges, heads of prisons and NICRO with its diversion programmes.²² These efforts should be applauded and continued. However, this impressive decrease that augurs well for the reduction of the number of children in pre-trial prison detention is watered down by the general increase in the population of sentenced prisoners.²³ In relation to children, this suggests the need for more appropriate alternatives to imprisonment .

(c) The role of the DCS in giving effect to the principle of detention as a measure of last resort

An international study correctly comments that prison systems have no control over the number of people sent to prison.²⁴ They do, however, have to deal with the consequences. Usually this relates to managing overcrowded prisons, which when viewed in light of inadequate and scarce resources allocated to prison administrations, often leads to a violation of the duty of care owed to prison inmates, a failure to guarantee basic human rights of prisoners and constitutes a hindrance to their rehabilitation and reintegration back into society. Due to the vulnerability of children on account of their age, child prisoners are more likely to be adversely effected by poor prison conditions .

The Law Society of South Africa's investigations carried out in selected prisons countrywide in 2004 reported overcrowding in the juvenile sections of many prisons. These reports emanated mainly from the northern provinces (with hardly enough residential facilities for children such as places of safety, for those awaiting trial for example). In Krugersdorp Prison, it was recorded that *"the juvenile section was grossly overcrowded....up to 97 young persons were sharing a communal cell and there was hardly any space to put one's foot"*²⁵. This situation was similar at Leeuwkop Prison albeit less overcrowded (estimated at 122%) in the juvenile section of the prison.²⁶ Similarly, the conditions in the juvenile section in Nelspruit Prison were found to be appalling due to the problem of overcrowding. In the juvenile section of this prison, a cell with a maximum capacity of 28 was accommodating 55 children, and children had to share beds and bunks when sleeping as the cell could not accommodate enough beds.²⁷ In a more recent study on best practices in prison governance, Drakenstein Youth Prison was found to be 41% occupied and Johannesburg Youth Prison was 114% overcrowded.²⁸ The study by

²² Office of the Inspecting Judge Annual Report 2004/2005 p. 22.

²³ Office of the Inspecting Judge Annual Report 2004/2005 23.

²⁴ Coyle, A (2002) *A Human Rights Approach to Prison Management* London: International Centre for Prison Studies at p 151.

²⁵ Law Society of South Africa (2004) *2004 Prison Report* at p 17.

²⁶ Law Society Report (2004) (as above) at p 24.

²⁷ Law Society Report (2004 (as above) at p 30.

²⁸ Tapscott C (2005) " A Study of Best Practice in Prison Governance", CSPRI Research Paper No. 9, p. 17 (hereinafter referred to as the Tapscott study). This research was, inter alia, aimed at describing and analysing seven prisons in South Africa to identify the critical factors that contribute to and result in better governed prisons. Three of the seven prisons (drawn from Department of Correctional Services centres of excellence and the two private prisons) were youth prisons – Drakenstein Youth Prison, Johannesburg Youth Prison and Westville Youth Prison.

Tapscott noted that the impact of overcrowding places pressure on management and administrative practices as well as on the welfare of offenders themselves.²⁹

Because of the consequences that are attendant upon increased numbers of prisoners (particularly children) and overcrowding in prisons, prison administrators have an obligation to giving effect to the principle of detention as a measure of last resort and for the shortest period of time. The above cited international study explains this obligation in the following words:

*"Prison administrators have a legitimate interest in how many people [children] are sent to prison, for how long and whether the resources will be made available to enable their responsibilities to the people sent to them. Related to this, they have an interest in the introduction of measures which reduce the numbers in prison through early release and in alternatives to prison at the sentencing stage. ..[Although] the work of prison administrators is to manage their systems ...they also have an [important] role in ensuring that prison is not overused and that other measures are available to deal with pre-trial detainees and with convicted people at the time of sentence."*³⁰

It is therefore commendable that the White Paper on Corrections emphasizes the centrality of diversion for children (particularly those under the age of 14). This policy should be implemented in co-operation with the judiciary and other criminal justice stakeholders. The Department's policy on the principle prohibiting the detention of children under the age of 14 is consistent with the proposed Child Justice Bill (2002).³¹ More fundamentally, the above challenge on the prison authorities also calls for the enactment of the Child Justice Bill (2002) and its eventual implementation. In this Bill, access to diversion for a wide category of child offenders is increased and opportunities for different diversion options at the pre-trial , during trial and post-trial stages (through alternative sentencing) are added to existing programmes.³² The obligation to realize this provision will rest on all role players including courts, prosecutors and prisons. However, the Department of Correctional Services has a crucial role to play in making available to sentenced children community based sentences, such as correctional supervision.³³

In relation to children awaiting trial, the White Paper calls for the speedy establishment of alternative facilities (such as places of safety) for awaiting trial children and the continued development of correctional facilities dedicated to children and youth.

²⁹ Ibid p 17.

³⁰ Coyle (n 24 above) at p 151.

³¹ Child Justice Bill [No. 49 of 2002], section 7(7) prohibiting the police arrest of a child under the age of 10 years (legislating the alternative of referring such children to probation officers) and section 69(1) (a) which provides, inter alia, that "A sentence of imprisonment may not be imposed unless the child was over the age of 14 years at the time of commission of the offence....."

³² Child Justice Bill, Chapter 6 on Diversion.

³³ Child Justice Bill, Chapter 8 detailing examples of alternative sentences including section 64 on community-based sentences and section 66 detailing "sentences involving correctional supervision".

In addition to the above, the need has also been expressed for the formulation of a release policy in respect of children in prisons in order to assist with their early reintegration into society.³⁴ This need assumes urgent relevance especially in the light of the provisions on release in the Correctional Services Act which have been cited on a number of occasions as a source of concern, in that they will deepen rather than alleviate the overcrowding crisis that prevails,³⁵ as well as the provisions of the minimum sentences legislation (Act 105 of 1997), which are generally regarded as a major contributory factor to current overcrowding levels.³⁶ In essence, it is argued that it is the sentenced prison population that is the driving force of the prison population and not the awaiting trial population.

Admittedly, as far as the decision to sentence a child to imprisonment is concerned, the Department of Correctional Services has little say. However, on a practical level, the Department can be far more candid about the conditions in prisons and how these affect imprisoned children. Particularly for sentencing purposes, departmental officials who are engaged in professional activities, such as educators or social workers, can make themselves available to sentencing officers to provide evidence on whether the prison environment is suitable for a particular individual case.

The Department has made an unequivocal statement in the White Paper on the suitability of children under 14 years of age in prison. This should be reinforced at every possible opportunity to ensure that this message is clearly conveyed to sentencing officers, as well as parliamentarians who ultimately decide on legislation and subsequent amendments.

3. The implementation of international minimum standards on the treatment of children deprived of their liberty

(a) Reception, induction, assessment, classification and planning for children in detention

(i) International standards

International standards detail rules on the admission of children to detention facilities requiring children to be informed of their rights while in detention, assessment of their needs, planning and review for their detention and

³⁴Community Law Centre (1997) *Children in Prison: A Situational Analysis* Bellville: Community Law Centre 76. (Hereinafter 'Situational Analysis').

³⁵ See Sloth-Nielsen, J (2004) "Policy and Practice in South African Prisons: An Update" at p 19 (citing examples of these citations as including an article by the Inspecting Judge of Prisons, Judge Fagan, in *The Advocate* (Vol 1 2005), and Sloth-Nielsen J and Ehlers L "A Pyrrhic Victory? Mandatory sentences in South Africa" (ISS Occasional Paper No. 111, 2005).

³⁶ Criminal Law Amendment Act 105 of 1997.

the keeping of records relating to these children and their detention. The UN Rules for the Protection of Juveniles Deprived of their Liberty require that all young people receive a copy of the rules governing the detention centre and a written description of their rights and obligations in a language they can understand.³⁷ They should be helped to understand the regulations governing the detention centre, the goals and methodology of the care provided and the disciplinary requirements and procedures. In addition, young people should be given details of the complaints procedures and advised as to methods of seeking information, including legal advice.³⁸

Children in detention should be interviewed for the purpose of compiling a psychological and social assessment report to identify any factors relevant to the specific type and level of care and programme required by each child. This report should be seen together with the medical report for the purposes of determining the most appropriate placement for the young person within the Centre, and the specific type and level of care and programme to be pursued. Trained personnel should prepare a written, individualised treatment plan, specifying treatment objectives and the time-frame within which it should be achieved.³⁹

A modern, comprehensive system for recording, storing and communicating information is central to securing an effective assessment and monitoring process which enables young people to return safely to society on release. International standards stipulate therefore that each facility where children are detained must have a complete and secure record of information relating to the identity of every person in the facility, their commitment details, including the reasons for their detention and admission and release or transfer dates, family contact information and details of known physical and mental problems including addiction.⁴⁰ The UN JDLs also require that all reports, records and other information should be placed in a confidential individual file, which is kept up to date, accessible only to authorised personnel and classified in a way that is easily understood.⁴¹ Where possible, young people should have the right to contest any fact or opinion contained in their file in order to permit the correction of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file upon request. Upon release, the records of children shall be sealed, and, at an appropriate time, expunged.⁴²

The UN Standard Minimum Rules on the Treatment of Prisoners require the separation of children from adults in prisons at all times.⁴³ The CRC further provides that “every child deprived of his or her liberty shall be separated from adults unless it is considered in the child’s best interest not to do so...”⁴⁴ In similar vein, drawing from the

³⁷Beijing Rules , Rule 24,

³⁸Beijing Rules Rule 25,

³⁹ Beijing Rules Rule 27,

⁴⁰Beijing Rules Rule 21,

⁴¹ UN JDLs Rule 21, UN Rules.

⁴² UN JDLs Rule 19, UN Rules.

⁴³ 1955 UN Standards Minimum Rules on the Treatment of Prisoners, Rule 8.

⁴⁴CRC, Article 37 (c)

right to presumption of innocence and respect for human rights safeguards, there should be separation of children awaiting trial from those who are already convicted.⁴⁵

According to Rules 17 and 18 of the UN JDL Rules, children under arrest or deprived of their liberty while awaiting trial are entitled to a presumption of innocence, detention for the shortest period of time (only where detention is necessary, otherwise detention must be avoided), to be kept separate from sentenced juveniles, the right to legal counsel and free legal aid, the right to work with remuneration, the right to continue their education or training and the right to retain materials for leisure and recreation.

