

**MAX PLANCK INSTITUTE
FOR FOREIGN AND INTERNATIONAL
CRIMINAL LAW**

**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

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1. Introduction

During the 1980s, United Nations opened a new range of applications for human rights¹ with its standards and norms in the area of juvenile justice.

- 1985 Standard Minimum Rules for the Administration of Juvenile Justice² (“Beijing Rules”)
- 1989 Convention on the Rights of the Child³ (“CRC”)
- 1990 Guidelines for the Prevention of Juvenile Delinquency⁴ (“The Ryadh Guidelines”)
- 1990 Rules for the Protection of Juveniles Deprived of their Liberty⁵ (“JDL”)

¹ In Art. 10 II b, III and 14 II b ICCP of 1966 and U.N. Standard Minimum Rules for the Treatment of Prisoners of 1955 and regional Human Rights Treaties very specific provisions on juvenile justice could be found sporadically.

² General Assembly Resolution 45/112.

³ General Assembly Resolution 44/25.

⁴ General Assembly Resolution 45/112.

⁵ General Assembly Resolution 45/113.

It was intended to formulate minimum standards for children in conflict with the law at the international level, which could be used by Member States as a basis for the creation of their own juvenile justice systems. In particular, the aim was to “emphasize the well-being of the juvenile and his/her family”⁶ and “to develop conditions that will ensure for the juvenile a meaningful life in the community”⁷. Thus areas of social human rights were integrated into United Nations criminal policy⁸. Putting up with the non-obligation of the Beijing Rules a broad acceptance should be created for its use and application. Some of the fundamental principles of the Beijing Rules were later able to be encompassed in the Convention on the Rights of the Child and therefore reached binding character.

The Standards and Norms envelop a full spectrum of laws and legal procedures, which a typical justice system requires. Topics include anything from crime prevention, diversion, administration of juvenile justice, sentencing, and the training of personnel to conditions in prisons and facilities, in which young people are deprived of their liberty. They guarantee openness for supporters of all different juvenile justice systems who follow the welfare approach or the justice model⁹. These sets of standards provide a mandate for the UN Secretary for action and assistance, in order to improve the implementation of the ideas and guidelines of UN Member States’ resolutions. One main question, which was raised to UN entities in regard to this, is how to improve implementation conditions for these standards and how to facilitate reform tendencies in Member States in order to bring their justice systems in line with the international standard. This question also represents the cornerstone of this research project, as it was carried out with the intention of finding an answer from a criminological perspective.

2. Aims of the research project

Its purpose is to explore the use and application of one set of these standards, the JDL and Art. 37, Convention on the Rights of the Child in a selected Member State - South Africa, which is currently undergoing a process of transition. Nevertheless, South Africa in its process of transition and social change can be seen as an example for global developments and phenomena. The study is an approach to the problems and progress in the use and application of the JDL in further

⁶ Beijing Rule 1.1.

⁷ Beijing Rule 1.2.

⁸ SCHÜLER-SPRINGORUM, H.: Sind die Menschenrechte noch zu retten? In: Festschrift für Miyazawa, hrsg. v. H.-H. Kühne Baden-Baden 1995, 393.

⁹ Compare to DÜNKEL, F.: Jugendstrafrecht in Europa. In: Entwicklungstendenzen und Reformstrategien im Jugendstrafrecht im europäischen Vergleich, hrsg. v. F. Dünkel u.a. 1997, 569, SCHÜLER-SPRINGORUM, H. 1986, p.109.

member states. As part of developing methods in implementation research, a specific research instrument for the measurement and control of the use and application of soft-law recommendations will be developed. In consequence, this research will enable an analysis of the chances and problems of the current penal system in SOUTH AFRICA to be made.

As far as the terminology is concerned, “juveniles” will be used for the purpose of referring to persons under the age of 21 and, in a specific context, “children” will be used to represent persons under the age of 18. Internationally, “child” is the appropriate term and in the South African Constitution it is used as well. However, as shown in the survey, current South African prison practice is to house children and juveniles together, both separated from adult inmates.

3. State of Research

At both national and international level no research has been pursued to date, which evaluates the implementation and/or use and application of these Standards and Norms on a scientific level. In particular, the situation of children deprived of their liberty, as described in the latter and its impact related to this, have never been the subject of any empirical study before. From a criminological perspective, the analysis of existing literature and material shows a lack of empirical, “in-depth” research. Current research is limited nationally and internationally to the interpretation of the contents of the Standards and Norms. Further research focuses mainly on the “implementation-mechanism” of the Committee on the Rights of the Child and its reporting system. In particular, research done by an independent scientific institution is so far not present¹⁰.

