

CHILDREN'S PERSPECTIVES ON CRIME AND THE CRIMINAL JUSTICE SYSTEM: MAIN FINDINGS

C Badenhorst
Department of Justice and Constitutional Development
H Conradie
Department of Criminology
University of South Africa

ABSTRACT

This research paper is an exploratory pilot study aimed at accessing the views of children on the criminal justice system, their perceptions of how children in conflict with the law are treated, the impact that crime has on them, their schools, families and communities, and their suggestions on how these problems could be eliminated. The aim was to give the children the opportunity to share their views and perspectives, and to encourage decision-makers and policy-makers to take cognisance of what the children have to say. The survey was carried out through an open-ended questionnaire, administered to 529 children between the ages of 11 and 17 years. The only requirement for participation was the ability to read and write. The participating children were selected from 47 schools throughout the Gauteng Province. Seventy-nine (15%) questionnaires were completed by children who indicated that they have been in conflict with the law and 450 (85%) questionnaires were completed by children who indicated that they have not. Seventy-nine percent (79%) of the children who participated in this pilot study clearly stated a need for training with regard to the criminal justice system (policing, the court proceedings, and the prison system). The rationale for training on topics relating to the criminal justice system is, according to 58% of the participants, to understand and prevent crime. The participants also recognised and accepted their responsibility to participate in actions to reduce crime.

INTRODUCTION

In the past, children's rights have not always been adequately protected, neither globally nor in our country.¹ In recent years various international instruments have been implemented to address this problem. The most important of these is the United Nations Convention on the Rights of the Child (hereinafter referred to as the "CRC") in 1989, which was signed by – and thus binding in – all but two countries worldwide. Article 12 of the CRC enshrines children's rights to "express their views freely in all matters affecting the child". South Africa ratified the Convention on 16 June 1995.

Article 7 of the African Charter on the Rights and Welfare of the Child of 1999 provides that "... every child who is capable of communicating his or her own views shall be assured the right to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws." South Africa also ratified the African Charter on the Rights and Welfare of the Child on 18 November 1999.

The African Charter does not differ significantly in content from the CRC on issues relating to juvenile justice. While the CRC promotes a highly individualised approach to the rights of the child, the African Charter takes a more collective approach, blending children's rights with respect for family and the community.

The Community Law Centre (2001) states in a report on children's rights that it is imperative to actively begin to listen to the voices of children, to give appropriate weight to their opinions and views, and to recognise that children have the capacity to reason and rationalise the issues at hand. The report concludes that Article 12 of the CRC provides a wonderful opportunity for children to become involved in decisions affecting their lives. Such involvement is a positive step towards empowering children, protecting their interests,

building their future capacity and encouraging adults to be more receptive towards the insights and understanding displayed by children.

The ultimate objective is to create a natural, ongoing process of child participation and not just a process that serves a particular need at a particular time. The report notes that much remains to be done in affording children their rights in terms of Article 12 of the CRC. At the very least this calls for informing children of these rights and ensuring that adults are willing to respect and understand the value of hearing children's opinions in all matters affecting them.

THE LAW AND CONSULTING CHILDREN

In May 2002 the General Assembly of the United Nations called upon all members of society to join in a global movement to build "A World Fit for Children" by upholding the commitment to listen to children and ensure their participation.² The UN declaration states that both children and adolescents are resourceful citizens capable of helping to build a better future for all. We must therefore respect their right to express themselves and to participate in all matters affecting them, in accordance with their age and maturity.

Within South Africa numerous legislative provisions have been developed to protect children, the most important being the Interim Constitution of the Republic of South Africa, Act 200 of 1993. These provisions were incorporated into the 1996 Constitution.

Among the obligations incurred through ratification of the CRC is the establishment of laws, procedures, and institutions to address the issue of children in conflict with the law. The Child Justice Bill 49 of 2002 was drafted by the South African Law Commission to meet this obligation. It aims to establish a criminal justice system for children accused of committing offences, and thus to protect their rights, as specified in the Constitution and required by the CRC and other international agreements. The Child Justice Bill also requires that children should, as far as possible, be given an opportunity to respond before any decision affecting them is taken.