(ii) South African domestic law, policy and practice

Assessment

The Correctional Services Act also provides detailed provisions in relation to the assessment of every sentenced prisoner (including children).⁴⁶ These provisions comprehensively cover the classification of offenders for purposes of safe custody, the health, educational religious, psychological and social, and the specific development needs of the individual. It should be noted that Section 38(2) places a limitation in the sense that only sentences of 12 months or longer must be planned in the light of the information gleaned from the assessment, as well as any comments from the sentencing court.

Plans for children

The Correctional Services Act recognizes the value of individual development plans in relation to all prisoners, and children in particular. Section 69 recognizes one aspect of such plans in relation to children who are subjected to community corrections, thus requiring the development of a community correction plan – although these plans relate correctional supervision which takes place outside of prison. The content of this plan should detail the correctional regime and make provision on access to educational, religious care, psychological, social work programmes which a particular child would undergo whilst serving a sentence of community corrections.

In addition, as far as detainees inside prison are concerned, section 41 of the Act deals with treatment, development and support services, which requires the Department to provide sentenced inmates with or give them access to a full range of programmes (as far as possible) to meet their educational and training needs. In particular section 41(2) states that illiterate prisoners or children may be compelled to take part in the abovementioned educational programmes.

⁴⁵The *UN International Covenant on Civil and Political Rights*, Article 10(2) (a) provides that "accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons".

⁴⁶ Correctional Services Act 1998, section 38.

The White Paper on Corrections articulates the Department's vision of the need for the preparation of "needs-based intervention plans" for all inmates serving a prison sentence.⁴⁷

Right to make complaints and Judicial Oversight

The right of all prison inmates (including children) to make complaints and requests is guaranteed in the Correctional Services Act.⁴⁸ In addition, the Act provides for the establishment of the Judicial Inspectorate of Prisons, the object of which is to facilitate the inspection of prisons in order to report on issues such as the treatment of prisoners, prison conditions and any dishonest or corrupt practices in prisons. This office and its functions fall in line with the purposes of the correctional system in South Africa, as set out in the Act.⁴⁹

The powers, functions and duties of the Inspecting Judge of Prisons include arranging for and inspecting prisons in order to report on the aforementioned objects of the office.⁵⁰ In accordance herewith the Inspecting Judge can appoint Independent Prison Visitors to deal with the complaints of prisoners and allow for community involvement in the correctional system.⁵¹ This allows for an independent mechanism through which the treatment of prisoners can be monitored and problems addressed. Obviously, this system applies to all prisoners – sentenced and un-sentenced, as well as children.

Separation of children from adults

The rule requiring separation of child prisoners from adult ones is codified in the South African Constitution in section 28 (1) (g). The White Paper on Corrections reflects this rule by affirming that children must at all times be separated from adult inmates⁵². The Correctional Services Act (1998) in Section 7(c) stipulates that child prisoners must be kept separately from adult prisoners and in accommodation appropriate to their age. A general provision in Section 7(2) (a-c) provides for the separation of sentenced and unsentenced prisoners at all times and the separation of the sexes. Section 7(3) provides for a departure from the provisions of Section 7(2) (a-c) conditional to the approval of the Head of Prison and for the purposes of providing development or support services, medical treatment but under no circumstances in relation to sleeping arrangements. The Regulations [in paragraph 3(2)(g)] made under the Correctional Services Act require that prisoners between the ages of 18 and 21 years must be detained separately from prisoners who are older than 21.⁵³

⁴⁷ *White Paper on Correctional Services* (n 14 above) Chapter 9.

⁴⁸ Section 21.

⁴⁹ Section 2 and 4

⁵⁰ Section 90

⁵¹ Section 92

⁵² *White Paper* (n 14 above) Para 11: 2.3.

⁵³ Sloth-Nielsen, J., "What does the new Correctional Services Act say about children in prisons" (2004) *Article 40* 6(3) at p 2.

Children awaiting trial in prison

The Act provides particular rules in relation to un-sentenced prisoners and these apply to pre-trial child prisoners by their general nature.⁵⁴ Un-sentenced prisoners are only to be subjected to restrictions necessary for the maintenance of security and good order and should be allowed all the amenities to which they could have access outside prison.⁵⁵ In case such amenities are to be restricted for disciplinary measures, this must be specified in regulations.⁵⁶ Similarly they cannot be compelled to wear prison uniforms unless their own clothes are not suitable or appropriate and they are unable to obtain alternative clothing from another source.⁵⁷ Further, subject to regulations to be prescribed, un-sentenced prisoners may receive food from home and have the right to visitation, contact with family, communication through writing and receiving letters and telephonically.⁵⁸

Records

The UN JDLs require that records be kept on a child's identity, reasons for detention and the authority for the detention, the day and hour of admission, transfer and release, notifications to parents on admission, details on known physical and mental health problems, as well as drug and alcohol abuse by the child. Furthermore, the UNSMR require that in every institution there shall be a register containing information on each prisoner's identity, reasons and authority for detention, and day and time of commitment and release.⁵⁹ The Correctional Services Act in Section 6 lists the information required to be recorded upon the admission of a prisoner, this is:

- A valid warrant of detention
- The identity of the person
- The reason for the committal and the authority thereof
- The day and hour of admission

Given the critical importance of identity in the prison context, the Correctional Services Act in Section 28 empowers the Commissioner to employ a variety of means to establish and record the identity of individuals; this includes the determination of age. These means are:

- Taking finger and palm prints
- Taking photographs
- Ascertaining physical characteristics
- Taking of measurements
- Referral of the prisoner to a medical officer to ascertain the age of the prisoner
- The attachment of an electronic or other device to the body of the prisoner.

⁵⁴Correctional Services Act, sections 46-49.

⁵⁵ Correctional Services Act, section 46 (1).

⁵⁶ Correctional Services Act, section 46(2).

⁵⁷ Correctional Services Act, section 47.

⁵⁸ Correctional Services Act, sections 48 & 49.

⁵⁹ UNSMR Rule 7

If the age determination of the DCS and that of the Court are in conflict, the Head of the Prison may in terms of section 28(3) remit the case to the court concerned for a reappraisal of the prisoner's age.

In addition to the general record-keeping requirements that are applicable to all prisoners, the Act in section 42 makes further provision for the detailed record-keeping by the Case Management Committee on all sentenced prisoners. The Case Management Committee must ensure that each sentenced prisoner has been assessed and that for those prisoners who are serving a sentence of longer than 12 months, that there is a sentence plan in place (as described in Section 38(2) of the Act). The Case Management Committee must submit a report to the Correctional Supervision and Parole Board on sentenced prisoners regarding:

- The offence(s) for which the prisoner is serving a sentence and any comments that the court has made regarding these
- Previous criminal record
- The conduct, disciplinary record, adaptation, training aptitude, industry, physical and mental health state of the prisoner
- The likelihood of relapse into crime
- Specific information regarding the prisoner if he or she has been declared a habitual prisoner
- The possible placement of the prisoner under correctional supervision in terms of the Criminal Procedure Act
- The possible placement of the person on parole
- Any other matter that the Correctional Supervision and Parole Board may request.

(iii) The practice

Plans for children

In relation to South African prison practice, it has been noted that there is generally access to educational and vocational training and that assessments are done to determine the educational or vocational training requirements of the child.⁶⁰ However, very little has been noted with regard to the centrality of individual development plans for programmes relating to child inmates.⁶¹ This may be due to the lack of staff capacity in terms of the general low staff to prisoner ratio's. There is also a shortage of appropriately qualified staff such as social workers, child psychologists and educationists who would specialise in the formulation and implementation of individual treatment plans.⁶²

⁶⁰Law Society Report (2004) (n 25 above) generally.

⁶¹Law Society Report (2004) (n 25 above) generally documenting the existence of educational programmes which are recorded to be plagued by a host of deficiencies. A detailed example discussed is that of Nelspruit Prison; see Law Society Report (n 25 above) at p 30.

⁶²Muntingh L (2005) Surveying the Prisons Landscape – what the numbers tell us, Law Democracy and Development, Vol 9 No. 1, p 37.

There is therefore a general need for the development of individual development plans for children in prison as part of the admission and classification process. These plans should reflect clearly articulated objectives based on the needs of the individual, supported by an implementation and monitoring plan. Section 42 of the Correctional Services Act describes the duties and powers of the Case Management Committee as referred to above already. It is indeed regrettable that such individual development plans are not a statutory requirement for prisoners serving sentences of less than 12 months. Of the total number of sentenced prison admissions (inclusive of adults), this category constitutes 43% of total admissions in 2004.⁶³

Whilst not directly applicable in this regard, the Tapscott study nevertheless notes that all three youth prisons included in the research deliver personal rehabilitation programmes in one form or another, usually life skills initiatives offered by either by prison staff or external service providers e.g. Drakenstein and Westville have encouraged offenders to paint the prison walls creatively, Drakenstein warders have introduced plants, birds and tortoises into a section cell yard to create a more hospitable living environment and Drakenstein also maintains a data-base of available jobs and arranges job interviews for released offenders.⁶⁴ In addition the prisons provide programmes on HIV/Aids, sexually transmitted diseases and alcohol and drug abuse.⁶⁵

Separation of children from adults

Inmate accommodation in South African prisons generally complies with the principle of separation of children from adults.⁶⁶ In all the prisons with a juvenile section adult and child inmates seem not to share accommodation nor do they eat together or interact.⁶⁷ However, a closer examination of compliance with this rule reveals that children under the age of 18 have in the past been frequently found in cells with young adults.⁶⁸ Further problems that have been identified include the lack of consensus in different prisons on a clear policy that would require separation of younger inmates from the older ones. Thus in many prisons, no attempt is made to separate younger children from the older children, and instances have been recorded prisoners over the age of 21 years share cells with younger inmates. Additionally in some prisons insufficient efforts to keep children apart from adults have been noted.⁶⁹

Most of the problems highlighted above arise due to the fact that most prisons were designed and planned to cater for adult inmates rather than children. This is illustrated in the case of Pollsmoor Medium-A prison where despite the separation of adult and juvenile sections, juveniles have to pass through the adult section on their

⁶³ Figures supplied by the Office of the Inspecting Judge.

⁶⁴ Tapscott, p. 20.

⁶⁵ Tapscott, p. 21.

⁶⁶ Law Society Report (n 25). Kiessel, H (2000) "United Nations Standards and Norms in the Area of Juvenile Justice in Theory and Practice: An empirical study on the use and application of UN Rules for the Protection of Juveniles Deprived of their Liberty in South African practice" pp 11-12.

⁶⁷ Law Society Report (2004) (n 25 above) generally.

⁶⁸ Situational Analysis (n 34 above) 12.