4. The research in its South African context

It is possible to provide a lot of valuable information about South Africa, but this would go beyond the limits of this summary. However, a few important aspects will be outlined. Transition is still the dominant factor of South African society. Many new and constructive processes were initiated based on a strong desire to construct a new society. However, reform and responsibilities for the new government can be characterized as Sisyphus-work with an unforeseeable end. Apartheid’s heritage is a stagnant economy lacking skilled professionals and a decaying school system. With poverty afflicting a great part of the population, a

¹⁰ On behalf of the European Institute for Crime Prevention and Control, affiliated with the United Nations, in 1996 Roy *Walmsley* focused on the use and application of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Also, the Crime Prevention and Criminal Justice Division of the United Nations started a process of data-collection and distribution of questionnaires to member states.

phase of accelerated population development and high unemployment all slow down the transitional process. One of the world's highest crime rates - in particular a high murder and rape rate - leaves its mark on society and fosters a fear of crime.

The „legal“ transition has far progressed with a strong constitution and a flood of new legal codes. A new child justice bill is being developed, which focuses on diversion, non-custodial measures and restorative justice instead of imprisonment. In this context it will be interesting to see if Parliament will finally accept the draft. It concentrates on the sentencing and administration of justice and does not consider the implementation of imprisonment. The new Correctional Service Bill, which was not enforced during the survey, covers this issue in some aspects, but not in detail. Until now South Africa did not have a special legal code for children. The current justice system concerning procedures with delinquent children is an incoherent one.¹¹ Only a few legal sections deal specifically with children. In 1995 corporal punishment was abolished as a sentence for juveniles, leaving the range of sanctions more limited and thus concentrated mainly on imprisonment as the appropriate sentence.

5. The situation in penal institutions

At the end of the survey prisons were in a state of unrest. In Johannesburg's largest prison, which at this stage accommodated 10.000 prisoners, 339 prisoners went on hunger strike. This unrest originated due to the Ministry of correctional services' new policy to reduce privileges, additional supplies, food from the outside, and visits. (TV and radio were also, already removed from the cells.) Staff shortage linked with overcrowding seems to endanger management control, security and order in penal institutions. South African prisons are confronted with an overpopulation quota of 141,1% and a staff-prisoner ratio 1:4,5.¹² Of 100.000 inhabitants about 330 are prisoners¹³. In 1997 about 76 out of 100.000 persons under the age of 21 were imprisoned.¹⁴

¹¹ *FRANCK, C., ARZT, L.* 1997, 163.

¹² In November 1998 the Ministry for Correctional Services described the capacity in South African prisons as 99.000 inmates, whereas 140.000 prisoners were actually incarcerated, see *The Cape Argus*, 3 November 1998, 3.

¹³ With regard to the general population quota estimations were made, since there is no definite figure available. For international comparison, see *Walmsley*, 2000, 2, he describes that on November 30, 1999 out of 100.000 inhabitants 400 were incarcerated.

¹⁴ With regard to this estimation there were no reliable absolute figures available. In particular, the quota of juveniles out of the general population quota can only be estimated.

6. Methodology

Part A of the study analyses the Standards and Norms, their legal status and content, while Part B analyses legal background, law, reform proposals and statistical material related to children deprived of their liberty in South Africa. On the basis of these findings and discussion of current research methods in empirical social science, in particular in implementation research, a research instrument will be developed. Implementation research is regarded as the theoretical working basis for this study. It was established in political sciences during the seventies and has meanwhile flourished, also in criminological research¹⁵. In this context, implementation is defined as the process of social change through norms, or more concrete as the “execution and application of the law and other programmes of action in the process of politics development”¹⁶. Implementation research focuses mainly on the causal explanation of occurring discrepancies between norms and reality, programme objective and its actual effect. The major factors of effective implementation basically fall into two categories. The characteristics of the implementation system and the behaviour of implementation agents, and the implementation field, mainly the characteristics and behaviour of the target group and other interested parties¹⁷.

The empirical study with its evaluating¹⁸ character focuses primarily in Part C on the situation of children deprived of their liberty, omitting considerations of prevention and administration of justice, which are the other key concerns of these Standards and Norms. It focuses mainly on the use and application of the JDL¹⁹ in terms of its level of execution, in particular, its use and application of concrete addressees, like the personnel in places of safety and prison personnel in the relevant institutions. It is characteristic of the implementation structure of the Standards and Norms that there is no obligation for Member States to implement UN Standards like the JDL into their national legislation. Therefore, the recommending and non-binding character of the JDL justifies the approach chosen in this research: focal points are the staff of prisons and places of safety (detention centres for children awaiting trial) and their acceptance of the JDL, as a target group in the implementation field, and also the juveniles themselves, as experts to describe their current situation in a penal institution.

¹⁵ MAYNTZ, R. 1980, 236; BROHM, W. 1998, 110; HEINZ, W. 1998, 48ff; OSWALD, K. 1997.

¹⁶ SCHWARZE, J. 1996, 141; REHBINDER, M. 2000, 178.

¹⁷ MAYNTZ, R. 1996, S. 144.