Both the CRC and the South African Constitution call for freedom of expression and making the child's best interest paramount in all matters pertaining to him or her. This means that adults have a responsibility to listen to children and to hear what they have to say about matters that affect them.

Adults often question the usefulness of consultation with children on a subject as complicated as law reform, notes a report by Ehlers (2002). According to Ehlers (2002), consultation with children is vital for two reasons:

- Firstly, because it contributes to strengthening democracy and respect for human rights. Just because children and youths are below voting age does not mean that they should be excluded from the benefits of democratic processes, such as consultation. On the contrary, children must have a voice in our democracy and should be heard and taken seriously.
- Secondly, children in conflict with the law are those who will be affected by the provisions and procedures outlined in the Child Justice Bill. For this reason they constitute a particularly important stakeholder group.

The involvement of children in political, social and legal decision-making has become the focus of child rights advocacy groups worldwide. Ehlers (2002) also concludes that we must allow our children to speak and we must teach ourselves to listen. If we listen carefully to children today, we may perhaps protect tomorrow's children from a system that does not hold their rights and interests paramount.

Masuku (2004) obtained the views of youth on crime in the Nelson Mandela Metro and concluded that, given the fact that the youth are both the victims and perpetrators of crime, and have many insights into the dynamics of the problem, their participation in prevention programmes is essential.

In his opening address at the 13th International Congress of the International Society for Prevention of Child Abuse and Neglect in Durban on 4 September 2000, Dr Zola Skweyiya, the Minister of Social Development stated that children's views are increasingly being heard, respected and taken into account.

Koch and Wood (2002) conducted an exploratory study with a group of 31 children selected from the traditional criminal justice institutions as well as the non-institutional criminal justice options. One of the conclusions was that interventions and responses of the criminal justice system which is geared towards fighting crime, can only succeed if they take into account the real lives and views of the people they attempt to reach. Children are sensitive barometers of social and economic change, and the impact of such changes in South Africa has been illustrated, amongst other things by the increase in crimes committed by children.

In a Review of Public Participation in the Law and Policy-Making Process in South Africa, it is stated that consultation with children provides an excellent example of how public participation can strengthen policy and legislation (De Villiers 2001).

Section 10 of the Children's Act 38 of 2005³ provides as follows: "Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration."

Young people are the key target group in the fight against crime, because they are simultaneously the primary victims and perpetrators of crime in South Africa, and moreover, because they represent the country's future (Simpson 1998).

METHODOLOGY

Aims of the Research

The study that accessed the views of children pertaining to crime and the criminal justice system in South Africa, was an exploratory pilot study seeking to:

- Reveal children's views and opinions on: (a) Changes to the criminal justice system that could benefit children in conflict with the law; (b) the impact that crime has on them, their schools, families and communities; and (c) how these problems can be eliminated.
- Encourage decision-makers to listen to and hear what children have to say.
- Identify possible needs that could arise when providing training to children on various topics related to the criminal justice system.
- Develop the identified needs as programmes that can be utilised as crime prevention tools through consultation and co-operation among various stakeholders (such as the SAPS, the Department of Justice and Constitutional Development, the Department of Education etcetera).

Sample

The survey was conducted by means of a questionnaire administered to 626 children between the ages of 11 and 17 years. The only requirement for participation was the ability to read and write. The participating children were selected from throughout the Gauteng Province and the sample was obtained by means of non-random convenience sampling techniques. The sample does not permit generalisations outside the group of sample elements. The children surveyed were encouraged to offer their own views, experiences and perspectives – no information on the criminal justice system or any other aspect of the survey was made available to them prior to completion of the mainly open-ended questionnaire. The decision to, with the exception of the biographical data, make the questions open-ended was related to the aim to give the children a voice. Open-ended questions afforded them the opportunity to write freely about their views.

Structure of the questionnaire

The children were requested to respond to 27 questions, the first five of which were related to biographical data. In question 6 the children were asked to indicate whether or not they have ever been in conflict with the law. The reasoning behind this question was to establish whether there is a difference in the perceptions of children who have been in conflict with the law and those who have not been in conflict with the law.