⁶⁹ Situational Analysis (n 34 above) 13.

way out of the prison to attend school or visit a doctor. Children also share a visiting area with the adults where they claim they are often robbed of their possessions by adult prisoners.⁷⁰

The Tapscott study noted that in all three youth prisons designated as centres of excellence where the research was conducted measures were in place to ensure that young offenders are totally separated from adult offenders and to separate children and youth by age e.g. 14 – 17 years of age from 18 – 20 years of age.⁷¹ It is important to be mindful of the fact that this study was looking to identify best practice and therefore is limited in that sense. However, it has established that there is good practice in this regard that the Department has to ensure is replicated across all youth prisons.

The example of dedicated facilities for child prisoners can therefore be cited as good practice since these facilities are child-centred and go a long way in remedying the problems faced in prisons with regard to separation of child and adult inmates.

Records

In the past it has been found that records are out of date and inaccurate.⁷² An example is where records may show that there are no sentenced children in a prison whereas in reality such children were present in a prison.⁷³ This extends to court records, as it is from here that children in the criminal justice system can be traced. It was therefore recommended that "*all court records as they relate to children should be urgently computerised in all the different provinces so that they can be tracked as they move through the system*".⁷⁴ This has proven to be easier said than done and tracking individual cases as they move between the SAPS, the DCS and the Department of Justice is still highly problematic in the absence of an integrated electronic national case management system to facilitate this.

⁷⁰ Situational Analysis (n 34 above) 13-14.

⁷¹ Tapscott, p. 22. However, it is also noted in the study that the process of separation is not always successful as it is difficult to determine the ages of older children, either because they don't know their birth dates or falsify their ages.

⁷² Situational Analysis (n 34 above) 15.

⁷³ Situational Analysis (n 34 above) 15

⁷⁴ Situational Analysis (n 34 above) 77.

(b) Physical environment and accommodation

(i) International standards

International standards require that children deprived of their liberty must have the right to access facilities and services that meet all the requirements of health and human dignity.⁷⁵ The rules are explicit on a number of issues regarding the physical environment of and accommodation in institutions. These include:-⁷⁶

- *The design of detention facilities:* This should be in keeping with the rehabilitative aim of residential treatment with due regard to the needs of the child for privacy, sensory stimuli, socialisation with peers, sporting, physical and leisure-time activities. The physical design should be so as to limit the risk of fire and ensure safe evacuation from the premise in the event of emergencies.
- *Sleeping accommodation:* This should normally consist of small group dormitories or individual bedrooms. Such accommodation should be accessible to supervision during sleeping hours. Separate and sufficient clean bedding in good order at the time of issuance should be provided to every child.
- *Sanitary installations:* These should be accessibly located and of a sufficient standard to meet the required physical needs of the child in relation to privacy and in a clean and decent manner
- *Adequate storage facilities:* These should allow every child the safe keeping and storage of personal effects. When kept in safe storage such personal effects should be registered in an inventory intended for that purpose.
- *Personal clothing:* This should be allowed of every child and should be suitable for the climate to ensure the child's good health. Such clothing should in no manner be degrading or humiliating to the child.
- *Food:* Every facility should ensure the suitable preparation and presentation of food at normal meal times and such food must be of a quality and quantity to satisfy standards of dietetics, hygiene and health. As far as possible such food should be religiously and culturally acceptable to the child.

In addition, the UNSMR contains various provisions relating to accommodation and other physical needs:⁷⁷

⁷⁵ Rule 31, UN JDL Rules.

⁷⁶ Rules 32-37, UN JDL Rules.

⁷⁷ Rules 9-14, UNSMR.

- *Accommodation:*
 - In individual cells or rooms, each prisoner shall occupy the room or cell by himself, unless temporary overcrowding requires sharing and then not more than two prisoners in a cell or room.
 - Dormitories shall be occupied by prisoners selected for their suitability to one another. In this instance, regular night supervision should occur.
 - All accommodation must meet health requirements, including climatic conditions, cubic content of air, minimum floor space, lighting, heating and ventilation.
 - Windows are to be large enough to allow for reading and working by natural light and for fresh air
 - Artificial light should not be such so as to cause injury to eyesight
 - Sanitary facilities must be maintained in a clean and decent manner, and allow for prisoners to bath or shower, at a suitable temperature, as frequently as necessary for personal hygiene, but at least once a week.
- *Hygiene:* In order to remain clean prisoners must be provided with water and toiletries that are necessary for health and cleanliness and allowed to care for their hair and beards.⁷⁸
- *Clothing:* If prisoners are not authorised to wear their own clothing, they must be provided with adequate clothing, bearing the climate in mind, and such clothing shall not be humiliating or degrading. In addition all clothing must be clean and kept in a proper manner and undergarments changed and washed. Where own clothing is used, this must be kept clean and fit for use.⁷⁹
- *Bedding:* Every prisoner shall be provided with a separate bed and sufficient bedding, which shall be clean, kept in good order and changed to ensure cleanliness.⁸⁰
- *Food:* Every prisoner must be provided with nutritional food at the usual times, which is of wholesome quality, well prepared and served. In addition, drinking water must be available for prisoners when they need it.⁸¹
- *Exercise:* Every prisoner must have at least one hour of daily exercise, weather permitting, if he or she is not involved in outdoor work. Young prisoners shall receive physical and recreational training during the exercise period and to this end the necessary equipment must be provided.⁸²

⁷⁸ Rules 15 and 16 UNSMR.

⁷⁹ Rules 17 and 18 UNSMR.

⁸⁰ Rule 19 UNSMR.

⁸¹ Rule 20 UNSMR.

⁸² Rule 21 UNSMR.

- *Transportation:* The transportation of prisoners must be done in vehicles with sufficient ventilation and light and in a way that does not subject them to unnecessary physical hardship.⁸³ The separation of children from adults during transportation also applies at all times.

Regarding recreation, the CRC recognizes that children need time to rest, and enjoy leisure and recreational activities.⁸⁴ The international standards stipulate that children in custody must enjoy the right to a daily amount of time for exercise in open air, weather permitting, during which time appropriate recreational and physical training should normally be provided.⁸⁵ Adequate space, installations and equipment should be provided for these recreational activities and every child should have additional time for daily leisure activities.⁸⁶ The detention facility should be such as to ensure that each child is physically able to participate in the available programmes of physical education.⁸⁷

(ii) South African law and policy

The legal regime applicable in prisons is fairly progressive. Chapter 3 of the Correctional Services Act⁸⁸ entitled “Custody of all Prisoners Under Conditions of Human Dignity” details a number of provisions relevant for the implementation of the international standards relating to accommodation and the physical environment of detention facilities. The Act specifically provides that “prisoners who are children ...must be kept in accommodation appropriate to their age”⁸⁹. Similarly the Act provides that the prison diet must make provision for the nutritional requirements of children.⁹⁰ More generally section 8(5) specifies that 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 personal property of prisoners is dealt with under a general provision in the Regulations to the Act (paragraph 2) and states that upon admission all monies and valuable items must be handed to the Head of the Prison (or duly authorised official) for safekeeping. Access to these items or cash is prescribed by order.

However, the Act refers to specifications to be set by subsidiary regulations and so there is a pressing need for the urgent implementation of these regulations together with the Act. The regulations are therefore important in the realization of the minimum standards in prisons.

⁸³ Rule 45 UNSMR.

⁸⁴CRC, Article 31.

⁸⁵ Rule 47, UN JDL Rules

⁸⁶ Rule 47, UN JDL Rules.

⁸⁷ Rule 47, UN JDL Rules.

⁸⁸ Correctional Services Act (1998) Sections 4-35.

⁸⁹ Section 7(2) (b) of the Act.

⁹⁰ Section 8(2).

An example of the details contained in the regulations are those dealing with the nutritional standards required for children in prisons, which specify that the minimum protein and energy content of food for children aged between 13 and 18 years must be 2, 800 kilo calories per day and that of this, at least 0.8 grams per kilogram of body weight per day must be from the protein group.⁹¹

Section 7(1) of the Act states that prisoners must be held in cells which meet requirements prescribed by the regulations in relation to floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions are consistent with the international standards. The Regulations (in paragraph 3) proceed to describe these in a fair amount of detail and a summary of the key points is sufficient here:

- There must be provision for general sleeping and in-patients accommodation in hospital facilities
- All cell accommodation must have sufficient space to enable free movement and comfortable sleeping arrangements
- Ventilation must be in line with the National Building Regulations
- There must be sufficient natural and artificial light in all cells to enable reading and writing
- There must be sufficient ablution facilities
- Access to hot and cold water
- In communal cells, the ablution facility must be partitioned off
- Each prisoner must have a separate bed with sufficient bedding
- The prison hospital must be sufficiently equipped in terms of beds and clothing
- Prisoners with different security classifications must be detained separately
- Prisoners between the ages of 18 and 21 years must be detained separately from persons over the age of 21 years.

However, the fear has been expressed that in light of the pervasive overcrowding that presently besets South African prisons, it is extremely unlikely that there would be compliance with these conditions in relation to accommodation in all prisons at all times.⁹²

Section 19(2) of the Correctional Services Act is relevant to the right of children in prison to recreational activities. Under this provision, "*the Commissioner must provide a child with social work services, religious care and recreational programmes and psychological services*"⁹³. These services which include recreational programmes "*will have to be put in place in a great number of prisons where children might at some point be incarcerated, either as sentenced or as awaiting trial prisoners*".⁹⁴

⁹¹ Regulations to the Correctional Services Act (1998) made under section 134 of the Act.

⁹²Sloth-Nielsen (n 35 above) 19 citing the views of J Steinberg 'Prison Overcrowding and the Constitutional Right to Adequate Accommodation in South Africa' CSV Occasional Paper, January 2005.

⁹³ Section 19(2) [underlining added].

⁹⁴ Sloth-Nielsen (n 53 above) at p 3.

Despite the comprehensive nature of the Correctional Services Act, the accompanying regulations remain silent on a number of issues that are raised in the international instruments. In this regard reference is made to requirements regarding the transportation of children in vehicles with adequate ventilation and light; provisions for fire alarms and drill procedures and appropriate leisure time and recreational activities.

