

Detention and Imprisonment

No Panacea for Child Offences

Jeanette Schmid

During the state of emergency (1986-1990) the public was horrified to learn that a significant number of people detained were children. The 'Free the Children' campaign captured the imagination and sympathy of the international community. Johannesburg Child Welfare appointed two social workers specifically to deal with the needs of these youngsters.

At this time, the National Association of Child Care Workers (NACCW), then regarded as a rather moderate body, attempted in its own publications to remind progressive welfare workers that the detention of children was an everyday phenomenon, preceding the emergency era. Progressive professionals did not show much awareness of this fact. Perhaps they felt that NACCW was insincere, as the issue had not been raised previously. Perhaps children arrested on criminal charges were not seen to be relevant, or perhaps we believed that the issue was raised to distract us from political detentions.

Young children are most vulnerable to becoming either victims or perpetrators of crime. Most children lack encouragement in terms of problem solving and coping skills. They are unable to resolve conflict in a constructive manner. Many have a poor sense of self. As a result they are easily influenced by their peers. Support structures for children in trouble are often absent, leaving the child to be self reliant.

The Extent of Child Detention

Every year hundreds of children suffer the trauma of imprisonment. Official statistics place this at an average of 600 awaiting trial and 800 sentenced a day. These figures are considered to be gross underestimates by welfare agencies. Accurate statistics have been extremely difficult to access. By mid-September 1993, there were 300 unsentenced children at Johannesburg Prison, with a further 700 detained in prisons of the southern Transvaal region. This does not include children who are held in police or prison custody because they are in need of care and are waiting to be referred to social workers. It does not include children who, following a children's court case, are waiting for a vacancy in a place of safety.

Facilities for Care

The continued detention of children is a symptom of the inadequate facilities and policies for South African children. Children in need of care should temporarily be accommodated in places of safety. At present, places of safety are limited. This is partly as a result of race based admission criteria. A non-racial approach has increased the number of available vacancies in the Cape. However, in the Transvaal, all places of safety remain filled to capacity.

It is felt that children currently cared for in institutions should increasingly be placed in foster care, where they can participate in family life. Children's homes should be made available for emergency placements, and for children who required specialist interventions. Child welfare societies are actively advocating increased foster care grants which would encourage potential families to apply, and with a greater number of applications, would allow societies to better screen the applicant families. It is often alleged that poorer families take on a foster child purely for the additional income, and in these cases the child is not properly cared for. Jackie Loffell, of the Johannesburg Child Welfare Society, motivates the increased grants by pointing out that personnel providing institutional care should not be seen only as means of providing for the foster child's needs, but should also be seen as payment for this service.

The Trauma of Arrest

Street children sometimes are arrested by police on the basis that they are "abandoned children" or children "in need of care". The police view is that they are caught between the needs of the public and child care workers. They also feel they are providing the child with a "roof over his head for one or two nights and a plate of food." There is little understanding that the removal of a destitute child to a police cell is experienced as an arrest and as harassment. It is experienced as a traumatic, rather than a charitable act.

Contacting Parents/Guardians

Police officers have always been obliged to contact parents of arrested children. However, it is evident from work carried out in Cape Town that officers often lapsed in terms of this duty. Theoretically, improved mechanisms now exist for parents to be contacted. Faxes are sent to the welfare departments of provincial authorities, who then link the child with a social worker. However, at the time of writing, problems in this regard still existed. Many children were not being



Children need protection from violence and detention. Photo: UNICEF

referred to the authorities. Social workers, already overloaded, struggle to execute this task responsibly. In some cases, there is reluctance to do the job reliably.

It must be noted that some parents, once contacted are reluctant to take responsibility for their children. They feel overwhelmed, frustrated and fed-up by their child's behaviour. There is often the belief that a period in custody will "teach the child a lesson."

Court Procedures

Although it is not practice that bail should be set for children, where the charges are seen as severe, bail is imposed. Lawyers for Human Rights succeeded over the 1992 Christmas period in reducing bail for a number of children, making it more affordable for parents and thus securing the release of children.

Most children are not legally represented in court. Often the case is heard in the juvenile court where the same conditions as those in an adult case apply. There is infrequent conversion of cases into children's court enquiries, in which it is assumed that the child is in need of care.

The Diversionary Approach

Magistrates and prosecutors themselves are often frustrated by the lack of alternatives to prison sentences. NICRO has set as a priority the development of community based sentences, which, at present, vary from region to region. These are applicable on two levels. Firstly, as diversionary mechanisms whereby children are charged for their offences, but where charges are dropped or withdrawn once the child completes a prerequisite course, and secondly, as a condition of a suspended sentence.

