

Restorative Justice Approach to Youth Crime and Violence in South Africa

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South African history illustrates the intractable factors of youth violence. The social and economic conditions of South Africa today demonstrate that the country is yet incapable to protect children from being exposed to unpredictable danger. It is understandable for emerging countries to be poor and suffer from higher risk of crime and violence, but it is no longer a matter of the black community when violence is accepted at the everyday level. In the country where people fight for their own rights, it is very challenging for the idea of justice to set in. Rights require legitimacy, which lies beyond the legislation, justified by strong human relationships, contributed by restorative work that unites the Rainbow nation.

The aim of this essay is to analyse youth crime in South Africa and propose restorative justice as a choice for young perpetrators because I think in order to take responsibility for their own actions, first they need to forgive themselves as well as others, heal from the past experience and move forward. In spite of such a promising approach, few studies are able to hold up the

performance in reducing anti-social behaviour or rebuilding the peace in the community. This essay will first examine youth growing up environment to look at the contextual driving force of youth violence. The second section investigates four fundamental elements in youth development: family, school and community to see how violence is accepted at daily level and discuss preventative measures at third section. The fourth section explains how the South African criminal justice system harnesses the restorative justice method within its legislative framework, and the last section presents reconciliation programs including offender reintegration projects that address justice and peace in the South African context.

I. History

Pre-apartheid (1652-1994)

The beginning of the Cape Colony dates back to 1652, the arrival of the first settlers from The Dutch East India Company, who originated social control based on colonists' assumption of racial inferiority, recognised as the apartheid justice. Slaves were imported from parts of Africa and South Asia to organize land, livestock and business. Later, the Roman-Dutch law and British criminal law were introduced to govern the colonial lands because slaves were blamed for disrupting it, though the real aim was to keep black Africans under the control. The early Masters and Servants Act is an example of a rule which limited the mobility of blacks.

In 1807, while the Cape Colony was at the beginning of colonial period, British abandoned slave trade to hold black labourers within the colony. Hence, many people including black workers had to carry an identification note known as a "reference book" which gave no freedom to travel, work, or live. When gold and diamonds were discovered in 1867 and 1886, whites inhibited from distributing wealth, determined land ownership and gold production by skin colour. After the South African War in 1902, industries grew rapidly in the cities, in contrast, economy in rural areas stagnated due to the degradation of black labour market which fostered them to migrate to the urban sides.

Industrialization in the early twentieth century intensified a countrywide segregation (1910-1948). In 1910, the Union was established, integrating the former British colonies and Boer Republics, and continued to limit political participation of black members under the 1913 Native Land Act: inhibited black Africans from having land rights, followed by the 1923 Native Urban Act, which regulated working opportunities by marginalizing "unneeded blacks".

Apartheid (1948-1994)

The apartheid laws were nonetheless lawless. The laws restricted educational, economic and political opportunities, and gradually trapped the most vulnerable to the impoverished townships. A systematic attempt to preserve and exercise the whites' power was potential threats to blacks. The essence of apartheid was

perhaps the 1950 Group Area Act, which divided residential areas by skin colour, and forcefully removed black South Africans. In the name of criminal policies, unnecessary legal violence was carried out against blacks. Long sentences were imposed for minor crimes, such as drug offenses, auto theft and housebreaking. The distinction between dissent and delinquency was more obscure in a context of the security laws, and drew extra warrant arrests, and even children were exiled to Robben Island, the prison island where Nelson Mandela were detained for 18 years.

Post-Apartheid (1994-)

The social and economic conditions of today reflect the legacy of colonialism and apartheid, which the country had promised to implement in 1994, in the Reconstruction and Development Plan. The 2016 data from *Overcoming Poverty and Inequality in South Africa* suggests that the 20 poorest cities are ranked from Eastern Cape, Limpopo and Kwazulu-Natal, rural areas least developed under the apartheid. Whereas, 15 out of 20 wealthiest cities are from Western Cape, urban sides (*Overcoming Poverty and Inequality in South Africa*, 32). Race is also a strong predictor of poverty (*Overcoming Poverty and Inequality in South Africa*, 38) chronically accounted by black and colored South Africans. Between 2014-2015, 80% of the population was black, and 50% of them remained in the middle class (*Overcoming Poverty and Inequality in South Africa*, 38). In contrast, nearly a third of whites were in the middle class and two thirds of them

were elites, who only constitute 10% of the overall population (Overcoming Poverty and Inequality in South Africa, 38).

Crime

Within 20 years of democracy, South Africa has made significant progress, but some of the shortcomings of the transformation have swept away relatively peaceful democratic transition. The percentage of criminal offences illustrates geographic trends in types of common crime. The street robbery grew tremendously in urban areas, most likely victimized young males, 16 years old or above living in Western Cape. This age group consisted of 1.9% of the total figure, 1.2 million incidents happened in 2018/2019 (VOCS). Gang related crime was reported from Western and Eastern Cape, but the SAPS data shows that gang activities were prevalent in the Cape Flats, "non-white area" formed under the Group Areas Act in 1950, became the breeding ground for gangs. Out of 3 729 reported murder in Western Cape, 2 295 were from Cape Flats (SAPS, 16) and 808 cases of 2 295 were driven by gang activities within 2017/18 (SAPS, 16). The gang activity raises the number of drug related crime. In 2017/18, drug related crime increased 10.5%, recording 323 547 cases (SAPS, 116), including Western cape: 117 157, Gauteng: 15 026, KwaZulu-Natal: 53 587 (SAPS, 117).