(iii) The practice

During the situational analysis conducted in 1998, it was observed that the norm in accommodation of prisoners tends to be the use of large communal cells with up to 50 juveniles inhabitants.⁹⁵ This did not comply with the international standards on cell accommodation which lean towards smaller dormitories or individual cells. In fact, the European Committee for the Prevention of Torture strongly advises against this form of accommodation.⁹⁶

In addition, cells were frequently overcrowded, containing, in some cases, twice as many young persons as they were designed for. This resulted in problems such as limited beds and bedding and overcrowded sharing of beds.⁹⁷ Inevitably, this made lack of privacy a frequent problem as well. The conditions of cells varied from prison to prison. The 1998 study noted generally poor hygiene conditions and generally insufficient lighting; natural and artificial.⁹⁸ The same study recorded that, in general, ablution facilities were dirty, foul smelling, and well below what is acceptable.⁹⁹ Overcrowded conditions exacerbated this situation as facilities had to cope with far more people than they were intended for.¹⁰⁰

Unfortunately, it appears that little has changed in relation to accommodation. A recent investigation into prisons cites a number of juvenile sections in individual prisons with single fairly large cells kept in good condition. However, in about half of the 18 prisons visited during this investigation, poor facilities that denied children the opportunity for physical exercise were recorded.¹⁰¹ Obviously the problem of poor facilities and an inappropriate environment is made worse by overcrowding. The same investigation thus records the position in respect of one prison in the following words:

"The cells (in the juvenile section) are dark and dingy, highly overcrowded and not at all clean. There is one toilet and one shower for 40 child prisoners. Both the shower and the toilet are in a very poor state.

⁹⁵ Situational Analysis (n 34 above) 16

⁹⁶ CPT (2004) The CPT Standards: "Substantive sections of the CPT's General Reports", Council of Europe, p. 9.

⁹⁷ Situational Analysis (n 34 above) 16.

⁹⁸ Situational Analysis (n 34 above) 19.

⁹⁹ Situational Analysis (n 34 above) 21.

¹⁰⁰ Situational Analysis (n 34 above) 22.

¹⁰¹ See the examples of Krugersdorp where juvenile cell is described as "grossly overcrowded" and Eshowe where juvenile cell is described as "dark and dingy" in Law Society Report (2004) (n 25 above) at pp 17 and 12 respectively.

A number of the inmates had neither blankets nor pillows and there were very inadequate mattresses.”¹⁰²

In relation to food, it appears that the situation has improved. The earlier study recorded the existence of complaints regarding food and meals in every prison.¹⁰³ It noted one of the most persistent complaints, which it considered as cause for great concern, was the fact that the last meal of the day was served in the early to mid afternoon. The same study also recorded complaints with regard to the quantity, quality, and cultural acceptability of food. The 2004 Law Society Report, reflecting on visits to 19 prisons, is generally more positive regarding the quality of meals served in the juvenile sections of prisons and the adequate spacing of meal times.¹⁰⁴ In a number of instances the children interviewed responded that they received good quality food save for the insufficiency of food in isolated cases and in other limited cases, where children were served food only twice a day.¹⁰⁵ This better practice is confirmed by the Tapscott study at the three youth prisons, which noted that the average daily nutrition targets for children are 2800 kilojoules and that provision is made for offenders with special dietary and religious requirements.¹⁰⁶

Problems with regard to clothing (an area not explored by the recent Law Society Investigation of 2004) were highlighted in the 1998 study. The study recorded the shortage and poor condition of clothing in every prison concluding that *“this almost certainly affects the children’s personal dignity and feelings of self-worth”*.¹⁰⁷ In most cases, convicted children had been supplied with only one set of clothes, or if more, two.¹⁰⁸

(c) Medical and social services in institutions

(i) International standards

The right to health and adequate healthcare is of special relevance to children in detention. While this right is generally important, it is further vital to children in prisons for a number of reasons, the primary one being that children who come into conflict with the law, are often already at risk from poor health and limited access to health care, for example street children or children from poor communities. Frequently, it is the first and only opportunity such children have for their health needs to be identified and addressed.¹⁰⁹ This is also linked to

¹⁰²Law Society Report (n 25 above) 12.

¹⁰³ Situational Analysis (n 34 above) 24.

¹⁰⁴Law Society Report (2004) (n 25 above) generally.

¹⁰⁵Law Society Report (2004) (n 25 above) at p 30 (on the example of Nelspruit Prison in the Northern Province).

¹⁰⁶ Tapscott C (2005) “A Study of Best Practice in Prison Governance”, CSPRI Research Paper No. 9, p 29

¹⁰⁷Situational Analysis (n 34 above) 23.

¹⁰⁸ Situational Analysis (n 34 above) 23.

¹⁰⁹Northern Ireland Human Rights Commission (2002) *In Our Care: Promoting the Rights of Children in Custody* Belfast: Northern Ireland at p 115.

children’s offending behaviour in a way that makes resolution of the children’s health problems essential to their successful reintegration into society upon release.¹¹⁰

International standards make clear provisions in relation to every child’s right to health and health care. The CRC guarantees children the right to the highest attainable standard of healthcare and health care services.¹¹¹ This right is given specific recognition by the UN JDL Rules which emphasize that every child in detention needs “adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care”.¹¹² In order to realize this need, the standards specify that every detention facility should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents, and that staff should be trained in preventative healthcare and the handling of medical emergencies. Furthermore, every child who is ill, complains of illness or demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.¹¹³

International standards provide that medical care provided in detention should, where possible, be rendered through appropriate health facilities and services of the community in which the detention facility is located so as to prevent stigmatisation and promote children’s self-respect and integration into the community.¹¹⁴

Only qualified medical personnel should authorise and carry out the administration of any drug.¹¹⁵ The standards state that all children have a right to be protected from narcotic substances.¹¹⁶ Detention facilities must also adopt specialised drug abuse prevention and rehabilitation programmes administered by qualified personnel.¹¹⁷ Children suffering from mental health problems should be treated in a specialised institution under independent medical management.¹¹⁸ In this regard, steps should be taken by arrangement with appropriate agencies to ensure any necessary continuation of mental health care services after release.¹¹⁹

The family or guardian of the child or any other person designated by the child, have the right to be informed of the state of health of the child on request and in the event of any important changes in the health of the juvenile. Immediate notification to these persons is required in the event of death or serious illness.¹²⁰ In the case of

¹¹⁰ Northern Ireland Human Rights Commission, *ibid*.

¹¹¹ Article 27, CRC.

¹¹² Rule 49, UN JDL Rules.

¹¹³ Rule 51, UN JDL Rules.

¹¹⁴ Rule 49, UN JDL Rules.

¹¹⁵ Rule 55, UN JDL Rules.

¹¹⁶ CRC, Article 33.

¹¹⁷ Rule 54, UN JDL Rules.

¹¹⁸ Rule 53, UN JDL Rules.

¹¹⁹ Rule 53, UN JDL Rules.

¹²⁰ Rule 56, UN JDL Rules.

death, the family/guardian or any other authorised persons have a right to inspect the death certificate and a right to request an independent inquiry into the death.¹²¹

These standards echo those contained in the UNSMR, which provide clear rules in relation to medical services. A clear duty is placed on medical staff to be proactive and also report to the head of prison any health matters related to prisoners; these are:

- Rule 22: Every institution must have at least one qualified medical officer as well as psychiatric services for diagnosis and possible treatment. In addition, the services of a qualified dental officer must be made available.
- Rule 23: If prisoners require specialised treatment, they must be transferred to specialised institutions or hospitals. If the institution has a hospital it must be adequately equipped and staffed.
- Rule 24: Every prisoner must be examined by the medical officer as soon as possible after admission in order to determine physical or mental illnesses and to make appropriate arrangements.
- Rule 25: The medical officer must report the condition of any sick prisoner to the director of the institution in cases where he or she feels that continued imprisonment will adversely affect the medical condition of the prisoner.
- Rule 26: The medical officer must also advise the director on quantity, quality and preparation of food; hygiene and cleanliness of the institution and the prisoners; the sanitation, heating, lighting and ventilation of the institution; the suitability and cleanliness of the prisoner's clothing and bedding; and compliance with the rules regarding recreation and sports.

(ii) South African law and policy

The general right to health care is guaranteed in the South African Constitution in section 27 and with regard to children in section 28. The right to health and the concomitant obligation of the State to undertake reasonable measures to ensure the realization of this right, especially for the indigent children and/or children in state care has been affirmed by the South African Constitutional Court.¹²² Section 35 of the Constitution explicitly guarantees the right of detained persons to an adequate standard of health.

Section 12 of the Correctional Services Act deals with healthcare in relation to inmates (both children and adults) in prison. This section guarantees the provision of adequate health care services and adequate medical treatment "within the available resources" of the Department of Correctional Services. The inclusion of the qualifier subjecting this right to the availability of resources is curious given the lack of such a qualifier in the counterpart provision in section 35 of the South African Constitution. However, although the Constitutional Court has not handed down any decisions directly relating to conditions under which prisoners are kept, it has been

¹²¹ Rule 57, UN JDL Rules.

¹²² See *Minister for Health v Treatment Action Campaign and Others* 2002 (10) BCLR 1075.

noted that its decisions make it clear that the court will be quite sympathetic to constitutional claims based on section 35 because non-compliance with section 35 will have a serious effect on the human dignity of prisoners.¹²³ The Constitutional Court has not been very sympathetic to the resources arguments when fundamental rights are concerned, as was demonstrated in *Minister of Home Affairs v NICRO*.¹²⁴

Section 12(4) (c) of the Correctional Services Act requires the written consent of a legal guardian for surgery in case of “minors” (a term not defined under the Act). If such consent is not possible or it is impractical to delay surgery in order to obtain such written consent, consent can be given by the medical practitioner in charge of the prisoner.

The procedures to be followed in the medical examination of a prisoner, on the death of a prisoner and in informing the prisoner’s next of kin of such death are part of the regulations promulgated under the Act.¹²⁵ In addition, in terms of section 15(2) of the Act, any death of a prisoner must be reported to the Office of the Inspecting Judge of Prisons and that the head of Prison must report the death in terms of the Inquests Act (59 of 1958) where a medical practitioner cannot certify that the death was due to natural causes.

(iii) The practice

The Law Society Report provides a recent update on the state of health care in a number of juvenile sections in prisons. The update shows varying conditions at different prisons. However, the general thread depicts the sharing of healthcare facilities by both adult and child inmates.¹²⁶ In general, every prison has one or two full time nurses and in some cases a medical practitioner. In exceptional cases, some prisons have one part time doctor and more than two nurses and more medical personnel.¹²⁷ The Law Society investigation also notes that in most cases nurses confirmed that records were kept up to date although some of the visiting teams from the South African Law Society were not able to verify this due to their confidential nature.¹²⁸

It was noted by the Law Society Report that there was at Pollsmoor Prison a separate medical ward for children and juveniles. It is questionable whether separation in terms of ages is a realistic expectation in medical facilities and the Act in S 7(3) makes provision for a departure from the general rule of separation to provide medical care.