Diversionary mechanisms are increasingly being recognised as an effective means of keeping children out of detention. At a conference on drafting legislation hosted by the Community Law Centre in October the following suggestions were made:

- * Children must, where possible, be diverted from detention at the point of arrest ***

They should be immediately placed in their parents'/guardian's care or suitable specialised care. It was proposed that assessment centres be established. On arrest children would be taken to the assessment centre, where a social worker and possibly a prosecutor would be available on a 24 hour basis. An assessment regarding the child's crime and circumstances would be made. Dr Paul Cooper, a lecturer in juvenile justice at the University of Liverpool, suggested recently that the task of assessment should not be left to police officers as they tend to decide in favour of detention.

In New York, an escort system has been established, where children are fetched from their homes for the trial. It has been demonstrated that children who have not been held in custody are also less likely to receive a prison sentence. Social workers often demonstrate that the young person has been motivated to continue schooling, and in so doing they have avoided trouble in this period.

- * Children must where possible be diverted from prosecution ***

Court appearances are traumatic and alienating experiences for children. If found guilty, the young person receives a criminal record which has a lifelong impact. Youths admitting to first offences should be diverted into rehabilitation programmes. On completion of these programmes, charges should be withdrawn. The young person has to suffer the consequences of their actions, but in a manner in which the person gains life skills which will prevent them from coming into conflict with the law a second time. NICRO is cautious about simple warnings or cautionary discharges, because the offender is not punished or made to make reparation in any way.

*** Children must where possible be diverted from the criminal court ***

Any child under the age of 15 must be seen in a Children's Court Enquiry and considered a child in need of care. Only if this court feels it is necessary, should the case be transferred to the criminal court. In all cases with juveniles, an inquiring rather than antagonistic approach should be adopted.

*** Children must be diverted from imprisonment ***

Community based sentences must be made available for youthful offenders, as imprisonment is a sure recipe for the youth falling back into crime. Where a juvenile has committed a violent crime and needs to be kept in safe custody, this should be in an environment with trained staff and in which the young person's needs are met.

NICRO's Offering

Current programmes offered by NICRO nationally include juvenile schools or 'youth on probation programmes', which range from 5 to 16 sessions over ten to sixteen hours. Life skills are taught, and the causes and consequences of crimes are discussed. Parents are invited to one session, at least.

Another programme deals with shoplifters. This is an eight hour session. It is done either as group or individually, through a course of cassettes. The programme is being initiated in Johannesburg. It is intended for first time offenders and not for compulsive shoplifters. It is envisaged that this programme will be included as a component of the Juvenile School's programme.

A five session programme, lasting 15 hours, for the education of drug related offences, focusses on the legal and medical consequences of drug abuse. It also targets first time offenders. A victim/offender mediation programme, being researched in Cape Town, allows victims to express their feelings about an offence directly to the guilty party. Where appropriate the offender must make reparation.

Offenders whose crimes do not make them a danger to the community are assessed by a panel of professionals as to their suitability. If given a community service order, offenders are expected to complete a stipulated number of hours serving a non-profit agency. In all these programmes, non-compliance results in the matter being referred back to the court. Where charges were suspended, pending completion of the course, non-compliance results in prosecution. In the case of a conditionally suspended sentence, non-compliance results in the sentence coming into effect.

Alternative sentencing has been used widely in other countries. Local authorities in the Netherlands, for example, involve young people caught for vandalism, in education and reparation programmes. Diversionary mechanisms have been used successfully in places like New Zealand.

Prison Conditions

In the short term, conditions in both police and prison cells need to improve. Recent visits have shown that at John Vorster, cells are filthy and poorly lit, children sleep on mats and the outside exercise area is too small for reasonable activity. At Johannesburg Prison, children awaiting trial have to share steel bunk beds with blankets, doubled up, in place of mattresses. Although sentenced juveniles at Leeukop Prison have clean cells, plus a large outside exercise area, they have no enclosed recreational area. The dining room facility, although covered by a roof, has no walls to protect the youngsters from adverse weather conditions.

Although prisons make social and psychological services available to the juveniles, with many involved in life-skills programmes, both warders (at police stations and in prisons) and other professional staff lack specialised training in dealing with troubled children. The focus remains on punishment rather than rehabilitation.

A number of organisations have come together in the various regions to form lobby groups which aim at reducing the arrests of children, at facilitating the release of children into alternative care and of promoting community based sentences for youth. It is hoped that through our combined efforts our goal of no children in detention will soon be reached.

Jeanette Schmid is the Johannesburg branch director of the South African Institute for Crime Prevention and Rehabilitation of Offenders (NICRO)

This is the life for freedom the blacks are fight
for freedom because they are suffering the most of
whites or not suffering this life is need a education
because if you not want education you will suffer,
if you got education you are going to have nice
work for more money. If we want freedom we must
respect our self we must not divided our self
we must stay together we must not hate another
person we must love together like lord made us
The black must gets a shops in the towns

Mongezi (13 years)

S E C T I O N C:
Disability, Rehabilitation &
Childhood Education