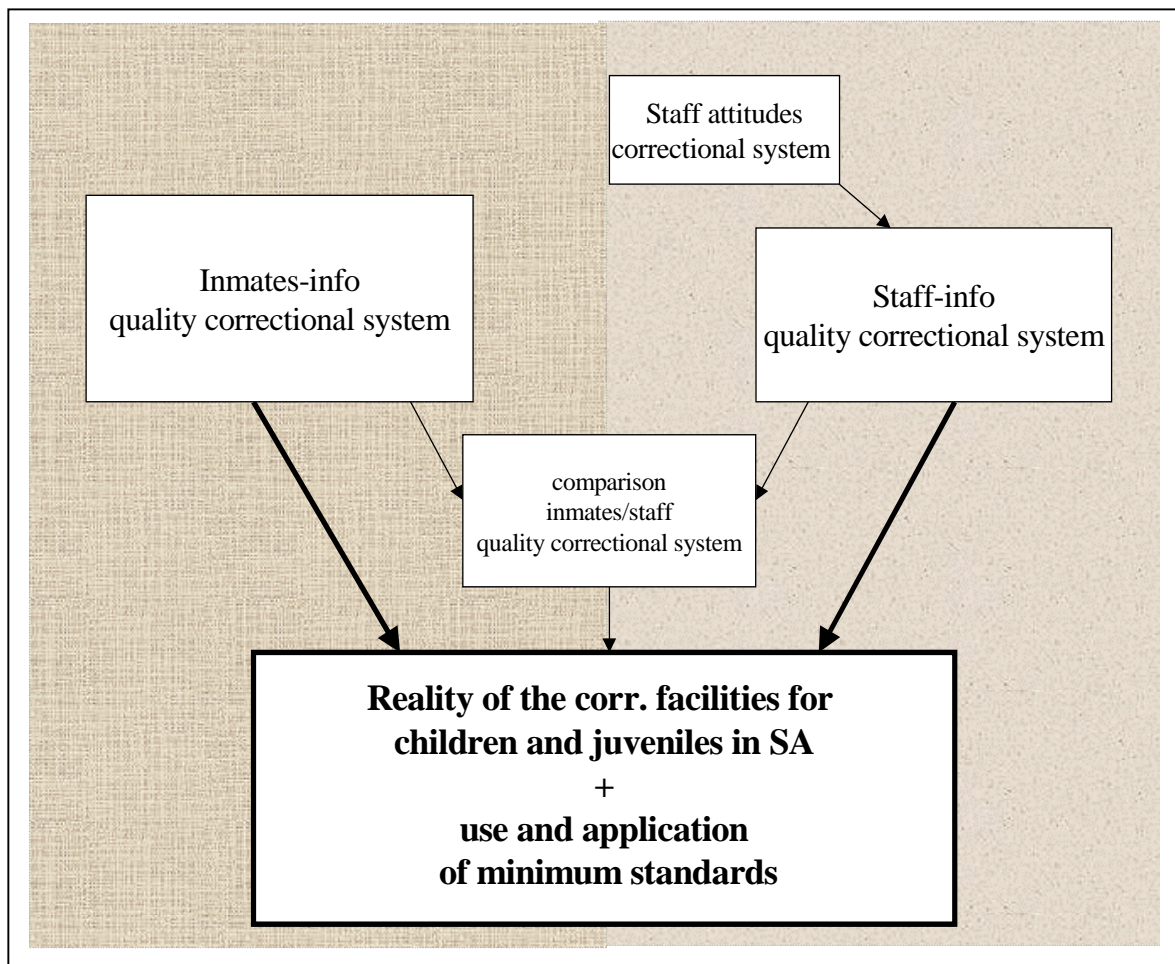
¹⁸ Implementation research overlaps with evaluation research, which was developed in social science.

¹⁹ Which are also elaborations of the basic principles found in the Convention on the Rights of the Child.

The survey approach was chosen as an appropriate research method. Questionnaires were distributed directly to staff dealing with juveniles, representing the whole spectrum addressed in the JDL (director, specialized staff, as well as social workers and custodial staff). The questions focus, i.a., on working and training conditions for the different personnel and their attitudes towards the imprisonment of children and service provision for juveniles in a penal institution. Accommodation, clothing, hygienic conditions, food, discipline, medical and social service and educational programmes are addressed.

In the same way questionnaires were distributed to a sample of juveniles.

Graph 1: Research design



The corresponding juveniles' questionnaire focuses on similar areas as the staff questionnaire. The specific needs and concerns of the juveniles, such as the disciplinary measures imposed, the relation to fellow inmates and staff and also victimization were additionally covered. The concrete everyday experience of the juveniles in a penal institution was subjected to comprehensive inquiry.

The fact that the questionnaire covered the everyday life of the juvenile inmates enabled the juveniles to fill what was probably the first questionnaire in their life and increased their motivation to fill it with care. (The variance in time lay between 35 min. and 3 hours/with 67 minutes as mean). An important part of the concept was the execution of the survey for juveniles (and partly of staff) in a „class-room context“ (which meant in practice not only class rooms, but also dining-hall, library, courtyard or church). The research team was present to introduce the subject, to motivate and above all to explain. The participating juveniles received a small gift as a reward.