¹²³ De Vos P (2003) Prisoners’ rights litigation in South Africa since 1994 - a critical evaluation, CSPRI Research Paper No 3.

¹²⁴ *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Others*, CCT 03/04

¹²⁵ As per section 134 of the Correctional Services Act (1998).

¹²⁶ Law Society Report (2004) (n 25 above) generally.

¹²⁷ Law Society Report (2004) (n 25 above) at p 23 (on the example of Leeuwkop Prison in the Gauteng Province with 5 nurses, one auxiliary nurse and one part time doctor) & p 42 (on the example of Pollsmoor with 7 nurses, a doctor who visits once a day, a dentist and psychiatrist both of who visit once weekly).

¹²⁸ Law Society Report (n 25 above) at p 14 (on the example of Stanger Prison in KwaZulu-Natal).

It also states at the same time that this does not apply to sleeping arrangements. There is therefore some ambiguity in the application of the Act in this regard.

Although attempting to examine best practice, the Tapscott study notes that while all of the State prisons visited (including those that are not youth prisons) had medical facilities available and all distributed basic drugs, the frequency with which offenders are able to receive medical treatment is variable and some are only able to receive treatment by a doctor or dentist once a week (with all prisons reporting that they had measures in place to transport emergency cases to external medical providers).¹²⁹

On a further negative note, the 2003/2004 Annual Report of the Judicial Inspectorate of Prisons records that prisoner complaints relating to health care services are the second highest category of complaints.¹³⁰ In 2004 this had dropped to the third highest category.¹³¹ The complaints ranged from access to medical treatment, treatment not effective or not received as prescribed, negative attitude of medical staff, refusal of requests to see a specialist or for dental treatment.¹³² In addition, hundreds of complaints were received by Independent Prison Visitors from ill prisoners who applied to be released from prison on medical grounds.¹³³

The high number of complaints indicates that there may be fundamental problems in the prison health care system. The fact that child inmates are exposed to the same health care services places them in a particularly vulnerable situation.

The Law Society Report records very few instances of deaths in prisons and the available figures do not distinguish between adults and children. The Annual Report of the Judicial Inspectorate of Prisons 2004/2005 notes that the total number of deaths recorded in South African prisons in 2004 was 1758, of which 1689 were natural and 69 were unnatural. Again, there is no indication of how many were children, save to state that the Report mentions that 31 inmates under the age of 20 years died. Further investigation has revealed that the 31 deaths were natural deaths reported in the age group 15 to 19 years of age and in addition there were 5 unnatural deaths in the age group 15 to 19 years during 2004, all 5 were males - 2 died as a result of assaults by a fellow inmate, 2 died as a result of suicide by hanging and one died of so called "unnatural causes – other", the meaning of which is unclear.¹³⁴

¹²⁹ Tapscott study, p. 27.

¹³⁰ Annual Report of the Judicial Inspectorate of Prisons (2004) (n 22 above) at p 15 (noting that there were 19, 329 such complaints in 2003).

¹³¹ Annual Report of the Judicial Inspectorate of Prisons (n 22 above) 10.

¹³² A similar analysis of health care in prisons was not included in the 2004 Annual Report.

¹³³ Annual Report of the Judicial Inspectorate of Prisons (2004) (n 22 above) at p 15 (reporting that there were 495 such complaints in 2003).

¹³⁴ Information obtained telephonically from the Office of the Inspecting Judge of Prisons on 16 November 2005.

In conclusion, there is therefore a clear need to increase the numbers of qualified medical staff in prisons, and in particular, those who can specifically deal with children. Special healthcare facilities which take consideration of children's vulnerability in health would go along way in ensuring compliance with the international standards highlighted earlier.

(d) Educational programmes

(i) International standards

The CRC recognizes the right of every child (including those in custody) to education.¹³⁵ The UN JDLs further provide that children deprived of their liberty should have access to education suited to their needs and abilities and designed to prepare them for their return into the society.¹³⁶ To achieve this, the UN JDLs emphasize the need to provide education through programmes integrated with the mainstream education system.¹³⁷ The intension is to ensure a smooth transition from prison-based education to mainstream education.¹³⁸ The Beijing Rules are also explicit on the need for inter-ministerial and inter-departmental co-operation in the provision of education.¹³⁹

The CRC regards primary education as sufficiently important to require that it must be compulsory. Primary education is a right which must be made compulsory and free to all children, including those in custody.¹⁴⁰ Different forms of secondary education and higher education, including general and vocational education, should also be made available and accessible to all children in detention.¹⁴¹ The right of children with learning difficulties to have their special education needs met, is also recognized by international standards.¹⁴²

(ii) South African law and policy

The right to education is guaranteed under the South African Constitution which includes the right of all children to free primary education and the duty on the State to progressively realize secondary and higher education.¹⁴³

The Correctional Services Act makes wide ranging provisions in relation to the right to education while in prison. Regarding the range of child-specific provisions in this Act, those on education are the most comprehensive.

¹³⁵ CRC, Articles 28 and 29.

¹³⁶ Rule 38, UN JDL Rules.

¹³⁷ Rule 38, UN JDL Rules.

¹³⁸ Rule 38, UN JDL Rules.

¹³⁹ Rule 26(6), UN Beijing Rules.

¹⁴⁰ CRC, Article 28.

¹⁴¹ CRC, Article 28.

¹⁴² Article 28, CRC & Rule 38 UN JDL Rules.

¹⁴³ Section 29, South African Constitution, Act No 108 of 1996.

Section 19, which is the primary provision relating to children provides that every prisoner who is a child and subject to compulsory education, must attend and have access to such educational programmes.¹⁴⁴ This covers children up to the age of 15 years who, if they were not in prison, would be subject to compulsory school attendance.¹⁴⁵

It has been observed that the above provision on education is not limited in any other respect and therefore applies to sentenced and un-sentenced children alike. It is not in any way limited to a particular category of sentenced children, for instance those serving prison sentences of longer than one or two years. In sum, the category children to benefit from education are therefore probably much wider than those presently receiving education in prison.¹⁴⁶

The Correctional Services Act further makes provision that “where practicable, all children who are prisoners not subject to compulsory education [that is those above 15 years of age] must be allowed access to educational programmes”.¹⁴⁷ Despite the qualifier in this provision in reference to practicalities, “the peremptory nature of the word ‘must’ suggests that extremely good reasons would have to be adduced to justify any lack of access to educational programmes for children aged 15 and older”.¹⁴⁸ This provision does not make a distinction between sentenced and un-sentenced prisoners and therefore applies to both categories. Reference in this section to educational programmes can be interpreted to include vocational and other programmes in line with the international standards highlighted in the above section.

The Act is further clear on instances when children may be compelled to attend educational programmes. Under section 41 (2) sentenced prisoners who are illiterate or who are children may be compelled to take part in educational programmes. Although section 41(1) applies to both child and adult sentenced prisoners, it is also relevant to the right of children in prison custody to education. It requires the Department of Correctional Services to provide or give access to as full a range of programmes and activities as is practicable to meet the educational and training needs of all sentenced prisoners.

(iii) The practice

The Law Society Report on Prisons (2004) documents a mixed record regarding educational and recreational programmes for children in prisons. In a number of juvenile sections of prisons there is provision for some form of

¹⁴⁴ Section 19(1) (a).

¹⁴⁵ Sloth-Nielsen (n 53 above) at 3.

¹⁴⁶ Sloth-Nielsen, *ibid.*

¹⁴⁷ Section 19(1) (b).

¹⁴⁸ Sloth-Nielsen (n 53 above) at p 3.

schooling or vocational training.¹⁴⁹ However in a few examples, there is no such provision at all.¹⁵⁰ In those where there are educational programmes, there are obvious discrepancies between the quality of educational and vocational programmes on offer. In some of the prisons these programmes are of reasonable good standard and well organised¹⁵¹ while in others they are down to the bare minimum.¹⁵² This situation is confirmed by the Tapscott study, which notes that while all of the State prisons in the study have teaching and training facilities, the prison managers reported that there are too few facilities to meet the needs of all offenders and that the quality of educational programmes is often poor.¹⁵³

Children should be allowed to register for schooling or at least to be engaged in some form of daily educational activity. It has been recommended that children should have a structured daily programme, involving at least four hours of education and participation in social education programmes, organised recreation and exercise.¹⁵⁴ Adequate books and other relevant materials should be provided. Because of their contact with the criminal justice system, children should receive such legal education in prison as may help them understand their rights.¹⁵⁵

The above mixed record extends to recreational programmes. In this regard, it is noteworthy that in most prisons there appear to be no child-centred recreational programmes and children use the same facilities as adults, except that these two categories of inmates are allowed to use these facilities at different times.¹⁵⁶ In some cases, record is made of sporting activities.¹⁵⁷ It appears, however, that there is not much in terms of additional recreational programmes besides sporting activities.¹⁵⁸ In one case the position is recorded thus:

*"The juveniles complained about the lack of facilities to alleviate boredom, and indicated that physical exercise amounted to at most one hour per day in the courtyard. There were newspapers available but the library was not functioning at present."*¹⁵⁹

¹⁴⁹See for example Law Society Report (2004) (n 25 above) at p 24 on the example of Leeuwkop Prison in the Gauteng Province with a full time schooling programme with Grade 12, Business Engineering and adult and basic educational training level 1-4 studies, p 32 on the example of Rooigrond Prison in the North West Province with 3 classrooms for primary education and p 42 on the juvenile section of Pollsmoor Prison in the Western Cape Province with a school programme for both male and female inmates, with ABET levels 1-4, Grades 10-12 (academic), skills development programmes, technical training, woodwork, wood carving, leatherwork, painting, drawing, gym and library.

¹⁵⁰ See Law Society Report (2004) (n 25 above) at p 14 on the example of Stanger Prison in KwaZulu-Natal where requests for study are made only by male prisoners and even in such cases, prisoners are transferred to Empangeni Prison which has such facilities.

¹⁵¹Law Society Report (2004) (n 25 above) at p 42 on the example of Pollsmoor Prison in the Western Cape with an organised school programme running from 0900-1400 and comprising of a wide variety of programmes.

¹⁵² Law Society Report (2004) (n 25 above) at p 32 on the example of Rooigrond Prison in the North West Province with 3 classrooms and presumably a few teachers comprising its education programme.

¹⁵³ Tapscott study, p. 27.