The first part of the questionnaire related to general questions on the criminal justice system. The children were requested to state whether they are of the opinion that children between the ages of 7 years and 14 years should be held responsible for committing crimes, and to furnish reasons for their answers. Question 8 asked whether a child should be detained when he or she commits a crime. The children were also requested to state how they think the police treat children who have been arrested, what crimes that children commit they consider to be serious, whether diversion is a good idea, whether children should be sentenced to imprisonment at all, whether the criminal justice system should be changed to benefit children in conflict with the law and what changes they think would benefit children in conflict with the law.

The second part of the questionnaire asked children which crimes affect their schools, homes or communities the most.

In part three of the questionnaire children were requested to offer solutions to the problem of crime currently experienced in our country. They were requested to indicate who, in their opinion, is responsible for stopping crime, what they think should be done to stop crime, what communities could do to stop crime and what they would do to stop crime if they had the power to do anything.

The last part of the questionnaire requested them to indicate whether they thought that it is a good idea to give children training on topics related to the criminal justice system, and to explain their answers. Various such topics were listed and children were also asked to indicate which topics they would like to receive training in.

Data analysis

A total of 626 questionnaires were completed. Ninety-seven (97) were disregarded for different reasons, including the fact that the respondents did not meet the age criteria of the survey or that they completed it in teams or did not complete the questionnaire at all. Consequently a total of 529 questionnaires were analysed. Seventy-nine (15%) questionnaires were completed by children who indicated that they have been in conflict with the law while

450 (85%) questionnaires were completed by children who indicated that they have not been in conflict with the law.

Figure 1: Children in conflict with law versus children not in conflict with the law

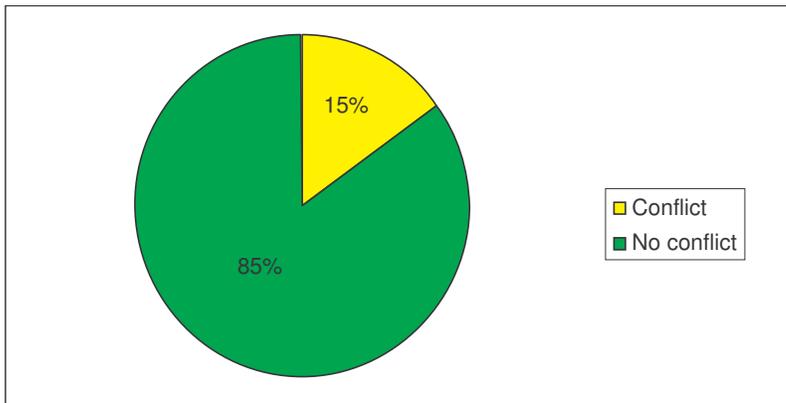


Figure 1 indicates that the vast majority of the participants had not experienced any conflict with the law at the time of the survey. Due to the guarantee of anonymity given to participants these claims could, however, not be verified.

BIOGRAPHICAL DATA

(a) Total number of inputs

Figure 2: Age composition of all participants

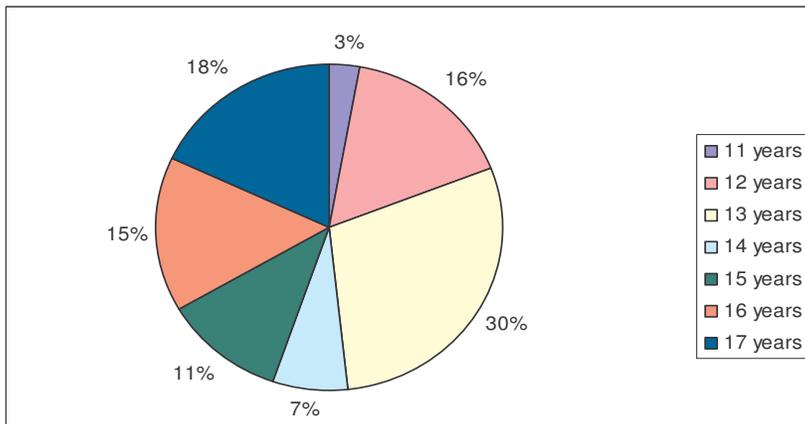
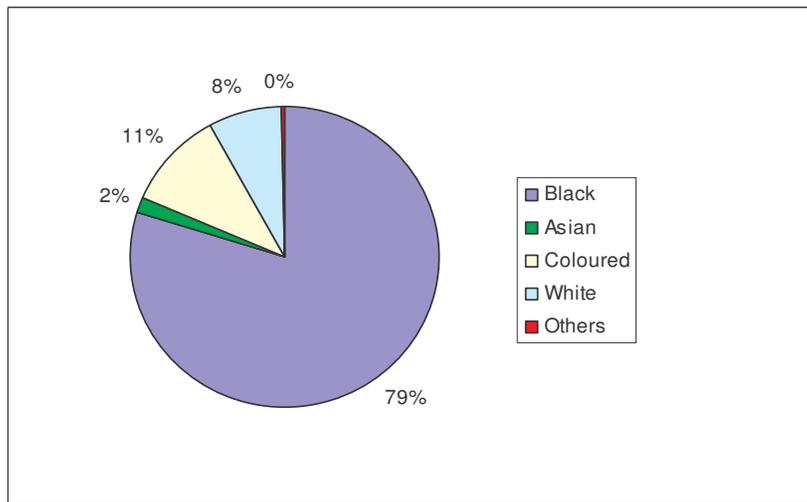


Figure 2 shows that 13-year-olds constituted the largest age group among the participants, followed by 12-year-olds (16%) and 16-year-olds (15%). The 15-year-olds comprised 11 percent of the sample, 14-year-olds only seven percent and the 11-year-olds just three percent.

Figure 3: Racial composition of all participants



With regard to race, 79 percent of the subjects were black, 11 percent coloured, eight percent white and two percent were of Asian decent. The race composition of the sample closely reflects the race distribution of South Africa’s overall population.

Training on Topics in the Criminal Justice System is a Good Idea

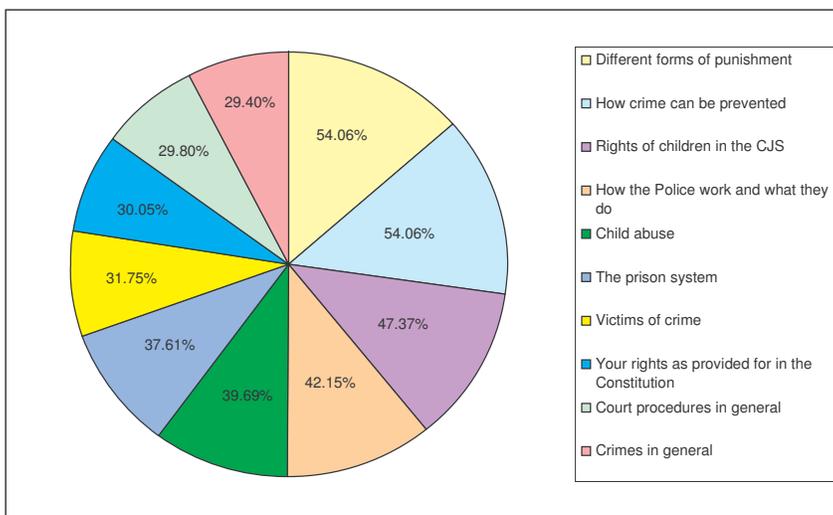
A total of 418 (79.01%) of all participants in the survey (including children in conflict with the law as well as those who have not been in conflict with the law), indicated that they think that children should receive training on topics related the criminal justice system, while 37 (6.99%) believed that it is not a good idea, and 74 (13.98%) did not respond.

Topics that children would like to receive training on

(a) Total responses

The training topics chosen by all participants were as follows:

Figure 4: Selected training topics



The children identified ten topics they wish to be trained in, which can be summarised as follows:

Policing: What the police do and how they work

Courts: Different forms of punishment and court proceedings

Prison: The prison system and types of punishment

Crime prevention: Child abuse, crimes in general, victims of crime

Rights: Child rights and Constitutional rights.

Table 1: Comparison in respect of training topics

Training topic	Children in conflict with the law	Children not in conflict with the law
Forms of punishment	50.63%	54.66%
Prevention of crime	60.75%	52.88%
Rights of children in CJS	59.49%	45.55%
Policing	43.03%	42.00%
Child abuse	45.56%	38.66%
Prison system	40.50%	52.88%
How to behave as victim	48.10%	28.88%
Constitutional rights	60.75%	29.33%
Court proceedings	37.97%	26.66%
Crime in general (causes/explanation)	45.56%	26.66%

It is evident that children want to know more about the forms of punishment that can be meted out to them. Irrespective of whether they have been in conflict with the law or not, it is more or less of equal importance to them. It is also interesting to note that those who have been in conflict with the law expressed a greater need for training on crime prevention. As one would expect, children who have had been in conflict with the law are stronger in their support for training about their rights as children when confronted with the criminal justice system. Learning more about what the police service does seems to be of equal importance to both groups, while the stronger emphasis on learning about child abuse among children in conflict with the law could reflect greater experience with this phenomenon among this group. The fact that those children who have not experienced conflict with the law indicated a stronger wish to be trained about the prison system might be linked to their tendency to seek retribution, as expressed in their responses to other questions.

The strong differences (20%) between the responses labelled “In conflict” and “Not in conflict” regarding training related to behaviour as a victim of crime might also be linked to the fact that those who have been in conflict with the law may themselves have been victims of crime. The strong differences that exist between the two groups with regard to learning about constitutional rights are most likely due to the fact that those in conflict with the law have been in need of such information. Similarly, the differences between the two groups pertaining to the need for training about court proceedings can be ascribed to the fact that the “In conflict” group has had to face such proceedings in the past.

In conclusion it is also interesting to note the significant difference between the “In conflict” and the “Not in conflict” groups with regard to training on the causes and explanations of crime in general: the group who have had conflict with the law registered a nearly 20 percent greater need for such training.

FINDINGS

The following can be listed as some of the key findings of the pilot study:

- The legal instruments aimed at ensuring that the best interest of the child prevails, as described earlier in this document, endeavour to safeguard our children.
- The right of children to express themselves in matters concerning them is clearly enshrined in the various international instruments and legislation referred to in this document. There have also been numerous acknowledgements of this right of children by both government and other parties. Despite all of the above, adults have however not honoured their obligation to afford children the opportunity to express themselves as they are clearly entitled to.
- The participants in this pilot study are not well-informed about their rights as expressed in the Constitution and international instruments.
- Seventy-nine percent (79%) of the children who participated in this pilot study, have clearly stated a need for training related to the criminal justice system (such as policing, court proceedings and the prison system).
- The rationale for providing training related to topics in the criminal justice system is, according to 58 percent of the participants, to understand and prevent crime.
- The participants also recognise their own responsibility to participate in actions aimed at reducing crime and expressed their wish to do so.
- The majority of the participants indicated that economic and contact crimes have the greatest impact on their homes, schools and communities.
- In most instances there was no significant difference between the views expressed by the children in conflict with the law and those not in conflict with the law who participated in the survey.

OUTCOME

Based on the results of this exploratory pilot study, it was decided that the urgency of some of the issues raised by the children should be addressed immediately. Therefore Mrs Nanette Minnaar (from Khulisa) activated 55 of the children from this project to distribute questionnaires to 280 (158 male and 122 female) members of the communities of Daveyton, Benoni, Thembisa, Hammanskraal, Soweto, Alexandra and Westbury, gathering information that the children themselves could utilise to develop crime prevention initiatives.

The result of this effort, which took place during an 11-day period from 4-15 October 2007, was that these children have developed three types of crime prevention initiatives, consisting of sports and recreation, feeding scheme and life skills development initiatives. The underlying theme of all the proposed projects is to address the basic need of a community that feels disconnected – namely to connect. According to Nanette Minnaar, mastery, independence and generosity, the basic needs that are lacking in disconnected communities, could be addressed by means of the projects the children have devised. She is convinced that these youth have shown tremendous wisdom and insight, and by listening to them and implementing their projects we can address the basic needs that are currently not being met, namely the need to belong, to experience generosity, survival, and the power to master one's own environment, as well as a feeling of success.

This development is the first outcome of this explorative pilot study aimed at accessing children's perspectives on crime and the criminal justice system in South Africa.

RECOMMENDATIONS

Based on the findings of this pilot study, the following recommendations are put forward:

- This research should be followed up with representative samples from all the provinces in order to obtain the viewpoints of children throughout South Africa.

- The findings of this pilot study should be utilised to inform the development of a questionnaire with closed-end questions which is to be used in the nation-wide random sample research.
- The state departments of Education, Police, Justice, Social Development and Correctional Services should each devise ways and means to teach the children of the nation – our future citizens – about the Constitution, children’s rights, the criminal justice system and what actions constitute crimes, what causes crimes and how it can be prevented.
- This country-wide research should be repeated every seven years in order to ensure that the views of 11 – 17 year olds are gathered on a regular basis.
- Khulisa (see endnote ...) should seek suitable partnerships to assist the organisation to participate in these follow-up research ventures.
- Khulisa should also develop courses, with the assistance of suitable partners, to accommodate the need for training as requested by the participants in this pilot study. These courses can then serve as pilot projects which may be adapted according to the findings of the country-wide representative research.
- The results of this pilot study should be explored in greater depth through articles and conferences.

CONCLUSION

One of the aims of this research was to give children an opportunity to speak out about crime and the criminal justice system. The research results clearly indicate that both sets of children (“In conflict” and “Not in conflict”) require more information about the CJS (police, courts, prisons) and even about crime prevention. They have clear views about the training they would like to receive and they volunteered to become involved in crime prevention. Lawmakers have afforded them the right to be heard. They have spoken. Now the lawmakers should listen and accommodate their views.

A hundred years from now it will not matter where we lived, what cars we drove, how many companies we owned or how many degrees we had, but the impact we had on the life of one child will be significant.

BIBLIOGRAPHY

Community Law Centre. 2001. Report on Children’s Rights: “They should listen to our side of the story”. Based on a report on workshops held to give effect to Article 12 of the United Nations Convention on the Rights of the Child.

Convention on the Rights of the Child. 1989. Available at:
<http://www.unhchr.ch/html/menu3/b/k2crc.htm> Accessed on: 1 September 2005.

De Villiers, S. 2001. People’s Government , the People’s Voice. A Review of Public Participation in the Law and Policy-Making Process in South Africa. Parliamentary Support Programme. June 2001. Available at:
http://oldwww.parliament.gov.za/pls/portal30/docs/FOLDER/PARLIAMENTARY_INFO
Accessed on: 24 August 2007.

Ehlers, L. 2002. Children’s Perspectives on the Child Justice Bill: NICRO for the Child Justice Alliance.

Koch, R & Wood, C. 2002. Case studies of children with experience of the criminal justice system in South Africa. An exploratory study. Institute of Criminology, University of Cape Town. In association with the Child Justice Alliance. January 2002.

Masuku, S. 2004. Youth views on crime in the Nelson Mandela Metro. *The Crime Quarterly*, No 9.

Simpson, G. 1998. Urban Crime and Violence in South Africa. In *Justice for Children: Challenges for policy and practice in Sub-Saharan Africa*, Petty, C & Brown, M (Eds). London: Save the Children.

ENDNOTES

¹ In terms of section 28(3) of the Constitution of the Republic of South Africa, 1996, a child is a person under the age of 18 years.

² During the 6th plenary meeting of the General Assembly of the United Nations on 10 May 2002, a resolution entitled "A world fit for children" was adopted, which was annexed to the present resolution.

³ Act 38 of 2005 which became operative on 1 July 2007 through Notice 13 of 2007 in *Government Gazette* 30030 of 29 June 2007: Commencement of certain parts of the Children's Act 38 of 2005.