The design in Graph 1 was chosen to record the reality of the South African correctional system for children and juveniles and the implementation of the minimum standards. Different segments were brought together to provide the overall picture. A multi-level-model is pursued.

7. Sample selection and execution of the survey

Due to a lack of statistical background information and in order to choose the sample of institutions, a short fact sheet questionnaire was distributed to the heads of prisons and places of safety in May 1998. After an analysis of the results and due to logistical considerations, 16 institutions were included in the main survey leaving out only 3 provinces (North, Free State and Northern Cape). The main survey was carried out in a period of 7 weeks in autumn 1998. It was conducted in 12 prisons of different sizes and 4 places of safety. Additional discussions with management and staff members took place. At the end of almost every survey, there was a visit to the respective institution. Preparation and execution of the survey was made possible with field support from Technikon SA. It was planned that about 50 children in each facility would be interviewed (if not enough children were available juveniles were asked to participate).

From 806 children/juveniles a total of 804 responded, resulting in a return rate of 99,8% (n=804). 75% of the children/juveniles participated in the English language and the rest in Afrikaans. From 779 staff members a total of 404 responded, resulting in a return rate of 51,9% (n=404).

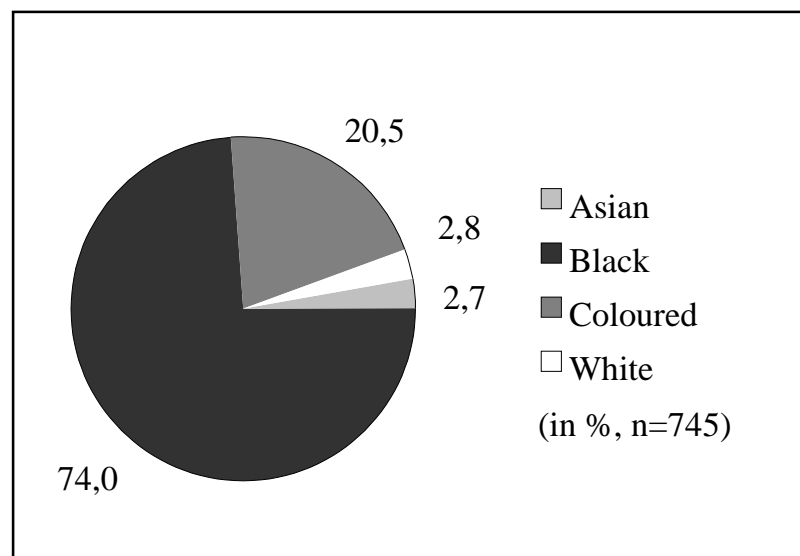
The following will consider some results of the two questionnaires, selecting particular topics.

8. Characteristics of the survey population: children and juveniles

The current juvenile population in penal institutions covers a broad spectrum. The average age in the sample is 17,4 years. As you will notice, adult inmates

were also included if they were accommodated in a juvenile section or in a juvenile facility. Adult inmates can even be found in places of safety. Age determination is one major problem in the current South African justice system. As there was for a long time no birth registration, the accurate identification of age is rather difficult and therefore the separation of child/juvenile inmates and adult inmates is a complicated task. Inmates see an advantage in the juvenile/child status.

Graph 2: Ethnic group



Also of interest is the ethnic background of the inmates (graph 2). Compared to the general population quotas, coloured inmates are over-represented in the sample (8,5% of the general population). White inmates are under-represented (about 12,7% of the general population).

Physical problems due to alcohol consumption during pregnancy, concentration difficulties and literacy problems were visible. Amongst juveniles awaiting trial street children could be found. Tattoos and missing front teeth suggests gang membership and although the issue is taboo, some of the respondents indicated their membership in gangs (Out of 718 inmates 12% indicated gang membership).

Offences, which were committed or for which there was suspect, were summarized into contact (violent offences) and non-contact (offences without physical contact). As is visible in the following table, the number of contact and non-contact offences is fairly balanced.

Table 1: Type of offence

offence	%	n=739
contact	51,8	383
non-contact	48,2	356

(missing values n=42)

Noteworthy is the high number of children who indicated a contact offence, which is also visible in the high rape and murder rate. The younger children’s most common offence was housebreak.

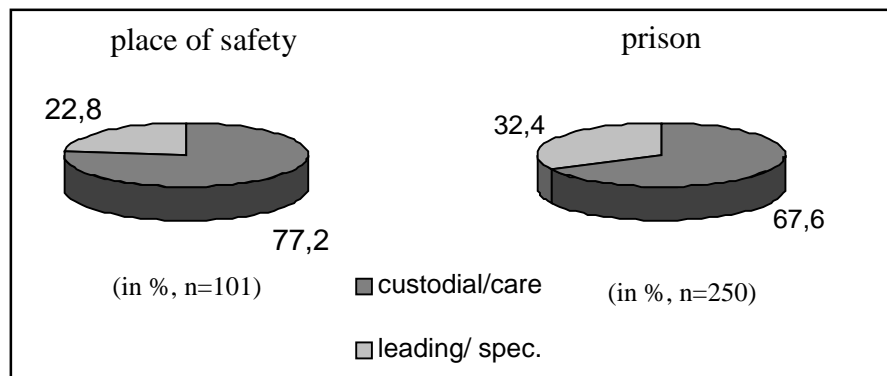
As far as the respondents’ personal background before their detention period is concerned, no differences are visible. More frequently, the younger inmates lived with their mother and/or father, but violent offenders have “normal” family relationships as well.

9. Characteristics of the survey population: staff members

40,5% (161) of the staff respondents are 30 years old or younger, 45,0% (179) are between 31 and 40, 10,8% (43) are between 41 and 50 years old, 3,5% (14) are between 51 and 60, and one staff member (0,3%) is older than 60.

More than half of the staff respondents (55,9%) are black, about one quarter (25,9%) are white, 14,1% are coloured and 4,1% are Asian. With regard to general population quotas white staff members are over-represented and black staff members under-represented. This distribution is the opposite of the ethnical distribution of the inmates.

Graph 3: Position/type of facility



The graph shows that in both types of facilities only a few specialised professionals or staff members in a leading position participated.

10. Minimum Standards

10.1 Assumptions

If we focus on the analysis of the survey, the research project is guided by the following assumptions:

The objectives of the survey analysis are to determine whether

- the JDL and Art. 37 CRC “are applied to” the practice in juvenile penal institutions
- the actual situation in penal institutions is in accordance with the prescribed requirements of the JDL
- structural differences exist in the degree of implementation in the respective institution
- places of safety (detention facilities for children under the age of 18) or special prisons for juveniles, which are “treatment”-oriented apply more to the JDL
- in some sensitive areas and in both types of institutions severe deficiencies in the implementation of the UN standards exist and whether current practice runs counter to the JDL (identification of this indicates existing obstacles for implementation)
- a lack in staff training appears as one of the main implementation obstacles
- a corresponding relationship between the quality of prison conditions for inmates and the staffs’ job satisfaction appears
- the prison staff regard their job less than staff of specialized facilities for children/juveniles.

By means of the statistical analysis the above questions will be answered.

10.2 Accommodation²⁰

Some of the visited prisons are twenty years old or even older and are accordingly in need of renovation. Most of the prisons are one-story high and are archi-

²⁰ *JDL: Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.*

JDL: Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

CRC: In particular, every child deprived of his or her liberty shall be separated from adults.

tecturally clearly designed, often located in beautiful surroundings with huge parks and gardens around the buildings. Usually, they have external security systems. The places of safety are one-story buildings as well - some old and some recently constructed. They are located mostly in or close to urban areas.

As you will notice in the following graph, most respondents were housed in communal cells. The concept of „places of safety“ means that accommodation is in smaller groups, whereas in prisons communal cells accommodate sometimes 20, but also more than 60 inmates.

Table 2: Number of inmates per cell/type of facility

number of inmates per cell	prison % (n=538)	place of safety % (n=175)
0-2	9,7 (n=52)	4,6 (n=8)
3-15	24,0 (n=129)	82,9 (n=145)
16-25	25,7 (n=138)	8,0 (n=14)
26+	40,7 (n=219)	4,6 (n=8)

(missing values n=68)

(p<.001)

The average population per cell was 20 inmates. When the different types of institutions are taken into account, the mean in prisons was 23,3 inmates and in places of safety 9,5 inmates per cell. The difference between these averages is striking. Overcrowding seems to be a big problem in the prisons.

10.3 Age separation

The respondents also indicated whether inmate accommodation complies with the principle of separation of children from older inmates. The table illustrates that inmates and staff have different ideas regarding the compliance of their respective institution with the separation principle (p<.001).

A total of 951 (80,3%) of inmates and staff responded. Out of 587 inmates 73,3% (430) declare that their accommodation complies with the principle of separation, whereas out of 364 staff respondents 52,2% (190) answer that the

separation principle is met. Thus, inmates regard the situation much more positive than staff.

Table 3: Separation principle

separation principle	complied %	not complied %
inmates (n=587)	73,3	26,7
staff (n=364)	52,2	47,8

(missing values n=234)

(p<.001)

An additional question in the childrens' questionnaire explored whether it was possible for the inmates to meet adult inmates in the facility (apart from their accommodation). Out of 427 child respondents 30% (119, 15% out of the total sample) answered that they have the opportunity to meet adult inmates in the institution. (This opportunity existed more in the prisons.) In fact, it was possible for them to meet adult inmates almost everywhere, whether in the dining hall, the visiting area or on the sports grounds.

10.4 Hygienic Conditions²¹

As one could say a lot about accommodation, I will focus shortly on the hygienic conditions present in the accommodation. Inmates were asked to indicate if their blankets have lice and if so, whether it occurs always, sometimes or never. The assumption behind this question is: if blankets have lice, inmates do as well.

The following graph explains the current practice and the significant differences between prisons and places of safety. However, lice were present in both types of facilities.

For almost half of the child/juvenile respondents toilets were not screened. The number of toilet users per toilet also gives an impression of the hygienic conditions in which the inmates have to live.

²¹ *JDL: Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.*

Graph 4: Quality of blankets/lice

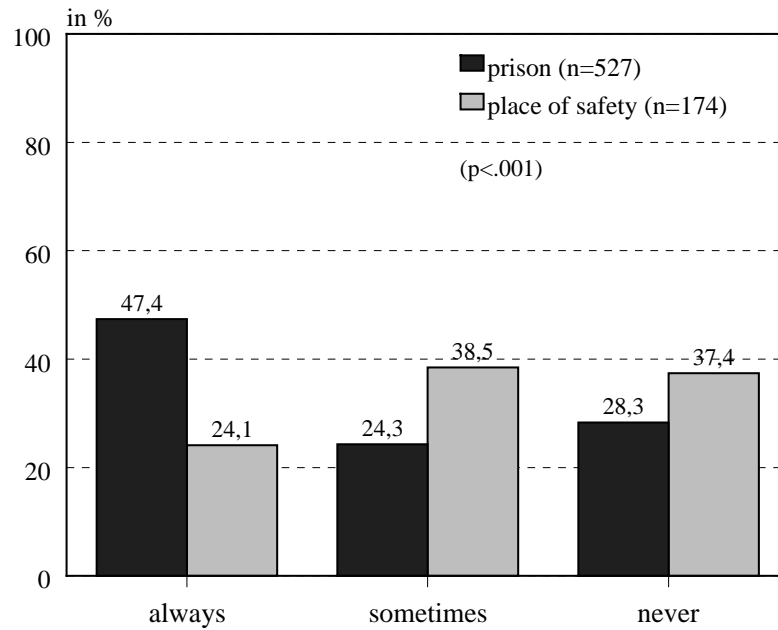


Table 4: Number of users per toilet

number of users per toilet	prison % (n=445)	place of safety % (n=133)
1-4	25,8 (n=115)	31,6 (n=42)
5-9	10,3 (n=46)	20,3 (n=27)
10-14	7,0 (n=31)	37,6 (n=50)
15-19	18,0 (n=80)	8,3 (n=11)
20-24	17,8 (n=79)	0,0 0
25-29	5,2 (n=23)	0,8 (n=1)
30-40	7,6 (n=34)	1,5 (n=2)
41-51	8,1 (n=36)	0,0 0

(missing values n=203)

(p<.001)

In conclusion, it should be emphasized that the accommodation situation in places of safety complies with international standards more than in prisons.

Now I will discuss the relation to staff members.

10.5 Relation to staff members

10.5.1 Observation of assaults by staff members

Child/juvenile participants were questioned as to the frequency in which they noticed assaults by staff members.

More than half of the inmate respondents observed assaults by staff members in both types of facilities. This is a serious claim. Even after the end of apartheid violence is still present in staff-inmate interaction, although more in prisons than in places of safety. Positive role models established through constructive behaviour are absent, instead the opposite might be claimed. Conflict resolution through violence in the relations between staff and inmates could be perpetuated in the relations amongst the inmates. Once violence is imposed by staff or inmates, a vicious circle develops which it is difficult to break.

10.5.2 Offences of inmates in confinement

Staff respondents' assessment of inmates' offences in confinement complement the above picture.

Table 5: Offences reported by staff

offences	prison % (n=291)	place of safety % (n=113)
escape	75,9 (n=221)	79,6 (n=90)
violent offence against staff	48,5 (n=141)	66,4 (n=75)
violent offence against inmates	80,4 (n=234)	73,5 (n=83)
illegal pos. of weapons	54,3 (n=158)	54 (n=61)

(missing values n=126)

*(p<.01)

In places of safety, as well as prisons, more than three quarters of the respondents indicate escape as an inmate offence. More than half of the respondents in both type of facilities possess illegal weapons. With regard to violent offences against staff, the responses diverge in both types of facility ($p < .01$). Out of all the staff surveyed in places of safety 66,4% (75) express that there are violent offences against staff members, whereas in prison 48,5% (141) respondents have the same observation. The problem seems bigger in places of safety than in prisons. In both types of facilities respondents describe the climate in the facilities for inmates as violent, since inmate-inmate violence is reported by more than three quarters of respondents in both types of facilities.

10.5.3 Disciplinary measures²²

The above picture bears out the use of disciplinary measures from the respondents' perspective. The following graph shows the distribution of disciplinary measures in both types of facilities.

43% of respondents experienced a warning as a disciplinary measure. This method is more widely used in places of safety than in prisons. Every second inmate in places of safety was cautioned compared to every fourth in prison. Cautioning is the most popular disciplinary measure in places of safety. However, every facility uses this measure. The younger inmates were given warnings more often than the older inmates.

About 28% of respondents indicated that they experienced smacking as a disciplinary measure. Significantly higher is the number of respondents who experienced smacking in places of safety. Every facility in the sample uses smacking and children face much more smacking than older inmates.

19,3% of the respondents experienced whipping (or something which they regard as serious as whipping). Strikingly, there is no significant difference between prisons and places of safety. Every facility makes use of whipping, though its use is officially forbidden. Most of the respondents concerned were children.

²² *JDL: Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the restriction or denial of contact with family members should be prohibited for any purpose.*

CRC: Every child shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

CRC: No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Table 6: Disciplinary measures

disciplinary measure	prison % (n=416)	place of safety % (n=148)	total % (n=564)	significance
1. removal of privileges	39,9 (n=166)	30,4 (n=45)	37,4 (n=211)	n.s.
2. lock up in cells during the day	51,4 (n=214)	19,6 (n=29)	43,1 (n=243)	p<.001
3. solitary confinement/ isolation	13,7 (n=57)	4,7 (n=7)	11,3 (n=64)	p<.05
4. restriction of visits	22,4 (n=93)	18,2 (n=27)	21,3 (n=120)	n.s.
5. warning	35,1 (n=146)	65,5 (n=97)	43,1 (n=243)	p<.001
6. whipping	19,2 (n=80)	19,6 (n=29)	19,3 (n=109)	n.s.
7. smacking	26,4 (n=110)	33,8 (n=50)	28,4 (n=160)	p<.05

(missing values n=217)

Isolation is a disciplinary measure in both facilities, which is most rarely imposed. It tends to be employed more in prisons than in places of safety. All facilities except one practise isolation. It is imposed more frequently on juveniles than on children.

Participants were asked to provide additional information on the disciplining they experienced. Some exemplary comments are „I was beaten to hell for talking while I was going to eat“, or to be „under the iron hand by being transferred to another prison without a valid proof“. Strange measures such as „body exercises like frog jumps or push ups“ or „standing for a long time in a funny position“ were reported. Cleaning is also used as measure.

In summary, it can be said that the pattern of disciplinary measures used is alarming, though the disciplinary measures used comply with the JDL. In almost every facility all seven listed measures are implemented.

To a considerable degree corporal punishment still exists and isolation is also used. These „illegal“ measures violate not only the South African Constitution, but also the JDL. Their psychological effects may be more damaging than their physical consequences and can possibly contribute to the future violence of the

victim and his/her potential to perpetuate violence in society. In the sense of the JDL and the CRC, the restriction of visits (particularly, limiting contact with family) would be also forbidden.

The opinion that corporal punishment develops educational effects still seems to be broadly accepted by staff members.

In vital points identical behavioural patterns emerge in prisons and places of safety. Even in treatment (or in educationally) orientated places of safety, inmates are exposed to punitive and illegal disciplinary measures. In this context smacking as a „light“ form of corporal punishment might be regarded as a disciplinary measure which is socially acceptable.

One reason for this practice in prisons might be the militaristic education of prison officers, which was practised until 1996. On the contrary, this explanation does not hold for places of safety. The standard of educational or psychological training is still deficient.

The imposition of warnings corresponds with the educational orientation of the training and professional understanding of staff in places of safety. A detailed analysis discloses that professional principles and a conceptual philosophy in accordance with the JDL have not been accepted by all staff members. There are a number of staff members who impose illegal measures either out of ignorance, overstrain, tradition or as a boycott and who may have repressive attitudes.

A certain helplessness in combination with young and partly difficult or violent persons is also visible. There is a lack of adequate training, which goes hand in hand with overstrain. This may contribute to the use of neglectful behaviour, the imposition of corporal punishment and/or other degrading methods.

The respective personnel is an important prerequisite for the implementation of treatment. The fact that warnings are used more often in places of safety than in prisons might be further explained as more availability and greater presence of staff. Prisons tend not to use measures which demand more human resources: confinement in cells or isolation are therefore practised more frequently.

10.6 Relation to other inmates

10.6.1 Victimization²³

About 30% of respondents indicated an experience of victimization during detention by other inmates. Inmates in prisons have a higher probability of becoming double victimized (assaulted and sexually assaulted). In contrast, it is in a place of safety that they are more likely to be assaulted. As far as the proportion

²³ *JDL: All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to ensure secure medical attention whenever required.*

of inmates who indicated victimization is concerned, there is no significant difference between the two types of facilities.

10.6.2 Worries

Additionally, the fear and observation of victimization was questioned, as well as problems with fellow inmates or with gang members. All this information was summarized in one variable „worry“, which related to the everyday life.

Almost half of the respondents indicate worries in three areas. For these inmates everyday life in detention can be characterized as a permanent threat. Fear is ever present. Although not victimized, the victimization of others is observed. Only about 4% of respondents did not have worries. Surviving detention „unharmed“ or without serious traumatization is probably a rare experience (with unforeseeable consequences for society and inmates' reintegration).