¹⁵⁴ Situational Analysis (n 34 above) 77.

¹⁵⁵ Situational Analysis (n 34 above) 77.

¹⁵⁶Law Society Report (2004) (n 25 above) generally.

¹⁵⁷Law Society Report (2004) (n 25 above) at p 42 on the example of Pollsmoor Prison with a sport and recreation programme, a gym and two sports and recreation teachers.

¹⁵⁸ Law Society Report (2004) (n 25 above) generally.

¹⁵⁹Law Society Report (2004) (n 25 above) at p 17 (on the example of Krugersdorp Prison in the Northern Province).

This account is reminiscent of the position in 1998 when an unsentenced boy reflected on the situation in the following manner:

*"Usually cells are locked all day. There is nothing to do. I only sleep; otherwise I am worried thinking about my case. You end up going crazy. Here they make you a "bandie!"."*¹⁶⁰

The situational analysis in 1998 made an important recommendation to the effect that there should be greater involvement of the outside community in prisons, for example through recreational programmes.¹⁶¹ Child prisoners' recreational activities should be encouraged and opportunities sought to showcase their talents. In addition, children must be allowed regular exercise, sport, art and music and this must be set in a recommended minimum standard for children's exercise.¹⁶²

The Tapscott study revealed one best practice that is commendable in light of the fact that it comes from Westville Youth Prison with overcrowding set at 114%. Although the prison has no playing fields and has limited recreational facilities, the staff regularly organise sporting and cultural events for the young offenders including soccer, basketball and volleyball tournaments between sections as well as fashion shows, singing competitions and plays.¹⁶³ However, the fact remains that the Department of Correctional Services has an obligation to ensure compliance with domestic and international standards and while such examples are laudable, they are ad hoc and nevertheless highlight the dire need for resource allocation and management of facilities to ensure the required standards are fulfilled.

(e) Disciplinary procedures and punishments

(i) International standards

International standards require that the disciplinary regime in any institution where children are deprived of their liberty must respect children's rights while securing the safety of others including personnel working in these institutions. Disciplinary measures in these institutions should be *"consistent with the upholding of the inherent dignity of the child and the fundamental objective of institutional care, namely instilling a sense of justice, self respect and respect for the basic rights of every person"*.¹⁶⁴ The UN JDL Rules require further that no child should be punished except in strict accordance with the terms of the law and regulations in force, and not without

¹⁶⁰ Situational Analysis (n 34 above) 29.

¹⁶¹ Situational Analysis (n 34 above) 29

¹⁶² Situational Analysis (as above).

¹⁶³ Tapscott study, p. 29.

¹⁶⁴ Rule 66, UN JDL Rules.

being informed of the alleged infraction in a manner appropriate to his or her full understanding, having a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority.¹⁶⁵

The UN Convention Against Torture and specifically Article 37 of the CRC prohibits the subjection of a child to inhuman and degrading treatment or punishment and adds that “every child deprived of liberty shall be treated with respect for humanity and respect for dignity”.¹⁶⁶ Some specific examples of prohibited disciplinary measures which constitute cruel, inhuman and degrading treatment according to the international standards are corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the young person.¹⁶⁷

The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment is guaranteed in article 37(a) of the CRC can be found in many other (international) instruments and this protection has been interpreted to extend to corporal punishment. For example, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.¹⁶⁸ In General Comment 20, the Human Rights Committee (HRC) notes that the ICCPR does not contain any definitions of the concepts covered by Article 7 and states that the distinctions between the different kinds of treatment or punishment depends on the nature, purpose and severity of the treatment applied.¹⁶⁹ The aim of Article 7 is to protect both the dignity and the physical and mental integrity of the individual.¹⁷⁰ Further, the HRC’s view is that the prohibition in Article 7 must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.¹⁷¹ The HRC emphasizes that in this regard, Article 7 particularly protects children, pupils and patients in teaching and medical institutions.¹⁷² It is said that the HRC’s reference to “excessive” chastisement indicates that corporal punishment is not *per se* a breach of Article 7, however, the HRC has since stated, with regard to Cyprus, that corporal punishment is prohibited by the Covenant.¹⁷³

The Committee on the Rights of the Child has gone beyond the condemnation of “excessive” chastisement as referred to in the HRC’s General Comment 20 by noting in its concluding observations that any corporal punishment of children is incompatible with the CRC, citing in particular Article 19. The Committee has criticized attempts by states parties to draw a line between acceptable and unacceptable forms of corporal punishment

¹⁶⁵ Rule 70, UN JDL Rules.

¹⁶⁶ CRC, Article 37 (c).

¹⁶⁷ Rule 67, UN JDL Rules.

¹⁶⁸ This Covenant was ratified by South Africa on 10 December 1998.

¹⁶⁹ Joseph S, Schultz J and Castan M “*The International Covenant on Civil and Political Rights: Cases, material and commentary*” 2000 page 148

¹⁷⁰ Joseph S et al, op cit, page 148- General Comment 20.

¹⁷¹ Joseph S et al op cit, page 170- General Comment 20.

¹⁷² Joseph S et al op cit, page 170 -General Comment 20.

¹⁷³ See Concluding comments on Cyprus (1998) UN Doc CCPR/C/79/Add.88 para 16 as referred to in Joseph et al, op cit, p 170, footnote 65.

and has called for a clear prohibition of all corporal punishment including in the family, in other forms of care, in schools and in the penal system.¹⁷⁴

International standards state that recourse to instruments of restraint and to force is permissible only in exceptional circumstances, such as to prevent a child from inflicting self-injury, injuries to others or serious destruction of property, and where all other control methods have been exhausted and failed.¹⁷⁵ Even then such measures must only be used as explicitly authorised, and this must be specified by law and regulation. When used, such measures should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. Further, the director of administration should at once consult medical and other relevant personnel and report to the higher administrative authority.¹⁷⁶

The international standards further state that a reduction of diet, forced labour, and denial or restriction of contact with family members may not be used for any disciplinary purpose.¹⁷⁷ Similarly, collective sanctions, aimed at groups of prisoners as opposed to an individual, are prohibited.¹⁷⁸

The Rules also make provision with regard to the keeping of complete records of all disciplinary proceedings and that regulations should establish norms concerning the conduct constituting a disciplinary offences, the type and duration of disciplinary sanctions that may be inflicted, the competent authority to impose such sanctions, and the competent authority to consider appeals.¹⁷⁹

A report of misconduct should be presented promptly (by disciplinary staff) to the competent authority, which should decide on it without undue delay, involving a thorough examination of the case.¹⁸⁰

(ii) South African law and policy

A number of provisions in the South African Constitution, including the children's rights clause in Section 28 (including the best interests of the child principle) and the prohibition of torture, cruel inhuman and degrading treatment apply to the disciplinary regimes in residential care facilities and prisons in which children are detained.¹⁸¹

¹⁷⁴Hodgkin, R and Newell, P, *UNICEF Implementation handbook for the Convention on the Rights of the Child*, 1998, p. 493. (2nd edition)

¹⁷⁵ Rule 63, UN JDL Rules.

¹⁷⁶ Rules 63 & 64, UN JDL Rules.

¹⁷⁷ Rule 67, UN JDL Rules.

¹⁷⁸ Rules 67, UN JDL Rules.

¹⁷⁹ Rule 68, UN JDL Rules.

¹⁸⁰ Rule 69, UN JDL Rules.

¹⁸¹ *S v Williams* 1995 (3) SA 632 (CC).

The Correctional Services Act contains provisions in relation to disciplinary measures and punishment. These apply to children as well as adult prisoners. The most relevant sections of the Act are contained in Part B of Chapter 3.¹⁸² Disciplinary order must be maintained “with firmness but in no greater measure than is necessary for security purposes and good order in prison”.¹⁸³ Section 23 contains a lengthy and detailed catalogue of what constitutes disciplinary offences by prisoners. This is consistent with the particular UN JDL Rule on this point.¹⁸⁴ The Act prohibits the use of any prisoner to implement any disciplinary measures. It further states that disciplinary hearings must be fair and that at the hearing the prisoner must be informed of the allegations against him or her. Solitary confinement is prohibited under the Act except where the Inspecting Judge of Prisons has confirmed it as being necessary and even then after an examination of medical and other reports in respect of the prisoner concerned.¹⁸⁵

The Correctional Services Act further prohibits the use mechanical restraints as a form of punishment or disciplinary measure, and restricts their use to ensure the safety of the prisoner concerned or other prisoners, or if there is a reasonable suspicion of escape, or if requested by the court.¹⁸⁶ Regulation 18(1) and 18(2) list the devices that may be used as mechanical restraints. A number of these devices, such as electric stun belts and leg irons, have been criticized by human rights organisations¹⁸⁷. The appropriateness of such restraints for use on children is highly questionable.

The Act further describes the disciplinary procedures to be followed and a distinction is made between a disciplinary hearing held by a Head of Prison and a hearing conducted by a disciplinary official. The former being more informal with a relatively low ceiling of penalties that may be imposed, and the latter being more formal and allowing, for example, for legal representation. The Regulations to the Act in paragraph 14 appear to emphasise the more formal procedure and limited guidance is given to the more informal hearing conducted by a Head of Prison. No distinction is made between children and adults for the purposes of disciplinary hearings. The following are important points raised in the regulations as applicable to hearings conducted by a disciplinary official:

- The disciplinary hearing must be conducted as soon as possible and if practicable within 14 days from the date that the prisoner was informed of the charge against him or her, and such notification may not be less than seven days before the hearing.
- A case presenter must be appointed who will be responsible for arranging the hearing
- The rules of evidence will apply at such hearings
- A full record of proceedings must be kept and signed by the disciplinary official

¹⁸² Sections 22-25.

¹⁸³ Section 22(1).

¹⁸⁴ Rule 68, UN JDL Rules.

¹⁸⁵ Section 25(1).

¹⁸⁶ Section 31(6).

¹⁸⁷ Amnesty International (2003) *The pain merchants – security equipment and its use in torture and other ill treatment*, ACT 40/008/2003, Accessed from <http://web.amnesty.org/library/Index/ENGA400082003>

- Any prisoner (or his or her legal representative) has the right to address the disciplinary official on the merits of the case
- The disciplinary official must make a finding of guilty or not guilty on a balance of probabilities
- The disciplinary official may decide who may attend the hearing
- The disciplinary official may request an assessment of the prisoner's state of mental health
- Witnesses may be called.

