

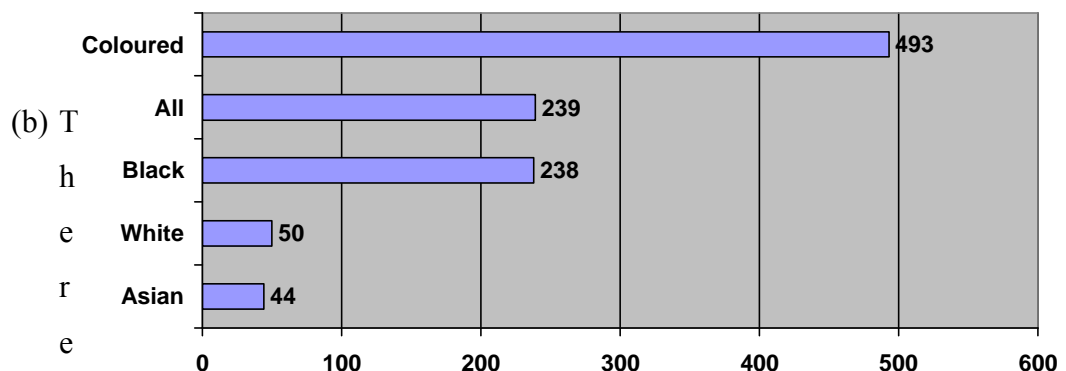
Submission: Criminal Law Sentencing Amendment Bill 15 of 2007

1. South Africa desperately needs sentencing reform. Minimum sentencing has worsened the problems of inconsistency in sentencing of serious crime. → Comprehensive sentencing reform is required. Minimum sentencing legislation should remain subject to renewal or be scrapped.

(a) There are **racial disparities** in sentencing and paroling:

- a. A coloured person is more than twice as likely as a black person to be a sentenced prisoner.
- b. A black person is more than five times as likely as an Asian/Indian person and four times more likely as a white person to be a sentenced prisoner.
- c. These trends cannot be fully explained by reported crime rates and prosecution trends.

Figure 1: Sentenced prisoners per 100 000 citizens by race group, March 2007¹

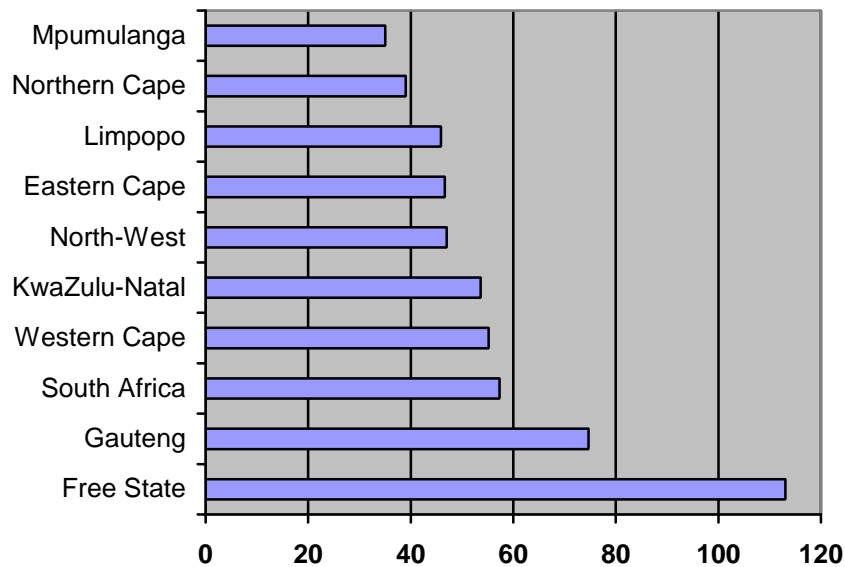


(b) There are **provincial disparities** in sentencing and paroling:

¹ This graph uses racial population estimates from the mid-year population estimates of Statistics South Africa, published in August 2006, and sentenced numbers per racial group as at March 2007 published by Correctional Services in June 2007.

- a. The incarceration rate of those serving 15+ year prison sentences was 2.5 times higher in the Free State than in Mpumulanga in December 2005. This month is representative of the usual trend.
- b. These disparities cannot be fully explained by differences in reported crime rates or prosecution rates.

Figure 2: Sentenced prisoners serving 15+ year sentences per 100 000 citizens, December 2005, by province²



- (c) There are **sentencing disparities even within courts**. Research shows sentencing has become **less consistent** since the imposition of minimum sentencing:
 - a. In general, and contrary to the intention of the law, minimum sentences have ensured that the same crime is likely to be met with a wider range of sentences.
 - b. For example, our research has uncovered an example of two sentences for rape of a pre-teen. One offender received a non-custodial sentence while the second offender received a sentence of life imprisonment. Both sentences were passed in the same year

² This graph uses provincial population figures for 2005 calculated by the Actuarial Society of South Africa combined with figures on the number of prisoners in custody per province as at December 2005 obtained from the Department of Correctional Services.

and arose from the same court (a well-resourced court in a metropolitan area). Many other such examples abound.

- (d) In the absence of comprehensive sentencing reform, **these disparities will remain**. Minimum sentencing has not addressed these disparities and may in fact have worsened them.

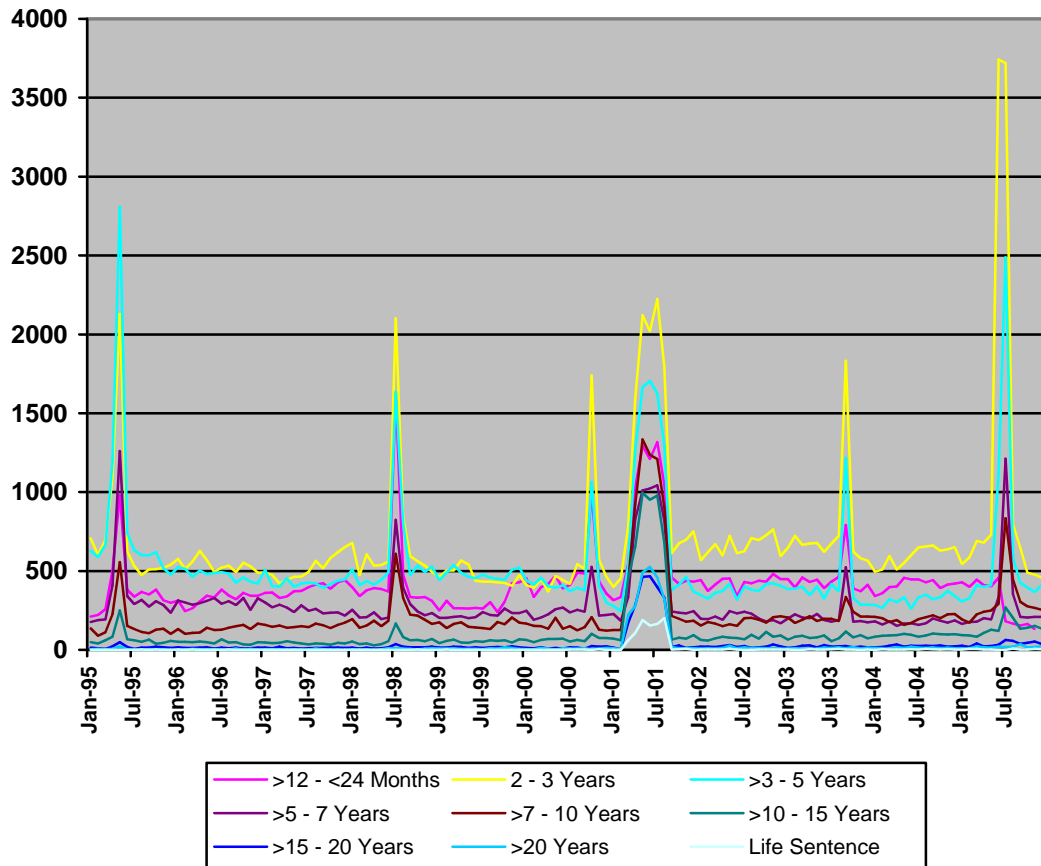
2. There will be more frequent mass early releases from prison. These releases will increasingly include prisoners with heavy sentences. Releases will become less and less able to distinguish among prisoners who are a threat to society, because an increasing proportion will be serving heavy sentences. → The regional courts' sentencing jurisdiction should not increase. Minimum sentencing should eventually be scrapped. The most serious cases deserving the scarce resource of 15+ years imprisonment should be set down in the High Court.

- (a) Giving regional courts the jurisdiction to sentence offenders to minimum sentences above 15 years will lead to a **rise in the number of long sentences**. When the sentencing jurisdiction of regional courts was raised from 10 to 15 years, there was a marked increase in the number of prisoners serving more than 10 years. If the regional court jurisdiction is increased to allow them to impose minimum sentences of over 15 years, there will inevitably be a similar increase in the number of prisoners serving 15+ years. Given the limited capacity of prisons to absorb these offenders, this will result in **more frequent mass early releases** from prison.

- (b) The main reason for prison overcrowding is now the sentenced proportion of prisoners and not the awaiting trial prisoners. The frequency of mass early releases of sentenced prisoners from prison to relieve overcrowding is currently approximately every two to three years. **Early releases already occur in all sentence categories**, including heavier sentences. The spikes in the graph below

indicate early releases in all sentence categories. The obvious spikes in monthly releases suggest that these releases are not the result of prisoners reaching the end of their term of imprisonment.

Figure 3: Number of releases from prison among prisoners sentenced to more than one years' imprisonment, per month³



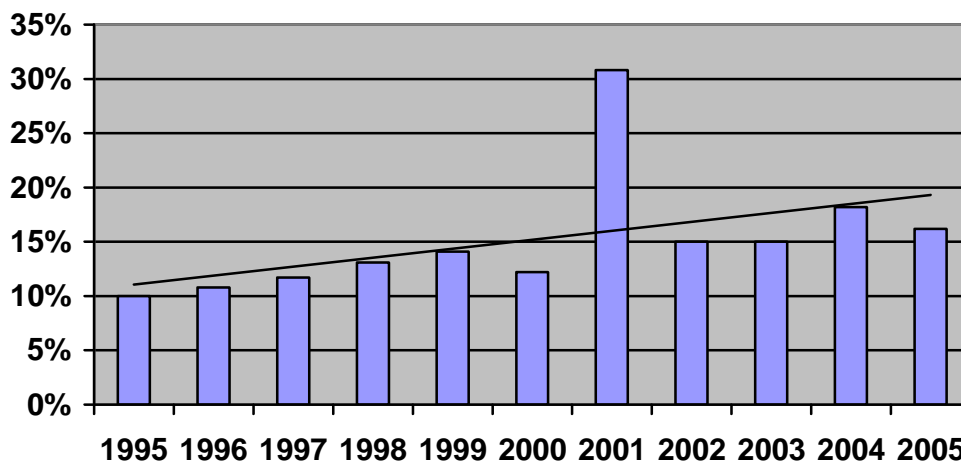
(c) **Sentence length will become less and less of a guide to the threat** imposed by prisoners being considered for release, as a greater proportion of prisoners will have been sentenced to heavy sentences.

(d) **The proportion of persons serving heavy sentences included in early releases will increase** in line with the increasing proportion of all prisoners serving heavy sentences. The proportion of prisoners serving more than 5 years (the lowest

³ This graph uses figures obtained from the Department of Correctional Services on the number of releases per sentence category per month 1995-2005, showing only releases of prisoners sentenced to one or more years' imprisonment.

minimum sentencing term) has already increased from less than 50% in 1995 to 77% at the end of 2005. The percentage of prisoners released each year from prison sentenced to 7 years or more, has already increased by 50% from about 10% to more than 15% of all releases per year of prisoners serving more than a year. (Prisoners sentenced to less than a year are obviously released within a year). If current trends continue, in 5 years some 23% of yearly releases of prisoners serving more than a year will comprise persons sentenced to 7+ years imprisonment, and considerably more in years in which early releases occur.

Figure 4: Prisoners serving 7+ years released from prison, as percentage of prisoners serving 1+ years released from prison, per year, 1995 - 2005⁴



(e) Mass early releases make a mockery of the sentencing process. **Sentencing becomes irrelevant** when scarce resources mean sentences must inevitably be subverted at the point of incarceration.

3. The scarce resource of prison time is ‘crowding out’ less serious offences. Wholly suspended sentences, or fines, are used for less serious offences because other options are not available. Fines are generally only applied to those who can pay them. The poor will

⁴ This graph uses data obtained from the Department of Correctional Services on the number of releases per sentence category per month 1995-2005. Monthly figures have been summed to obtain yearly figures and proportions. The high 2001 percentage is partly explained by releases and re-admissions to new prisons. We do not consider the under one year sentence category, because over a year the number released should be roughly equivalent to the number admitted.

increasingly be disproportionately imprisoned for less serious offences, while others will ‘get off’ without their crimes being adequately addressed. → Comprehensive sentencing reform must plan and budget for alternative sentencing programmes for less serious offences.

- (a) Fewer and fewer offenders are being sent to prison. Total yearly **admissions to prison have dropped** almost 20% in 10 years, from 112 787 in 1995 to 90 661. This drop is entirely due to the drop in admissions for sentences in the under one year category, which have dropped 26% from 75 852 in 1995 to 55 582 in 2005. While it is commendable that less serious offences are not filling prisons, the absence of a roll-out of alternative sentencing programmes suggests that offenders that would previously have received these sentences are not being adequately addressed. South Africa’s courts convict more than 300 000 offenders each year.⁵ Less than a third of these offenders convicted are imprisoned each year. What happens to the remaining 200 000 offenders?
- (b) **South African needs a comprehensive sentencing package that includes appropriate alternatives for less serious offences.** Hundreds of thousands of offenders who are caught and convicted each year are not receiving an appropriate message from the criminal justice system. Such a message is only conveyed when a conviction follows a serious crime. Opportunities for addressing incipient serious criminality are routinely being missed.

Submitted by:

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Hlakanaphila Analytics is a non-profit research organisation dedicated to excellence in the field of analysis, particularly quantitative analysis. The organisation has conducted research in the criminal justice field for some years. The data referred to in this submission was obtained for the purposes of prior research reports. These research reports can be accessed on www.quanta.org.za

⁵ Data obtained from the NPA shows that in 2004/5 the district courts obtained convictions in 291 212 cases, the regional courts in 28 997, and the high courts in 1209 cases.