On the other hand, the percentage of housebreaking demonstrates that the lack of home security was a common concern in urban and rural areas. The 2018-2019 report from South African Police Service (SAPS) listed three of the top areas affected by

house breaking and robbery: Gauteng (53, 092), Western Cape (39, 418) and KwaZulu-Natal (38, 790) (VOCS, 23), while the smallest figure was reported from Northern Cape (6, 325). The proportion of households experienced housebreaking was the highest in following order: Northern Cape 7.39%, Gauteng 6.81% and KwaZulu-Natal 6.5% (VOCS, 12), points out the likelihood of housebreaking in the north east side. The slight difference between VOCS number and SAPS report indicates that not all crimes are reported to the police. Governance, Public Safety and Justice Survey (GPSJS) estimated housebreaking figure from VOCS and SAPS reports. The study from GPSJS concluded approximately 1.3 million housebreakings took place in 2018/19, but 467, 599 incidents (48%) were reported to the police (GPSJS).

Young people put themselves into danger without knowing how harmful it can be. The overall figure for the reported crime against children decreased for 1.6%, 44, 252 cases in 2016-17 to 43, 540 cases in 2017-18 (SAPS, 34). Murder and attempted murder experienced more than 10% increase respectively. The number of murders against children grew by 17.4%, reaching 985 cases in 2017/18. The cases of attempted murder experienced 13.4% rise, recording 1, 059 in 2017/18 (SAPS, 34). The most reported incidents were crimes related to sexual offence and common assault. In 2017/18 reported number for sexual offence against children declined for 4.8% from the previous period, reached 23, 488 in 2017/18. Common assault slightly increased for 2.3% and in total 10 466 cases were reported to the police in 2017/18 (SAPS, 34). Regardless of the number of unreported crimes, the alarming

figure of crime rate suggests that there is much work to do for the country to reconstruct, regain the trust from the nation.

II. The Situation of Youth:

Four Key Transition Elements to Adulthood

Life in South Africa is characterized by social upheavals from long before apartheid: substantial inequality underlies the justice struggle and continues today. Despite the democratic transition in 1994, inequality is still severe. In 2015, over a half of population (55.5%) lived below the upper-bound of the poverty line, only able to spend R992 per month to cover all the basic needs such as food, shelter and transportation (STATS). Poverty itself does not cause a problem, but it hinders youth development and social participation, and raises the likelihood of youth involving criminal environment. This section explores four essential elements for adulthood: education, work, health and socialisation to analyse the developmental pathways of youth in South Africa.

Education

Education is the fundamental element for youth development, but many learners are unable to complete school. Data from the 2018 General Household Survey, shows nearly one-quarter (24.2%) dropped out before turning 18 years old, mainly for financial reasons (STATS). In 2017, over a half (51%) of youth between 18-24 years old stated that they had difficulty paying

tuition and 18% of them showed poor academic performance and participation (STATS). According to the 2017 General Household Survey, only 33.8% of adolescents aged 18-24 were in educational institutions which includes school (22.2%) and higher educations (11.6%) (STATS). In 2018, 69% of 20-24 years old did not completed their schooling, which also recorded 48.6% in jobless rate (OECD, 2). Gender and income inequality hobble the educational opportunities. In 2017, only male students (71%) and female students (76%) were able to go up from Grade 11 to Grade 12 (STATS).

Education can be undervalued when the government fails to spend the budget. During 2016-2017, South African government allocated over R216 billions (16.7%) of national budget on primary and high school education (UNICEF, 7), but it was less than the desirable amount for public schools to fill up the financial gap between private schools. From 2014-2016, the National Educational Infrastructure Management System took polls over 23,500 schools for three years and found that educational infrastructures need to be improved (UNICEF, 16). For three years the survey demonstrated over 75% of public schools had no library, just above 20% had no reliable water, and 20-30% used latrines instead of flush toilets (UNICEF, 16). Besides the ineffective use of budget, teacher absenteeism can lower the security level. From 2017 survey, 10% or more of the teachers in primary and high school teachers were absent on a daily basis (the DBE, 10).

Work

Having educational background does not secure working opportunities. South African youths are likely to fall into temporary or low paid work. In fact, recent statistics indicates that young people around 15-24 years old are in the lowest demand in the South African labour market. Recent statistics shows 55.2% of 15-24 years old were unemployed in the first quarter of 2019, including graduates 31.0%, which rose 11.4% from the fourth quarter of 2018 (STATS). Women and youth are more affected by long-term unemployment. The 2015 figures suggest 50.0% of female-headed households were under the upper poverty line, while only 33.3% from male-headed households were (STATS, 79). The percentage of poor households has been decreasing from the past, though black African persistently stayed on the top in 2015, accounted by black (46.6%), coloured (32.2%), Indian (4.6%), and white (0.8%) (STATS, 80).

The poverty rate is unstably high among youth. The 2015 report from STATS demonstrates 66.8% (0-17 years old), 60.1% (18-24 years old), and 51.0% (25-34 years old), lived below the upper poverty line (STATS). Household poverty differed between urban and rural areas. Only around 35% in Eastern Cape and 46% in Limpopo of young children who lived in households had access to pipe water inside their residential areas, while 94% in Gauteng and 89% in Western Cape had pipe water inside their houses or on site (STATS).

Health

Living in an unhealthy environment can be harmful for the physical and psychological wellbeing of young people. In 2018 around 260,000 children aged 0-14 years old were HIV positive, about 1,200,000 children aged 0-17 became orphans because their parents abandoned them when the parents found out their children had AIDS (UNAIDS). Widespread awareness of HIV and use of condoms have made progress, but the lack of knowledge is one of the reasons. The same survey estimated in 2018, just above 45% of young people aged 15-24 knew how to prevent HIV (UNAIDS). Besides prevalent infective diseases, a habitual drinking culture is a risk factor for youth health. Binge drinking during pregnancy increases the risk of Fetal Alcohol Syndrome (FAS) among infants, a biological disorder linked with hyperactivity and physical impairment. According to the JAMA study, one in 13 pregnant women give birth to children with the syndrome, makes them difficult for to socialize with others, alienates youth from communities, risks them of being victims and perpetrators of violence (JAMA).