Contrary to the UN JDLs in Section 67, the Correctional Services Act does not prohibit the use of solitary confinement for child prisoners. The Act does however require in Section 25 that all cases where solitary confinement is contemplated, the implementation of this sanction must be confirmed by the Inspecting Judge after he or she has seen a record of the case which is supported by a report from a registered nurse, psychologist or the medical officer on the health status of the prisoner concerned.

(iii) The practice

A study conducted in 2000 revealed the prevalence corporal punishment either in the form of "smacking" or the more severe form of "whipping" in both places of safety and prisons.¹⁸⁸ This study concluded that potentially, every detention facility (prisons and places of safety) makes use of corporal punishment though its use is legally prohibited.¹⁸⁹ The study concluded that both the use of corporal punishment and isolation as disciplinary measures violate not only the South African Constitution, but also the UN JDL Rules.¹⁹⁰

On the positive side, the same study revealed the widespread use of warnings or cautions in both prisons and places of safety. This indicates some compliance with the international and domestic minimum standards. A total of 43 % of the child respondents in the Kiessel study experienced warning as a disciplinary measure.¹⁹¹ Cautions and warnings were found to be used more frequently in places of safety than in prison.¹⁹² Kiessel attributes this disparity to greater availability and presence of staff in places of safety than in prison. The Kiessel study adds in this regard that "prisons tend not to use measures which demand more human resources [hence] confinement in cells or isolation are practiced more frequently than in places of safety"¹⁹³. In addition, places of safety employ child care workers who have some training, while prison officials have no specialised training in working with children.

¹⁸⁸Kiessel (2000) (n 66 above) at p 15. She notes that 28 % of the child respondents in his study had experienced smacking as a disciplinary measure and 19.3 % indicating the use of whipping or serious whipping. Kiessel further adds that in this regard that "strikingly, there was no significant difference between prisons and places of safety".

¹⁸⁹ Kiessel (2000) (n 66 above) at p 15.

¹⁹⁰ Kiessel (2000) (n 66 above) at p 16.

¹⁹¹ Kiessel (2000) (n 66 above) at p 15.

¹⁹² Kiessel (as above) (noting that every second inmate in a place of safety was likely to be cautioned as compared to every fourth in prison and that younger inmates were given more warnings more often than older inmates).

¹⁹³ Kiessel (2000) (n 66 above) at p 17.

The use of other punishment measures, such as the suspension of visitation rights, restrictions on what to wear, assault or abuse (by staff and co-inmates) violate the international standards highlighted above. Denial of food has also been cited as a disciplinary measure for children in some prisons in an investigation as recent as 2004.¹⁹⁴ More than half of the child respondents in the study by Kiessel observed assaults by staff members in both prisons and places of safety.¹⁹⁵

There is a need to encourage humane responses to disciplinary infringements by children in prison. It is for this reason that reliance should be placed on dialogue and communication between warders and children to encourage measures such as warnings and reprimands as constructive and positive forms of discipline.

(f) Contact with the outside world

(i) International standards

International standards express that every child who is deprived of his or her liberty must enjoy the right to maintain regular contact with his or her family through visits and correspondence. The visits should take place in circumstances that respect the child's need for privacy, contact and unrestricted communication with the family, other visitors and where applicable, legal counsel. Children should also be allowed to leave detention for home visits and other important reasons.¹⁹⁶

These standards further stress the importance of ensuring that young people in detention have the opportunity to keep themselves informed regularly of the news by reading newspapers and magazines through access to radio, television and films and through visits of representatives of any lawful club or organisation in which the child is interested.¹⁹⁷ The latter provision brings to the fore the role of child rights and -welfare organisations, such as non-governmental organisations, with regard to visitation of children in custody.

In summary, the purpose is to maintain contact with the outside world to limit the negative effects of institutionalisation and facilitate reintegration upon release. Haney describes institutionalisation as "*the process by which inmates are shaped and transformed by the institutional environments in which they live*" and

¹⁹⁴ Law Society Report (2004) (n 25 above) at p 30 (on the example of Nelspruit Prison in the Mpumalanga Province).

¹⁹⁵ Kiessel (2000) (n 66 above) at p 14.

¹⁹⁶ Article 37 (c), CRC & Rules 59-62 UN JDL Rules.

¹⁹⁷ Rule 62, UN JDL Rules & Article 17, CRC.

prisonisation as a summary of the negative psychological effects of imprisonment.¹⁹⁸ The effect of imprisonment can be physically, mentally and emotionally devastating for any individual.

(ii) South African law and policy

Section 13 of the Correctional Services Act deals with prisoner's contact with the community and family. In the case of children, the Act specifically [in S 13(6)(c)] provides that "the Commissioner must notify the appropriate state authorities who have statutory responsibility for the education and welfare of children, as well as the parents or legal guardian or family member of the child" when the child is admitted to prison or transferred to another prison. The Act further provides that the child cannot refuse to allow this notification, an option available to adult prisoners. Sloth-Nielsen remarks that *"this gives effect to the important rights of children to maintain contact with parents and families"*, as provided for in Rule 22, 59, 60, 61 and 62 of the UNJDs.¹⁹⁹ Section 19(3) of the Act requires the Commissioner, if practicable, to ensure that prisoners who are children remain in contact with their families through additional visits and "any other means". The Regulations under the Act do not amplify what is meant by the reference to any other means but places a specific duty on the Head of Prison to give special attention to the development of good family relationships between prisoners and their families and other relatives.²⁰⁰ This has been said to beg an answer to the question of what additional obligation this provision could be regarded as imposing upon the Commissioner-*"must he provide transport for families, or telephone access, or writing paper?"*²⁰¹ The Head of Prison has a further duty to convey "any important information" regarding the prisoner's family, relatives or friends that may come to his attention to the prisoner.

Neither the Correctional Services Act nor the regulations describe in detail the frequency of visits or provisions in relation to the child's right to be kept informed, but states in Section 13(3) of the Act that there must be under all circumstances at least a one hour visit per month by a spouse, family member, relative, medical practitioner or chosen religious counsellor. This right also applies to foreign nationals in South African prisons and the Act in Section 13(5) provides for communication with the appropriate diplomatic or consular representative. Should such a mission not be available in South Africa, the prisoner has access on the same basis to an international organisation whose task it is to protect the interests of such prisoners.

Part of the right to be kept informed while in prison is also guaranteed by section 35 (1) (b) of the South African Constitution which provides for the right of detained persons to access reading material while in detention. This is provided for in Section 18 of the Correctional Services Act and further described in Paragraph 13 of the

¹⁹⁸ Haney C (2001) The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment, Paper presented at the National Policy Conference 30-31 January 2002, US Department of Health and Human Services, The Urban Institute, p 5.

¹⁹⁹ Sloth-Nielsen (n 53 above) at p 3.

²⁰⁰ Correctional Services Regulations, para 8(1) Government Gazette No. 26626

²⁰¹ Sloth-Nielsen, (n 53 above) at p 3.

regulations to the Act. As far as is practicably possible, a library should be in place at the prison and prisoners may also receive reading material from the outside. The Head of Prison may further prohibit any publication that may pose a threat to the security of the prison or would be viewed by other prisoners and undermine a person's sense of personal dignity.

(iii) The practice

The practice in prisons in relation to the detained child's right to maintain contact with the family varies greatly between different prisons. However, the common thread is that this right is not effectively realized for a variety of reasons.²⁰² In certain juvenile sections of prisons, visitation and contact with the family was stated to be frequent in some cases. In other instances, it was found to be largely hampered by the financial resources available to prisoners' families.²⁰³

The distances between imprisoned children's homes and the prison are often a major obstacle to maintaining regular contact. Poverty is also a major obstacle, even if the distance is not that far. Although there is some concentration of children in certain prisons and primarily those in the large metropolitan areas, nearly all the prisons have some, sometimes only one, children in them. Only six out of 239 prisons hold more than 100 children as at end of February 2005; these are Durban-Westville, Pollsmoor Medium, Pollsmoor Maximum, Port Elizabeth, St Alban's and Leeuwkop. The result is that children are spread out across prisons in South Africa, and this obviously creates a monitoring problem.²⁰⁴

The recommendations made in relation to the need to have well-equipped libraries stocked with relevant books, materials, newspapers, and magazines in order to bolster the educational programmes, extend to imprisoned children's right to contact with the outside world. In addition to the importance of television and radio, current reading material is a key aspect of ensuring that children keep in touch with the developments on the outside world through news and features.

(g) Staffing and the administration of prisons

(i) International standards

The CRC recommends the aim and purpose of every child justice system to be the "promotion of the child's reintegration and the child assuming a constructive role in society".²⁰⁵ The presence of adequate and competent

²⁰² Law Society Report (2004) (n 25 above) generally.

²⁰³ Law Society Report (n 25 above) at p 14 (on the example of Stanger Prison in KwaZulu-Natal).

²⁰⁴ Muntingh, L "Children in Prison: some good news, some bad news and some questions", *Article 40*, Vol. 7 No. 2, 2005, p.8.

²⁰⁵ CRC, Article 40(1).

staff in institutions where children are deprived of their liberty is essential to achieving the aim of reintegration of the child as provided for in the CRC. The UN JDL Rules are also specific that personnel in these institutions should be “qualified, carefully selected and recruited”²⁰⁶. Such personnel should include “sufficient numbers of educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists”.²⁰⁷

These standards further prescribe that personnel should be appointed as professional officers with adequate remuneration and should receive training in child psychology, child welfare and international standards and norms of human rights and the rights of the child.²⁰⁸ These standards are in line with the over-arching right of the child to have his or her best interests as the determining factor in all actions concerning him or her.²⁰⁹

At a more general level, international standards require that prison personnel should be appointed on a full-time basis as professionals and have civil service status with security of tenure subject to good conduct, efficiency and physical fitness.²¹⁰ Recruitment of prison personnel should be carefully done and based on integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institution depends. Personnel should therefore be appointed and accorded adequate salaries with employment benefits and conditions favourable to the exacting nature of work to attract suitable men and women.²¹¹ As far as possible, specialists such as psychiatrists, psychologists, social workers, teachers and trade workers should form part of prison personnel preferably on a permanent basis but without excluding part-time or voluntary workers.²¹²

(ii) South African law, policy and practice

The Act and the Regulations do not describe in detail the appointment requirements, skills requirements, salaries and so forth as these are regulated by the general provisions of the civil service. There are no norms described in terms of the number of warders or professional staff to the number of prisoners and this is regarded as a policy shortcoming. The Strategic Plan of the Department of Correctional Services does provide for the employment of 8311 additional entry level staff members to facilitate the implementation of the seven-day work week, and further plans to reduce post vacancy rates are also described. In this regard the Department suffers from two shortcomings, namely the shortage of posts and the vacancy rates in approved posts. The 2003/4 Annual Report of the Department of Correctional Services reports the following vacancy rates for selected posts as shown in Table 1. The number of psychologists' posts is 112 and it is highly questionable whether this is sufficient for a sentenced population of more than 155 000 prisoners. Similar questions can be asked around the

²⁰⁶ UN JDL Rules, Rule 81.