11. Imprisonment and application of the JDL in synopsis

To encompass the reality of imprisonment in the different institutions, 42 variables in the child/juvenile questionnaire were selected as indicator-variables. The assessment of respondents' comments in these variables suffices in examining the essential aspects of the JDL. The situation of inmates, their everyday life experience and their perspectives are important keys to the approximation of differences, which possibly exist in the different forms of penal institutions. With those variables as a basis, the mean spectrum of the respondents' assessment will be covered and will assist in constructing a standard profile. Correspondingly, a standard profile was developed from a selection of 38 variables included in the staff questionnaire.

Two mean processual curves values emerged (for illustration as profile). These descending curves reflect the assessment of the international standard on the basis of participants' answers. Quality deficiencies as well as good implementation practices could be identified, analysed and compared.

By means of the respective process curve and trend (each for inmates and staff separately), the respective profiles of 18 facilities could be categorized into three different groups. The first group is worse than average, the second is better than average in that minimum standards are much more commonly applied, and the third group corresponds more or less to the standard profile (average).

It was further of interest to analyse from both staff and inmate perspectives, whether there is a difference in the process curve between prisons, on the one hand, and places of safety on the other. The difference in the process curve of relevant types of staff was analysed as well.

Also the effects of imprisonment and the implementation of the JDL, as assessed by the staff, were identified and a regression analysis was executed.

12. Summary

As with the descriptive analysis, these results also confirm the assumptions made at the beginning (see 10.1 above). Both types of facilities do not comply with the JDL on some sensitive issues, although the scope and ideals of the JDL are clearly considered.

To improve the use and application of the JDL, a comprehensive reform strategy is necessary which would focus on more than one aspect of its implementation. The concept of places of safety (small facilities, age limit, without serious overcrowding, psycho-social care, food, accommodation and hygienic conditions) should be further developed. A lack of financial resources will be the biggest obstacle to its realization. Particularly important is, however, the improvement of the inmate-inmate and the inmate-staff relations. Resources for reforms should first be used for training staff, but simultaneously for improving the basic living conditions of inmates.

Finally, it should be mentioned that these selected indicator variables can be a basis for future research projects, in particular longitudinal studies or analyses of the implementation of minimum standards in other countries. With this selection, a screening-model for the implementation of minimum standards could be developed, which is also suitable for a general evaluation of the imprisonment of juveniles in a justice system and which is applicable for future international studies.

References

- FRANCK, C., ARZT, L.: Justice. In: S.A. Robinson (ed.), *First Call: The South African Children's Budget*, Cape Town 1997, 156-198.
- BROHM, W.: Gesetzesvollzug als Handelobjekt? Zur Notwendigkeit der Rechtstatsachenforschung auf dem Gebiet des informellen Verwaltungshandelns. In: W. Heinz (Hrsg.), *Rechtstatsachenforschung heute*, 2nd edition, Konstanz 1998, 103-111.
- DÜNKEL, F. u.a. (Hrsg.), *Entwicklungstendenzen und Reformstrategien im Jugendstrafrecht im europäischen Vergleich*, Mönchengladbach 1997.
- HEINZ, W.: Strafrechtliche Rechtstatsachenforschung und empirische Kriminologie. In: W. Heinz (Hrsg.), *Rechtstatsachenforschung heute*, 2nd edition, Konstanz 1998, 39-82.

- MAYNTZ, R.: Die Implementation sozialer Programme: Theoretische Überlegungen zu einem neuen Forschungsgebiet, in: Mayntz R. (Hrsg.), Implementation politischer Programme, Königstein 1980, 236-249.
- ders.*: Soziale Dynamik und politische Steuerung. Theoretische und methodologische Überlegungen, Frankfurt/Main 1996.
- OSWALD, K.: Die Implementation gesetzlicher Maßnahmen zur Bekämpfung von Geldwäsche in der Bundesrepublik Deutschland, Diss. Freiburg 1997.
- REHBINDER, M.: Rechtssoziologie, 4. Aufl., München 2000.
- SCHÜLER-SPRINGORUM, H.: The Standard Minimum Rules for the Administration of Juvenile Justice - Some Remarks on the Philosophy and Crime Policy Implications of the "Beijing Rules", UNAFEI Resource Material Series No. 29, Tokyo 1986.
- ders.*: Sind die Menschenrechte noch zu retten? - Vorfragen einer Überlebensfrage, in: Festschrift für Koichi Miyazawa, Baden-Baden 1995, 391-405.
- SCHWARZE, J., POLLACK, C.: Die Implementation von Gemeinschaftsrecht, Baden-Baden 1993.
- UNITED NATIONS (ed.): Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, New York 1992.
- WALMSLEY, R.: Prison Systems in Central And Eastern Europe. Progress, problems and the international standards, Helsinki 1996.
- ders.*: World Prison Population List. Home Office Research Findings No. 116, 2nd edition, London 2000.

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