Alcohol and cigars are two of the most popular substances South African adolescents take up from the fairly young age. The 2015 survey from Tobacco Atlas Study shows that over 55,000 children aged between 10 to 14 and 6,321,000 people over 15 years old smoke every day (Business Tech). Due to the rise in the illegal market, cigars became more affordable and accessible for young people. In the illegal market, a pack of cigars can be bought around R17.85, which was \$1.30 in October 2018 (Ipsos,

1), and many cigars can be bought as a single stick, not a pack, allowing them to be purchased at more reasonable price. As a result, the illegal trade market experienced a 33% rise from 2013 to 2018, while legally sold cigars dropped by 20% (Research and Markets).

Civic Participation

Declining social participation reduces opportunities to find purpose or identity, making young people less capable of building economic and social protection around themselves. In 2019, African Checks reported the number of voters in the sixth democratic election, held in May. The estimated figure showed that approximately 9.8 million applicants did not even register to vote including 6 million people who were below 30 years old. In terms of youth voters, younger than 30 years old, only consisted 21% of overall voters (African Checks). The other disengaging factors for social activities are exponentially high crime rate, which terrifies young people from walk around neighbourhoods. In 2018, Global and Peace Index that South Africa ranked in the bottom 20 in the world for the societal safety and security level. (Business Tech). Criminal activities increased from 39.4% in 2016/17 to 42.2% in 2017/18; at the same time, the percentage of household feeling safe walking outside dropped from 84.8% in 2016-2017 to 79.1% in 2017/2018. The 2018-2019 Victims of Crime Survey (VOCS) reported that 83% of households felt safe going out in day time, but only 35% of household felt safe walking at night (STATS, 57). The more households feel unsafe for children

to go outside, less likely for the children to socialise or engage in outdoor recreational activities, drive youth into antisocial behaviour to fill up the feeling of leisure boredom.

III. A Deeper Understanding of Youth Violence

Child Maltreatment

The situation that South African young people grow up in is unique even by looking at four essential elements of youth development: education, work, health and civic participation. There are also other contextual factors that lead to youth violence which overlap and intertwine in places where young people spend most of their time: home, school and community. No single combination of the risk factors is predictable, but a series of driving forces develop interpersonal anger from early in the childhood. This section examines child maltreatment: sexual abuse, physical abuse and emotional abuse based on data collected by Optimus Study (2015) and other researchers to figure out how adverse childhood experience affects developing anti-social behaviour later in life. The Optimus Study (2015) collected data based on interviews and questionnaire carried out at homes and schools, participated by total 9730 teenagers: household survey (5635) and school-based survey (4095), who are aged between 15-17 years old, to find out child abuse in terms of gender, ethnicity and cultural bases (Optimus Study, 4). The household survey was conducted between males (55.7%) and females (44.3%), who were black (75%), coloured (13.7%), white (7.4%), Indian (3.9%)

and who lived in metropolitan areas (35.1%), outskirts (35.1%), rural areas (31.6%) (Optimus Study, 5). Meanwhile, the school-based survey was taken by males (51.7%) and female (48.3%): black (87%), coloured (10.1%), white (1.5%), Indian (1.3%), who go to schools in metropolitan areas (46.8%), countryside (27.9%), suburbs (25.3%) (Optimus Study, 8-9).

Child Sexual Abuse

Children and adolescents can be victims as well as perpetrators of sexual violence. The Optimus Study (2015) demonstrated different number of victims in respect of gender, race and living places. In the household survey, some sorts of sexual violence were reported through questionnaires (16.4%): women (17.4%) and men (15.6%), and from interviews (11.4%): women (13.8%) and men (9.5%) (Optimus Study 8-9). On the other hand, a slightly higher percentage was reported from school-based research through questionnaire (19.8%) and interviews (12.8%) (Optimus Study, 8). The school-based research suggests gender and ethnicity differences in the percentage of sexual abuse victims. Data from the questionnaires, victims were accounted by male (20.3%) and women (19.2%): coloured (21.2%), black (19.7%), white (17.5%), and Indian (17%) (Optimus Study, 9). Whereas the victims who answered through the interviews also differed by sex and race: women (15%) and men (10.8%): black (13%), coloured (13%), white (9.5%) and others (Optimus Study, 9). The perpetrators can be young as children or teenagers. The Optimus Study (2015) also asked victims about the identity of

offenders and found out most of the abusers were someone who were older but unfamiliar. Only 2.1% from interview and 9.4% from questioners in school-based survey and 2.2% from interview and 7.0% from self-administered questions in household survey said that the perpetrators were either children or teens (Optimus Study, 11).

Non-Sexual Child Maltreatment

Physical Abuse

The degree of non-sexual child maltreatment differed by color. For example, Optimus Study (2015) demonstrated no statistical difference in victims of physical violence from school-based survey, but the racial difference was seen from the household survey. In the household survey, physical abuse was reported by coloured (19.7% by interviews and 25.4% from questionnaires), black (19.0% by interviews and 27.8% by questionnaires). In contrast, relatively a few reports on physical abuse were heard from white (9.8% by interviews and 13.4% by questionnaires) and Indian (6.5% by interview and 9.8% by questionnaires) (Optimus Study, 17). Moreover, girls seem likely to report their experience compared from boys, which was seen in both school and home-based research. The highest physical abuse was reported from Mpumalanga (33%), Limpopo (30.1%), followed by Western Cape (29.9%), the lowest was from Eastern Cape (17.5%) during the household survey (Optimus Study, 17).

Emotional Abuse

No remarkable distinction was seen in emotional abuse regards to race from household survey, conducted by Optimus Study (2015), but girls seem likely to report the abuse compared from boys and there was difference between provinces. While the highest were figures were from Free State (20.1%) and Western Cape (17.6%), the lowest number were reported from Eastern Cape (6.8%) and Mpumalanga (6.5%) (Optimus Study, 18). In the household survey, children who experienced neglect were formed by black (18.8%), coloured (12.9%), Indian (6.7%), white (5.6%) (Optimus Study, 15). In terms of gender, girls had higher percentage rather than boys in reporting the experience of neglect. The least percentage was recorded from Eastern (3.6%) and Northern Cape (4.9%), while the highest figures were from Limpopo (11.6%), Mpumalanga and KwaZulu-Natal (11.1% each) (Optimus Study, 15). The emotional abuse includes failing to keep children safe. In the household survey, Optimus Study (2015) discovered children who said they have lived in an unhealthy environment were black (15.9%), Indian (6.8%), coloured (6.4%), and white (3.3%), while children who felt unsafe around home were black (11.6%), coloured (9.9%), white (4%), Indian (1.3%) (Optimus Study, 15).

Family Violence

Young people are particularly vulnerable to violence among family members when parents or caregivers fail to protect them. In the Optimus Study (2015), 23.1% from school-based interviews

and 16.5% from the household survey answered that they have been exposed to some sort of violence at home (Optimus Study, 19), which includes encountering parents or caregivers physically attacking siblings (23.8% from the school survey and 17.7% from the household survey), seeing a parent or care worker threatening people (23.8% from the school survey and 14.3% from the household survey), hitting (19.3% from the school survey and 11.2% from the household survey), other forms of physical violence such as kicking or choking (14.1% from the school and 8.2% from the household survey) (Optimus Study, 19). The result differed by race and gender of children who were interviewed at schools and homes. In the school interview, victims of family violence were in the following order: Indians (24.5%), black (23.3%), and the lowest was white (15.9%). In household survey, on the other hand, the victim percentage changed into black (17.8%), Coloured (15%), Indian (11%), and white (6.2%) (Optimus Study, 19). Being victims of domestic violence can motivate them to behave aggressively outside home. The vulnerability of family such as parental criminal activities (9.4%), sibling criminal activities (23.7%), seeing family violence (12.2%) and directly experiencing violence at home (12.2%) raised the likelihood of high school students to be perpetrators as well as victims of crime outside home, in schools (CJCP, 4).

School Based Violence

School-based violence involves non-school factors and sometimes socio-economic factors normalise violence and crime at school. In

2012, The National School Violence Study from the Centre for Justice and Crime Prevention (CJCP) selected 5939 students who were 12 years old or older and 239 teachers and 121 principals to measure school violence in high schools from August 2011 to August 2012 (Burton & Leoschut, xi). The 2012 NSVS found that 22.2% of high school students were exposed to some kind of violence (apart from theft) in schools. This can be extrapolated to 1,020,597 learners around the country are experiencing violence in secondary schools (Burton & Leoschut, 11). Including theft, overall school violence was experienced by 58.7% of participants, which translates to 2,698,606 high school students in South Africa as being victims of some kind of crime (Burton & Leoschut, 13). Racial variation among high school students who answered they have experienced some forms of school violence were as follows: Indians 31.8%, Coloured (26.3%), black (22%), white (15.9%) (Burton & Leoschut, 14). Gender difference of school violence victims was not particularly seen, except for sexual offense. Five times more women reported rape compared to men, in figures, women (7.6%) and men (1.4%) and theft were the highest for both, accounted by women (45.2%) and men (42.8%) (Burton & Leoschut, 20).

Various types of criminal violence were reported from schools. Data from the 2012 NSVS were recorded as follows: theft (44.1%), some forms of violence except theft (22.2%), threat (12.2%), assault (6.3%), sexual assault (4.7%), robbery (4.5%) (Burton & Leoschut, 16). Other forms of violence include bullying (13%), being pressured to say something he/she does not

want to say (14%), being threatened to do wrong activities (13.3%) (Burton & Leoschut, 15). Provincial differences were apparent. Theft was reported more from the countryside, the eastern side of the country: Mpumalanga, (64.1%), Eastern Cape (55.9%), Free State (52.0%) (Burton & Leoschut, 22). Without theft, the overall rate for victims of any form of violence in the past year was the highest in the following order: Free State (30.4%), Western Cape (28.7%), Limpopo (25.2%) and the lowest was Gauteng (13.4%) (Burton & Leoschut, 21), which illustrates the prevalence of criminal activities in South African high schools. Although the victim rate for theft was particularly high, the victims of verbal abuse cannot be ignored; rather it is a key indicator for school violence (Burton & Leoschut, 18-19). As the figure shows, victims of any kind of school violence are first being exposed to verbal assault: bullied (56.5%) and never being bullied (17.1%) (Burton & Leoschut, 19). Moreover, the experience of criminal violence including theft was also common among the victims of verbal insult: bullied (78.7%) and never being bullied (49.4%) (Burton & Leoschut, 19).

School violence can be between educators and learners, students against teachers or among peers. Most of the reported cases of educators against learners were verbal abuse (28.1%), physical offense (14.0%), and sexual assault (2.5%) (Burton & Leoschut, 29). Although corporal punishment was outlawed in 1996, the 2012 NVS survey indicates that it is being carried out in South African schools. In the survey, 49.8% of the students responded that they have been slapped or beaten by teachers as a

form of punishment (Burton & Leoschut, 29-30). Educators can also be victims. Reports on learners against educators were classified into the following results: verbal abuse (52.1%), physical abuse (12.4%), sexual violence (3.3%) (Burton & Leoschut, 29). The level of violence experienced by educators at school was varied: insults (29.3%), threats (9.6%), sexual assault (4.6%), objects being thrown (4.2%), threats with weapons (4.2%) (Burton & Leoschut, 28). From learners, several types of reports about peer violence were heard: verbal abuse (73.6%), physical violence (66.1%), sexual violence (10%), weapons (36.8%) (Burton & Leoschut, 26). However, incidents reported by learners were slightly lower than reports from educators in respect of violence between peers or among educators and learners (Burton & Leoschut, 26).

Community Violence

In disorganised communities, where dangerous factors are next to protective factors, children have fewer opportunities to go out, which reduces recreational opportunities outside schools. The under-stimulation theory and other theories related to social control or resistance (Larson & Richards, 99, 418-443) suggest that the feeling of boredom can provoke risk-taking behaviours in a desire for additional stimulation and independence, but end up more mentally disengaged (Eccles et al., 48,90-101). Peer socialisation around neighbourhoods can be a driving force for child delinquency: stealing, substantial abuse and unsafe sex. The 2012 NSVS study found that communities raises

criminal knowledge of young people through access to alcohol, drugs and weapons, strong elements associated with criminal activities. Having easy access to deviant leisure such as alcohol (64.7%), weapons (50.5%), drugs (27.6%), and guns (17.2%), paves the way for young people to join criminal activities (Burton & Leoschut 59).

The frequency of violence within communities threatens public safety. The 2012 NSVS study pointed out violent behavior is seen in places like streets (69.9%) and stores (12.5%), almost one in ten of these cases were seen in open areas (Burton & Leoschut 57). In the 2012 NSVS, 68.1% of high school students knew people who smoke marijuana, 42.8% answered they know someone who have done illegal activities, 30.9% knew people who buy drugs, 30.9% knew people who uses drugs, and 24.9% knew people who sell drugs (Burton & Leoschut 57-58). Sometimes children as young as seven to eight years old leave school and find belonging in the street, the place where they find gangs who give a sense of identity and masculinity that they have being deprived of. They grow up learning that stealing and drug dealing are ways to survive (IOL).

In contrast to the harsh reality, the low reporting rates makes it harder to analyse youth crime and violence in South Africa. However, child maltreatment should not be dismissed, when one in three children experienced violence at some point of their lives (Altz et al., 5), and the children need to be protected from violence and crime, hampering youth development, so as to reconstruct the nation protected by individuals and communities.

IV. Prevention

What Works

The ecological approach of understanding youth violence demonstrates that antisocial behaviour develops at different points in their lives which demonstrates the variability and flexibility in designing intervention programs. Currently, a number of preventative projects are offered by government and non-governmental organizations. Despite the good intentions of the intervention measures, lack of research data may lull social workers to support the notion. This section will examine international intervention programs for young people to alleviate misbehaviour seen at home, schools and outdoor places and consider characteristics of ideal intervention measures for preventing youth violence in South Africa.

Family Violence Intervention and Challenges

It is important for parents to have right parenting knowledge and skill to prevent family violence. In Western Cape, the Khayelitsha mother-infant intervention, a pilot study was conducted to educate new mothers about child rearing. The intervention was delivered in participants' homes in hourlong sessions and comprised 16 sessions in total, ending at six months postpartum (Cooper et al., no page). The intervention was associated with significant benefits to the mother-infant relationship. At both six and 12 months, compared to control mothers,

mothers in the intervention group were significantly more sensitive and less intrusive in their interactions with their infants (Cooper et al., n. p.). The intervention was also associated with a higher rate of secure infant attachments at 18 months. The intervention also reduced maternal intrusive and coercive behaviour (Cooper et al., n. p.). The drawback of this study is that aggressive behaviours can develop later on, for example, family may fail to take care of their children or the children may start to socialize with deviant peers. From this study, it is possible to assume that some improvements in care-giver child relationship may only be seen for a short period of time.

As the pilot study shows above, the intervention programmes perform only on a limited level. Therefore, it is important for young people to have knowledge to protect themselves, so that they know what to do when they encounter violence from family members or care givers, for instance, knowing places to hide outside the home, such as shelters or police stations, and having someone to talk to may help to relieve the pain. These early responses depend on young people themselves, but in cases like rape, not all cases are reported to the police due to the fear of being embarrassed or being ashamed to accept what has happened, which can delay the recognition as well as support, which reminds the country to design interventions that are accessible for everyone.

School Based Intervention and Challenges

Schools are symbols of safety in the community, if school-based

violence can be prevented or at least minimized and facilitate positive development of well-being. Since school violence is motivated by inside and outside school factors, the *Whole School Development* program, a multisectoral collaborative intervention approach, was recommended by researchers for having potential in changing school environment. The *Whole School Development* program foremost aims to create a safe and healthy school environment: repairing broken facilities, cleaning classrooms building fences, hiring security guards. These works are managed by the cooperative work of learners, family members, educators and social workers.

The *Whole School Development* program was implemented into a primary school in Cape Peninsular after seeing positive outcome from a French school. In the French school, there was a 60% decline in violence, 50% down in verbal abuse after the program was implemented in 2001 (Khan, 4). Later, the program was applied to a school in Cape Peninsula, who was concerned with youth involvement in gang activity. Again, a positive result was reported in respect of healthy relationships between teachers, students and parents and their favourable attitude towards prosocial skill development. However, the study found that it was slightly challenging to motivate students and educate them to stay involved (Flisher et al, 113-130). Furthermore, contrary to the French schools, many South African local schools run short of material and financial resources, which makes it difficult to conduct the *Whole School Development* project or try and hope for similar outcome.

The study on *Whole School Development* program indicates that the intervention model for school-based violence has to be cost-effective to maintain, so that it can be open for children in all sectors, including those who don't go to school. Using existing facilities, schools can be spaces for children to participate in leisure activities and seminars or skill workshops. Also, educators can encourage children to stay away from risk-taking behaviour, but instead to develop proactive skills and knowledge. These specific and diverse approaches require additional resources such as financial and material supplies which South African schools may not manage. Hence, the *Whole School Development* program will function better if the program works with other programs to cover up the benefit that South African schools cannot have due to lack of substantial and monetary supplies (Petersen & Carolissen, 94-112).

Out of School Intervention and Challenges

Outside school is a place surrounded by risks and opportunities. With little research on intervention outside school, it is important to make use of available data from other countries to search for the best practices in the South African context. *The 2008 Harvard Family Research Project* (HFRP 2008) researched after school activities in United States and provided evidence that may help structuring after school programs in South Africa. According to the study, the primary factors for successful programs are that they are frequently accessible for children regardless of their living background, that they are well-

structured with monitoring plans, and they are supported by collective and interdependent work among family, schools and community.

Based on the research, HFRP recommended three fundamental concepts in delivering community-based programs: family involvement, problem solving within social context and supervision responsibility. In fact, some programs were implemented in South Africa which had the same principles as HFRP presented. For example, the *Men's Mentoring Project* in Western Cape or *One Man Can Campaign (OMC)* tried in all South Africa provinces: a workshop for men to understand their role in family and community; *Umhlali* project in Eastern Cape, early interventions for schools and families through field work research; the *Durban Safer City project* in Durban and Kwazulu Natal, a program aimed to develop recreational activities; and *The Peace and Development Project (PDP)* in Tswane and Gauteng, a communal peace keeping services through patrolling and settling conflict and emergency. However, the 2012 report Country Assessment on Youth Violence, Policy and Programmes in South Africa from the Social Development Department (the Dsd) and the World Bank were unable to present the outcome that these programmes may have made, which suggests further research on intervention projects.

Limits to Prevention and the Role of Legislative Framework

Unfortunately, all the intervention schemes, *Men's Mentoring Project* in, *One Man Can Campaign (OMC)*, *Umhlali* project and

The Peace and Development Project (PDP), were carried out in South Africa, but they are not well-known for their effectiveness compared to more intensive intervention programs offered around the world, largely due to the absence of evidence-based research and resources. For instance, international programs such as *Multisystemic Treatment (MST)*, a family intervention program, and *Multidimensional Treatment Care (MTFC)*, a supervision program for targeted homes, are assisted by trained psychiatrists and therapists. Whereas many intervention measures in South Africa are not based on explicit theories or internationally discussed models like the *Whole School Development* program, but rather the country relies on research assumptions of NGOs and social workers. Another reason why the international intervention plans would not work in South Africa is that local communities do not have resources to maintain such intensive programs.

On top of that, dividing into program types is not the primary point because one program is composed of multiple elements which may work as merits in one program but may fail in the other. For future reference, it is important for South Africa to know key features in designing successful preventative programs. At least, programs should cover the following aspects: consider the risk level of individuals and collective offenders and victims, focus on direct measures that to cure and support, invite all stake-holders in restoring process, integrate the measures into children's life style and have well-structured model with monitoring service. These are few of the visions for constructing

ideal early intervention, but it is also necessary to have a legislative framework that would maximize the rights and justice for offenders and victims of youth crime in South Africa.

V. The Criminal Justice System

Juvenile Justice

The idea of restorative justice lays strong value on youth justice. Although law violations are generally seen as wrong, criminologists Franklin Zimring and Maximo Langer point out that "the capacity of young persons to commit crimes does not mean that they are as blameworthy as older offenders and should be punished as harshly" (Zimring & Langer, 387). Juvenile justice considers the penal capacity of youth offenders and leaves confinement as a last resort, believing in youth's ability to change themselves as they grow up. Internationally speaking, South Africa sets a broader framework for children's rights. While the United Nations understands 'youth' as people aged between 15-24 years old, South African National Policy defines youth as those who are 14-24 years. This one-year difference is important in respect of protecting rights and justice for those who are involved. This section explores the criminal justice system in South Africa to understand how it has incorporated a restorative justice approach to ensure justice for juvenile offenders.

The Constitution and Practices

Internationally, South Africa interprets children's rights in a wider sense, understanding the justice struggle that many young people continue to face, and provides more opportunities for those who deserve them. According to the 1996 Constitution section 28(1)(g), children's rights are defined as follows:

Every child has the right not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under section 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be -

- (i) kept separately from detained persons over the age of 18 years; and
- (ii) treated in a manner, and kept in conditions, that take account of the child's age.

(Statute of the Republic of South Africa, 1255)

*section 12: Freedom and security of the person.

*section 35: Arrested, detained and accused persons.

The Child Justice Act 75 of 2008 gave further protection for child offenders who are under 18 years old. The Department of Justice and Constitutional Development (the Doj & cd) released a pamphlet (n.d.) to briefly summarise the Act. According to the booklet, the children's rights are protected in the following ways:

- A child under the age of 10 years cannot be arrested! This means that a child under 10 years does not have criminal capacity and cannot be charged or arrested for an offence.

In such a case, the child will be referred to the Children's Court (the Doj & cd, 2).

- A child older than 10 years but below the ages of 14 years is presumed to lack criminal capacity unless the state proves that he/she has criminal capacity. Such a child can be arrested (the Doj & cd, 2).
- A child above 14, but under 18 years of age, is said to have criminal capacity and can be arrested (the Doj & cd, 2).

The Act is applied in a preliminary inquiry which is held within the 48 hours of the child arrest, before the first court appearance (the Doj & cd, 3). This is when offenders discuss with other people such as judges, probation officers, parents, police or lawyers to think about what has led them to commit a crime and how can they avoid reoffending. For the offender who is waiting to be given a sentence, the Act embraces a wide range of sentencing options: community-based options, restorative justice options, a fine or symbolic restitution, correctional supervision, youth care centres, and direct imprisonment (Skelton, 354).

Non-Custodial Sentencing

The Child Justice Act gives some protection to young offenders under 18 years old, but not to those who are over 18 years old. In such cases, a non-custodial sentencing can be considered, once an offender is found guilty. Magistrates or the judge decides to send offenders to community services, an alternative option for imprisonment. Other choices may include correctional services, rehabilitation programs or counselling offered by government

and non-profit organisations. This is commonly applied to young offenders who are 17-18, 21-22, 30-39 years old, accused of minor crimes: theft, assault, housebreaking and physical abuse. If they are seen to have risk of reoffending during the trial time, they will be sent back to the service, and if they do not follow the advice, they will receive a warning slip for a retrial.

Challenges: A Case out of Child Justice Act

The Child Justice Act does not apply to every case. On 25th October 2013, the Supreme Court received an appeal, *Makatu v The State* (612/12) [2013] ZASCA 149 from Limpopo High Court, Thohoyandou. In this case, the offender who was 14 years old at that time was convicted for three charges: murder, rape and theft. He was sentenced to 20 years imprisonment. A series of crimes made him more punishable than a person with a minor crime, but the statement explains that the judge had fully given thought to his age and criminal capacity. For example, in his case of rape, his lawyer claimed that his sentence should reflect his lack of education and adulthood experience because both the offender and the victim may not know what would happen as a result of their own actions, since he was only 14 and the victim was 13 years old at that time. Considering all these facts, he was imprisoned for 20 years.

Dysfunctional Facilities

Some youth care centres or prisons are unsupervised. On 17th February 2014, Eastern Cape High Court, Grahamstown

received a criminal case *S v Goliath* [2015] JOL 32716 (ECG) (17 Feb 2014). In this case, the offender was 14 years old at that time and was accused of two counts of rape and sent to Bhischo Child and Youth Care Centre. However, the facility turned out to be out of control: the building was vandalized, children were walking around freely and escaping at night to use drugs. After similar cases were reported, the correctional centre closed down and the children had to be moved to other placements.

Public concern rises when the South African justice system struggles to secure public safety and the public are not ready to restore and reintegrate offenders and victims into the community. In 2018, VOCS reported that the household satisfaction figure from those who knew ex-prisoners remained under 60% (2017/18) and the percentage of households satisfied with correctional services dropped from 49.8% (2016/17) to 42.6% (2017/18) (VOCS). The extent of willingness to offer places for former prisoners was moderate. The statistics from VOCS demonstrates 79.6% of households showed a favourable response in accepting offenders from their community, but the degree of trust towards former prisoners differed by ethnicity. In 2016/17, 51.6% of black Africans responded they would offer work to former prisoners, 22.2% of black Africans said that they do not mind marrying people who used to be prisoners. The percentages were lower among Indians and Asians. Only 30.9% of Indian and Asians claimed that they will give new work former prisoners, and just 9.1% of children said that they would marry ex-prisoners.

Reconciliation and reintegration will take time, and are already posing a number of questions, for example, "what extent of punishment should be given for 'the child's best interest' as it is stated in the section 28 of the Constitution?" "Will the years in prison serve the needs of victims?" For the time being, correctional services may be a place for young offenders to spend their time in, but there will be times when they can be freed. Until then, victims, perpetrators and communities are all responsible for participating in the restorative process.

VI. Healing

Reconciliation

The legislative framework alone does not guarantee the peace unless all the citizens participate in the reconciliation process. Reconciliation embraces the relational approach to understanding the harm and responsibility in a broader sense: at the interpersonal, social and state level. The ethic of forgiveness helps individuals and communities to recover from the wounds that tear them apart and gives the nation reasons to trust again. This collective participatory approach is valued, followed by quantitative outcomes. The major concern for offender reintegration programs is that they can exclude serious offenders in the matter of public safety, to avoid victims' secondary traumatization. This section will first justify the role of forgiveness and introduce reintegration projects supported by government and a non-government organisation to discover why the

reconciliation process is hoped to build sustainable peace in post-conflict societies such as South Africa.

The Role of Forgiveness

Psychologist Michael McCullough explains forgiveness is "a private process of getting over your ill will and negative emotions, and replacing these 'negative' with 'positives' such as wishing the offender well or hoping for a new and improved relationship" (Pope, 175). He incorporates the notion from the medieval Roman Catholic theologian Thomas Aquinas, who advocates that "an agent's choice to love an offender despite his or her unjust act toward the self or others" (Pope, 176). The term "love" does not mean pleasure, joy or romance, but willingness to be good to others, to replace negative feelings with positive energy and move forward. Forgiveness requires victims and perpetrators to let go of anger they may have felt and renounce revenge, accepting a punishment as a form of taking responsibility of their own actions. It does not mean to forget what has happened or what they may have done, but rather what psychologist Robert D. Enright describes as a "path to freedom" which necessitates shared commitment for the common good.

Interpersonal Level

Restorative justice thrives when offenders are able to forgive themselves as well as others, recover from the harm and move forward. Through the reconciliation process, the offenders are responsible for acknowledging their own guilt to repair the

harm they may have caused. For victims, they are accountable for seeking opportunities to regain a sense of power to control their own lives. Reconciliation begins before bringing the matter into courts. The National Institution for Crime Prevention and Reintegration of Offenders (NICRO), a non-government organisation, designs offender reintegration programs such as *Victim Offender Meditation (VOM)* and *Family and Victim Offender Group Conferencing (FGC and VOC)*. These programs offer victims and perpetrators a chance to address the damage and the wrongdoing with the assistance of meditators. The 2016/17 NICRO report demonstrates that 2, 321 children and 11, 272 adult offenders benefited from its overall service, though there is no data demonstrates which diversion program or offender reintegration programs had given a real impact in making behavioural change that lasts for long. (NICRO, 3) Unless research evidence can support the program, such a therapeutic approach may not be promising, as American psychological concludes "single-component insight-oriented and relationship-focused individual therapeutic approaches have been found to be particularly ineffective with violent adolescents" (Tate & Mulvey, 50, 777-781).

Community Level

Restorative justice flourishes when the community acknowledges the collective loss and engages in reconstructing public safety, and the ethic of forgiveness facilitates doing so. After the diversion program, some offenders enter mentoring pro-

grammes referred by the court. One internationally popular curriculum is *Big Brothers Big Sisters (BBBS)*, a community monitoring project, tested at a small sample size in 35 countries besides South Africa (Steyn, 2005). Big Brother or Big Sisters are played by adult voluntary workers, who are responsible for taking care of Little Brothers/Sisters, youth around 6-18 years old for three to five hours a week for about one year.

South Africa enforced BBBS program. Preliminary findings from a recent evaluation of BBBS South Africa indicated a decrease in the youth involvement in property damage, an increase in intimacy with peers and an increase in mastery and coping (self-concept) and an increase in time engaging in social and cultural activities across three groups receiving different levels of the intervention (one group received no intervention and functioned as the control group) (Louw, 2003). The group who received the highest level of mentoring received more emotional support from their peers and experienced less conflict with their peers, while the wait list control group displayed the lowest level of attachment to school (Louw, 2003). However, BBBS project is yet convincing, when it was only tested among a small number of groups. Instead of one-on-one service, a multimodal reintegration measure maybe ideal, since youth delinquency is led by multiple factors.

It is also important for communities to meet the needs for individuals in its restorative work. Therefore, NICRO organizes constructive steps for prisoners to rehabilitate, preparing them

to restart new lives. For example, *Tough Enough Programme* is one-year program for inmates who are in the last year of jail. It helps them to be ready for the new life outside prison and enhances life skills that are necessary in finding friends, work and resources, so that they are able to protect themselves. Also, NICRO holds seminars with local governments to support them to find new work. In 2017, the Western Cape Department of Labour carried out a workshop, "Equal Opportunities for Work-seekers at Risk" with NICRO, (NICRO, 6) to mitigate the difficulty of searching work for former prisoners and decry any feelings of worthlessness that they may have. The drawback of these projects is that there is no available data to measure the outcome of these programs, which makes challenges for these projects to gain supporters or be accepted by communities.

State Level

The state is responsible for not being able to prevent crime in the first place, so their primary work has to be establishing the foundation of restorative framework to promise that future harm will be minimized. Indeed, the implementation of the Child Justice Act 2008 extended legal aid to youth offenders, did provided preliminary inquiries, an informal pre-trial discussion. From 2015 to this day, approximately 15,000 preliminary inquiries have been held every year. In 2017-2018, 13,381 preliminary inquiries were conducted; referred to Child Justice Court (5193), diversion (3490), postponement (1756), withdrawn (1313), struck of roll (844) and other sentences (Doj, 23-24). In the 2017-

2018 annual report, 94.2% of preliminary inquiries were registered by children aged around 14-17 years old. This high registered rate suggests that youth are concerned about addressing the harm and the guilt before they stand in to courts. Meanwhile, the main participants were 17 years old which reminds the society that the age matters in considering the criminal capacity (Doj, 24).

Furthermore, the government is responsible for repairing the harm and guilt from the past crime. The Truth and Reconciliation Committee (TRC): The Amnesty Committee, the formal hearings for victims of apartheid, grants amnesty in the exchange for telling the truth. Historically, amnesty laws were criticised for "acts of oblivion" that seek to "forget" past crimes (Mallinder, 156), but TRC emphasises "answerability" in an accountable process (Mallinder, 157), comprises a part of restorative justice in deciding the extent of punishment. During 1995-2002, TRC had interviews with about 21 000 victims and 2 000 of them testified at public hearing (United States Institute of Peace). The commission accepted 7, 112 applications, bestowed amnesty in 849 cases, but rejected 5, 392 cases (United States Institute of Peace).

Challenges

Many restorative justice projects are evaluated by the process, rather than the performance which may value high in participant satisfaction, though the work scores low in the long-term behavioural change. Reviews of victim-offender meditation

initiatives have demonstrated that restitution (either symbolic or material) is a central part of most agreements between the victim and offender, that an agreement is reached in practically all cases and that agreements are completed between 75% and 100% of the time (Fischer, & Jenué, 28, 60-70; Kurki, 294-315; Umbreit et al., 65, 29-35). In addition, mediation has been shown to significantly reduce victims' anger, anxiety, fear of re-victimisation by the same offender and crime in general (Kurki, 294-315), but this positive feedback alone does not give the right reason to propose reconciliation projects as a solution for youth crime, since there is no research data that indicates reduction in violence or reoffending contributed by these practices. Several questions remain to be answered for reconciliation and reintegration to be accepted by the society. For instance, do diversion programs help the reconciliation process? Do results meet the needs of victims and offenders? Diversion programs may raise the number of false accusations, pressuring youth to accept things they may have not done, only to avoid more trouble. Without answering any of these matters, restorative justice may not be acknowledged as an alternative pathway for juvenile offenders.

South African historical background helps to understand the structural inequality in the country. For coloured people, the everyday sense of being themselves had to do with their skin colour, marginalized them to the corner, drove them into a life of crime in order to survive. The democratic transition meant little for South Africans when the socio-economic factors, unemploy-

ment, poor education, and substantial abuse, are toxically weaved, disrupting youth development. Inadequate protective factors allow violence to be carried out places like home, school and neighbourhoods, in pursuit of wealth, power and liberation. No matter where children grow up, it does not mean they can do whatever they want because there will be lines that they shouldn't cross, but the penal capacity of young offenders needs to be considered in the best of their interest, in places where todays victims can be tomorrows perpetrators.

Restorative justice and reconciliation understand the harm and responsibility in broader senses, and ignites the Rainbow nation to work for the common good, which seems like putting value on communal life, and displacing the values of individuals. The idea of forgiveness reminds us that collective peace rests in the shared work of individuals and gives purpose to unite the pluralistic society of South Africa. A restorative approach is an alternative pathway in criminal justice that has made a shift in thinking about humanitarian concerns by posing the fundamental question for human beings: what does justice mean for all? At some point of life, there will be someone who will experience pain and suffering, but the moral and virtuous aspect of individuals cannot be separated in thinking about justice. South Africa is being asked to balance liberty and sacrifice, to find the quality of the good life that provides happiness for all and to light up the path to a sustainable peace for the country that belongs to everyone.

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