²⁰⁷ UN JDL Rules, Rule 81.

²⁰⁸ UN JDL Rules, Rule 83.

²⁰⁹ CRC, Article 3.

²¹⁰ Standard Minimum Rules for the Treatment of Prisoners, Rule 46(3).

²¹¹ Standard Minimum Rules, Rule 46.

²¹² Standard Minimum Rules, Rule 49.

number of social work posts. From the available documentation it is also not apparent whether any of these posts are exclusively allocated to children and whether different norms apply to children than to adults.

Table 1 Posts and vacancy rates in the Department of Correctional Services, selected posts

Post	Number of posts	Posts filled	Vacancy rate %
Educationists	489	328	32.9
Professional nurse	979	512	47.7
Psychologists and vocational counsellors	112	27	75.9
Social work and related	634	434	31.5

It is expected that the Department of Correctional Services will deal with these operational matters on an annual basis through the medium term expenditure framework supported by the Strategic Plan. Section 95 of the Correctional Services Act does provide for regular internal service evaluations to assess the effectiveness and efficiency of the department's operations. This will presumably deal with human resource management issues.

(h) Monitoring of children in detention

(i) International standards

The international standards such as the UN JDLs (in Rule 72 to 78) and the UNSMR (in Rule 55) require that all prisons should be subject to a system of inspection which is independent of the authority responsible for the administration of prisons and places of detention. These Standards also give prisoners the right of full and confidential access to inspectors subject to legitimate security considerations. The Standard Minimum Rules for the Treatment of Prisoners state as follows in Rule 55:

"There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services."

The CRC in Article 37(d) also provides implicitly for the monitoring of detention by ensuring the right to challenge the legality of the detention. The UN Convention Against Torture also provides in Articles 12 and 13 for the prompt and impartial investigation of any allegations of torture.

The obligation to provide for independent and regular inspections has been put into practice in different ways in jurisdictions worldwide. An international survey records different examples of good practice.²¹³ These include civil society involvement (through voluntary visits to assess prison conditions) in preventing abuses in prisons through regular visits enabled by virtue of formal inspection procedures. This avenue is an example of the benefits of having a good working relationship between prisons and local civil society structures. Other examples found in some parts of the world involve monitoring bodies comprised of lay members of the community. The involvement of lay monitors in cases of serious prison incidents in England and Wales has been cited as serving a dual purpose of helping to protect prisoners from abuse, besides safeguarding staff against unjust allegations.²¹⁴ Other examples include roles designated for independent internal and external inspectors who should carry out both regular and ad-hoc inspections (including outside work hours) and with unlimited access to persons and places within prisons. In some countries, such as France, judges are given the responsibility of ensuring that prisons are managed according to the law and that prisoners are treated humanely.²¹⁵

(ii) South African law, policy and practice

Of significance to compliance with the international standards relating to monitoring are provisions in Chapters IX and X of the Act which establish an independent external monitoring procedure. These provisions relate to the establishment, power and working of the Judicial Inspectorate, the Office of the Inspecting Judge of Prisons and the appointment and powers, functions and duties of Independent Prison Visitors.²¹⁶ In short, the Act makes provision for the establishment of Independent Prison Visitors to hear, record and resolve complaints from prisoners. The purpose is to address such complaints at ground level. Should this not be successful, the complaint can be referred to the Visitors Committee and/or the Office of the Inspecting Judge. The Act does not make any special provision with regard to the work of the Judicial Inspectorate and children in prisons.²¹⁷ There is therefore no independent body of institution with a specific mandate to monitor children deprived of their liberty and other institutions such as the Human Rights Commission and the Judicial Inspectorate have a general mandate in this regard that extends to adults. The annual visits to prisons by members of the South African Law Society provides a further method of monitoring detained persons, including children, as is demonstrated in their very informative reports.

²¹³ Coyle (n 24 above) 113-115.

²¹⁴ Coyle (as above) 114.

²¹⁵ Coyle (as above) 115.

²¹⁶ The Judicial Inspectorate works through the Office of the Inspecting Judge which appoints Independent Prison Visitors (IPVs) to perform a range of functions including regular visits to prisons, interviewing of prisoners and recording of complaints received from prisoners. During 2004, the 221 IPVs appointed visited prisons 9,948 times, interviewed a total of 573,941 prisoners, dealt with their complaints and reported to the Inspectorate, see Annual Report of the Inspecting Judge 2004/2005 (n18 above) 9.

²¹⁷ For a more detailed description of the effectiveness of the IPV system, see Gallinetti J (2004) An Evaluation of the Independent Prison Visitors System, CSPRI Research Paper.

4. Conclusion

International law contains explicit and comprehensive standards in relation to the position of children in prison. This is evidenced by the number of instruments both of binding and non-binding (persuasive) nature applicable to children deprived of their liberty. The comprehensive UN JDL Rules apply (by virtue of their expansive definition of 'children deprived of their liberty'²¹⁸) to all settings in which juveniles are deprived of their liberty, including prisons, for both sentenced and un-sentenced child prisoners. The point of departure in the debate on children deprived of their liberty, is the principle that detention should be used as a measure of last resort and then for the shortest possible period of time. This principle is given legal force through Article 37(c) of the CRC and forms part of South African law through the children's rights clause in section 28 of the (1996) Constitution. In the event of detention, international law regulates the conditions under which children must be detained and their treatment. A number of these standards have been domesticated through South African law and policy as highlighted in different sections of this paper.

This paper makes a number of observations in relation to the need to upgrade some areas of these domestic laws and policies to ensure compliance with the international law framework. Examples of practical compliance and non-compliance have also been highlighted, calling for the need to go beyond progressive laws and policies. The last aspect of the standards that was considered relates to monitoring of children's treatment in prisons and the vital role of internal evaluation process besides an external independent monitoring process. In accomplishing this role, the discussed international standards should serve as key indicators of monitoring. As advocated for by the UN JDLs, this traverses the entire panoply of areas including the law, policy and practice relating to

- admission, registration, classification and placement procedures (and the keeping of records),
- the physical environment and accommodation conditions;
- education and vocational training and work;
- recreational and social activities;
- health care;
- disciplinary procedures;
- the system of inspection and complaints;
- reintegration; and
- standards relating to personnel.

There are a number of critical aspects for which the legislation and regulations do not make special provision for children and they are provided for in the same manner as adults. From a policy development point of

²¹⁸ UN JDL Rules, Rule 11 defining deprivation of liberty to mean "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which that person is not permitted to leave at will, by order of any judicial, administrative or other public authority."

view it may be required to revisit these and interrogate whether the general protection is adequate, given the South African context. It should be emphasised that regulations and standing orders need to be in harmony with the international instruments in order to give expression to the principles espoused by the instruments. Discord at this level will and does create substantive problems with regard to compliance and the protection of children's rights. The extent of violence and coercion in South African prisons place all children in these facilities at extreme risk and it would therefore be appropriately proactive to rather err on the side of caution.



Sources

Court cases

Minister for Health v Treatment Action Campaign and Others 2002 (10) BCLR 1075.

S v Williams 1995 (3) SA 632 (CC).

Legislation, regulations and policy documents

Correctional Services Amendment Act 17 of 1994.

Regulations to the Correctional Services Act (1998)

Correctional Services Act (Act 111 of 1998)

Department of Correctional Services (March 2005) White Paper on Corrections in South Africa, Pretoria.

Other

Amnesty International (2003) The pain merchants – security equipment and its use in torture and other ill treatment, ACT 40/008/2003, Accessed from <http://web.amnesty.org/library/Index/ENGA400082003>

Annual Report of the Judicial Inspectorate of Prisons (2004)

Community Law Centre (1997) Children in Prison: A Situational Analysis Bellville: Community Law Centre.

Coyle, A (2002) *A Human Rights Approach to Prison Management* London: International Centre for Prison Studies

CPT (2004) The CPT Standards: "Substantive sections of the CPT's General Reports", Council of Europe.

De Vos P (2003) Prisoners' rights litigation in South Africa since 1994 - a critical evaluation, CSPRI Research Paper No 3

Haney C (2001) The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment, Paper presented at the National Policy Conference 30-31 January 2002, US Department of Health and Human Services, The Urban Institute.

Hodgkin, R and Newell, P, *UNICEF Implementation handbook for the Convention on the Rights of the Child*, 1998.

Inter Ministerial Committee on Young People at Risk (1996) *In whose best interests? Report on Places of safety, Schools of industry and reform schools.*

Joseph S, Schultz J and Castan M (2000) *"The International Covenant on Civil and Political Rights: Cases, material and commentary"*.

Kiessel, H (2000) "United Nations Standards and Norms in the Area of Juvenile Justice in Theory and Practice: An empirical study on the use and application.

Law Society of South Africa (2004) *2004 Prison Report*

Muntingh L (2005) Surveying the Prisons Landscape – what the numbers tell us, *Law Democracy and Development*, Vol 9 No. 1.

Muntingh, L "Children in Prison: some good news, some bad news and some questions", *Article 40*, Vol. 7 No. 2, 2005.

Northern Ireland Human Rights Commission (2002) *In Our Care: Promoting the Rights of Children in Custody* Belfast: Northern Ireland.

Office of the Inspecting Judge Annual Report on Prisons 2004/2005.

Sloth-Nielsen J and Ehlers L "A Pyrrhic Victory? Mandatory sentences in South Africa", ISS Occasional Paper No. 111, 2005.

Sloth-Nielsen, J (2005) "Policy and Practice in South African Prisons: An Update" *Law Democracy and Development*, Vol 9 No. 1

Sloth-Nielsen, J "The juvenile justice law reform process in South Africa: Can a Children's rights approach carry the day?" (1999) 18 (3) *Quinnipiac Law Review* 473-476.

Sloth-Nielsen, J., "What does the new Correctional Services Act say about children in prisons" (2004) *Article 40* 6(3) at p 2.

Tapscott C (2005) "A Study of Best Practice in Prison Governance", CSPRI Research Paper No. 9.

UN Convention on the Rights of the Child

UN International Covenant on Civil and Political Rights

UN Standards Minimum Rules on the Treatment of Prisoners

UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty