

**PROTECTING THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW IN
SOUTH AFRICA: THE LAW VERSUS THE PRACTICE**

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30 NOVEMBER 2024

DECLARATION

I, **Leeuw Tembisa**, hereby declare that the doctoral thesis or the interrelated, publishable manuscripts and published articles submitted for the doctoral degree qualification at the University of the Free State constitutes my independent work. Furthermore, I affirm that this submission has not been previously presented for a qualification at any other institution of higher education.



30 November 2024

Signed:

Date:

DEDICATION

This doctoral thesis is dedicated to my late father, the former Eastern Cape Education Superintendent General Themba Standly Kojana.

My father's recognition of my achievements, regardless of their magnitude, significantly contributed to enhancing my confidence and motivation. He consistently affirmed my abilities and past successes, which served as a source of encouragement during challenging periods. He fostered a sense of self-reliance and confidence by supporting me in taking ownership of my research and decision-making processes. Additionally, he emphasised the importance of maintaining a healthy work-life balance, which was crucial for sustaining my well-being throughout my PhD journey.

Ndiyabulela Tata.

Kumkani Wemfundo, Siyaqhuba!!!

Lala Ngoxolo, Nxasana, Mkhwa, Dunjane.

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ABSTRACT

This study examines the protection of children's rights in conflict with the law in South Africa, highlighting the discrepancies between legal provisions and practical implementation. It acknowledges that children, defined as individuals under 18, possess varying degrees of cognitive maturity and are often influenced by their environments, which may lead to unlawful behaviour. Despite constitutional guarantees and international standards aimed at safeguarding their rights, significant challenges remain in their treatment within Child and Youth Care Centres (CYCCs). The research explores historical contexts, the evolution of child justice policies, and the conditions faced by children in detention, emphasising the need for humane treatment and rehabilitation. It investigates the roles of various stakeholders, including Child and Youth Care Workers (CYCWs), in ensuring that children's rights are honoured and their developmental needs are met. Through a critical analysis of existing frameworks and practices, this study aims to identify gaps and propose recommendations for enhancing the protection and rehabilitation of children in conflict with the law, ultimately advocating for a more rights-based approach in the South African legal system.

South Africa's population includes a significant number of children, many of whom encounter the law. The Constitution emphasises children's rights, particularly those in conflict with the law, but implementation remains a challenge. Historical context highlights the transition from punitive measures to a focus on rehabilitation. Despite constitutional protections, many face inadequate treatment in detention settings.

CYCCs aim to rehabilitate children awaiting trial or sentencing but often fall short in providing safe environments. Issues include overcrowding and inadequate psychological support, leading to further rights violations. CYCWs play a crucial role in supporting the development of children in care. Their responsibilities include providing emotional and psychological support, but challenges persist in their training and resources. The key legislative frameworks safeguarding children's rights include the Child Justice Act and the Children's Act, which align with international human rights standards. However, gaps exist between legislation and practice, leading to continued human rights violations.

The study employs a qualitative approach, examining the conditions in various CYCCs and gathering perspectives from affected children.

ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
AHDQ	Adolescent Health and Development Questionnaire
CJA	Child Justice Act 75 of 2008
CYCC	Child and Youth Care Centre
CYCW	Child and Youth Care worker
DSD	Department of Social Development
IDP	Individual Development Plan
JCWS	Johannesburg Child Welfare Society
JDL	Juveniles Deprived of their Liberty
JICS	Judicial Inspectorate for Correctional Services
NCPS	National Crime Prevention Strategy
NGO	Non-governmental organisation
NICRO	National Institute of Crime Prevention and the Rehabilitation of Offenders
NPM	National Preventative Mechanism
PBT	Problem Behaviour Theory
SACSSP	South African Council for Social Services Professionals
SAPS	South African Police Service
SDG	Sustainable Development Goals
UN	United Nations
UNCRC	United Nations Conventions on the Rights of the Child
UNHROHC	United Nations Human Rights Office of the High Commissioner
UNODC	United Nations Office on Drugs and Crime

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CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

South Africa has a population of approximately 60.6 million people, of which nearly a quarter consists of children.¹ It is important to recognise that children who come into conflict with the law may possess the cognitive maturity necessary to discern acceptable from unacceptable or criminal behaviour. However, it is crucial that these children do not come into contact with adult offenders or other child offenders, as such interactions can expose them to harm and negatively influence their behaviour. Children who engage in unlawful acts often do so not of their own volition but might do so as a result of contact with criminals and or criminal behaviour as well as limited opportunities for their development. These opportunities become increasingly compromised once children enter the criminal justice system.² Violence against children continues in many forms, especially in contexts where they are held in detention. While acts of violence and abuse can be classified as torture or other cruel, inhuman, or degrading treatment under international law, existing frameworks for addressing these issues have often been inadequately enforced for children in detention.

The Constitution of South Africa,³ specifically in Chapter 2, delineates a framework for human rights that includes explicit protections for children, particularly in sections 28 and 35. Section 28 guarantees every child special protection and the enjoyment of certain rights. Among these rights, which are enumerated without a specific order, are the following:

- Section 28. “(1) Every child has the right—
- (a) to a name and a nationality from birth;

¹ Ndoma & Siachiwena 2023: 1.

² UNICEF 2017: 4.

³ *Chapter 2 of the Constitution, 1996.*

- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services, and social services;
- (d) to be protected from maltreatment, neglect, abuse, or degradation;
- (e) to be protected from exploitative labour practices;
- (f) not to be required or permitted to perform work or provide services that—
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 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; (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - (iii) not to be used directly in armed conflict, and to be protected in times of armed conflict".⁴

Children involved in criminal activities are commonly called children in conflict with the law, juvenile delinquents, or juvenile offenders. Although constitutional measures like Section 12, Section 28, and Section 35 are designed to protect their rights, substantial progress in applying these protections is still lacking. This chapter explores the complexities surrounding juvenile delinquency, the historical context of treatment in South Africa, and the current status of rights and rehabilitation for children in conflict with the law.

⁴ *Section 28 (1) of the Constitution, 1996.*

The term children in conflict with the law describes individuals under the age of 18 who are suspected or accused of committing offenses. The motivations for such behaviour are multifaceted, often rooted in environmental factors. Children may come from backgrounds characterised by a lack of boundaries, limited parental supervision, exposure to substance abuse, or associations with delinquent peers. Such circumstances can lead to problematic behaviours beginning in childhood and escalating into adolescence.⁵ Research indicates that, in the United States, 7% of youths arrested for violent crimes in 2020 were under 18, a decline from 14% in 2010.⁶ In South Africa, 138 murders committed by children were reported in 2019/2020, highlighting the urgent need for humane treatment in Children and Youth Care Centres (CYCCs).⁷

Historically, the rights of children in conflict with the law were insufficiently safeguarded in South African prisons. The prevailing view was that all offenders deserved punishment,⁸ leading to young offenders being subjected to the same punitive measures as adults.⁹ Prior to the establishment of democracy in 1994, legal responses to juvenile delinquency were often inhumane, involving corporal punishment and prolonged detention without parental notification.¹⁰ The mid-1990s marked a transformative period for South Africa's legal system, shifting from a repressive approach to one rooted in human rights and dignity.¹¹

Before 1948, the absence of CYCCs meant that children who violated the law were typically punished or sent to reform schools.¹² These institutions, designed to accommodate juvenile offenders, often lacked the necessary policies to ensure the humane treatment of children, leading to significant human rights violations. A reform school was a residential institution designed to accommodate all children

⁵ Franjić 2020: 1.

⁶ Puzzanchera 2022: 1.

⁷ South African Police Service (SAPS) 2024: 138.

⁸ Dlamalala 2018: 34.

⁹ Thompson 2016: 8.

¹⁰ Thompson 2016: 8.

¹¹ Steyn 2010: 1.

¹² Skelton 2005: 42.

who were sentenced by a court of law.¹³ Reform schools included residential facilities designed to care for children who had been taken away from their families or communities. Children in conflict with the law would be sent to reform schools following a specific court order.¹⁴ Not all children were sent to reform schools, as some were sent to prisons where they were detained in the same spaces as adult prisoners.¹⁵ In prison, child offenders often became the victims of various human rights violations, because there was a lack of policy guidelines on how they should be treated or protected while in prison.¹⁶

In the 1990s, “campaigns such as Justice for Children: No Child Should Be Caged, the National Working Committee on Children in Detention, and Free a Child for Christmas, began to address issues affecting children in conflict with the law, and the best or most effective means of dealing with them in South Africa”.¹⁷ These campaigns intensified the pressure on the Government to address the mistreatment of young offenders.

In 1998, Sloth-Nielsen and De Villiers¹⁸ investigated prison conditions in South African prisons. In most of the prisons they visited, they found harsh and dehumanising conditions that were not conducive for children. Most children suffer from isolation due to separation from their families and friends. The investigation also revealed a shortage of prison personnel, which made it impossible for sentenced children to be provided with special developmental programmes.¹⁹ In the same year (1998), research indicated that there were 22 879 children, both sentenced and awaiting trial, in South African prisons, and at least 1 230 of them were children between the ages of 7 and 16 years. Other findings, which correlate with the previous authors, include overcrowding, shortage of personnel, and inhuman conditions in the prisons.²⁰

¹³ Child Justice Project 2003.

¹⁴ Child Justice Project 2003.

¹⁵ Moumakwa 2015: 1.

¹⁶ Skelton 2005: 55.

¹⁷ Skelton 2005: 90.

¹⁸ Sloth-Nielsen & De Villiers 1998: 12.

¹⁹ Sloth-Nielsen & De Villiers 1998: 12.

²⁰ Mubangizi 2001.

Neville Snyman's death in 1992 prompted the creation of the Correctional Service Act.²¹ At the age of 13, Neville Snyman and a friend broke into a store and took some candy and a soft drink. He was held in a police cell in Robertson alongside adult detainees. He was assaulted in custody cells and died after sustaining severe injuries.²² After his death, the National Working Committee on Children in Detention was established. Additionally, various diversion programs were introduced to keep children out of the criminal justice system. However, there were no legal frameworks specifically regulating child justice and diversion. In 1994 the African Prison Watch Project²³ found that 1 428 children were detained, awaiting trial, or sentenced to imprisonment. In the Western Cape alone 36 000 children in conflict with the law were sentenced to be whipped in 1993. In November 1994, the Juvenile Justice Drafting Consultancy released the first extensive guide for managing child offenders in South Africa. This framework outlined procedures for arrest, intake, and referral, while also addressing diversion and the sentencing of young offenders.²⁴

The National Crime Prevention Strategy (NCPS) was introduced in 1996. It emphasised the absence of diversion and child sentencing policies. Moreover, it called specifically for the development of approaches to divert minor offenders away from criminal justice procedures.²⁵ These sentiments were echoed in the white papers and strategic plans of various government departments, including Correctional Services and Social Development. Soon after the National Crime Prevention Strategy was launched, the South African Law Reform Commission released two papers related to child justice. The first, Sentencing Restorative Justice (1997a), dealt with the crime victim's position and role in the justice process. It specifically referred to restitution, compensation, and mediation, which today form part of many diversion programmes. The restorative sentiments of the publication eventually became an important thrust in official directives for managing child offenders. The second paper, Juvenile Justice (1997b), specifically examined

²¹ *Correctional Service Act 17 of 1994.*

²² Bezuidenhout & Joubert 2003: 191.

²³ *Prison conditions in South Africa*, Africa Prison Watch Project 1994.

²⁴ Juvenile Justice Drafting Consultancy 1994: 1.

²⁵ The National Crime Prevention Strategy 1996: 61.

issues related to age and criminal responsibility, police authorities and responsibilities, pre-trial detention, diversion programs, and sentencing.

In May 1995, the Inter-ministerial Committee on Young People at Risk set the groundwork for creating Child and Youth Care Centres.²⁶ A Child and Youth Care Centre (CYCC) refers to a rehabilitation centre where children awaiting trial and sentence are cared for.²⁷ Children who are placed in CYCCs are those who have committed crimes and need care.²⁸ In essence, a CYCC is a remand centre that keeps children whose cases are still pending, awaiting trial or those sentenced by the court. Other factors that influence the need for care include uncontrollable behaviour, living or working on the streets, drug addiction and dependency, exploitation, maltreatment, or being exposed to conditions that place the child's physical, emotional, social, and cognitive development at risk due to parental neglect or abuse.²⁹ CYCC is a short-term facility that provides basic needs such as shelter, food, care, clothes, and healthcare for those who are detained and awaiting trial or sentencing. The centre should provide programmes specifically emphasising crime prevention and self-development, as well as diversion.³⁰ The aim of providing these services to children in conflict with the law is so that they can change their delinquent behaviour and view life from a different perspective.

After 1994, when a culture of human rights was introduced in South Africa, the conditions and treatment of children in conflict with the law in CYCCs changed. The adoption of new laws and international standards specifically the rights and treatment of children contributed to this change. One of these was the Child Justice Act³¹ (CJA) which was approved and enacted in late 2008. However, it only took effect on 1 April 2010 to allow sufficient time for the preparation of role players. According to section 2(a)-(e), the objectives of the CJA are:

²⁶ Kiessl & Würger 2002: 301.

²⁷ Moumakwa 2015: 7.

²⁸ Thesen 2014: 1.

²⁹ Thesen 2014: 1.

³⁰ Kiessl & Würger 2020: 303.

³¹ *Child Justice Act 75 of 2008*.

- a) The protection of children's rights, as specified in the Constitution of the Republic of South Africa.³²
- b) The promotion of the spirit of *ubuntu* in the child justice system, this approach entails ensuring that the sense of dignity of the children is strengthened while holding the children accountable for their actions and providing support by following a restorative process. This is done with the involvement of parents, families, victims, and the community.
- c) The provision of special treatment is designed to break the cycle of crime. The anticipated outcome is ensuring that communities are safer and encouraging child offenders to be actively involved in their transformation into law-abiding and productive adults.
- d) Implementing suitable procedures and services to protect children from the adverse impacts of the formal criminal justice system involves utilising diversion strategies that address their needs.
- e) Promoting effective collaboration within the government and among its departments, as well as with civil society, reflects a comprehensive and cohesive approach to executing the Criminal Justice Act (CJA).

Individuals under 18 years old, and in certain exceptional cases those under 21, are eligible for diversion. This approach aligns with the overarching goals of the CJA, and diversion is defined as follows:³³

- a) Dealing with child offenders informally by not practising formal criminal procedures.
- b) Meeting the needs of individual children and also encouraging responsibility.
- c) The facilitation of reconciliation while reintegrating a child into their family and the community.
- d) Victims must be allowed to express their perceptions and opinions and also be given compensation for the offence.
- e) The potential for stigmatisation must be prevented from flowing from contact with the justice system.

³² *The Constitution of the Republic of South Africa, 1996.*

³³ *Chapter 8 (s51(a)-(k)) of the Child Justice Act 75 of 2008.*

- f) The reduction of the potential for recidivism and preventing the child from having a criminal record.
- g) Promoting the child's dignity and well-being while helping the child to develop self-worth plus an ability to contribute to society.

While the Criminal Procedure Act³⁴ governs adult diversion, the Child Justice Act³⁵ governs diversion for children in South Africa. Diversion in South Africa is aligned with international human rights practice and it was reportedly practiced before the Child Justice Act was enacted by some prosecutors.³⁶ In South Africa, crime prevention and the reintegration of offenders are managed by the South African National Institute for Crime Prevention and Rehabilitation of Offenders (NICRO). This organisation provides services for both adults and children nationwide, except in the Western Cape Province, where it only offers diversion programs for adults. In their 2020/2021 reporting period, NICRO reported that they had reached 336 children for diversion, estimating diversion for children 18 years and under to constitute 8.7% nationally.³⁷ In its 2021/2022 report, NICRO reports that diversion constitutes 86.8% of its services; however, there is no report on what percentage of that comprises children.³⁸ The types of offences reported are inclusive of children 18 years and younger and adults from 18 to 35 years of age: malicious damage to property (2.6%), contravention of a protection order (3.5%), reckless and negligent driving (4.3%), drug possession (5.9%), common assault (10%), shoplifting (10.3%), contravention of Disaster Management Act³⁹ (11%), assault with intent to cause grievous bodily harm (11.7%), and theft (22%). NICRO, as South Africa's largest provider of diversion services, indicates the referral profiles concerning diversion. Children with non-violent crimes are referred to NICRO so that they can be helped to deal with the root cause through a diversion programme suitable to each

³⁴ *Criminal Procedure Act 51 of 1997.*

³⁵ *Child Justice Act 75 of 2008.*

³⁶ Mujuzi 2015: 44.

³⁷ NICRO 2021: 5.

³⁸ NICRO 2022: 8.

³⁹ *Disaster Management Act 57 of 2002.*

individual.⁴⁰ This referral can be the court, school, family, other organisations, and self-referral.

International law outlines the rights, rules, and principles governing the treatment of children in conflict with the law within Child and Youth Care Centres (CYCCs). When children's rights are infringed upon, this framework allows lawyers and courts to recognise the violations and seek remedies to address the harm done. Additionally, it can recommend legislative or procedural changes to prevent similar violations in the future.

Article 3 of the Convention on the Rights of the Child (CRC)⁴¹ provides that all institutions responsible for rendering services for the protection of children in conflict with the law must conform to the established standards. The function of a CYCC “is to provide an enabling, caring, safe, and secure environment, and services which are integrated, holistic and developmental” for children in conflict with the law”.⁴² CYCCs should be safe spaces for both children and personnel, and also provide access to counselling mental health services, general health services, education, recreation, and legal assistance for sentenced children.⁴³

Children in CYCCs often present challenging behaviour such as bullying, recklessness, manipulation, rebelliousness, defiance, dictatorial behaviour, and a general lack of discipline. Caregivers are often confronted by children who fight, are disobedient, promiscuous, and often fail to follow rules.⁴⁴ Children in CYCCs face several human rights violations, including victimisation, crime, and violence such as physical assault, verbal assault, torture, sexual assault, intimidation, and bullying from other juvenile offenders, as well as from personnel members at the centres. Many of these children are deemed to be at risk to themselves or others. They may engage in self-harming behaviour, act out sexually, and become verbally or physically abusive towards others.⁴⁵ These violations impact the behaviour of

⁴⁰ NICRO 2013.

⁴¹ *Article 3 of the Convention on the Rights of the Child 1989.*

⁴² Department of Social Development 2010: 16.

⁴³ Smith, Fulcher & Doran 2013: 18.

⁴⁴ Thesen 2014: 3.

⁴⁵ Nel 2016: 9.

children in many ways including being stubborn, uncontrollable, or even suicidal. The issue of the violation of the rights of children in conflict with the law is of serious concern in South Africa. This research study investigates whether the treatment of children in conflict with the law in CYCCs is consistent with the South African Constitution and other international laws. The research was done at the following centres: Thabo Mofutsanyana Secure Care Centre, Bloemfontein Secure Care, the Matete Matches Secure Care Centre in Kroonstad, John X Merriman in East London, Bhisho CYCC in Bhisho, and Enkuselweni Secure Care Centre in Gqeberha (previously Port Elizabeth).

1.2 CONCEPTUALISATION

1.2.1 Children

Section 28(3) of the South African Constitution defines a child as an individual under the age of 18 years.⁴⁶ This definition is echoed in both the Children's Act⁴⁷ and the Correctional Services Act.⁴⁸ Children, as distinct from adults, exhibit different physical and emotional developmental stages and possess unique needs that necessitate specialised protection.

Within the demographic of children, those aged 14 to 17 are categorised as adolescents. This developmental phase is characterised as sensitive, critical, and complex. The United Nations defines adolescents as individuals between the ages of 10 and 19.⁴⁹ Research indicates that delinquency tends to rise during early adolescence and continues throughout middle adolescence.⁵⁰ This period is marked by heightened variability and conflict, which also entails significant risks.

The South African Constitution, particularly Section 28, states that detaining a child should be a last resort. It highlights the rights of all children, as outlined in Sections 12 and 35, which specify that detention should be for the shortest necessary time.

⁴⁶ *Section 28 (3) of the Constitution, 1996.*

⁴⁷ *Children's Act 38 of 2005.*

⁴⁸ *Correctional Services Act 111 of 1998.*

⁴⁹ Nkwoji 2016.

⁵⁰ Berk, 2009.

Additionally, it mandates that children must be kept separate from individuals over the age of 18, and they have the right to treatment that is sensitive to their age. This legal framework is designed to prioritise the best interests of the child throughout the detention process.

Deprivation of liberty for children should be employed solely as a measure of last resort. Alternative interventions must be available to promote the well-being of children. The deprivation of freedom fundamentally signifies the loss of rights, agency, visibility, opportunities, and affection. When detention becomes necessary, it should be for the minimal duration required and should aim to rehabilitate and reintegrate the child into society. Ultimately, the deprivation of liberty equates to a deprivation of childhood.⁵¹

Consequently, this study adheres to the definitions and stipulations outlined in the South African Constitution, as well as the Child Justice Act⁵² and the Children's Act,⁵³ both of which align with international legal standards.

1.2.2 Children in conflict with the law

The Convention on the Rights of the Child defines children in conflict with the law as individuals under the age of 18 who are placed in Child and Youth Care Centres (CYCCs) due to suspicions of, or convictions for, criminal offenses.⁵⁴ This classification encompasses those who have violated the rights of others and have subsequently been subjected to judicial measures that result in their placement in CYCCs.⁵⁵ Relevant legislation, such as Section 19 of the Correctional Services Act,⁵⁶ delineates specific provisions safeguarding the rights of these children. Furthermore, Articles 37 and 40 of the Convention stipulate that children in conflict with the law are entitled to treatment that upholds their dignity, acknowledges their developmental stage, and facilitates their reintegration into society.⁵⁷

⁵¹ Report of the South African Human Rights Commission 2019/2020.

⁵² *Child Justice Act 75 of 2008*.

⁵³ *Children's Act 38 of 2005*.

⁵⁴ *Convention on the Rights of the Child 1989*.

⁵⁵ Moumakwa 2015: 8.

⁵⁶ *Section 19 of the Correctional Services Act 111 of 1998*.

⁵⁷ *Articles 37 and 40 of the United Nations Convention on the Rights of the Child 1989*.

Children represent one of the most vulnerable demographics within detention settings, largely due to their developmental stage and limited maturity. The experience of detention can have profound and lasting adverse effects on their overall well-being and development. Typically, detention fails to accommodate the individual characteristics and specific needs of children, including their requirements for appropriate education, familial connections, community interactions, and recreational activities. Instead, it often exacerbates their susceptibility to discrimination, abuse, violence, inadequate living conditions, and insufficient access to health care and nutrition.⁵⁸

The reasons for the deprivation of liberty among children are multifaceted. While many are detained based on suspected or alleged criminal activity, others may be incarcerated for non-criminal reasons, including accompanying a parent seeking asylum, issues related to physical and mental disabilities, or status offenses—behaviours that would not be criminalised if committed by adults, such as homelessness, begging, violating curfews, or substance abuse. Such behaviours are frequently symptomatic of broader socio-economic disadvantages or psychological challenges, and “should therefore be addressed through child protective measures, including effective support for parents or caregivers and interventions that tackle the root causes of such behaviours”.⁵⁹

When apprehended on suspicion of an offense, children mustn't be subjected to handcuffing unless they pose an imminent threat to themselves, others, or law enforcement personnel.⁶⁰ Handcuffing should only be considered if there is a credible risk of escape. South African law mandates that within 24 hours of a child's arrest, the police must notify the child's parents or guardians, as well as social workers or probation officers.⁶¹ Following apprehension, parents possess the right to request bail for their child. Additionally, an initial investigation report must be compiled within the first 24 hours and submitted to the prosecutor for further action;

⁵⁸ Global study on children deprived of liberty 2019.

⁵⁹ Committee on the Rights of the Child, General Comment No. 10.

⁶⁰ South African Police Services 2024: 6.

⁶¹ *Child Justice Act 75 of 2008*.

this period may be extended to a minimum of 48 hours. Only the designated prosecutor has the authority to release the child to their parents or guardians.⁶²

The South African Constitution asserts that children should be detained for the shortest possible duration. However, due to systemic failures within the child justice framework, some minors experience prolonged detention without a court appearance, contravening Section 28(g) of the Constitution. Historically, during the apartheid era, there were no legal protections to ensure that children were not subject to prolonged detention or placed under parental guardianship pending trial, resulting in significant pre-trial detention rates. In contrast, the contemporary child justice system mandates that detained children be placed in secure care centres designed to address their social, educational, vocational, psychological, and health needs.

1.2.3 Child and Youth Care Centres

The Department of Social Development describes Child and Youth Care Centres as residential facilities and intervention programs aimed at offering suitable physical, behavioural, and emotional support for children who have been charged with crimes, sentenced, or are awaiting trial. These facilities aim to create an environment conducive to the care, safety, and healthy development of each young person, while simultaneously ensuring community protection.⁶³ The Children's Amendment Act defines Child and Youth Care Centres (CYCCs) as facilities that offer a secure and healthy environment, especially for children facing behavioral and emotional challenges, as well as those in legal trouble. Within this framework, CYCCs may include detention cells for children who have not yet appeared in court or are awaiting trial.⁶⁴ Typically, these centres cater to children deemed a danger to themselves or the community, or those at high risk of absconding prior to their court hearings.⁶⁵

⁶² *Child Justice Act 75 of 2008.*

⁶³ Department of Social Development 2010: 29.

⁶⁴ *Section 1(q) of the Children's Amendment Act 41 of 2007.*

⁶⁵ Nel 2016: 9.

The necessity for CYCCs arises from the need for residential care that removes children from their family environments, offering specialised programmes tailored to their unique needs. However, these facilities also face significant challenges, including the risk of abuse and ill-treatment by both personnel and peers during pre-trial detention and while serving sentences. International standards, such as the Convention on the Rights of the Child, stipulate that children deprived of liberty should be separated from adults unless such separation is deemed contrary to the child's best interests.⁶⁶ Nonetheless, many countries fail to uphold this crucial standard, often resulting in children being detained alongside adults during transport, in police stations, and within detention centres.

The risks faced by children in these environments are exacerbated when those awaiting trial are housed with convicted youth, when boys are detained with girls, and when younger children are placed alongside older individuals. Additionally, the placement of children in detention facilities often fails to consider the specific needs of vulnerable populations, such as those with physical or mental disabilities. This underscores the urgent need for reform and the establishment of more protective and supportive environments within CYCCs.

1.2.4 Child and Youth Care Worker (CYCW)

A Child and Youth Care Worker (CYCW) is a professional who operates within the living environments of children and adolescents, addressing both typical and special developmental needs. The primary objective of a CYCW is to promote optimal development by leveraging everyday life events and structured programmes that enhance the capacity of young individuals to function effectively across diverse contexts.⁶⁷ In South Africa, the (CYCW) profession is emerging as a vital component of community-based support services. CYCWs primarily engage in residential care settings, where they provide preventive and early intervention services aimed at fostering the developmental, psychological, and emotional well-being of children

⁶⁶ Article 37 (c) of the *United Nations Convention on the Rights of the Child*, 1989

⁶⁷ Thesen 2014: 1.

placed in Child and Youth Care Centres.⁶⁸ The core functions of a Child and Youth Care Worker include:⁶⁹

- a) Providing social, emotional, and physical care.
- b) Ensuring social, emotional, physical, cultural, and spiritual safety.
- c) Facilitating therapeutic behaviour development and management.
- d) Conducting observations and developmental assessments.
- e) Implementing individualised development plans based on assessment outcomes.
- f) Executing life-space therapeutic interventions and programmes for individuals or groups.
- g) Designing and implementing developmental and recreational activities.
- h) Managing therapeutic transitions and routines, particularly during critical times such as admissions, school transitions, and community reintegration.
- i) Advocating for children's rights and safeguarding their interests.

These functions are carried out through collaborative teamwork, which often includes professionals such as social workers, whose roles are complementary and essential to the overall support system for children and youth.

1.2.5 Social worker

A social worker is a trained professional who collaborates with various occupational groups and community stakeholders to deliver a comprehensive array of protective, preventative, and developmental services aimed at supporting children and families.⁷⁰ In South Africa, becoming a social worker necessitates obtaining a four-year degree and registering with the South African Council for Social Services Professionals (SACSSP).⁷¹ Children deprived of their liberty represent a diverse demographic, and their needs, as well as the risks they encounter, can differ significantly based on several factors. These factors include age, developmental

⁶⁸ Agere 2014.

⁶⁹ Report of the South African Human Rights Commission 2019\2020

⁷⁰ Agere 2014: 7.

⁷¹ South African Council for Social Service Professionals 2022.

stage, gender, physical or mental disabilities, substance abuse issues, prior experiences of violence and exploitation, and educational attainment. Consequently, it is imperative to conduct thorough assessments of the specific characteristics of these children to ensure they receive tailored care and treatment that addresses their unique needs. Notably, girls who are deprived of their liberty experience heightened vulnerability due to their age, gender, and relatively smaller numbers, necessitating targeted measures to address their specific challenges.

A social worker's role encompasses the assessment of the needs of children in conflict with the law and the facilitation of optimal care and protection within Child and Youth Care Centres. In South Africa, qualified social workers can also serve as probation officers under Section 2 of the Probation Act.⁷² The role of a probation officer is defined as “one who conducts intake screenings to ascertain whether a case will be managed formally or informally within the juvenile justice system”.⁷³ Other scholars characterise probation officers as juvenile court intake decision-makers responsible for gathering information to assist the court in determining the appropriateness of formal juvenile court proceedings.⁷⁴ The probation officer is involved from the moment a child is suspected of committing an offense until the conclusion of the sentencing process. Consequently, it is essential for law enforcement to promptly notify the probation officer following the arrest of a child.

In the case of *S v J and Others* 2000 (2) SACR 384 (C),⁷⁵ the court examined the deficiencies of an assessment record used for sentencing a 16-year-old offender, specifically noting the lack of a comprehensive pre-sentence report from a probation officer. The court concluded that the existing assessment record was inadequate for the purposes of sentencing. The probation officer's role was further clarified in the Supreme Court of Appeal's decision *S v Petersen and Another* 2001 (1) SACR 16 (SCA).⁷⁶ In that case, the Director of Social Services presented a letter stating that probation officers abstained from conducting home visits in gang-afflicted areas of

⁷² *Section 2 of the Probation Act 116 of 1991.*

⁷³ Taylor, Fritsc & Caeli 2007: 263.

⁷⁴ Mays & Winfree 2006: 171.

⁷⁵ *S v J and Others* 2000 (2) SACR 384 (C).

⁷⁶ *S v Petersen en 'n Ander* 2001 (1) SACR 16 (SCA).

Port Elizabeth. The Appeal Court strongly criticised the magistrate for accepting this explanation, asserting that sentencing a young offender without the benefit of a probation officer's report constituted a significant error in judgment. This ruling was later cited in *S v M and Another* 2005 (1) SACR 481 (E).⁷⁷ Furthermore, the case of *S v N and Another* 2005 (1) SACR 201 (CkH)⁷⁸ reinforced the principle that probation officers should provide oral testimony in addition to written reports. These cases collectively highlight the judiciary's dedication to ensuring comprehensive and informed sentencing practices, particularly in cases involving juvenile offenders.

The responsibilities of a probation officer during assessments are delineated in Section 39 of the Child Justice Act.⁷⁹ The probation officer is required to clarify the purpose of the assessment to the child, inform the child of their rights, elucidate the procedural steps to be followed, and ascertain whether the child acknowledges responsibility for the offense.⁸⁰ Furthermore, the probation officer is authorised to consult privately with any individual possessing relevant information pertinent to the assessment.⁸¹

1.2.6 Violence

Violence encompasses all types of physical or psychological harm, injury, abuse, neglect or careless treatment, mistreatment, or exploitation, which also includes sexual abuse. Children can experience violence at the hands of adults, and violence may also occur between children.⁸² Children in CYCCs should be protected from any kind of violence, exploitation, abuse harmful practices, torture, and ill-treatment. In a closed environment, people are most likely to be victimised or suffer from abuse, including torture and maltreatment. Both sentenced children and those awaiting trial in CYCCs are in a situation of vulnerability. They are at risk of being victims of torture, violence, and abuse.

⁷⁷ *S v M and Another* 2005 (1) SACR 481 (E).

⁷⁸ *S v N and Another* 2005 (1) SACR 201 (CkH).

⁷⁹ *Section 39 of the Child Justice Act 75 of 2008.*

⁸⁰ Gallinetti 2009: 33.

⁸¹ Dlamalala 2018: 103.

⁸² *Article 19 of the United Nations Convention on the Rights of the Child 1989*

Children who are deprived of their freedom face a higher likelihood of discrimination and abuse from both staff and other detainees right from their initial interaction with the criminal justice system. Additionally, their lack of liberty increases the risk of self-harm or suicide.

In some countries, children can be stigmatised by authorities and society at large for behaviour that does not conform to conventional expectations. Such stigmatisation can lead to arbitrary arrest of these children and expose them to abusive and discriminatory practices by the police. When they are arrested, children are commonly not provided with information on their rights and the allegations against them in a manner that they can understand. Following their arrest, children may not have prompt access to their parents or caregivers and to legal assistance, which puts them at greater risk of physical, verbal, and psychological violence, especially during interrogations.⁸³

Most children involved in legal conflicts are placed in pre-trial detention, frequently for extended durations and for minor offenses. This practice violates international standards, which state that detention should only be a last resort, for the shortest necessary time, and only for young offenders who genuinely pose a threat to others.

In many instances, children in conflict with the law are subject to violent and unlawful disciplinary measures. States must ensure that disciplinary measures and means of restraint are used only to maintain safety. Measures that constitute cruel, inhuman, or degrading treatment, and those that compromise the well-being of the child – including denial of contact with family, corporal punishment, and solitary confinement – should be strictly prohibited. To prevent abuse and ill-treatment of children in detention, states should also ensure there is specialised personnel working with children and that children in detention have access to child-friendly complaints mechanisms.⁸⁴

⁸³ Report of the South African Human Rights Commission 2019\2020.

⁸⁴ Report of the South African Human Rights Commission 2019\2020.

1.3 RESEARCH PROBLEM

Children's rights serve as fundamental building blocks for securing human rights across generations. In light of the numerous violations, crimes, and acts of violence that children endure within Child and Youth Care Centres, there is a compelling need for enhanced protection of both human and children's rights. Juvenile delinquency represents a significant concern globally, with a marked prevalence in South Africa. Reports indicate that a substantial proportion of crime, particularly violent crime, is perpetrated by young individuals.⁸⁵ This trend is mirrored in South Africa, where children frequently face charges for serious offenses such as robbery, rape, assault, and even murder.⁸⁶ In 2021, the three most common crimes for which individuals under 18 were convicted included housebreaking, rape, and murder.⁸⁷ This persistent issue is underscored by earlier findings from 2010, which highlighted alarmingly high crime rates in post-apartheid South Africa, particularly regarding serious offenses committed by minors.⁸⁸ The spectrum of offenses committed by children ranges widely, from serious crimes such as armed robbery and murder to minor infractions like shoplifting and theft.⁸⁹

As noted by Du Plessis, South Africa lacks adequate resources and frameworks to effectively address the needs of children in conflict with the law.⁹⁰ Before 1994, the absence of legislation regulating the appropriate age and duration of detention resulted in juvenile offenders being processed under the Criminal Procedure Act,⁹¹ which failed to provide sufficient procedural protections.⁹²

Post-1994, the South African government enacted several laws aimed at enhancing procedural protections for youth in conflict with the law. A pivotal element of this legal framework is found in the South African Constitution, specifically, Section 28(1)(g), which asserts that children have the right “not to be detained except as a

⁸⁵ Masuku 2004: 21.

⁸⁶ Masuku 2004: 21.

⁸⁷ Masweneng 2022.

⁸⁸ Breetzke 2010: 446-452.

⁸⁹ Van Eeden 2013: 5; Booyens, Beukman & Bezuidenhout 2003: 36.

⁹⁰ Du Plessis 2006.

⁹¹ *Criminal Procedure Act No 51 of 1977*.

⁹² Du Plessis 2006.

measure of last resort”.⁹³ Additionally, legislative measures such as the Children’s Act,⁹⁴ the Child Justice Act,⁹⁵ and the Convention on the Rights of the Child⁹⁶ have been established to safeguard the rights of children within the legal system.

However, the institutionalisation of juvenile delinquents in CYCCs raises concerns about the oppressive environments in which these children are placed.⁹⁷ Reports suggest that when young offenders are housed together, they often influence and bully one another, perpetuating negative behaviours rather than fostering rehabilitation. Moreover, practices such as strip searches upon return from external appointments contribute to a distressing environment, leading many children to perceive CYCCs as deeply oppressive.⁹⁸

The confinement experienced by these children significantly restricts their freedom, forcing them to adapt to new social dynamics with unfamiliar peers. The process of forming new friendships and achieving peer acceptance becomes fraught with challenges, as newcomers must navigate complex social hierarchies to avoid exploitation while also ensuring they do not appear threatening to personnel.⁹⁹ Adaptation to CYCCs varies among individuals, with some children managing to adjust more easily than others.¹⁰⁰ Furthermore, inadequate resources available to many CYCCs hinder their ability to meet the diverse needs of the children in their care.¹⁰¹

Reports indicate that numerous children within CYCCs have identified themselves as victims of emotional, physical, or sexual abuse, often at the hands of both personnel and peers.¹⁰² This alarming situation may stem from insufficient supervision and a lack of comprehensive programming.

⁹³ Section 28(1)(g) of the *Constitution, 1996*.

⁹⁴ Children’s Act 38 of 2005.

⁹⁵ *Child Justice Act 75 of 2008*.

⁹⁶ United Nations *Convention on the Rights of the Child 1989*.

⁹⁷ Bartollas 2003: 38.

⁹⁸ Bartollas 2003: 38.

⁹⁹ Bartollas 2003: 38.

¹⁰⁰ Malatji and Dube 2015: 8.

¹⁰¹ Smith, Fulcher & Dorah 2013: 18.

¹⁰² Moumakwa 2015: 4-5.

The South African Constitution, extends protection to all children, including those in conflict with the law.¹⁰³ In alignment with the South African White Paper for Social Welfare, the Department of Social Development (DSD) has implemented guidelines aimed at enhancing social services, particularly for social workers, within a developmental framework known as the integrated social service delivery model.¹⁰⁴ This model delineates four levels of intervention: “prevention, early intervention (non-statutory), statutory, and reintegration”.¹⁰⁵ These guidelines serve as tools for social workers and others to support child victims and offenders, as well as those at risk of offending. Gxubane advocates for a developmental approach that emphasises holistic and multidisciplinary interventions for young offenders, promoting social change through the enhancement of individuals, families, and communities.¹⁰⁶

From a public health perspective, different levels of intervention for children in conflict with the law are recognised: primary prevention, secondary prevention, and tertiary intervention.¹⁰⁷ Primary prevention aims to modify individual and environmental factors to reduce the risk of offending, while secondary prevention focuses on the early identification and intervention of at-risk youth. Tertiary prevention, conversely, is concerned with managing children who have already offended, with the goal of deterring recidivism.¹⁰⁸

Child participation is essential in Child and Youth Care Centres (CYCCs), requiring that children be consulted and given the opportunity to share their views on issues that impact them. Article 4 of the African Charter on the Rights and Welfare of the Child emphasises that the best interests of the child should be the foremost concern in all decisions affecting children.¹⁰⁹ Furthermore, children capable of articulating their views should be afforded opportunities to have their opinions heard, as outlined

¹⁰³ *Section 27(1)(c) of the Constitution, 1996.*

¹⁰⁴ Department of Social Development 2005: 19.

¹⁰⁵ Department of Social Development 2005: 19.

¹⁰⁶ Gxubane 2010: 35-43.

¹⁰⁷ Bezuidenhout 2013.

¹⁰⁸ Bezuidenhout 2013.

¹⁰⁹ *Article 4 of the African Charter on the Rights and Welfare of the Child, 2009.*

in Article 7 of the African Charter¹¹⁰ and Section 16 of the South African Constitution,¹¹¹ which guarantees the right to freedom of expression. The research problem addressed in this study focuses on assessing the protection of the rights of children in conflict with the law, specifically examining whether the treatment of these children and the conditions within CYCCs align with established legal frameworks.

1.4 RESEARCH QUESTIONS

Research questions serve to delineate the specific inquiries that a researcher aims to investigate within the chosen topic.¹¹² Essentially, these questions function as guiding parameters that direct the researcher throughout the extensive duration of their study, which may span several months or years, in pursuit of answers to the identified problem.

The principal research question that this study intends to address is: “Are the rights of children in conflict with the law in South Africa adequately protected?”

The supplementary research questions are articulated as follows:

- a) What types of violations, crimes, and acts of violence are prevalent in Child and Youth Care Centres?
- b) What are the measures taken by governmental and non-governmental role players to address these challenges faced in Child and Youth Care Centres?
- c) Is the treatment of children in Child and Youth Care Centres consistent with the law protecting their rights?
- d) Why, despite comprehensive legislation, constitutional imperatives, and extensive human rights developments, are children in conflict with the law still suffering high rates of multiple human rights violations, crimes, and acts of violence in South African Child and Youth Care Centres?

¹¹⁰ *Article 7 of the African Charter on the Rights and Welfare of the Child, 2009.*

¹¹¹ *Section 16 of the Constitution, 1996.*

¹¹² Sekaran & Bougie 2016: 51.

- e) Are children in conflict with the law allowed to be involved in or respond to any decisions affecting them?

To adequately respond to these inquiries, relevant literature has been reviewed, encompassing a variety of sources including international legal instruments, customary international law, treaties, general legal principles, United Nations (UN) declarations, resolutions, reports, soft law instruments, judicial decisions, interpretative human rights documents, scholarly works, public policies, narratives, and studies focusing on children's rights within the South African context.

1.5 RESEARCH GOALS AND AIMS

A research goal articulates the primary purpose or roadmap of the study.¹¹³ This investigation analyses the protection of the rights of children in conflict with the law in South Africa, with a particular focus on the discrepancies between legal provisions and practical implementation. To fulfil this overarching objective, the following aims have been established:

- a) To explore the treatment of children in conflict with the law by childcare officials and other inmates in the Free State and Eastern Cape provinces' Child and Youth Care Centres.
- b) To assess the role that governmental and non-state actors play in ensuring the protection of children in conflict with the law.
- c) To examine whether the criminal justice system considers the best interests of the child in dealing with children in conflict with the law.
- d) To recommend remedial measures to mitigate the violations of human rights, crime, and violence in South African Child and Youth Care Centres.

1.6 LIMITATIONS OF THE STUDY

The limitations inherent in a research study refer to specific characteristics that may affect the interpretation of the findings. In this investigation, the research was

¹¹³ De Vos, Strydom, Fouché & Delpont 2005: 29.

confined to six Child and Youth Care Centres (CYCCs) located in the Free State and Eastern Cape provinces of South Africa. These centres include the Thabo Mofutsanyana Secure Care Centre, Bloemfontein Secure Care, Matete Matches Secure Care Centre in Kroonstad, John X Merriman in East London, Bhisho CYCC in Bhisho, and Enkuselweni Secure Care Centre in Gqeberha (formerly Port Elizabeth).

The sample, consisting of 100 participants, does not comprehensively represent the entire population of children residing in CYCCs, as they may not experience the same types of violations or challenges faced in other centres. Consequently, the findings of this study cannot be generalised beyond the selected facilities, given that the backgrounds of the children and their current environments differ significantly from those in other provinces. Such variations may influence their behaviours, shaped by factors such as differing socioeconomic conditions and other contextual elements that the researcher may not fully recognise.

Additionally, it is important to acknowledge the potential for selective response bias among participants, which may arise from concerns about victimisation by peers or personnel members. To mitigate this issue, the researcher assured all participants that their responses would remain confidential and that only the researcher would have access to their information. This measure was intended to foster an environment of trust and encourage candid responses.

1.7 MOTIVATION FOR THE STUDY

The impetus for this research derives from a comprehensive review of the literature regarding the treatment of detained and incarcerated children, which reveals a significant gap in the South African context concerning the protection of the rights of children in conflict with the law. This scarcity of research prompted the researcher to investigate potential underlying reasons for this deficiency. Notable issues emerged, including the appropriate placement of children who are detained or sentenced and the nature of the treatment they receive from childcare officials and peers, both of which remain inadequately addressed in existing studies.

The primary objective of this study is to assess the extent to which the treatment of children in conflict with the law in South Africa aligns with legal frameworks designed to safeguard their rights. It is well-documented that children in Child and Youth Care Centres exhibit heightened sensitivity to the ramifications of detention compared to adult inmates and are particularly susceptible to victimisation.¹¹⁴ This study seeks to explore, elucidate, and describe the various forms of victimisation, crime, and violence experienced by these children. Furthermore, it aims to inform the development of targeted programmes that address these violations effectively.

In addition, this research examines the protections afforded to children in conflict with the law as articulated in South African legislation, as well as in international and regional instruments. The findings of this study may catalyse a re-evaluation and amendment of existing policies and laws in South Africa, providing a basis for recommendations to policymakers. By contributing to the existing literature on children in conflict with the law and their rights, this study aspires to offer insights that could enhance policy formulation aimed at promoting the best interests of children residing in CYCCs.

To achieve these goals, the study investigates the nature of human rights violations, criminal acts, and instances of violence as defined by the South African Constitution and relevant international frameworks. This examination is crucial for understanding the attitudes and practices that lead to human rights infringements within CYCCs. It is imperative to explore this topic, particularly in light of Section 28 of the South African Constitution, which asserts that “every child has the right to be protected from maltreatment, neglect, abuse, and degradation”.¹¹⁵

Moreover, the Constitution specifies that children accused of offenses should face detention only as a last resort and for the shortest time possible. During their detention, children must be segregated from individuals over the age of 18 and treated in a manner that respects their age and developmental maturity.¹¹⁶ Article 17(1) of the African Charter on the Rights and Welfare of the Child further

¹¹⁴ Kiessl & Würger 2002: 300.

¹¹⁵ *Section 28 of the Constitution, 1996.*

¹¹⁶ *Section 28 (1)(g)(i)(ii) of the Constitution, 1996.*

emphasises that juvenile justice should be administered in a manner consistent with a child's dignity and worth.¹¹⁷ It is important to note that no country has completely established a separate juvenile justice system that guarantees children in legal trouble are treated differently from adults.¹¹⁸

The current operational framework of CYCCs often prioritises containment over rehabilitation, with many facilities lacking the professional personnel and resources necessary to promote effective rehabilitation and reintegration.¹¹⁹ Rehabilitation is inherently multifaceted,¹²⁰ necessitating a collaborative approach involving social workers, therapists, and other stakeholders to optimise the physical, psychological, social, and vocational well-being of children.¹²¹ The CYCCs are often poorly equipped and maintained, most of them do not provide skills development training, there is limited counselling, and families are not allowed to visit their children as often as they wish to.¹²²

Despite the constitutional and international standards in place, the rights enshrined in the South African Constitution and the Convention on the Rights of the Child are frequently violated.¹²³ A significant number of children in conflict with the law within CYCCs lack access to education,¹²⁴ which severely limits their employability upon reintegration into their communities. Consequently, these children often encounter substantial barriers to educational and employment opportunities,¹²⁵ which are readily accessible to their peers outside the system.¹²⁶

As a result, many children who have interacted with the criminal justice system remain unemployed due to a lack of essential skills. This situation is exacerbated by high dropout rates and inadequate educational provisions within CYCCs, which fail to meet the diverse educational needs of these children. There is a pressing need

¹¹⁷ Article 17(1) of the *African Charter on the Rights and Welfare of the Child*, 2009

¹¹⁸ Boëton 2009: 4

¹¹⁹ Boëton 2009: 44.

¹²⁰ Nkwoji 2016: 2.

¹²¹ Nkwoji 2016: 2.

¹²² UNICEF 2006b: 13.

¹²³ Musiani 2006: 16.

¹²⁴ Tlale 2013: 2.

¹²⁵ UNICEF 2006b: 13.

¹²⁶ Mendes, Pinkerton & Munro 2014: 1-4.

for these facilities to equip children with skills necessary for survival and self-sufficiency, as many do not receive the quality education to which they are entitled. Contributing factors to this crisis include a shortage of qualified personnel capable of delivering appropriate psychological and psycho-educational services, as well as a lack of skilled educators to provide necessary vocational training.¹²⁷

1.8 HISTORY AND DEVELOPMENT OF CHILD AND YOUTH CENTRES

The detention of children without trial in South Africa persisted until the early 1980s, when various non-governmental organisations (NGOs), parents' committees, and political activists began advocating for reform.¹²⁸ These efforts culminated in significant changes by the end of the 1980s, effectively ending the political detention of children in conflict with the law. Nonetheless, the practice of holding children in custody while awaiting trial continued. The youth care system, during this period, was limited in scope, with few residential institutions accessible to the majority of children in South Africa.

By the early 1990s, the shortcomings of the youth care system became increasingly evident. Contributing factors included inadequate detention facilities, insufficient salaries for personnel working with children, a lack of proper training for management and personnel, inadequate subsidisation of non-government facilities, and an unfavourable child-to-personnel ratio in detention centres.¹²⁹

The historical context of racial discrimination before 1994 further exacerbated the situation, as existing laws largely failed to recognise the rights of children. Consequently, many children experienced severe suffering within the penal system,¹³⁰ often being housed in separate detention sections that were still located on prison premises.¹³¹ This arrangement exposed them to violence and abuse from adult inmates. Prison conditions were characterised by inadequate nutrition, poor health facilities, insufficient space and recreational opportunities, and a general lack

¹²⁷ Gartin & Murdick 2008: 97.

¹²⁸ Department of Social Development 2010: 33.

¹²⁹ Department of Social Development 2010: 33.

¹³⁰ Skelton 2005: 9.

¹³¹ Devenish 1999.

of qualified personnel to provide counsel and rehabilitation.¹³² Thus, the concept of Child and Youth Care Centres was virtually non-existent. Children who committed offenses were treated similarly to adults, and subjected to the same legal processes without any specialised programmes or courts to address their unique needs.¹³³

The principles governing the containment of youth—physically, behaviourally, and emotionally—should prioritise the dignity and well-being of the individual. No child should be subjected to degrading conditions within secure care facilities, as this contradicts the fundamental mandate of such institutions.¹³⁴ Effective interventions should ensure that neither children nor personnel face physical, social, or emotional harm. Behavioural management should focus on care and discipline rather than punishment, aiming to cultivate responsible behaviour rather than merely imposing sanctions.

Before South Africa's first democratic elections in 1994, various institutions attempted to address the ramifications of the apartheid regime's racial discrimination. The transition to democracy prompted legislative reforms concerning children in conflict with the law.¹³⁵ Notably, Dr Nelson Mandela, the first democratic president, expressed concerns about the high number of children detained for extended periods and their exposure to various forms of abuse. In a 1994 address, he stated:

“The government will, as a matter of urgency, attend to the tragic and complex question of children and juveniles in detention and prison. The basic principle from which we will proceed is that we must rescue the children of the nation and ensure that the criminal justice system is the last resort in the case of juvenile offenders. I have therefore issued an instruction to the departments concerned to work out the necessary guidelines to empty our prisons of children and place them in suitable alternative care”¹³⁶

¹³² Moumakwa 2015: 15.

¹³³ Singh & Singh 2014.

¹³⁴ Moumakwa 2015: 31.

¹³⁵ Singh & Singh 2014: 101.

¹³⁶ Department of Social Development 2007.

Legislative changes were imperative, as children had previously been treated under a medical model that often resulted in their brutalisation, punishment, and stigmatisation for criminal behaviour. One key initiative was the establishment of CYCCs by NGOs aimed at providing care and protection for children rendered vulnerable through abandonment, neglect, or orphanhood. These interventions significantly improved access to education and healthcare for children in conflict with the law and successfully advocated for the separation of children from adults in detention.¹³⁷

The development and operation of NGOs in South Africa are closely tied to the country's political history. The urgent need for childcare arose from the neglect and abandonment experienced by children whose parents could not or would not care for them, leading to a rise in street children engaging in criminal activities. In response, a sympathetic former mayor of Johannesburg founded the Johannesburg Child Welfare Society (JCWS).¹³⁸ This organisation established a home for abandoned African children in Orlando, Soweto, in 1940. Although support from the JCWS diminished by 1976 due to financial constraints, residents took over the home and continued its operation as an independent NGO.¹³⁹

Following the democratic elections in 1994, the home garnered attention from the new government, resulting in a government subsidy and ongoing support from various initiatives aimed at aiding deprived children.¹⁴⁰ During the transformation of the child and youth care system, the term 'youth care centre' was introduced.¹⁴¹ In 1994, the Government of National Unity initiated legislation to prohibit the detention of children awaiting trial in prisons and police cells.¹⁴² This legislation, promulgated in 1995, mandated the Inter-Ministerial Committee to oversee the release of children awaiting trial.¹⁴³ By that time, there were 829 children in South African prisons and a similar number in police cells. Court protocols required these children to be

¹³⁷ Moumakwa 2015: 15.

¹³⁸ Agere 2014: 11.

¹³⁹ Agere 2014: 11.

¹⁴⁰ Agere 2014: 11.

¹⁴¹ Department of Social Development 2010: 33.

¹⁴² Department of Social Development 2010: 33.

¹⁴³ Singh & Singh 2014: 101.

presented within 24 to 48 hours, after which they were either released to their parents or guardians or transferred to places of safety.¹⁴⁴ However, due to a lack of adequate accommodation in these facilities, many young offenders absconded or failed to appear for their court hearings.

In May 1996, amendments to the Correctional Services Amendment Act¹⁴⁵ allowed for the detention of children in police custody or prison to prevent abscondment and ensure court attendance. Initially, it was stipulated that only children charged with serious or violent crimes could be held in detention, but this policy was not uniformly applied across magistrates' courts. Reports showed that the number of children sentenced to imprisonment rose by 51.9%, increasing from 896 in July 1996 to 1,361 by September 1997. Likewise, the number of children awaiting trial in prisons doubled, growing from 604 in December 1996 to 1,182 by September 1997.¹⁴⁶

The Department of Social Development reported a sharp increase in the number of children arriving at places of safety, exacerbating an existing crisis. Personnel shortages and inadequate qualifications raised concerns about the safety of children already housed in these facilities. In response, the government established the Inter-Ministerial Committee of Young People at Risk to analyse conditions in residential facilities such as places of safety, schools of industry, and reform schools.¹⁴⁷ Investigations conducted in 1995 revealed significant issues:¹⁴⁸

- a) Many children awaiting trial were placed in facilities alongside those placed under the Child Care Act No. 74 of 1983, without any systematic placement procedures.
- b) The absence of a coordinated system further fragmented families, as parents often could not afford to visit their children.
- c) Personnel in residential facilities frequently lacked sufficient qualifications in child and youth care, compromising the quality of care.

¹⁴⁴ Department of Social Development 2010: 33.

¹⁴⁵ *Correctional Services Amendment Act 111 of 1998*.

¹⁴⁶ Community Law Centre 2000.

¹⁴⁷ Department of Social Development 2010: 33.

¹⁴⁸ Department of Social Development 2010: 33.

- d) Some children reported experiencing emotional, physical, or sexual abuse from facility personnel or other residents due to inadequate programming and supervision.

This historical context underscores the absence of standardised child and youth care facilities designed to meet the needs of children in conflict with the law. The detention of children in police cells, places of safety, and prisons, often alongside adult offenders, prompted the establishment of CYCCs in South Africa. The Department of Social Development assumed responsibility for the creation of these centres for detained, awaiting trial, and sentenced children.

The child and youth care system in South Africa encompasses a comprehensive array of services aimed at providing alternative care, education, and therapeutic support for children and youth, as well as essential care services.¹⁴⁹ These facilities were established for several key objectives:¹⁵⁰

- a) To deliver programmes that instil accountability for their actions in children.
- b) To prevent recidivism and the commission of further offenses.
- c) To maintain a secure and closed environment for their safety.
- d) To restrict their movement as necessary.
- e) To ensure community safety.

The intervention sought to establish secure environments for these children while implementing rehabilitative measures during their containment. Consequently, the term youth care centre has been utilised interchangeably to refer to both the facilities and the programmes they encompass, extending beyond mere residential care to include protective and therapeutic services.

Section 191(2) of the Children's Act gives a list of the types of programmes that can be offered at CYCCs:

“(2) A child and youth care centre must offer a therapeutic program designed for the residential care of children outside the family environment, which may include a program designed for—

¹⁴⁹ Department of Social Development 2010: 29.

¹⁵⁰ Department of Social Development 2010: 3.

- (a) the reception, care, and development of children other than in their family environment;
- (b) the reception, care, and development of children on a shared basis with The parent or other person having parental responsibilities;
- (c) the reception and temporary safe care of children pending their placement;
- (d) early childhood development;
- (e) the reception and temporary safe care of children to protect them from abuse or neglect;
- (f) the reception and temporary safe care of trafficked or commercially sexually exploited children;
- (g) the reception and temporary safe care of children for—
 - (i) observing and assessing those children;
 - (ii) providing counselling and other treatment to them; or
 - (iii) assisting them to reintegrate with their families and the community;
- (h) the reception, development, and secure care of children awaiting trial or sentence;
- (i) the reception, development, and secure care of children with behavioural, psychological, and emotional difficulties;
- (j) the reception, development, and secure care of children in terms of an order—
 - (i) under the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (ii) in terms of section 56(l)(i) placing the child in a child and youth care centre which provides a secure care program; or
 - (iii) in terms of section 171 transferring a child to alternative care;
- (k) the reception and care of street children; or
- (l) the reception and care of children for any other purpose that may be prescribed by regulation”.¹⁵¹

¹⁵¹ Section 191(2) of the Children’s Act 75 of 2008.

The Children's Act¹⁵² establishes a framework for Child and Youth Care Centres to deliver specific developmental programmes tailored to the needs of children. According to Section 75(1), CYCCs are required to implement programmes that address the developmental, therapeutic, and recreational needs of children.¹⁵³ Regardless of the duration of stay, each young person is entitled to a developmentally appropriate intervention plan, known as the Care Plan. This plan is formulated collaboratively by probation officers and social workers stationed within secure care facilities. An Individual Development Plan (IDP) is to be created for each juvenile offender under the care of a CYCC.¹⁵⁴ It is imperative that young individuals are treated with respect for their cultural and religious differences, and that they maintain contact with family and friends unless deemed inappropriate by a court or a multidisciplinary team of child and youth care experts.

In addition to these rights, every juvenile is entitled to personal privacy, adequate free time, and the security of their possessions, all while being safeguarded against exploitation and abuse. Notably, many secure care centres restrict children in conflict with the law from using personal belongings such as clothing, toiletries, and jewellery, which are stored securely and returned upon discharge.¹⁵⁵ The management of personal belongings varies significantly across different facilities. Furthermore, children in conflict with the law should be afforded developmental opportunities that foster respect and care for others. Participation in sports, cultural, and recreational activities should be encouraged, but not mandated. Secure care facilities are expected to maintain clear grievance and complaints procedures, ensuring that each young person is informed about how to utilise these mechanisms effectively.¹⁵⁶ The programming and materials provided within these facilities should maximise opportunities for growth and development while addressing potential risks, such as abscondment, harm to individuals, or damage to property. The environment within secure care centres must empower personnel to fulfil their

¹⁵² *Children's Act 75 of 2008*

¹⁵³ *Section 75(1) of the Children's Act 75 of 2008.*

¹⁵⁴ Moumakwa 2015: 31.

¹⁵⁵ Theron 2000.

¹⁵⁶ Moumakwa 2015: 32.

responsibilities effectively while offering children every chance to mature and assume responsibility within a nurturing context.

All personnel working within secure care centres, including senior management, are held accountable to the ethical code of conduct governing child and youth care practice.¹⁵⁷ Children in conflict with the law considered a threat to the community may be placed in secure care centres either as awaiting trial or as part of in-house diversion programmes, as stipulated in Section 53(4)(b) of the Child Justice Act.¹⁵⁸ Administration of secure care centres varies, with some directly managed by the Department of Social Development and others by private entities contracted by the department. Children may enter these centres as awaiting trial or through Level 2 diversion programmes. In cases where direct imprisonment is recommended, convicted children are either placed in juvenile prisons managed by the Department of Correctional Services or in reformatory schools.¹⁵⁹ Probation officers can recommend diversion to the Children's Court for child offenders deemed in need of care, allowing placement in schools of industry or places of safety, both of which are administered by the Department of Social Development.

To enhance the management of children within the criminal justice system, the concept of a 'one-stop' justice centre has been proposed and piloted multiple times since the 1990s in South Africa.¹⁶⁰ This model aims to centralise the management of child justice cases within a single facility, where social workers, court officials, police, and childcare workers collaborate in a child-centred environment.¹⁶¹ Examples of such centres include Stepping Stones in Gqeberha (Port Elizabeth) and the Mangaung One Step Centre in Bloemfontein, with plans for similar establishments across all provinces.¹⁶² The overarching principle guiding secure care centres is the protection of the rights of young individuals. Placement in these facilities should adhere to the principle of the least restrictive and most empowering

¹⁵⁷ Theron 2000: 7.

¹⁵⁸ *Section 53(4)(b) of Child Justice Act 75 of 2008.*

¹⁵⁹ Moumakwa 2015: 30.

¹⁶⁰ Moumakwa 2015: 30.

¹⁶¹ Nicholas, Rautenbach & Maistry 2010: 265.

¹⁶² Nicholas, Rautenbach & Maistry 2010: 265.

options available.¹⁶³ Only youths aged 14 to 17 who have committed serious offenses and are assessed as threats to themselves or society should be detained. An effective service must be delivered by a well-trained, multidisciplinary team that supports the young person and their family, ensuring that the personnel employed in secure care services are the most competent and suitable for their roles.¹⁶⁴

1.9 TYPES OF CHILD AND YOUTH CARE CENTRES

When the Children's Act was implemented on April 1, 2010, all reform schools and schools of industry were reclassified as Child and Youth Care Centres. Initially, the administration of these centres was overseen by the Department of Education. However, within two years, the administrative responsibility transitioned to the Department of Social Development. It is important to note that some CYCCs are specifically designed to accommodate children awaiting trial, while others are intended for those who have been sentenced. As detailed in Table 1.1, this study examined a total of six centres: three of these centres exclusively serve children awaiting trial, two are dedicated solely to sentenced children, and one accommodates both groups.

¹⁶³ Theron 2000: 7.

¹⁶⁴ Theron 2000: 7.

Table 1.1 The total capacity of the centres that were investigated

Province	Name of the CYCC	Capacity	Type of facility
Eastern Cape	Enkuselweni Secure Care	50	Awaiting trial only
	John X Merriman	100	Awaiting trial only
	Bhisho Secure Care	100	Sentenced children
Free State	Bloemfontein Secure Care	50	Sentenced children
	Matete Matches Secure Care	40	Awaiting trial only
	Thabo Mofutsanyana Secure care	68	Sentenced Children (36) Awaiting trial (32)

(Source: Self-developed)

The study encompassed several secure care centres, specifically: Thabo Mofutsanyana Secure Care Centre, Bloemfontein Secure Care, Matete Matches Secure Care Centre in Kroonstad, John X Merriman Centre in East London, Bhisho Child and Youth Care Centre (CYCC) in Bhisho, and Enkuselweni Secure Care Centre in Port Elizabeth. These facilities serve as detention centres for children who conflict with the law, either awaiting trial or serving sentences for various offences, both serious and minor. The centres are designed to accommodate children aged 14 to 17 years and provide a range of programmes aimed at fostering rehabilitation and facilitating reintegration into society. These programmes include developmental, religious, educational, recreational, and therapeutic components. The combined capacity of the six CYCCs is 408 children. Specifically, two centres accommodate 50 children each, two centres have a capacity of 100 children each, one centre can house 40 children, and one centre has a capacity of 68 children, as detailed in Table 1.1.

Table 1.2 The number of children awaiting trial and sentenced between 2018 and 2022

Centre	2018/2019	2020/2021	2021/2022
Free State	47	53	54
Eastern Cape	105	130	128
Northern Cape	85	89	84
Western Cape	125	125	136
Limpopo	56	85	89
Mpumalanga	210	186	185
North West	33	48	52
Gauteng	156	125	100
Kwa-Zulu Natal	103	131	111

(Source: Department of Social Development 2022)

The analysis of youth legal issues across South Africa reveals substantial variability in case numbers across different provinces. Some provinces demonstrate an upward trend, while others exhibit a decline over the years. Notably, there has been a gradual increase in youth involvement in legal matters, suggesting a potential rise in the incidence of youth-related legal issues.

A significant surge in cases was observed from 2018 to 2021, followed by a minor decrease, indicating fluctuations in youth crime or legal proceedings during this period. Specific provinces experienced a small increase followed by a decrease, reflecting instability in the number of cases reported. From 2018 to 2021, certain regions maintained a stable rate of cases, with a notable increase in 2022, pointing towards an emerging concern regarding youth legal cases.

Moreover, some provinces exhibited a marked increase over the years, signalling rising apprehensions about youth crime. Conversely, a decline from 2018 to 2021 in other provinces suggests a potential decrease in cases, although these provinces still reported the highest numbers overall. Notably, there was a steady increase in youth awaiting trial or sentencing, indicating an upward trend in this demographic.

In contrast, a significant decrease in case numbers in some provinces over the years may reflect the effectiveness of improved interventions or changes in legal policies. Trends also indicate an initial increase in cases followed by a slight decline, which underscores the volatility of youth legal issues.

Among the provinces, Mpumalanga has consistently reported the highest number of children awaiting trial or sentencing, peaking at 210 in the 2018/2019 period. In contrast, the North West recorded the lowest numbers, starting at 33 in 2018/2019, with a gradual increase thereafter. Additionally, many provinces exhibit fluctuations in case numbers, suggesting the influence of varying local contexts on youth crime and legal proceedings.

Overall, the data underscores the complexity of youth legal issues in South Africa, highlighting significant regional disparities and trends. A comprehensive understanding of these dynamics is essential for informing policy development and interventions aimed at addressing the root causes of youth crime and enhancing the legal system's efficacy in responding to these challenges.

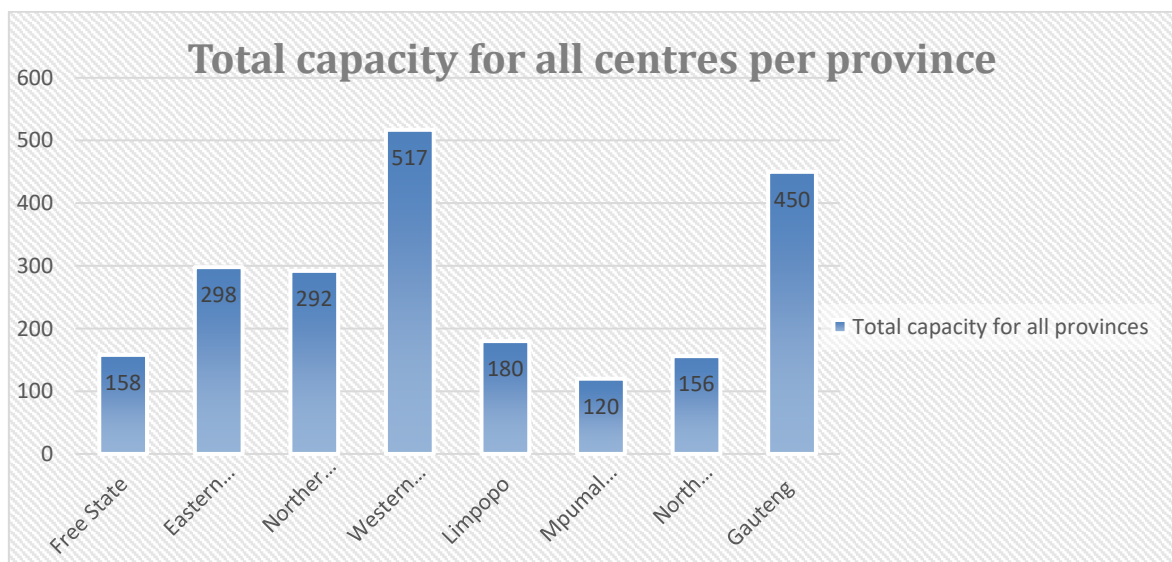


Figure 1.1 The total capacity of centres accommodating children in conflict with the law per Province

(Source: Department of Social Development 2015)

This study examines the current state of Child and Youth Care Centres in South Africa, highlighting disparities in capacity, conditions within facilities, and the involvement of various governmental and community stakeholders. Despite a notable reduction in the number of children in CYCCs over the past decade, significant challenges remain regarding the treatment and environment provided for children in conflict with the law.

The CYCCs in South Africa play a critical role in rehabilitating children in conflict with the law. However, there are significant variations in capacity across provinces, with Mpumalanga having the lowest capacity at 120 children, while the Western Cape can accommodate up to 517 children. Despite an increase in the number of children entering the justice system, many CYCCs are not operating at full capacity.

According to the Annual Report of the Judicial Inspectorate for Correctional Services,¹⁶⁵ as of March 2014, there were 26 810 sentenced children aged 18 to 21 and 235 children under 18 in correctional facilities. In the 2015/2016 financial year, South Africa recorded a total of 159 331 sentenced inmates, including 187 children under 18. These figures indicate a persistent issue of youth incarceration, raising concerns about the adequacy of existing facilities and processes.¹⁶⁶ In the Annual Report for the Implementation of the Child Justice Act, No. 75 of 2008, for the financial year 2020/2021, a total of 6,979 children were assessed. The data reveals a gender disparity, with 55.33% of the assessed children being male, contrasted with 23.33% female assessments. This discrepancy can be attributed to the significantly higher number of males (6,228) admitted to Child and Youth Care Centres (CYCCs) compared to female admissions, which totalled 751. Furthermore, the overall percentage of children assessed in the 2020/2021 financial year was 32.13%, a notable decline from 87.17% in the previous year (2019/2020). This reduction is largely attributed to the impact of COVID-19 regulations, which resulted in fewer referrals for assessment.¹⁶⁷

¹⁶⁵ Judicial Inspectorate for Correctional Services 2014:39.

¹⁶⁶ Department of Correctional Services 2016.

¹⁶⁷ 2020/21 Inter-Departmental Annual Reports On The Implementation Of The Child Justice Act (Act 75 Of 2008).

CYCCs are mandated to provide a child-friendly and rights-based environment per the Minimum Standards for the Child and Youth Care System. However, a 2019 visit by the National Preventative Mechanism (NPM) team to Bloemfontein Secure Care revealed deplorable conditions. Issues included the absence of running water, non-functional lighting, and unsanitary conditions. Despite recent renovations, poor workmanship rendered parts of the facility unusable, necessitating the transportation of children to other facilities for court attendance.¹⁶⁸

A similar investigation at Molehe in Kimberley uncovered additional concerns, such as inadequate refuse disposal areas and the presence of disused equipment, including old mattresses, which violated Occupational Health and Safety¹⁶⁹ regulations. In both instances, centre managers were unable to provide satisfactory explanations regarding the prevailing conditions.¹⁷⁰

Effective operation of CYCCs necessitates a well-structured team comprising various professionals, including social workers, registered nurses, child and youth care workers, teachers, and security personnel.¹⁷¹ The Department of Social Development serves as the primary governmental authority overseeing these centres, with additional collaboration from the South African Police Services, the Department of Health, the Department of Education, and the Department of Correctional Services, alongside the families of the children involved.

Over the past decade, South Africa has achieved a significant reduction, exceeding 80%, in the number of children in CYCCs. A 2010 study indicated that 345 CYCCs were registered with the Department of Social Development, providing care for over 21,000 children,¹⁷² including 35 places of safety, 71 shelters, and 238 children's homes.¹⁷³ However, a global study conducted in 2021 raised questions regarding the reliability of these figures, suggesting uncertainty about whether the decline resulted from overall decreases in detention rates or shifts between different types

¹⁶⁸ South African Human Rights Commission 2020.

¹⁶⁹ *Occupational Health and Safety 85 of 1993*.

¹⁷⁰ South African Human Rights Commission 2020.

¹⁷¹ Moumakwa 2015: 3.

¹⁷² Mahery, Jamieson & Scott 2011: 15.

¹⁷³ Baseline Study on Registered Child and Youth Care Centres 2010.

of CYCCs.¹⁷⁴ The same study identified 948 children in CYCCs, comprising 273 sentenced and 675 awaiting trial. Notably, the number of children awaiting trial consistently exceeded that of sentenced children from 1998 to 2021, except 2018, highlighting ongoing challenges in ensuring appropriate legal processes for youth.¹⁷⁵

The findings underscore the need for ongoing evaluations of CYCCs in South Africa to ensure compliance with established standards and to address the systemic issues affecting the treatment of children in conflict with the law. Collaborative efforts among various stakeholders, including governmental bodies and community organisations, are essential to enhance the conditions within these facilities and to support the rehabilitation and reintegration of affected youth.

Table 1.3 Number of sentenced and awaiting trial children between 1998 and 2021

Year	Sentenced	Awaiting trial	Total
1998	1 291	13 120	14 417
1999	12 665	14 130	26 795
2018	132	110	242
2021	273	675	948

(Source: Report of the South African Human Rights Commission 2019/2020)

¹⁷⁴ Global Study 2021.

¹⁷⁵ Global Study 2021.

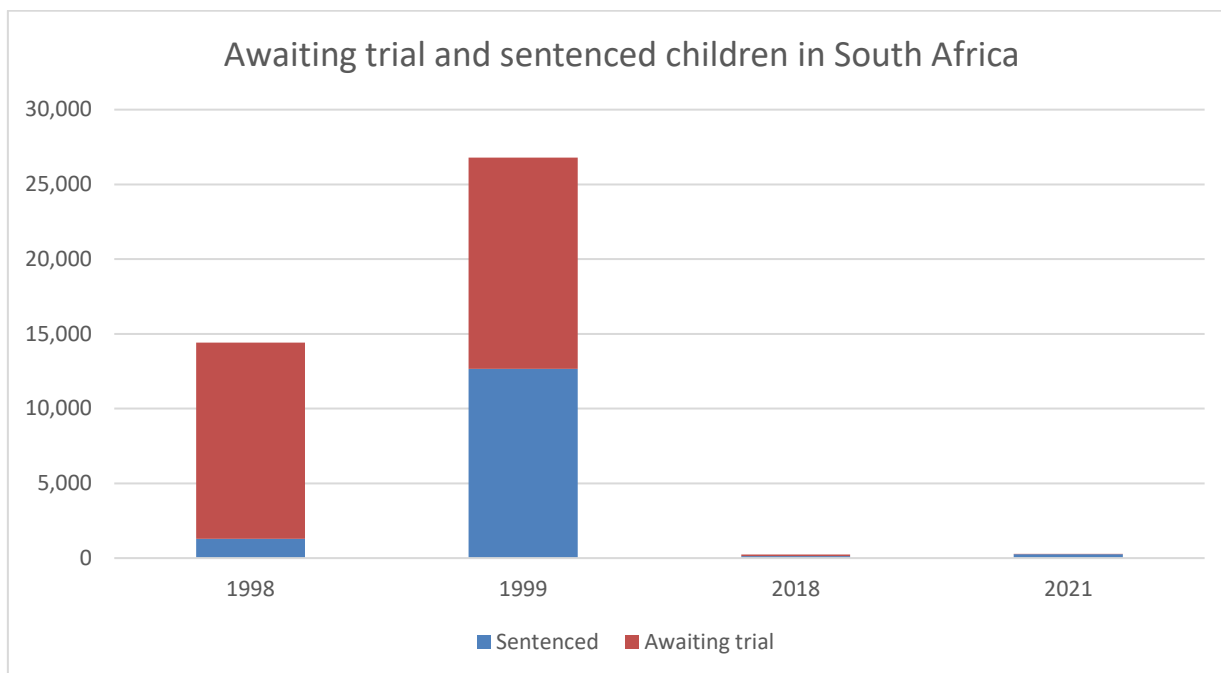


Figure 1.2 Number of sentenced and awaiting trial children between 1998 and 2021

(Source: Report of the South African Human Rights Commission 2019/2020)

The data pertaining to the involvement of children in the juvenile justice system reveals significant fluctuations from 1998 to 2021. In 1998, the total number of children engaged with the system peaked at 14,417, comprising 1,291 children who were sentenced and 13,120 who were awaiting trial. This period marked a troubling surge in juvenile involvement in the justice system, particularly evident in 1999, when the total rose dramatically to 26,795. This escalation was primarily due to a substantial increase in the number of sentenced children, which reached 12,665, while the number of children awaiting trial remained relatively stable at 14,130.

A significant decline is observed by 2018, with a total of only 242 children involved in the system. The number of sentenced children decreased to 132, and those awaiting trial dropped to 110. This decline represents a substantial reduction in juvenile engagement with the justice system compared to the late 1990s, suggesting potential reforms or shifts in judicial practices related to juvenile offenders.

In 2021, there was a slight increase, with the total number of children rising to 948. This included 273 sentenced children and 675 awaiting trial. Although this marks a

rebound from the low point observed in 2018, the figures remain significantly lower than those recorded in the late 1990s.

The trends indicate an initial surge in the late 1990s, particularly in 1999, followed by a dramatic decline from 1999 to 2018. This decline may reflect effective reforms or modifications in the judicial approach towards juvenile offenders. Conversely, the increase from 2018 to 2021 suggests a complex situation, potentially indicative of shifts in policies, societal challenges, or an uptick in offenses among children.

The data illustrates a substantial peak in the number of children sentenced and awaiting trial in the late 1990s, followed by a notable decline over the subsequent two decades. However, the increase observed from 2018 to 2021 raises concerns regarding ongoing challenges in the juvenile justice system. Further investigation into the underlying causes of these trends is warranted to better understand the broader societal context and to inform future policy decisions.

The sub-section to follow is a summary of the methodology followed by the researcher to achieve the objectives of this study.

1.10 METHODOLOGY

The present research study employed a mixed-methods approach, integrating both qualitative and quantitative components. The researcher engaged in observation, discovery, description, comparison, and analysis of the characteristic attitudes, themes, and underlying dimensions associated with children in conflict with the law within Child and Youth Care Centres. The quantitative aspect of the study involved the collection and analysis of numerical data aimed at identifying the specific violations, crimes, and acts of violence encountered by children in CYCCs. This statistical analysis enabled a clearer understanding of the prevalence and types of issues faced by this vulnerable population.

Incorporating qualitative methods was essential for exploring the nuanced experiences of children regarding the violations, crimes, and acts of violence they endure. This exploration was facilitated through interviews, which provided rich, contextual insights into the children's perspectives. The mixed-methods approach

allowed for a comprehensive examination of both statistical data and the subjective experiences of the participants, thus enriching the overall findings of the study.

Interviews and questionnaires were administered at several CYCCs, including the Thabo Mofutsanyana Secure Care Centre, Bloemfontein Secure Care, Matete Matches Secure Care Centre in Kroonstad, John X Merriman in East London, and Enkuselweni Secure Care Centre in Gqeberha (Port Elizabeth). The sample comprised no more than 100 children, selected based on the following inclusion criteria:

- a) Children who resided in the Free State and the Eastern Cape provinces.
- b) Children who were available and willing to participate in the study, who have been fully informed of what the study entails, and who participated voluntarily.
- c) Children who were detained for more than 24 hours, awaiting trial and sentencing.

One-on-one interviews facilitated in-depth discussions, allowing the children to express their experiences in detail and a comfortable manner. Focus group interviews involved small groups of children discussing their experiences with peers and CYCC personnel, fostering a collaborative environment for sharing insights. To preserve the integrity of the information collected, all interviews were recorded with the participants' permission, and subsequent audio recordings were transcribed. Anonymity was maintained, as participants were not identified with their statements and audio recordings were deleted following transcription.

A desk review was conducted to gather information from both primary sources, including legal documents, and secondary sources such as books, academic journals, and newspaper articles addressing police brutality in holding cells. The utilisation of primary sources provided direct evidence and original material regarding the violations and abuses experienced by children. Secondary sources were instrumental in analysing and contextualising these primary findings.

The methodology also included a focus on various forms of abuse, such as physical assault, verbal assault, torture, sexual assault, intimidation, and bullying. Primary sources encompassed international human rights instruments, national legislation, policies, and individual case studies, while secondary sources comprised academic

literature and media publications. This research engaged with academic journals and online resources to deepen the understanding of human rights violations faced by children in conflict with the law within CYCCs and to examine the roles of perpetrators.

The study employed several theoretical frameworks, including the Ecological Perspective Theory, Behaviour Modification Theory, and Bronfenbrenner's Socio-ecological Systems Theory. These frameworks served to elucidate the treatment of children, the roles of governmental and non-governmental actors, and considerations regarding the best interests of the child within CYCCs. The methods utilised were deemed both effective and reliable for obtaining pertinent information relevant to this research.

1.11 ETHICAL CONSIDERATIONS

To uphold ethical research principles, participants who consented to take part in the study signed consent forms that authorised their involvement. The researcher provided comprehensive information regarding the study's purpose, motivation, and expectations. Ethical clearance was secured to ensure that the research was conducted in a responsible and ethical manner. The researcher committed to treating all participants with respect and dignity throughout the process.

Ethical considerations in research are fundamental principles that guide researchers in their conduct, rooted in a broader framework of morality. As articulated by Liamputtong, these ethical imperatives stem from a commitment to respect and care for others, promote justice and equality, protect individual freedoms, and mitigate harm.¹⁷⁶ Such moral tenets not only influence researchers during their investigative processes but also shape their broader social interactions. Creswell further emphasises that research ethics encompass “the codes of moral principles and values that direct the behaviour of a researcher in terms of what is right and wrong during the research process”.¹⁷⁷ Alpaslan defines ethics as a collection of moral

¹⁷⁶ Liamputtong 2009: 32.

¹⁷⁷ Creswell 2007: 122.

principles proposed by individuals or groups, which are subsequently accepted by a wider audience.¹⁷⁸ These principles establish guidelines governing appropriate conduct towards experimental subjects, respondents, employers, sponsors, research assistants, and students. In this context, ethics can be interpreted as societal norms regarding acceptable behaviour.

In research, ethical standards necessitate obtaining informed consent from participants who are to be interviewed, questioned, or observed. The following sections outline the ethical considerations that were adhered to throughout this study.

1.11.1 Informed consent

Informed consent is defined as the process by which participants receive comprehensive information about the research's purpose, procedures, potential risks, benefits, and alternatives, enabling them to make an informed and voluntary decision regarding their participation.¹⁷⁹ This principle serves as the foundation for participants' voluntary involvement in research projects, predicated on a thorough understanding of the associated risks.¹⁸⁰ In the present study, the researcher secured the necessary permissions from respondents after thoroughly informing them about the interview's purpose and the broader investigation.¹⁸¹ Informed consent was obtained by providing participants with relevant information and ensuring their comprehension. The researcher confirmed that participation was voluntary and secured written consent to affirm that participants were legally competent to engage in the research. This process is crucial for safeguarding the rights of research participants.

1.11.2 Anonymity

Confidentiality in the context of research refers to the commitment of the researcher not to publicly associate specific responses or behaviours with particular

¹⁷⁸ Alpaslan 2010: 29.

¹⁷⁹ Liamputtong 2009: 34.

¹⁸⁰ Babbie 2007: 34.

¹⁸¹ Welman, Kruger & Mitchel 2005: 201.

participants. Ensuring participants' privacy is paramount; thus, researchers must obtain consent before proceeding and take necessary precautions to protect participants' anonymity.¹⁸² This ethical obligation guarantees that research data remains confidential and inaccessible to the public, preventing any linkage between individuals and their responses.¹⁸³ The researcher adhered to these ethical principles by providing a detailed explanation of the research before conducting interviews. Participants were empowered to make their own decisions regarding participation, free from coercion or undue influence. The researcher did not solicit participation through deception or false promises.

1.11.3 Confidentiality

According to Liamputtong, confidentiality aims to protect the true identities of participants, rooted in the principle of respect for autonomy, which grants individuals the right to maintain their privacy and control who has access to their information. When participants disclose personal information to researchers, it is imperative to safeguard this private data.¹⁸⁴ Both the researcher and participants must have a shared understanding of the confidentiality of the study's results and findings.¹⁸⁵ Information and responses provided by participants will be kept private, with results presented anonymously to preserve participant identities. In this study, the researcher ensured the confidentiality of participant information and activity by securely managing recordings and employing coding systems. Permission was obtained from all participants to further protect their identities and data.

1.11.4 Management of information

Mouton and Marais emphasise that the sensitivity of information pertains to the degree of personal or potentially threatening nature of the data collected by researchers.¹⁸⁶ Certain types of information are inherently more personal and may pose greater risks to individuals. In addressing this concern, Alpaslan offers

¹⁸² Alpaslan 2010.

¹⁸³ Neuman 2006:139.

¹⁸⁴ Liamputtong 2009: 36-37

¹⁸⁵ Holloway & Wheeler 2010: 120.

¹⁸⁶ Mouton & Marais 2007: 128.

recommendations for the confidential management of information. Audio recordings, notes, and transcripts must be securely maintained at all times.¹⁸⁷ Researchers must take measures to ensure the safekeeping of audio recordings, and it is essential that no personal identifiers, such as names, are disclosed.¹⁸⁸

To uphold the principles of confidentiality and transparency, this study implemented a consent form distributed to all respondents. The form outlined the purpose of the research, the methodological processes to be undertaken, the potential benefits of the study, and the voluntary nature of participation. Additionally, the research design included a systematic documentation of significant decisions made throughout the project. To further protect participant confidentiality, pseudonyms were assigned to all individuals involved in the study, and all data collection tools were securely stored in a locked space. These measures aimed to safeguard the confidentiality of participants and their associated activities. Throughout the research process, the researcher adhered to strict protocols to ensure that all identifying information was kept confidential, utilising coded identifiers to enhance data protection.

1.12 CHAPTER OUTLINE

Chapter 1: Introduction

This chapter sets the stage for the research by outlining the background, identifying the problem, and defining the purpose of the study. It also presents the research questions, discusses the significance of the study, and clarifies its scope and limitations, along with the chosen methodology.

Chapter 2: Literature Review

This chapter summarises and critically analyses existing literature, theories, studies, and historical contexts pertinent to the research topic. This review establishes a foundation for understanding the research area.

Chapter 3: Theoretical Framework

¹⁸⁷ Alpaslan 2010: 32.

¹⁸⁸ Schurink 2010: 432.

Here, various theoretical frameworks and models that inform the study are discussed. The chapter emphasises their relevance and implications for the research.

Chapter 4: Research Methodology

This chapter details the research design, the methods used for data collection, and the techniques for data analysis. It also provides justifications for the choices made regarding these methodological approaches.

Chapter 5: The Law versus the Practice – A Critical Analysis

The research findings are presented and analysed in this chapter. The implications of these findings are discussed in relation to the original research questions and objectives.

Chapter 6: Recommendations and Conclusion

The final chapter summarises the key findings, reiterates the study's significance, and draws conclusions based on the research outcomes. It also offers recommendations for future research or practical applications.

1.13 CONCLUSION

In South Africa, a network of Child and Youth Care Centres operates across all nine provinces, duly registered with the Department of Social Development. This governmental body holds the mandate to ensure the safety, protection, and care of children. Notably, there has been a significant decline in the number of children entering into conflict with the law over recent decades. Historically, before 1994, minors were incarcerated alongside adult offenders, often enduring severe punitive measures. However, the post-1994 democratic landscape has ushered in a framework wherein children's rights are explicitly defined, delineating the standards for their treatment within CYCCs.

This study was motivated and informed by the historical context surrounding the treatment of children in conflict with the law in South Africa. It is evident that prior to the establishment of a human rights culture, children were subjected to the same judicial processes as adults, with no legal provisions to safeguard their treatment

while in detention. The chapter seeks to clarify several key concepts related to children in conflict with the law, thus providing a foundational understanding pertinent to the study. Subsequent chapters will delve into the contextual realities of life within CYCCs, as well as the influence of both international and South African legal instruments in promoting and safeguarding the rights of children facing legal challenges. This examination will highlight the existing gaps between legal frameworks and practical implementation in the context of child justice in South Africa.

CHAPTER 2

LITERATURE REVIEW ON CHILDREN IN CONFLICT WITH THE LAW

2.1 INTRODUCTION

A literature review serves as a foundational framework for researchers, establishing the context and rationale for their study while articulating the significance of their intervention. It demonstrates that the investigated problem extends beyond mere participant responses, suggesting applicability to analogous situations.¹ This systematic examination of existing knowledge elucidates how each study contributes to the cumulative understanding of the topic and guides future research directions.² In this chapter, the literature review goes beyond mere summarisation of available information; it entails a critical analysis that lays the groundwork for subsequent empirical data analysis. It provides an overview of the theoretical background, elucidating key concepts and their interrelationships. Consequently, the literature review enhances the study's findings by supplying essential information that underpins data collection and analysis.³

Moreover, a well-structured literature review must exhibit two principal aspects: first, the researcher's comprehension of prior research and relevant publications; and second, the researcher's capacity to critically synthesise and evaluate the available literature.⁴ This is achieved through a thorough analysis and narrative of concepts related to children in conflict with the law, highlighting identified gaps in the literature. The review adopts a global perspective, subsequently narrowing its focus to the South African context. This methodological approach illustrates the necessity of

¹ Jesson, Matheson & Lacey 2011: 54.

² Snyder 2023: 4.

³ Paré, Trudel, Jaana & Kitsiou 2015: 184.

⁴ Steane 2004: 124.

conducting this study and its potential contributions to existing knowledge, ultimately serving as a foundation for future research endeavours.

2.2 CHILDREN IN CONFLICT WITH THE LAW IN SOUTH AFRICA

South Africa grapples with numerous socio-economic challenges, including poverty and inequality, which are deeply rooted in the legacies of the apartheid era. These enduring issues have precipitated a range of resultant problems, one of which is juvenile delinquency, defined as the involvement of children in conflict with the law. As delineated in the previous chapter, the term child in this context refers to individuals under the age of 18 who are alleged to have committed criminal offenses. While not all children engage in criminal activities, for many, such involvement is perceived as a rite of passage. A significant portion outgrows this phase; however, for some, it marks the onset of a perilous trajectory.⁵ Recognising the needs of these children is paramount, as their behaviours often reflect societal shortcomings rather than inherent criminality. Thus, it is crucial to provide transformative opportunities instead of labelling them as criminals.⁶

Children in conflict with the law can be categorised into three distinct groups. The first group is young offenders, this group consists of children who have been formally processed by the criminal justice system, having been found guilty and sentenced for their offenses. The second, is youth in conflict with the law, this broader category includes those known to the justice system but not prosecuted, those reported to law enforcement, and those charged with offenses but not convicted. Lastly, the youth at-risk, this group encompasses children whose circumstances, behaviours, and lifestyles predispose them to future offending. Examples include street children, gang members, school dropouts, and those lacking parental supervision or engaging in substance abuse.⁷ Children who transgress the law often do so due to limited developmental opportunities, a situation worsened by their entrance into the

⁵ Shaw & Tschivula 2002: 59-69.

⁶ Maharishi, Kumar & Dheeman: 2022: 7.

⁷ Shaw & Tschivula 2002: 59-69.

criminal justice system, which exacerbates their vulnerability. Many of these children are victims of neglect, abuse, and economic hardship.⁸

It is essential to acknowledge the differences between children and adults regarding cognitive and emotional development. Consequently, children suspected of criminal offenses should be treated distinctively compared to adults. The principles guiding such treatment include:

1. Addressing the child in a manner appropriate to their age, intellectual development, and cultural context.
2. Considering the proportionality of consequences relative to the offense and societal interests.
3. Ensuring parental or guardian presence during legal proceedings.
4. Following proper protocols in cases where legal guardians are absent.
5. Avoid harsher treatment of children than would be applied to adults in similar circumstances.⁹

In the case of *S v. M* (2011),¹⁰ the court addressed the constitutionality of minimum sentencing laws as they pertain to juvenile offenders. The arguments presented highlighted that these laws fail to consider the distinct circumstances and developmental status of minors. Consequently, the ruling emphasised that children should not be subjected to the same sentencing norms as adults, advocating for individualised assessments and the exploration of alternatives to incarceration.

These principles align with the provisions of the Child Justice Act,¹¹ which mandates a contextual consideration of each child's background and needs before judicial action.

Children between 16 and 18 years of age are physically well-developed; however, might still be immature. It is due to their immaturity that they sometimes make unwise decisions because of various reasons, often leading to conflict with the law.

⁸ Juvenile Justice Reform Commission 2007.

⁹ Center for Child Law 2023: 5.

¹⁰ *S v. M* (2011).

¹¹ *Child Justice Act 75 of 2008*.

At this age, puberty affects how they process emotional and social information.¹² They are at a stage where everything is exciting and they are not guided by societal norms and standards, but by principles of pleasure and reward.¹³ The adolescent brain is still developing, which means they have lower cognitive control, making them prone to risk-taking.¹⁴ This risk-taking is evident when adolescents are with peers who negatively affect their decision-making competence. Decision-making competence is one's ability to make better decisions and rational choices and is influenced by one's cognitive abilities as well as social factors.¹⁵

The term 'children in conflict with the law' does not only refer to juvenile crime, it also embraces "all or any deviation from normal youthful behaviour and includes the incorrigible, the ungovernable, the habitually disobedient, and those who desert their homes and mix with immoral people, those with behavioural problems and indulging in antisocial practices".¹⁶ There is no single explanation why children come into conflict with the law; it is a complex state that emanates from the children experiencing adversity from an individual, family, or community members, while it is also influenced by an ethnic minority background.¹⁷

Some predictors have been identified as risk factors leading to delinquent behaviour, such as family factors that include a "lack of proper parental supervision, ongoing parental conflicts, neglect, and emotional, physical, and psychological abuse".¹⁸ A child's development and appreciation of right and wrong begin at home, therefore children need stable families and loving, responsible adults who will protect them and provide an environment that encourages them to thrive.¹⁹ Children who have experienced conflict with the law are four times more likely to originate from broken families, characterised by separation or divorce, or from families that lack mutual harmony. This correlation is notably higher when compared to children

¹² Dayal, Prasad, Misra, Kalra, Pandey & Mathur 1986: 627-633.

¹³ Dayal *et al.* 1986: 627-633.

¹⁴ Avilés, Téllez-Alanís, Flores-Olvera & Prada-Sarmiento 2023: 853.

¹⁵ Skagerlund, Forsblad, Tinghög & Västfjäll 2021: 15.

¹⁶ Park 2013: 48-568.

¹⁷ KilKelly 2023: 5.

¹⁸ Gupta, Biddala, Dwivedi, Variar, Singh, Sen, Bhat, Kunte, Nair & Shankar 2015: 173.

¹⁹ Songca 2019: 316-343.

who do not engage in legal conflicts.²⁰ In general, children require a nurturing environment characterised by love, care, security, and protection from their parents. In the absence of these essential emotional and physical supports, children may engage in criminal behaviour as a means of seeking attention or may exhibit rebelliousness and a disregard for established rules and regulations. This underscores the critical role of parental involvement in fostering healthy development and mitigating adverse behavioural outcomes. Conduct disorder is observed as one of the contributing factors leading to children coming into conflict with the law. Conduct disorder is defined as a “lack of empathy and disregard for societal norms”.²¹ This is diagnosed when a child or adolescent violates the basic rights of others, and it may emanate from biological, psychological, or social factors, usually a combination of factors that are individual-dependent.²²

In addition, in a majority of cases of children in conflict with the law, substance abuse has also been a contributing factor.²³ Rebellious children tend to be drug or alcohol users and abusers. Substance abuse is an act that catches children’s attention and quickly becomes a trend. Substance abuse turns into an addiction and addiction needs maintenance or funds to sustain it. When an addicted child fails to obtain the money needed to feed their addiction they then resort to crime to get the necessary funds.²⁴ Substance abuse increases the risk of offending and can result in theft and burglary to finance drug addiction.²⁵ Criminal justice contact also occurs when children are dealing with compounding disadvantages, such as mental illness, drug-induced psychosis, acquired brain injuries, or cognitive disabilities.²⁶ These are children who needed psycho-educational therapies, but had not received any. Psycho-education is needed when children with mental problems are provided knowledge to assist them in comprehending their issues, which includes talking about it with others so that they can learn and acquire coping skills.²⁷ Because of

²⁰ Ganga, Ravichandram & Padmanabhan 1989: 227-230.

²¹ Haveripet 2013: 29-31.

²² Prajapati & Pumariega 2017: 86.

²³ Haveripet 2013: 29-31.

²⁴ Gupta *et al.* 2015: 173.

²⁵ Shaw & Tschiwula 2002: 59-69.

²⁶ Baldry & Dowse 2013.

²⁷ Ahmed & John 2023: 13.

this lack of therapy and knowledge, some of these children become rebellious and turn to drugs and substance abuse, which often leads to delinquent behaviour and conflict with the law.

Children can also be involved in criminal activities because of their inability to delay gratification. They also display signs of impulsive behaviour and uncontrollable aggression. Globally, aggression among children is a powerful predictor of misbehaviour.²⁸ Aggressive behaviour is aimed at harming or injuring another person or people. Children and adolescents can exhibit reactive and proactive aggression. Reaction aggression occurs when the individual reacts after being provoked, while proactive aggression yields positive results after exhibiting aggression.²⁹ Children who have experienced victimisation often demonstrate elevated levels of aggression and are more prone to engage in delinquent behaviour.³⁰ Research indicates that these victimised children typically exhibit reactive behavioural patterns and tend to have insecure attachments to their parents. This insecurity is further compounded by their comparatively lower emotional regulation and coping skills when contrasted with non-victimised aggressors. Additionally, it is noteworthy that such children may direct their aggression toward parental figures.³¹

Most children who get into conflict with the law are from a lower socio-economic status. Children from lower socio-economic backgrounds usually have less access to financial, educational, social, and health resources than those from a higher socio-economic status. It is common for poor, disadvantaged people to have multiple and complicated legal conflicts and to be disproportionately affected by them. The reason for their involvement in criminal behaviour might be poverty. This is because of what happens in such communities where “poor people are always bumping into sharp legal things... and will still be bumped and chafed and pushed

²⁸ Gupta *et al.* 2015:173.

²⁹ Su 2018: 202.

³⁰ Songca 2019: 316-343.

³¹ Navas-Martínez & Cano-Lozano 2022: 9.

by the law long after the lawyers have completed their last appeals.”³² The crime they commit most frequent is theft.³³ There is a positive association between parental poverty and juvenile crime rates at a national level, as well as a positive association between neighbourhood conditions and juvenile crime. Hence, there is a higher number of children in conflict with the law in areas dominated by poor households and high unemployment rates.³⁴

Homeless children experience more regulation from and conflict with the criminal justice system than their housed counterparts.³⁵ Children are not only criminalised for being homeless, but they are also more likely to experience conflict with the law for reasons related to their precarious living situations. Homeless children engage in illegal or prohibited activities, such as panhandling, prostitution, survival sex work (sex for food, shelter, etc.), drug dealing, and theft.³⁶ The reasons for criminal offences among homeless children are complex, but often stem from the need for survival and to provide for themselves in the face of blocked opportunities and serious deprivation.³⁷ Indeed, “the earlier a young person comes into contact with the criminal justice system, the more contact over life is likely”, even if the contact is not an arrest (victim/witness).³⁸ Some children’s contact with the justice system is due to circumstances that they cannot control such as poverty. Homeless children have no adults to protect them and they are also victimised by physical or sexual assault, resulting in them being most likely to become aggressive and thus coming into conflict with the law.³⁹ The above issues of poor socio-economic backgrounds and homelessness also lead to structural crime.

Structural crime is a manifestation of poor socio-economic conditions originating from inequality and poverty. Structural violence is a less visible form of violence, but its consequences are devastating and help explain why South Africa has elevated

³² Wexler 1970: 88.

³³ Gupta *et al.* 2015: 173.

³⁴ Gunuboh 2023: 310-311.

³⁵ Baron & Hartnagel 1998; Bernstein & Foster 2008; Hermer & Mosher 2002; Mayock 2008.

³⁶ Greene, Ennett, & Ringwalt 1999; Kipke, Montgomery, Simon & Iverson 1997.

³⁷ Hagan & McCarthy 1998; Baron 2008.

³⁸ Baldry & Dowse 2013: 226.

³⁹ Kerman, Kidd & Voronov 2023: 1.

levels of direct crime.⁴⁰ Direct crime poses multiple risks for children, which may account for delinquent behaviours. Individual crimes against children, such as neglect, and physical and sexual abuse, are examples of direct crime originating from structural crime. Hence, children growing up in poverty and experiencing economic exclusion are likely to engage in delinquent behaviour, trying to fill the void left by the exclusion.⁴¹ Ideally, families should serve as the foundation for crime prevention. However, in South Africa, economic factors play a larger role in the high incidence of children facing legal issues. This is an issue in South Africa because of the inequality between the rich and the poor. Structural criminology is a sociological approach to criminology where associations between social classes, genders, and races are taken into consideration to understand the root causes of crime.⁴² Inequality also refers to education when it comes to crime and it has been reported that mitigation strategies to reduce crime such as robbery in South Africa need to include increasing education levels.⁴³ Although it may take a lengthy period, reductions in the number of high school dropouts and an increase in the number of matriculants with access to higher education have the potential to reduce the high rate of robberies in the country significantly.⁴⁴ Table 2.1 is a presentation of the top 10 crimes that were committed by children from 2015 to 2021 in South Africa.

⁴⁰ Songca 2019: 316-343.

⁴¹ Songca 2019: 316-343.

⁴² Hoose, Adams, Tiliouine & Savahl 2021: 5.

⁴³ Adam & Grobbelaar 2022: 17.

⁴⁴ Adam & Grobbelaar 2022: 17.

Table 2.1 The top 10 crimes allegedly committed by children: 2015/2016-2020/2021

Number of offences	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
	Number of cases	Number of cases	Number of cases	Number of cases	Number of cases	Number of cases
Assault GBH	2457	1549	2019	2508	2690	1734
Theft	2663	1351	1353	1495	1604	878
Assault	1475	899	989	1249	1504	796
Rape	1612	1053	1255	1184	1458	1365
Housebreaking with the intent to steal and theft	1629	1057	1194	1177	1117	653
Robbery	994	606	705	749	705	353
Possession/ use of drugs	2535	1961	1931	1303	688	205
Robbery with Aggravating Circumstances	478	330	471	527	651	391
Murder	462	379	416	451	621	168
Malicious injury to property	730	488	525	568	589	404

(Source: Department of Justice)⁴⁵

Table 2.1 comprehensively categorises various offenses and their corresponding case numbers over six years. The offenses are classified into three primary categories: violent crimes, property crimes, and drug-related offenses. Violent crimes encompass serious offenses such as assault and murder, while property crimes include theft and housebreaking.

⁴⁵ Department of Justice 2021: 25.

In terms of specific trends, grievous bodily harm (GBH) incidents peaked in the 2019/20 fiscal year, recording a total of 2,690 cases. However, this number experienced a significant decline to 1,734 cases in 2020/21. This fluctuation may suggest alterations in reporting practices, shifts in law enforcement priorities, or changes in societal conditions. A similar trend was observed with general assault cases. Theft incidents reached a peak of 2,663 cases during the 2015/16 year but exhibited a general downward trajectory, culminating in a low of 878 cases in 2020/21. Housebreaking offenses showed a consistent decrease as well, dropping to 653 cases by 2020/21, particularly following the 2018/19 period.

Rape cases demonstrated variability, peaking at 1,458 in 2019/20 and slightly declining to 1,365 in the subsequent year. This trend indicates a potential need for further investigation into societal factors influencing reporting practices. Robbery and aggravated robbery offenses exhibited a downward trend, with robbery cases decreasing to 353 in 2020/21. This decline may reflect the effectiveness of improved prevention strategies or a shift in the focus of criminal activities.

Murder cases also followed a notable trend, peaking at 621 in 2019/20 before experiencing a dramatic reduction to 168 in 2020/21. This significant decrease may suggest substantial changes in crime dynamics or enhanced effectiveness of law enforcement efforts.

Lastly, cases of drug possession and use saw a sharp decline from 2,535 in 2015/16 to 205 in 2020/21. This reduction may indicate shifts in drug policy, changes in law enforcement priorities, or evolving societal attitudes toward drug-related offenses. Overall, while the data reflects various fluctuations within these categories, there is a clear trend of decline in several key areas by the end of the observed period.

The phenomenon of assault with intent to cause grievous bodily harm (GBH) remains a significant concern, particularly when examining the offenses committed by minors during preliminary inquiries. Notably, GBH ranked as the most prevalent charge among children, with rape emerging as the second most common charge, accounting for 1,365 of the total charges recorded in the 2020/2021 period. This alarming trend underscores the necessity for a deeper examination of the underlying factors contributing to such behaviours. Assault is legally defined as the unlawful

and intentional application of force by one individual against another. The intent to inflict grievous bodily harm entails causing serious injury to the victim's body.⁴⁶ The prevalence of these charges among children indicates a troubling manifestation of aggression, suggesting that many minors are exhibiting violent behaviours that warrant serious attention. Research indicates that many children involved in such violent offenses often come from backgrounds characterised by various forms of abuse, including neglect, sexual abuse, and physical abuse.⁴⁷ These adverse childhood experiences are frequently perpetrated by trusted adults, leading to detrimental psychological and behavioural outcomes. Consequently, affected children may display antisocial behaviours, which can escalate into criminal activities, resulting in conflicts with the law.

A study conducted among male adolescents in Ecuador revealed that those living with their parents were less likely to engage in criminal behaviour. Conversely, a lack of unity within the family unit, along with poor communication and other problematic home situations, significantly elevated the risk of delinquency among adolescents. The absence of a supportive and communicative family environment, especially in conjunction with educational neglect, is likely to foster delinquent behaviours.⁴⁸

Delinquent behaviour is defined as actions that contravene societal norms and legal standards. Adolescents are often reported to engage in such behaviours,⁴⁹ which may include dehumanising crimes, such as sexual offenses. A study in Iran, utilising the Adolescent Health and Development Questionnaire (AHDQ), supported the Problem Behaviour Theory (PBT),⁵⁰ which posits that delinquent behaviour is goal-oriented and typically arises when children and adolescents seek independence from familial structures.⁵¹ This quest for autonomy can lead to increased social

⁴⁶ South African Police Service 2023.

⁴⁷ World Health Organisation (WHO) 2014.

⁴⁸ Vallejo Valdivieso, Zambrano Pincay, Beltran-Aroca & Girela-Lopez 2022: 10.

⁴⁹ Onebunne, Ezeaka & Chinenyenwa 2017: 42.

⁵⁰ Darvishi, Atef, Elhami, Trejos-Castillo & Habibi 2022: 7.

⁵¹ Karaman 2013: 138.

interactions and may subsequently result in harmful behaviours that endanger both the adolescents themselves and others.⁵²

A 2019 research report by Songca highlighted a troubling increase in the number of children committing sexual offenses against their peers. Many child offenders fall into high vulnerability categories due to prior experiences of sexual abuse, neglect, and other forms of maltreatment.⁵³ The prevalence of violence involving children, whether as perpetrators, victims, or witnesses, has intensified concerns regarding their safety and overall development.⁵⁴

The lack of recent data on child-on-child sexual abuse necessitates reference to a 2012 study conducted in Johannesburg, South Africa.⁵⁵ This study found that most perpetrators were boys aged between 6 and 12 years, revealing that young girls were more frequently victimised by peers than by adults. The findings further indicated significant disparities in victimisation rates, with approximately 82% of girls experiencing abuse compared to 18% of boys.⁵⁶

The concerning rise in both the incidence of assaults with intent to cause grievous bodily harm and sexual offenses among children illustrates a pressing need for comprehensive strategies to address the underlying issues contributing to such behaviours. Given the critical role of familial support and the impact of adverse childhood experiences, targeted interventions are essential to mitigate these troubling trends and enhance the safety and development of vulnerable children. The current lack of data on child-on-child sexual abuse further highlights the need for more rigorous research and informed policy responses to protect affected minors and foster healthier environments.

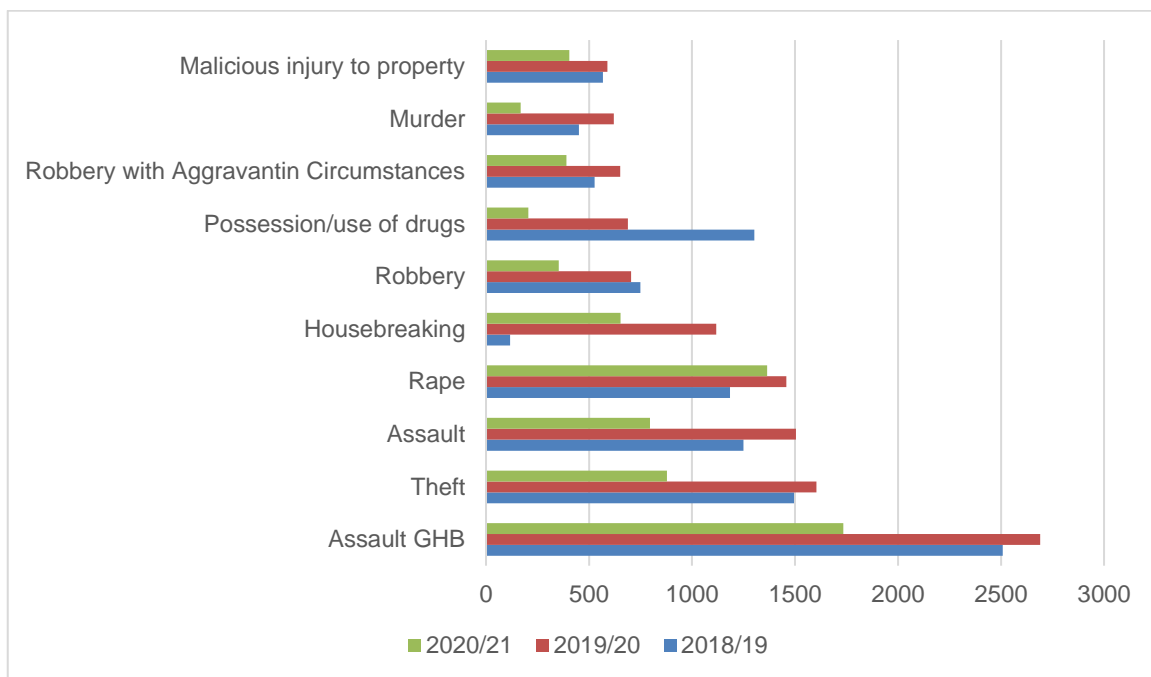
⁵² Karaman 2013: 138.

⁵³ Songca 2019: 316-343.

⁵⁴ Songca 2019: 316-343.

⁵⁵ Omar & Patel 2012: 279.

⁵⁶ Omar & Patel 2012: 279.



Graph 2.1 Percentage change – 2019/20 vs 2020/21: top 10 crimes allegedly committed

(Source: Integrated Case Management System: Child Justice)

Graph 2.1 compares the number of incidents of various crimes across three academic years: 2018/19, 2019/20, and 2020/21. The crimes included in the graph are:

1. Malicious injury to property
2. Murder
3. Robbery with Aggravating Circumstances
4. Possession/use of drugs
5. Robbery
6. Housebreaking
7. Rape
8. Assault
9. Theft
10. Assault GBH (Grievous Bodily Harm)

The graph shows the trend in the number of incidents for each crime over the three-year period. For example, the number of incidents of malicious injury to property

decreased from around 2,800 in 2018/19 to around 1,900 in 2020/21. The number of murder incidents increased from around 400 in 2018/19 to around 700 in 2020/21. Overall, the graph provides a visual representation of the changes in the number of reported incidents for different types of crimes over the three academic years.

Murder represents the lowest incidence of crimes committed by children during the 2020/2021 reporting year, reflecting a decline of 453 cases compared to the 2019/2020 financial year. The National Strategic Plan on Gender-Based Violence and Femicide (2020-2030) identifies children who experience violence within familial and institutional contexts as a primary target group for intervention. Given the elevated levels of violent crimes perpetrated by children in South Africa, it is imperative to address the various forms of violence against this demographic, including corporal punishment, as a fundamental strategy for eradicating gender-based violence.⁵⁷ However, a significant limitation within South Africa is the reactive nature of service delivery, which is exacerbated by inadequate funding for the effective implementation of developmental social welfare initiatives designed to protect children from abusive environments.⁵⁸

2.3 UNDERSTANDING THE NATURE OF HUMAN RIGHTS

Human rights are defined as the fundamental entitlements that every individual possesses from the moment of birth until death. These rights are inherent to all human beings, irrespective of their circumstances, and encompass “essential rights such as the right to life, as well as rights that contribute to a dignified existence, including access to food, education, work, health, and liberty”.⁵⁹ Human rights are characterised as universal and inclusive, encompassing civil and political rights (e.g., the right to opinion and expression), economic, social, and cultural rights (e.g., the right to social security), and collective rights (e.g., the right to a healthy environment).⁶⁰ This framework applies to all citizens of South Africa.

⁵⁷ Songca 2019: 316-343.

⁵⁸ Strydom, Schiller & Orme 2020: 396.

⁵⁹ UNHROHC 2023.

⁶⁰ UNOHCHR 2016: 21-22.

The principle of equality is central to human rights,⁶¹ implying that these rights are shared universally, regardless of factors such as age, gender, social status, power, culture, or religion. This universality extends to children who come into conflict with the law, particularly those who are separated from their communities by the justice system. When children are placed in care centres, deprived of liberty, it is essential that they receive the same respect and treatment afforded to their peers outside these centres. The rights of children in Child and Youth Care Centres must be upheld, as they do not lose their human rights despite their circumstances.

The notion that individuals cannot lose their rights is fundamental to human dignity; no person should be deprived of their human rights without due process.⁶² In the context of CYCCs, the deprivation of liberty must not result in the victimisation or unfair treatment of children in conflict with the law. Reports of such treatment raise serious concerns about the violation of these children's rights.

It is important to recognise that the prioritisation of human rights can differ among individuals, as the significance of certain rights may vary based on specific situational contexts.⁶³ For instance, Section 35(1)(c) of the Constitution of the Republic of South Africa⁶⁴ guarantees that arrested individuals cannot be compelled to confess or make admissions that could be used against them.⁶⁵ While this right holds critical importance for those who are arrested, it may not be relevant to individuals who have not experienced arrest.

Human rights provide human beings with basic standards without which people cannot live a dignified life.⁶⁶ For example, if a child or youth care worker or any personnel member is making it impossible for children to live a dignified life in the CYCC, he or she violates the child's right to live a dignified life. Human rights are

⁶¹ Britannica 2014.

⁶² Donnelly 2003.

⁶³ Beddard and Hill 1992.

⁶⁴ *Constitution of the Republic of South Africa, 1996.*

⁶⁵ *Section 35 of the Constitution, 1996.*

⁶⁶ Donnelly 2003.

basic needs, thus violating a child's right to food is violating his or her basic human needs.

Human rights establish basic standards essential for living a dignified life. For example, if personnel members in a CYCC impede a child's ability to live with dignity, they violate the child's fundamental right to such a life. Rights related to basic needs, such as access to food, are also integral components of human rights; violations in this area are tantamount to infringing on a child's essential human needs.

Human rights have limitations that are reasonable and mostly justifiable. Such limitations are there to ensure that people do not violate or misuse their rights. In terms of section 36(1) of the Constitution, the general requirement for the limitation of any right is that it may be limited only in terms of law of general application "to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom".⁶⁷ Limitations connect rights to responsibilities, for example, children have a right to education and the responsibility to stay in school and study.⁶⁸ It is important to claim rights and respective responsibilities.

While human rights are fundamental, they do have reasonable and justifiable limitations. These limitations serve to prevent the abuse or misuse of rights. According to Section 36(1) of the Constitution, any limitation of rights must be in accordance with the law of general application and must be reasonable and justifiable in an open and democratic society grounded in human dignity, equality, and freedom.⁶⁹ Such limitations often connect rights to responsibilities; for instance, the right to education is accompanied by the responsibility of children to attend school and engage in their studies.⁷⁰

⁶⁷ *Section 36 limitation of rights.*

⁶⁸ *Section 29 the right to education.*

⁶⁹ *Section 36 of the Constitution, 1996.*

⁷⁰ *Section 29 of the Constitution, 1996.*

In conclusion, children and youths possess the same general human rights as adults, along with specific rights that acknowledge their unique needs. This recognition underscores the principle that children are not mere extensions of their parents nor passive recipients of charity from organisations. This understanding extends to children in conflict with the law, affirming their rights regardless of the nature of their offenses.

2.4 INSTRUMENTS PROTECTING CHILDREN IN CONFLICT WITH THE LAW IN SOUTH AFRICA

To effectively prevent children and adolescents from coming into conflict with the law, a multifaceted approach is essential. Primary prevention strategies emphasise the role of parental guidance and community-based programmes designed to educate young individuals about crime and its consequences. These initiatives aim to instil a strong foundation of understanding and awareness before potential issues arise. Secondary prevention programmes are implemented within educational institutions and other community platforms, targeting broader societal contexts. These efforts are designed to identify and support children who may be at risk of engaging in delinquent behaviour, particularly those from vulnerable backgrounds. Tertiary prevention, or reactive measures, focuses on children and their families who are already experiencing legal challenges. This stage of intervention is critical for addressing the needs of those in conflict with the law and for facilitating their reintegration into society. In the context of a country's social welfare system, primary prevention initiatives are directed towards children not identified as at risk for criminal behaviour. Conversely, secondary prevention programmes are tailored to assist children from dysfunctional and unsupported familial environments.⁷¹ Such targeted support is vital for mitigating the risks associated with delinquency.

Effective preventative measures necessitate a proactive approach that includes the analysis of endemic data and the identification of both risk and protective factors. This analytical framework should inform early intervention strategies, thereby

⁷¹ UNICEF 2022: 2-4.

enhancing the potential effectiveness of programmes aimed at reducing disruptive and delinquent behaviours among youth.⁷² The anticipated outcome of comprehensive preventative measures is a reduction in the number of children and adolescents entering the juvenile justice system. However, the insufficient implementation of these measures raises concerns, as it may lead to an increasing number of youths facing legal conflicts. The subsequent sections will discuss the instruments available for safeguarding the rights of these children and adolescents.

2.4.1 United Nations Convention on the Rights of the Child 1989

The recognition of children's rights in international law dates back to 1924, with the adoption of the first international declaration concerning these rights by the League of Nations. This foundational framework was further developed with the adoption of the United Nations Convention on the Rights of the Child (UNCRC) in 1989, which came into effect in 1990. The UNCRC is significant for being the most universally accepted international human rights treaty.⁷³ South Africa signed the UN Convention on the Rights of the Child (UNCRC) in 1993 and ratified it in June 1995. By ratifying this Convention, South Africa committed itself to the principles of respecting, protecting, and fulfilling the rights of children, including those who find themselves in conflict with the law. The UNCRC serves as a critical benchmark for assessing children's rights on a global scale.

It is important to note that the UNCRC is not self-executing; its provisions require legislative action to be effectively incorporated into South African law. This incorporation means that international law is taken into account in South African courts.⁷⁴ The South African Constitution requires courts to give precedence to any reasonable interpretation of legislation that is consistent with international law when interpreting laws.⁷⁵

⁷² Loeber, Farrington & Petechuk 2003: 14.

⁷³ Ame 2011: 272.

⁷⁴ *Section 39(1) of the Constitution of the Republic of South Africa.*

⁷⁵ *Section 233 of the Constitution of the Republic of South Africa.*

The advocacy for children's rights, as outlined in the UNCRC, emphasises the necessity for children to be protected from violence, abuse, and exploitation. Key rights outlined in the UNCRC encompass the right to survival, the right to reach their full potential, the right to protection from harmful influences, and the right to fully engage in family, cultural, and social life. Articles 2, 3, 6, and 12 of the Convention are recognised as the four general principles that underpin its implementation.

Article 2 - Non-discrimination

South Africa bears the responsibility to ensure equitable treatment and respect for children in conflict with the law.⁷⁶ The state is obligated to protect every child from all forms of violence, “without discrimination of any kind, irrespective of the child’s or their parent’s or guardian’s race, colour, religion, political opinion, national or social origin, property, disability, birth, or other statuses”.⁷⁷ Addressing discrimination against children in conflict with the law, as well as other vulnerable groups, is essential for the state to uphold the principle that all children’s rights are equally protected.

Article 3 - Devotion to the views of the best interest of the child

In juvenile justice, prioritising the best interests of the child is essential in every decision made. Children are distinct from adults in their physical, psychological, emotional, and educational development, which contributes to their reduced responsibility in legal matters. This recognition necessitates a distinct juvenile justice system, designed to address children's specific needs. The protection of these interests entails prioritising rehabilitation and restorative justice over traditional punitive measures.⁷⁸ In the case of *S v M* (2007),⁷⁹ the Constitutional Court addressed the prosecution of a minor for a serious offense. The Court underscored the necessity for the justice system to focus on rehabilitation rather than punishment when dealing with children. It reaffirmed the principles of restorative justice,

⁷⁶ *General comment No. 10* (2007).

⁷⁷ *General comment No. 13* (2011).

⁷⁸ *General comment No. 10* (2007).

⁷⁹ *S v. M* (2007).

emphasising the importance of prioritising the best interests of the child in legal matters. The Convention emphasises that preventing violence is crucial, advocating for a coordinated national framework that includes substantial investment in human, financial, and technical resources dedicated to a child rights-based protection system.⁸⁰

Article 6 - The right to life, survival, and development

Children in conflict with the law must be protected from violence and exploitation that could threaten their rights to life, survival, and development. This development includes the child's physical, mental, spiritual, moral, psychological, and social well-being.⁸¹ The detrimental effects of deprivation of liberty on a child's development are well-documented; hence, Article 37(b) stipulates that such measures should only be employed as a last resort and for the shortest appropriate duration. This approach ensures that a child's right to development is upheld.⁸²

Article 12 - Respect for the views of the child

It is imperative that children's views are solicited and given due consideration throughout the child protection process. Their participation in developing prevention strategies, particularly in schools to combat bullying and violence, is vital. Programmes that enhance children's capabilities to eliminate violence should be encouraged.⁸³ The right for children to express their views on matters affecting them must be fully respected and integrated into every stage of juvenile justice. The voices of children within this system can drive meaningful improvements and reforms, reinforcing their rights.⁸⁴ Every right enshrined in the Convention is integral to the human dignity and development of children. The Convention establishes standards in healthcare, education, and social services,⁸⁵ underscoring the importance of Articles 2, 3, 6, and 12 in the context of the Sustainable Development

⁸⁰ *General comment No. 13 (2011).*

⁸¹ *General comment No. 13 (2011).*

⁸² *General comment No. 10 (2007).*

⁸³ *General comment No. 13 (2011).*

⁸⁴ *General comment No. 10 (2007).*

⁸⁵ Agere 2014: 4.

Goals (SDGs). These principles emphasise prioritising the most marginalised children, ensuring accountability, enabling child participation, and maximising resource investment in children's welfare.⁸⁶ The Convention has effectively urged global leaders to prioritise children's rights and needs through legislative action.

Articles 37 and 40- Juvenile Justice Administration

Articles 37 and 40 of the Convention specifically address juvenile justice administration. Article 37(b) mandates humane treatment for children within the justice system, stipulating that any deprivation of liberty must align with legal standards.⁸⁷ Children should be able to access legal assistance, especially in situations of inhumane treatment. The rights of children facing legal issues must include protection from torture and degrading treatment, as well as the right to legal support.⁸⁸

Article 40, when considered alongside Articles 3, 12, and 39, emphasises the need for rehabilitation and the promotion of children's dignity and respect for the rights of others. It obliges state parties to treat juvenile offenders in a manner conducive to their reintegration into society.⁸⁹ Article 40(2) outlines due process guarantees for children facing criminal charges, including the presumption of innocence, access to legal assistance, and the right to a speedy trial.⁹⁰ Moreover, Article 40 highlights the necessity of diverting juvenile cases from the criminal justice system.⁹¹ Article 40(3) advocates for alternative measures to judicial proceedings, provided that such alternatives respect human rights and legal safeguards.⁹² The article suggests that approaches should be tailored to the well-being of children and proportionate to their unique circumstances.

⁸⁶ UNICEF 2017: 3.

⁸⁷ *Article 37 (b) of the United Nations Convention of the Rights of the Child 1989.*

⁸⁸ *Article 37 (b) of the United Nations Convention of the Rights of the Child 1989.*

⁸⁹ *Article 40 of the United Nations Convention on the Rights of the Child 1989.*

⁹⁰ *Article 40 (2) of the United Nations Convention on the Rights of the Child 1989.*

⁹¹ Vandi 2007: 19.

⁹² *Article 40 (3) of the United Nations Convention on the Rights of the Child 1989.*

The principles articulated in the Convention on the Rights of the Child underscore the importance of protecting children's rights, particularly in the context of juvenile justice. By adhering to these articles, states can ensure that children in conflict with the law are treated with dignity and respect, ultimately fostering their rehabilitation and reintegration into society. The comprehensive framework provided by the Convention serves as a guide for nations to prioritise and uphold the rights and needs of children.

2.4.2 United Nations Guidelines for the Prevention of Juvenile Delinquency 1990

The United Nations Guidelines for the Prevention of Juvenile Delinquency, commonly referred to as the Riyadh Guidelines, articulate a framework for states to follow in order to mitigate the incidence of juvenile crime. While these guidelines do not offer definitive solutions regarding children in conflict with the law, they delineate comprehensive processes for addressing criminal behaviour among minors.⁹³ A critical aspect of these guidelines is the emphasis on proactive measures aimed at preventing delinquency before it occurs, coupled with supportive services that families can extend to the broader community. The Riyadh Guidelines underscore that a developmental approach, which integrates all stakeholders, is essential for the effectiveness of any juvenile justice system.

Central to the Riyadh Guidelines is a social policy that prioritises the child, the family, and community involvement. This triadic focus is deemed fundamental to the establishment of an effective juvenile justice framework. However, the guidelines are characterised by a verbose and intricate drafting style, which often complicates the distillation of their core messages. This complexity may stem from the inherently nuanced nature of prevention, which intersects significantly with social philosophy, necessitating a more elaborate exposition of the relevant provisions.⁹⁴

⁹³ Skelton & Tshehla 2008.

⁹⁴ Skelton 1996: 184.

Particularly noteworthy is Section IV, titled “Socialisation Process”,⁹⁵ which highlights the pivotal roles of the family, educational systems, and community-based prevention programmes. Guideline 12 highlights that the family is the main entity responsible for children's socialisation. It argues that government and community initiatives should focus on maintaining the integrity of the family unit, including extended family relationships. The guideline further posits that society should assist families in providing care and protection, as well as ensuring the physical and mental well-being of children.⁹⁶

In alignment with this, Guideline 13 advocates for the establishment of governmental policies that facilitate the upbringing of children in stable family environments. It stipulates that families requiring services to achieve this stability should be granted appropriate support, particularly those affected by poverty or other socio-economic challenges.⁹⁷

Education represents the second focal point within the ‘Socialisation Process’. The guidelines propose an enriched curriculum that encompasses the cultural, emotional, and psychological dimensions of a child's life. They recommend that educational institutions collaborate with parents and community organisations to create a supportive learning environment. Moreover, the guidelines advise against the implementation of severe disciplinary measures in schools, especially corporal punishment, thus promoting a more constructive approach to discipline.

In summary, the Riyadh Guidelines provide a comprehensive framework aimed at preventing juvenile delinquency through a multi-faceted approach that emphasises the essential roles of family, education, and community. Their intricate nature reflects the complexity of the issues they address, highlighting the need for collaborative, supportive systems to effectively nurture and protect children.

⁹⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>

⁹⁶ *Guideline 12 of the United Nations Guidelines for the Prevention of Juvenile Delinquency.*

⁹⁷ *Guideline 13 of the United Nations Guidelines for the Prevention of Juvenile Delinquency.*

Guideline 21 states that the “education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:”⁹⁸

- (a) “Teaching basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilisations different from the child's own, and for human rights and fundamental freedoms;
- (b) Promotion and development of the personality, talents, and mental and physical abilities of young people to their fullest potential;
- (c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;
- (d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;
- (e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;
- (f) Provision of information and guidance regarding vocational training, employment opportunities, and career development;
- (g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;
- (h) Avoidance of harsh disciplinary measures, particularly corporal punishment”.⁹⁹

Community involvement and community-based solutions play a crucial role in enhancing the well-being of children. According to Guideline 32, there is a pressing need for the development or strengthening of community-based services and programmes tailored to address the specific needs, concerns, and interests of young individuals. These initiatives should provide appropriate counselling and support to both young persons and their families.¹⁰⁰

⁹⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>

⁹⁹ *Guideline 21 of the United Nations Guidelines for the Prevention of Juvenile Delinquency.*

¹⁰⁰ *Guideline 32 of the United Nations Guidelines for the Prevention of Juvenile Delinquency.*

Particularly important is the attention given to homeless children. The guidelines advocate for government support, both financial and otherwise, to voluntary organisations that serve the youth. Furthermore, they emphasise the necessity of encouraging youth participation. Local youth organisations should not only be created but also empowered to engage actively in management and decision-making processes within their communities.¹⁰¹

An additional significant aspect outlined in the guidelines pertains to the role of mass media in shaping societal perceptions of children. The media is urged to highlight the positive contributions of youth while minimising the portrayal of violence, substance abuse, and the degradation of women and children.¹⁰² However, this recommendation faces challenges due to the media's independence and the constitutional protection of freedom of expression, which complicates the enforcement of such portrayals.

Guidelines 45 to 51 delineate a social policy framework aimed at preventing juvenile offending. They call for adequate funding to be allocated for essential services, including healthcare, nutrition, housing, counselling, and substance abuse prevention.¹⁰³ In South Africa, these responsibilities are shared among the Ministries of Health, Education, Welfare, and Housing, underscoring the interconnectedness of prevention efforts with broader social development issues. Despite the importance of these guidelines, they have garnered minimal recognition within South Africa, indicating a significant gap in their implementation and impact.

2.4.3 United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly referred to as the Beijing Rules, delineate a comprehensive framework for an effective juvenile justice system. Each rule is accompanied by

¹⁰¹ Skelton & Tshehla 2008.

¹⁰² *Guideline 32 of the United Nations Guidelines for the Prevention of Juvenile Delinquency.*

¹⁰³ *Guidelines 45,46,47,48,49,50, and 51 of the United Nations Guidelines for the Prevention of Juvenile Delinquency.*

commentaries that serve as integral components of the document, providing necessary context and interpretation.

According to general principles, the Beijing Rules state that the minimum age for criminal responsibility should not be set too low. This guideline takes into account the emotional, mental, and intellectual development of children.¹⁰⁴ In South Africa, the law establishes that children under the age of 7 are rebuttably presumed to lack criminal capacity, a threshold that ranks among the lowest globally. Additionally, children aged 7 to 14 years are also rebuttably presumed to lack criminal capacity. While this presumption aims to safeguard children younger than 14, it is frequently easily overturned in South African courts. In contrast, numerous other jurisdictions have adopted a definitive cut-off age of 12 or 14 years, reflecting a more protective stance towards children in conflict with the law. In the case *Centre for Child Law v Minister of Justice (2013)*,¹⁰⁵ the Court scrutinised the treatment of minors within the criminal justice system, particularly focusing on the age of criminal capacity. This legal examination prompted a reassessment of the age at which children can be deemed criminally responsible, emphasising the importance of developmental factors in such determinations. The Beijing Rules further describe the aims of juvenile justice in the following terms: “The Juvenile Justice system shall emphasise child offenders’ well-being and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence.”¹⁰⁶

The Beijing Rules articulate the objectives of juvenile justice as prioritising the well-being of children in conflict with the law, emphasising that responses to child offenders must be proportional to both the offender’s circumstances and the nature of the offense.¹⁰⁷ This principle of proportionality is crucial in addressing cases involving children in conflict with the law, influencing not only the handling of cases and trial outcomes but also interactions with the juvenile justice system outside

¹⁰⁴ *Rule 4.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*

¹⁰⁵ *Centre for Child Law v. Minister of Justice (2013).*

¹⁰⁶ *Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*

¹⁰⁷ *Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*

formal criminal proceedings. The accompanying commentary cautions against reactions that, while intended to safeguard the welfare of young offenders, may be disproportionate to the offense, as such measures could infringe upon the fundamental rights of the child.¹⁰⁸

Rules 10.1 and 10.2 underscore the importance of immediate parental or guardian contact and advocate for the prompt release of children post-arrest.¹⁰⁹ Following the enactment of the amended Section 29 of the Correctional Services Act in May 1995, South African legislation ostensibly aligns with these rules. However, with the impending repeal of Section 29 by the Child Justice Bill—once enacted—new provisions regarding the arrest and pre-trial detention of children will be introduced.

At the core of an effective juvenile justice system are strategies for steering children away from the criminal justice system. The Beijing Rules emphasise the importance of this diversion principle. Rule 11.1 provides that “consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority”.¹¹⁰

A cornerstone of an effective juvenile justice system is the diversion of children from formal judicial processes. The Beijing Rules emphasise this principle; Rule 11.1 states that consideration should be given to addressing juvenile offenses without resorting to formal trials whenever appropriate.¹¹¹ Furthermore, Rule 12 mandates that police officers dealing with juvenile offenders receive specialised training, and recommends the establishment of dedicated police units in larger cities.¹¹² Currently, South Africa lacks specialisation within its police service concerning juvenile offenders, with the Child Protection Unit focusing solely on child victims. Police objections to specialisation cite the challenges posed by personnel shortages

¹⁰⁸ *Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*

¹⁰⁹ Correctional Services Act 8 of 1959.

¹¹⁰ *Rule 11.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*

¹¹¹ *Rule 11.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*

¹¹² *Rule 12 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice*

in rural areas and the assertion that all officers must be equipped to handle juvenile arrests.¹¹³

When a child is alleged to have committed an offense, the police are responsible for conducting the initial investigation. If sufficient evidence exists, the child may be arrested and presented before the Children's Court, which plays a pivotal role in determining the child's bail, detention, or release. The Beijing Rules stipulate that, in cases where diversion does not occur, proceedings must be conducted by a competent authority with the child's best interests as the central focus. Additionally, the young person should be encouraged to participate in the process. For South African courts to meet these criteria, significant changes to the courtroom environment will be necessary.

The Beijing Rules enshrine the right to legal representation, mandating the provision of free legal aid in countries that have such provisions. In South Africa, the Legal Aid Board serves as the appropriate agency to fulfil this obligation, and it currently provides partial legal representation.¹¹⁴ The rules also outline guiding principles for sentencing, emphasising the necessity of proportionality and prioritising the well-being of the juvenile. It advocates for minimising measures that restrict personal liberty and prohibits corporal punishment for children in conflict with the law. This prohibition was notably reinforced by the Constitutional Court ruling in *S v Williams and Others*,¹¹⁵ aligning South Africa with international standards.

In summary, while the Beijing Rules establish a foundational framework for juvenile justice, their effective implementation in South Africa remains a challenge. Continued efforts are necessary to ensure that the principles outlined in the Beijing Rules are fully realised within the South African legal context.

¹¹³ Skelton & Tshehla 2008.

¹¹⁴ Skelton & Tshehla 2008.

¹¹⁵ *S v Williams and Others* (1995 (7) BCLR 861 (CC)).

2.4.4 United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty 1990

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly referred to as the "Beijing Rules," establish essential standards for the treatment of children who have been deprived of their liberty. These rules delineate principles and procedures aimed at ensuring that children in conflict with the law are treated humanely and with respect for their inherent dignity. They include a wide range of children facing deprivation of liberty, such as those in custody during pre-trial and trial stages, along with those who have been sentenced to prison. Deprivation of liberty refers to any type of detention, imprisonment, or confinement in a public or private facility from which the individual cannot freely leave.¹¹⁶ In the South African context, this definition includes children who are awaiting trial in safe facilities, those placed in Schools of Industry (SOIs), and those sentenced to Reform Schools (RS).¹¹⁷ Notably, the terminology has evolved following the enactment of the Children's Act,¹¹⁸ which redesignates these institutions as 'Child and Youth Care Centres'.

A key principle of the Juvenile Detention Laws (JDLs) is that individuals under 18 should only be deprived of their freedom as a last resort. Furthermore, in instances where deprivation of liberty is necessary, it is imperative that each young person is treated as an individual, with efforts made to accommodate their specific needs.¹¹⁹ The JDLs emphasise the importance of preparing these young individuals for reintegration into society from the moment they enter the detention facility.

The JDLs are founded on several fundamental principles, the foremost of which asserts that the juvenile justice system must uphold the rights and safety of children in conflict with the law while promoting their physical and mental well-being. Additionally, the guidelines specify that imprisonment should be utilised only as a

¹¹⁶ *Rule 11 (b) of the United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty.*

¹¹⁷ Skelton & Tshehla 2008.

¹¹⁸ *Children's Act 38 of 2005.*

¹¹⁹ *Rule 11 (a) of the United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty.*

last resort and for the minimum duration necessary, applicable solely in exceptional circumstances.¹²⁰ This stipulation is a critical emphasis across all related instruments.

A large part of the JDLs relates to the oversight of juvenile facilities, covering areas like administration, the physical setting, services offered, and suitable disciplinary practices. To ensure adherence to these standards, regular and surprise inspections, as well as independent complaint processes, are required.¹²¹ The JDLs also include provisions for the appointment and training of specialised personnel tasked with engaging with young individuals deprived of their liberty.

The comprehensiveness of the JDLs is evident in their detailed attention to a wide array of issues pertinent to the daily experiences of youth in CYCCs, encapsulated within 87 distinct rules. In South Africa, the prevalence of individuals under the age of 18 receiving sentences of imprisonment or other forms of detention remains a critical concern, albeit one that is anticipated to decline. Section 28(1)(g)(ii) of the South African Constitution mandates that children be detained in a manner appropriate to their age.¹²² The JDLs serve as a valuable resource in interpreting and implementing this constitutional provision, fostering a juvenile justice system that prioritises the well-being and rights of young individuals.

2.4.5 African Charter on the Rights and Welfare of the Child 1999

The African Charter on the Rights and Welfare of the Child (ACRWC) is a regional human rights treaty that was adopted in 1990 and came into effect in 1999. South Africa ratified the Charter on January 7, 2000. The ACRWC was created to support the global framework established by the Convention on the Rights of the Child, with the goal of safeguarding and promoting children's rights at both regional and international levels.¹²³ The Charter delineates specific rights and principles

¹²⁰ *Rules 1 and 2 of the United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty.*

¹²¹ *Rule 21 of the United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty*

¹²² *Section 28(1)(g)(ii) of the Constitution*

¹²³ Nel 2016: 30.

concerning the status of children, emphasising the unique challenges and circumstances that children face on the African continent.¹²⁴ It recognises the socio-economic, cultural, and developmental issues that significantly impact the lives of many African children. In this context, South Africa has not only become a signatory to the ACRWC but has also adapted its provisions to align with domestic considerations surrounding culture, religion, and gender. This adaptation is crucial for addressing the specific needs of children within the South African milieu, particularly regarding the roles of non-profit organisations (NPOs) that provide care and protection.¹²⁵

The implementation of the ACRWC is overseen by the African Committee of Experts on the Rights and Welfare of the Child,¹²⁶ which focuses on monitoring the application and realisation of children's rights. This monitoring system is grounded in the recognition that children in Africa possess these rights and are deserving of care and protection. Signatory countries are required to report biennially on their progress in implementing children's rights.¹²⁷ A notable provision in Article 17(1) of the ACRWC stipulates that every child found guilty of an offense is entitled to special treatment that respects the child's dignity and worth.¹²⁸ Furthermore, the Charter prohibits the torture, inhuman treatment, or degrading punishment of children deprived of their liberty. Additional provisions emphasise that no child should be unlawfully or arbitrarily deprived of liberty, and that imprisonment should be a measure of last resort, applied for the shortest duration necessary.¹²⁹

Fortunately, these critical protections are also enshrined in the South African Constitution. Specifically, Section 28(1)(g) asserts that a child may only be detained as a last resort and for the shortest appropriate period. Additionally, it guarantees that detained children are to be kept separately from adults and treated in a manner

¹²⁴ Nel 2016: 1.

¹²⁵ Agere 2014: 2.

¹²⁶ *Article 43 of the African Charter on the Rights and Welfare of the Child.*

¹²⁷ *Article 43 of the African Charter on the Rights and Welfare of the Child.*

¹²⁸ *Article 17(1) of the African Charter on the Rights and Welfare of the Child.*

¹²⁹ *Article 19 (2)(a) of the African Charter on the Rights and Welfare of the Child.*

that considers their age,¹³⁰ thereby reinforcing the principles outlined in the ACRWC within the South African legal framework. In the case of *Minister of Justice and Constitutional Development v Chaskalson (2017)*,¹³¹ the issue of detaining children in adult correctional facilities was examined, with the argument that such practices infringed upon the rights of minors and adversely affected their developmental needs. The Constitutional Court ruled that children must be held separately from adults, thereby underscoring the necessity for specialised facilities designed to meet the specific requirements of juvenile detainees.

2.4.6 Constitution of the Republic of South Africa 1996

The Constitution of the Republic of South Africa, promulgated in 1996, encompasses a comprehensive range of human rights, including both civil and political rights, as well as socio-economic rights. Central to this framework is the Bill of Rights, articulated in Chapter 2 of the Constitution, which assigns specific rights to children, recognising their vulnerability within society.¹³² As a foundational legal document, the Constitution serves as a vehicle for social justice, enshrining the rights of all individuals, particularly those of children.¹³³ In conjunction with the Children's Act, the Constitution addresses the multifaceted needs of children. Key principles such as children's rights, child-centeredness, and the best interests of the child are integral to both pieces of legislation.¹³⁴ However, it is important to note that the Constitution does not explicitly provide for specific programmes to be offered in Child and Youth Care Centres; rather, it mandates that services should be accessible to children. Furthermore, the Constitution stipulates that detention should be utilised as a measure of last resort and for the shortest appropriate duration, thereby strongly advocating for the interests of children involved in legal conflicts.¹³⁵

The significance of the Constitution in influencing the nature of programmes and services available to children in conflict with the law is evident. Since its inception,

¹³⁰ *Section 28(1)(g)(i)(ii) of the Constitution, 1996.*

¹³¹ *Minister of Justice and Constitutional Development v Chaskalson (2017).*

¹³² Currie & De Waal 2005.

¹³³ *Section 28 of the Constitution, 1996.*

¹³⁴ Singh & Singh 2014: 104.

¹³⁵ *Section 28(1)(g) of the Constitution, 1996.*

the Constitution has prompted substantial changes regarding the treatment of children.¹³⁶ Notably, it has replaced certain terms with more child-friendly alternatives, reflecting a commitment to positive language. For instance, "detention" has been replaced with "children awaiting trial," "detention centres" have been redefined as "Child and Youth Care Centres," and "child prisoners" are now referred to as "children in conflict with the law," as articulated in the Children's Act of 2005.¹³⁷

Section 10 of the Constitution affirms the right of every individual to have their dignity protected and promoted.¹³⁸ This principle underscores the necessity for children in conflict with the law to be treated in a manner that respects their dignity. Specific provisions regarding the rights of children are detailed in Section 28, which states:

- “(a) to a name and nationality from birth;
- (b) a child has the right to family care or parental care, or to appropriate alternative care when removed from the family environment
- (c) to basic nutrition, shelter, basic health care services, and social services
- (d) to be protected from maltreatment, neglect, abuse or degradation”.¹³⁹

Section 28 (1)(h) states that children have the right to have a legal representative assigned to them by the state, and at state expense, in civil proceedings affecting the child.¹⁴⁰ In the case of *S v Makhubela* (2014),¹⁴¹ the Court addressed the rights of minors in relation to the right to a fair trial and the adequacy of legal representation. The ruling underscored the importance of providing children with access to legal aid, emphasising the need to safeguard their rights throughout the judicial process.

According to Nicholas, Rautenbach, and Maistry, the rights of an arrested child include:

¹³⁶ Singh & Singh 2014: 104.

¹³⁷ *Children's Act No 38 of 2005*.

¹³⁸ *Section 10 of the Constitution, 1996*.

¹³⁹ *Section 28 (1)(a,b,c,d) of the Constitution, 1996*.

¹⁴⁰ *Section 28 (1)(h) of the Constitution, 1996*.

¹⁴¹ *S v Makhubela* (2014).

- a) Management that respects the juvenile's legal status, promotes their well-being, and avoids harm.
- b) Presence of a parent, guardian, or legal representative during the arrest, assessment, and court processes.
- c) Access to legal representation at state expense.
- d) Provision of clothing, food, and medical care while in custody.
- e) Protection against self-incrimination.
- f) Separation from adult detainees, with specific provisions for the search and supervision of female juveniles by female police officials.
- g) Explanation of criminal charges and rights in the child's home language.
- h) Timely appearance in court, within 48 hours of arrest, with those under 12 years being released or appearing in court within 24 hours.¹⁴²

The Constitution of South Africa plays a critical role in safeguarding the rights of children, particularly those in conflict with the law. Its provisions reflect a commitment to dignity, care, and legal representation, serving as a transformative instrument aimed at enhancing social justice and the legal status of vulnerable populations.

2.4.7 Child Justice Act 75 of 2008

The rights of children in conflict with the law are enshrined in international instruments and protected under the South African Constitution, specifically through the provisions of the Child Justice Act.¹⁴³ This Act, which came into operation on April 1, 2010, establishes a framework for addressing the legal needs of children accused of crimes. The concept of child justice encompasses a comprehensive set of laws, policies, procedures, and institutions designed to manage cases involving children who are alleged offenders, victims, or witnesses within the justice system. The primary objective of a child justice system is to ensure the protection and well-being of children. Internationally, this system aims to uphold and apply established norms and standards for all minors who interact with judicial processes for various

¹⁴² Nicholas, Rautenbach & Maistry 2010.

¹⁴³ *Child Justice Act 75 of 2008*.

reasons, including care, custody, and protection. The Preamble of the Child Justice Act asserts that the state is obligated to prioritise the welfare of children in accordance with international commitments.¹⁴⁴

Initially, the Act aimed to establish a distinct criminal justice system tailored specifically for children. One of its key provisions is the minimisation of children's interactions with the formal justice system, advocating that detention be employed only as a last resort and for the shortest appropriate duration. This principle is also reflected in the South African Constitution,¹⁴⁵ which underscores the importance of safeguarding children's rights. The experiences of children in conflict with the law, particularly those detained in Child and Youth Care Centres, can have detrimental effects on their development and reintegration into society, often leading to recidivism. Consequently, the deprivation of liberty must be treated as a measure of last resort.¹⁴⁶

To mitigate the adverse impacts of formal criminal proceedings, the Child Justice Act incorporates processes and mechanisms that are more aligned with the developmental needs of children. This includes the promotion of diversion as a fundamental principle of the child justice system. Diversion may consist of counselling, mediation, community service, or educational initiatives. In instances where diversion is deemed inappropriate or ineffective, the Act outlines alternative options based on the severity of the offense. For minor offenses, non-custodial sentences such as probation or fines may be imposed, while more serious offenses may result in placement within a Child and Youth Care Centre.

The Act further stipulates that children within the justice system receive specialised treatment aimed at disrupting the cycle of criminal behaviour and fostering their development into law-abiding, productive members of society. The case of *Centre for Child Law v Minister for Justice and Constitutional Development (CCT98/08)*¹⁴⁷

¹⁴⁴ *Child Justice Act 75 of 2008.*

¹⁴⁵ *Section 28(1)(g) of the Constitution, 1996.*

¹⁴⁶ Gxubane 2006.

¹⁴⁷ *Child Law v Minister for Justice and Constitutional Development (CCT98/08).*

represents a pivotal judgment by the Constitutional Court of South Africa, issued in 2009. This ruling examined the constitutionality of the minimum sentencing provisions applicable to minors aged 16 and 17 under the Criminal Law Amendment Act of 1997.¹⁴⁸ The court underscored key principles enshrined in the South African Constitution, notably the rights of children to be treated with dignity and the doctrine that incarceration should be a measure of last resort, particularly for young offenders. The decision called for a more nuanced framework for sentencing juvenile offenders, advocating for an approach that considers individual circumstances and the potential for rehabilitation, rather than applying universal minimum sentences indiscriminately. The judgment in *Centre for Child Law v Minister for Justice and Constitutional Development* reaffirmed the significance of constitutional safeguards for children within the justice system, promoting a rehabilitative rather than punitive perspective on juvenile justice. This ruling has had enduring effects on the treatment of young offenders within the South African legal context. By establishing a separate and specialised framework for children, the Act acknowledges their unique vulnerabilities and needs, ensuring that their rights are upheld and that their rehabilitation is prioritised. Particular emphasis is placed on the management of children during the initial 24 hours following their contact with the justice system. The Act actively discourages the arrest of children, and in cases where arrest occurs, it mandates their prompt release into the custody of a parent or guardian. Prior to the implementation of the Act, it was reported that between 9,000 and 13,000 children were arrested monthly. Following the Act's introduction, nearly 48% of these children were released either into the care of their parents or guardians, released with a warning or without charge, or had their cases adjusted to Children's Court inquiries as children in need of care and protection.¹⁴⁹

Additionally, the South African legal framework recognises the fundamental rights of children, including the right to legal representation, the right to be heard, and the right to privacy. The Child Justice Act emphasises the significance of parental or guardian involvement and the provision of supportive services throughout the legal

¹⁴⁸ *Criminal Law Amendment Act 105 of 1997.*

¹⁴⁹ *Child Justice Act 75 of 2008.*

process, thereby enhancing the protective measures afforded to children in conflict with the law.

In summary, the Child Justice Act represents a critical advancement in the South African approach to juvenile justice, reinforcing the imperative to treat children with dignity and to ensure their rehabilitation and reintegration into society. The case *S v Thwala (A92/2015) ZAGPPHC 114*¹⁵⁰ holds considerable significance within the framework of the Child Justice Act in South Africa, especially concerning the treatment of juvenile offenders. This case serves as an essential reference for comprehending the intricacies of juvenile justice as addressed by South African law under the auspices of the Child Justice Act. Furthermore, the Act is designed to align with international conventions pertaining to children's rights, striving to safeguard minors and ensure equitable treatment within the justice system.

2.4.8 Children's Act No 38 of 2005

The Children's Act¹⁵¹ was enacted to implement specific rights of children as enshrined in the Constitution and to establish principles related to their care and protection. A fundamental tenet of the Act is the principle of the best interest of the child¹⁵², which aligns with constitutional provisions and is further supported by international instruments such as the Convention on the Rights of the Child¹⁵³ and the African Charter on the Rights and Welfare of the Child.¹⁵⁴

This legislation is comprehensive, and aimed at providing children with the necessary care, protection, and support to enable them to reach their full potential. The Children's Act reflects and enforces the values and principles articulated in the UNCRC and the White Paper for Social Welfare, advocating for the enhancement of social welfare services.¹⁵⁵

¹⁵⁰ *S v Thwala (A92/2015) ZAGPPHC 114.*

¹⁵¹ *Children's Act 38 of 2005.*

¹⁵² *Section 7 of the Children's Act 38 of 2005*

¹⁵³ *Article 3(1) of Children's Act 38 of 2005.*

¹⁵⁴ *Article 4 (1) of Children's Act 38 of 2005*

¹⁵⁵ Agere 2014: 3.

The following are the key objectives of the Act:¹⁵⁶

- a) “To promote the preservation and strengthening of families.
- b) To give effect to the constitutional rights of children.
- c) To give effect to the Republic’s obligations concerning the well-being of children in terms of the International instruments binding on the Republic
- d) To make provision for structure, services, and means for promoting and monitoring the sound physical, psychological, intellectual, emotional, and social development of children.
- e) To strengthen and develop community structures that can assist in the provision of care and protection for children, and
- f) protect children from discrimination, exploitation, and any other physical, emotional and moral harm.
- g) To provide care and protection for children who need it.
- h) To recognise the special needs which children with disabilities have.
- i) To promote the protection, development, and well-being of children”.

The implementation of the Children’s Act falls under the purview of the Department of Social Development, which is tasked with ensuring that necessary resources are allocated to not-for-profit organisations (NPOs) to fulfil the Act's objectives.¹⁵⁷ The Act encourages positive discipline as a method for managing behaviour in Child and Youth Care Centres, explicitly prohibiting punitive measures such as physical punishment, verbal and emotional abuse, and the deprivation of essential needs like food and clothing, as well as access to family members or significant others.¹⁵⁸

The aforementioned international and national frameworks provide a blueprint for an ideal child justice system, emphasising the promotion of child well-being and individualised approaches in dealing with children. The system should prioritise diversion from the criminal justice process at the earliest possible stage, directing

¹⁵⁶ *Children’s Act 38 of 2005.*

¹⁵⁷ Agere 2014: 3.

¹⁵⁸ Thesen 2014: 2.

children toward welfare systems or suitable diversion programmes managed by competent personnel. A vigilant approach to safeguarding due process rights is essential, with active involvement from family and community members being crucial. Should a child enter the criminal justice system, it is imperative that they are tried by a competent authority, with access to legal representation and parental support in an environment that prioritises their best interests. Children should be empowered to participate in decision-making processes, and proceedings must adhere to timeframes appropriate for children, avoiding unnecessary delays.

2.5 RESTORATIVE, RETRIBUTIVE, AND REPARATIVE JUSTICE

The concept of justice lacks a singular, definitive interpretation, as it varies significantly across different contexts and perspectives. For the ordinary citizen, justice may be synonymous with appropriate punishment; for philosophers, it often embodies moral principles; and for legal practitioners, it pertains to the application of law. Despite its evolving nature, justice generally encompasses the principles of ensuring that individuals receive what they deserve, alongside notions of fairness, moral righteousness, and equality. Among the four primary types of justice are (distributive justice, which addresses the allocation of resources; procedural justice, focused on the fairness of processes; retributive justice, which centres on punishment for wrongdoing; and restorative justice, aimed at repairing relationships to a state of rightness)¹⁵⁹ both restorative and retributive justice are particularly relevant to this study. The subsequent sections will elaborate on these forms of justice, including a discussion of reparative justice.

2.5.1 Restorative justice

Restorative justice is a process aimed at addressing crime by prioritising the redress of harm inflicted upon victims, while also holding offenders accountable for their actions. This approach typically involves engaging the community in the resolution of conflicts.¹⁶⁰ The underlying assumption of restorative justice is that a holistic

¹⁵⁹ Maiese & Burgess 2020.

¹⁶⁰ Goodhart 2013.

response to crime, one that includes offenders, victims, and the community is fundamental to effective resolution. In the case of *S v Shilubane* 2005 (JOL 15671(T)),¹⁶¹ the judge notably emphasised the potential of restorative justice as a viable approach in the sentencing process. This decision marked a significant moment in South African legal discourse, as it acknowledged the benefits of restorative justice principles in addressing the needs of victims, offenders, and the community. The anticipated outcomes of restorative justice practices include the repair of relationships, substantive reparation for victims, and the reintegration of offenders into society.¹⁶² This approach serves as a response to the limitations and dissatisfaction associated with retributive and rehabilitative justice models. Restorative justice prioritises the restoration of victims, which encompasses the restitution of material, physical, and emotional losses, as well as the reinstatement of the victims' sense of security and dignity.¹⁶³ The implementation of restorative justice principles has gained prominence within the South African criminal justice system.¹⁶⁴

The initial proposal for restorative justice in South Africa was articulated in the White Paper for Social Welfare¹⁶⁵ and endorsed by the Inter-Ministerial Committee on Young People at Risk.¹⁶⁶ This proposal advocated for the integration of restorative justice, diversion programmes, prevention, and early intervention strategies as key principles in addressing child offenders. This marked a significant paradigm shift from a retributive justice framework to one that emphasises accountability and rehabilitation.¹⁶⁷ These initiatives channel children in conflict with the law away from the traditional criminal justice system, allowing them to take responsibility for their actions and to compensate their victims rather than face punitive measures.¹⁶⁸

¹⁶¹ *S v Shilubane* 2005 (JOL 15671(T)).

¹⁶² Goodhart 2013.

¹⁶³ Murhula & Tolla 2020: 9.

¹⁶⁴ Murhula & Tolla 2020: 9.

¹⁶⁵ *White Paper for Social Welfare* 1997.

¹⁶⁶ Inter-Ministerial Committee on Young People at Risk 1996.

¹⁶⁷ Gxubane 2010: 37.

¹⁶⁸ Gxubane 2010: 38.

The Child Justice Act, which came into effect in April 2010, was designed to humanise the juvenile justice system and safeguard the rights of children in conflict with the law.¹⁶⁹ Restorative justice within this framework aims to involve child offenders, victims, their families, and community members in a collaborative process to identify and address harms, needs, and obligations. This process encourages the acceptance of responsibility, restitution, and measures to prevent future incidents, thereby promoting reconciliation.¹⁷⁰ Diversion alternatives under the Act include family group conferencing and victim-offender mediation. For child offenders, the Act provides for community and restorative sentences, facilitating processes such as family group conferences and victim-offender mediation.¹⁷¹ Restorative justice is predicated on the belief that societal functioning relies on a balance of rights and responsibilities.¹⁷² It is crucial for children to be educated early on regarding their rights and responsibilities and to understand how to maintain this balance. When this equilibrium is disrupted, restorative mechanisms must be employed to restore it. For restoration to occur, offenders must acknowledge their wrongdoing and the harm caused, while victims must be willing to engage in negotiations and accept restitution for the offenses committed. The overarching goal of restorative justice is to put right the wrong and mend fractured relationships through dialogue and peace-making.¹⁷³

The concept of restorative justice is not a novel one in South Africa. Many communities have historically addressed juvenile offenses in ways that encourage accountability, such as through apologies, restitution, and the restoration of relationships between offenders and victims.¹⁷⁴ In 1992, the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) introduced initiatives aimed at diverting children in conflict with the law from the criminal justice system.¹⁷⁵ Subsequently, in 1995, the Inter-Ministerial Committee on Young People at Risk

¹⁶⁹ Department of Justice 2010: 73-76.

¹⁷⁰ Department of Justice 2010: 18.

¹⁷¹ Department of Justice 2010: 84-88.

¹⁷² Tlale 2013: 45.

¹⁷³ Tlale 2013: 45, Fagan 2004: 1.

¹⁷⁴ Naude, Prinsloo, Ladikos & Setlatjile 2002: 2.

¹⁷⁵ NICRO 2003.

launched a pilot family group conference in Pretoria. Other notable initiatives include the Stepping Stones Project in Port Elizabeth and various programmes within the North West Province.¹⁷⁶

Family group conferencing is a specific restorative justice mechanism outlined in the Child Justice Act.¹⁷⁷ According to Section 61(1),

(a) A family group conference is an informal procedure which is intended to bring a child who is alleged to have committed an offence and the victim together, supported by their families and other appropriate persons and, attended by persons referred to in subsection (3) (b), at which a plan is developed on how the child will redress the effects of the offence.

(b) A family group conference may only take place if both the victim and the child consent. (2) If a child has been ordered to appear at a family group conference, a probation officer appointed by the magistrate referred to in section 42, an inquiry magistrate or a child justice court must, within 21 days after the order, convene the conference by-

(a) setting the date, time, and place of the conference; and

(b) taking steps to ensure that all persons who may attend the conference are timeously notified of the date, time, and place of the conference.

(3) (a) The family group conference must be facilitated by a family group conference facilitator, who may be a probation officer or a diversion service provider referred to in section 56 (1).¹⁷⁸

The family conferencing mechanism empowers affected families and the community to engage in the decision-making process regarding child offenders. The goal is to foster negotiated resolutions to conflicts and to heal the social relationships damaged by the offense.¹⁷⁹ The plan developed during these conferences may

¹⁷⁶ NICRO 2003.

¹⁷⁷ *Section 61 of the Child Justice Act 75 of 2008.*

¹⁷⁸ *Section 61 of the Child Justice Act 75 of 2008.*

¹⁷⁹ Tlale 2013: 46.

include actions such as apologies or restitution for stolen property, with participants agreeing on a course of action that addresses the offense's impact. Section 61(5) clearly states:

(5) Participants in a family group conference must follow the procedure agreed on by them and may agree to a plan in respect of the child, by subsection (6).

(6) A plan referred to in subsection (5)-

(a) may include-

(i) the application of any option contained in section 53 (3); or

(ii) any other action appropriate to the child, his or her family, and local circumstances, which is consistent with the principles contained in this Act; and

(b) must-

(i) specify the objectives for the child and the period within which they are to be achieved;

(ii) contain details of the services and assistance to be provided to the child and a parent, an appropriate adult, or a guardian;

(iii) specify the persons or organisations to provide the required services and assistance;

(iv) state the responsibilities of the child and the child's parent, an appropriate adult or a guardian;

(v) state personal objectives for the child and the child's parent, an appropriate adult or a guardian;

(vi) include any other matters relating to the education, employment, recreation, and welfare of the child as are relevant; and

(vii) include a mechanism to monitor the plan.¹⁸⁰

Restorative justice mechanisms are particularly effective for children who have committed minor offenses, as they allow for early intervention that can prevent the escalation into a criminal trajectory. The involvement of close family and community members enhances accountability and fosters a sense of shame for the actions taken, which is especially impactful during the developmental stages of childhood.¹⁸¹

2.5.2 Retributive justice

Retributive justice is a principle asserting that punishment is a necessary response to wrongdoing by an offender.¹⁸² This approach seeks to address the injustices perpetrated by individuals through formal legal prosecution and assigns appropriate penalties corresponding to the crimes committed.¹⁸³ The foundation of retributive justice is built upon four key rationales. First, when a child or personnel member infringes upon the rights of another individual within a Child and Youth Care Centre, it is essential that such an offense is publicly acknowledged. During the hearing or trial, the specifics of the offense must be transparently discussed to ensure accountability and recognition of the harm caused. Second, any child or personnel member found guilty of an offense within a CYCC must face punishment. This punitive measure aims not only to remove the individual from the CYCC but also to facilitate their rehabilitation, thereby preparing them for reintegration into the community. Third, the process of disciplining an offender serves a dual purpose: it acts as a deterrent and provides an educational framework for others within the CYCC. By witnessing the consequences of deviant behaviour or violence, other children and personnel members may be discouraged from engaging in similar misconduct, thereby fostering a safer environment. Lastly, the capability to conduct trials reinforces the notion that the justice system is equipped to address matters of retributive justice effectively.¹⁸⁴

¹⁸⁰ *Section 61 of the Child Justice Act 75 of 2008.*

¹⁸¹ NICRO 2003.

¹⁸² Goodhart 2013.

¹⁸³ Moore 1997.

¹⁸⁴ Goodhart 2013.

It underscores the importance of accountability within CYCCs, emphasising that individuals responsible for misconduct should face the consequences of their actions. Without such measures, there exists a risk that inappropriate behaviour may persist, as offenders might assume their actions are tolerated or acceptable. Thus, any child or personnel member who violates the law must be held accountable for their misconduct, ensuring the integrity of the justice system and the safety of all individuals within the CYCC.

2.5.3 Reparative justice

Reparative justice is distinct from both retributive and restorative justice in that its primary aim is to address and rectify past wrongs. This approach focuses on providing remedies for the suffering and losses experienced by victims within Child and Youth Care Centres.¹⁸⁵ The fundamental goal of reparative justice is to heal emotional wounds by compensating victims and assisting them in overcoming their experiences of abuse, including through the provision of counselling services.¹⁸⁶ In essence, it seeks to repair the harm inflicted upon individuals due to violations of their human rights. Reparative justice can be categorised into two main forms: apology and restitution.¹⁸⁷

The first method of addressing past grievances is through the issuance of an apology. This requires the individual responsible for the misconduct to formally acknowledge their actions. In instances where the perpetrator is deceased, a family member or governmental representative may issue an apology on their behalf.¹⁸⁸ The benefits of an apology are manifold. It serves to acknowledge the violent or abusive behaviour that occurred, allowing victims to attain a sense of closure and aiding them in processing their pain.¹⁸⁹ Moreover, an apology can mitigate feelings of hatred and bitterness among victims. While it does not erase the pain or enable victims to forget, it may alleviate some of the anger and hurt associated with their

¹⁸⁵ Goodhart 2013.

¹⁸⁶ Sheeran & Rodley 2016.

¹⁸⁷ Goodhart 2013.

¹⁸⁸ Goodhart 2013.

¹⁸⁹ Goodhart 2013.

experiences. Additionally, an apology affirms the victims' identities as individuals who have suffered abuse, thereby contributing to a reduction in the trauma they have endured.¹⁹⁰

Restitution constitutes another critical aspect of reparative justice, involving financial compensation awarded to victims for their losses or injuries. This compensation is often aligned with the amounts determined by civil courts in cases of negligence, such as the wrongful death of a child. However, it is crucial to recognise that no sum of money can restore a lost life or fully account for the harm inflicted; the intrinsic value of a person's life is immeasurable.¹⁹¹ Thus, it is important to emphasise that financial compensation, while necessary, is insufficient to rectify the profound losses and suffering caused by CYCCs. No act of cruelty can be adequately addressed through monetary means alone.¹⁹²

Ultimately, these reparations serve as a means of acknowledging the wrongs committed against victims. The reparative justice framework aims to restore the dignity of victims while also facilitating the reintegration of offenders into society. This approach aspires to dignify and empower those who have experienced human rights violations, fostering a sense of harmony within the community.¹⁹³

2.6 CONCLUSION

This literature review presents a narrative and critical analysis of the existing information regarding children in conflict with the law in South Africa. Recent trends indicate a growing number of children involved in criminal activities, a phenomenon that can be attributed to the socio-economic challenges prevalent in the country. Research suggests that a child's background is a significant risk factor for delinquent behaviour, compounded by issues such as poverty, inequality, and limited access to education. Children who have experienced abuse, neglect by parents or

¹⁹⁰ Goodhart 2013.

¹⁹¹ Goodhart 2013.

¹⁹² Goodhart 2013.

¹⁹³ Goodhart 2013.

caregivers, and economic hardship are particularly vulnerable. Additionally, delinquent behaviour is commonly observed among children exhibiting rebellious tendencies and engaging in substance abuse. When substance abuse escalates to addiction, it often leads these children to commit theft to sustain their dependency.

The types of crimes most frequently reported among youth include assault with intent to cause grievous bodily harm, which was the most common offense in 2021, followed by theft, rape, housebreaking, and malicious injury to property. Alarmingly, rape—a crime against humanity—ranked as the third most prevalent crime among children under the age of 18. Furthermore, reports indicate that instances of child-on-child sexual assault are more common than assaults perpetrated by adults against children. Many children identified as sexual offenders have themselves been victims of sexual abuse, neglect, or other forms of maltreatment.

Regardless of the nature of the offenses committed, it is crucial to recognise that children in conflict with the law possess human rights and must be treated differently from adults within the justice system. The rights of these children are enshrined in various national and international legal frameworks, including the United Nations Convention on the Rights of the Child (UNCRC)¹⁹⁴, the Constitution of South Africa¹⁹⁵, the Children’s Act¹⁹⁶, and the Child Justice Act.¹⁹⁷ These documents delineate the appropriate treatment of children in conflict with the law to safeguard their rights. In the case *S v L.J (346/22) ZAWCHC 6*,¹⁹⁸ the Court underscored the critical importance of ensuring the rights and welfare of children involved in legal conflicts. It highlighted the obligation of authorities to shield minors from practices that could threaten their mental and physical health, advocating for a rehabilitative approach rather than a punitive one. This ruling is consistent with international standards pertaining to the treatment of juvenile offenders, reinforcing the necessity

¹⁹⁴ *United Nations Convention on the Rights of the Child 1989.*

¹⁹⁵ *Constitution, 1996.*

¹⁹⁶ *Children’s Act 38 of 2005.*

¹⁹⁷ *Child Justice Act 75 of 2008.*

¹⁹⁸ *S v L.J (346/22) ZAWCHC 6.*

for a system that focuses on rehabilitation and prioritises the best interests of the child.

Despite the South African government's efforts to reform its justice system, significant gaps remain in the implementation of relevant legislation. Reports indicate that children in conflict with the law are not consistently treated equitably. The limited scholarly literature on this subject in the South African context underscores the necessity for further research to obtain comprehensive insights into this pressing issue. Such studies may inform policy amendments and contribute to the transformation of practices within Child and Youth Care Centres throughout the nation.

CHAPTER 3

THEORETICAL FRAMEWORK

3.1 INTRODUCTION

This chapter presents the theoretical framework, which acts as a toolkit designed to address the gaps identified in the literature review presented in Chapter 2. The tools articulated herein consist of theories, propositions, and concepts that facilitate the examination of these gaps and problems. This framework provides a refined focus for the study, enabling the researcher to avoid disorganized data collection and analysis. A theoretical framework can be understood as “a blueprint that researchers often borrow to construct their research inquiries”.¹ It serves as a foundation for mapping research directions across all aspects of the study, ensuring coherence and relevance. This framework elucidates the connections among the study's title, the identified research problem, research questions, research objectives, and the selected methodology.² Consequently, it offers a comprehensive explanation of the theories underpinning the study, rendering its findings both relevant and credible.³

The theories explored in this chapter are particularly relevant for elucidating factors associated with children in conflict with the law. They address the motivations behind such behaviours, including predisposition factors and environmental influences that facilitate criminal activity. The primary theories discussed include: Classic Theory (Rational Choice Theory), Bronfenbrenner's Socio-ecological Systems Theory, Social Bond Theory, Behaviour Modification Theory, and Social Control Theory. These theories are widely recognized as valuable frameworks by psychologists, sociologists, researchers, and educators engaged in the study of child development.

¹ Adom, Hussein & Agyem 2018: 238.

² Chukwuere 2021: 2680.

³ Salawu, Bolatitio & Masibo 2023: 2104.

Additionally, to assess the adequacy of support provided by the justice system and relevant organisations for children in conflict with the law, the researcher incorporates Desistance Theory. This theory pertains to the phenomenon of individuals refraining from criminal behaviour after the previous offending. Despite over two decades of research, Desistance Theory remains largely misunderstood.⁴ Its relevance to this study lies in the intention to inform policymakers and contribute to the existing body of knowledge, thereby establishing a foundation for future research endeavours.

3.2 CLASSIC THEORY

The Classic Theory, also referred to as Rational Choice Theory, posits that individuals engage in criminal behaviour through a conscious decision-making process. This theory asserts that individuals evaluate the potential pleasure derived from committing a crime against the anticipated pain or consequences associated with such actions.⁵ Within the framework of criminology, the Classic Theory emphasises the interplay between free will and rationality, positioning the offender as an active decision-maker. Consequently, it can be described as a collection of concepts that elucidate the relationship between individual preferences and the choices made in the context of criminal activities.⁶ This theory is grounded in utilitarian principles, suggesting that individuals are motivated to commit crimes when they perceive these actions as accessible, rewarding, and beneficial. It further implies that, due to inherent rationality, the fear of punishment should serve as a deterrent to criminal behaviour. Thus, it is anticipated that individuals will refrain from engaging in criminal activities if they perceive the potential costs as outweighing the benefits.

⁴ Rocque 2021:1.

⁵ United Nations Office on Drugs and Crime (UNODC) 2018a “Classical: pain-pleasure decisions”, <https://www.unodc.org/e4j/en/organized-crime/module-6/key-issues/classical-pain-pleasure-decisions.html#:~:text=The%20classical%20view%20in%20criminology,maximize%20pleasure%20and%20minimize%20pain>. (Accessed on 20 March 2023).

⁶ Brunisma & Weisburd 2014: 2.

The Classic Theory underscores the notion that individuals are rational thinkers who conduct a cost-benefit analysis prior to committing a crime. It is regarded as one of the foundational theories in criminology, explaining that potential offenders undergo a decision-making process aimed at maximising pleasure while minimising pain.⁷ This economic dimension of the theory highlights that the decision to engage in criminal behaviour is influenced by an individual's self-control, which is shaped by their belief that the advantages of the crime will surpass its associated risks.⁸

In summary, the key assumptions of the Classic Theory include:

- a) Individuals act with a specific purpose and are goal-oriented.
- b) Preferences are organised hierarchically.
- c) Rational decision-making occurs when individuals evaluate alternatives, considering the costs associated with each, in order to maximize potential outcomes.⁹

Criminologists have adapted the Classic Theory from economic principles to explain behavioural decision-making processes. The theory acknowledges both formal and informal factors that influence choices. However, criminologists assert that informal factors tend to have a more significant impact on the decision to engage in criminal behaviour. The theory is particularly applicable to instrumental crimes, which involve planning and foresight, such as corporate crime, traffic violations, and driving under the influence.¹⁰ In contrast, expressive crimes are characterised by emotional responses that inhibit rational thought, making individuals less likely to consider the consequences of their actions.

Despite its strengths, scholars recognize that criminal behaviour is inherently unpredictable and that deterministic factors are often elusive.¹¹ This complexity suggests limitations in criminological theories, as understanding and preventing

⁷ Beaudry-Cyr 2015: 1.

⁸ Zhou 2023: 623.

⁹ Turner 1997: 354.

¹⁰ Özdemir & Öner-Özkan 2017: 356-357.

¹¹ Lee 2023: 5.

criminal behaviour remains a multifaceted challenge. Central to this discourse is the question of whether individuals possess the capacity for criminality. In the context of this study, it is imperative to explore whether children undergo a similar decision-making process and if their behaviours are influenced by comparable factors.

A primary concern is whether children can distinguish between right and wrong at the time of committing a criminal offense.¹² This concern is reflected in South African legislation, which protects children aged 7 to 14 from court proceedings to mitigate potential trauma. Conversely, children aged 14 to 18 are considered to possess criminal capacity, with legal proceedings guided by Section 5 of the Child Justice Act.¹³

In relation to more costly crimes, the Routine Activity Theory, a subset of the Classic Theory, offers valuable insights into the causation of crime.¹⁴ Established by criminologists Lawrence Cohen and Marcus Felson in 1979, this theory emphasizes the significance of opportunity in criminal events, focusing on the spatial and temporal contexts of crime and recognizing its ecological implications.¹⁵ Routine activities reflect the reality that individuals often find themselves in situations conducive to victimisation as they engage in normal daily activities.¹⁶

The Routine Activity Theory posits that crime is contingent upon the availability of opportunities, necessitating the presence of three key elements:

- a) A motivated offender
- b) A suitable target
- c) The absence of a capable guardian¹⁷

The theory further contends that influential figures in the lives of potential offenders—such as parents, relatives, and peers—play a crucial role in shaping their

¹² Bandenhorst 2006: 147.

¹³ *Child Justice Act 2008 (Act 75 of 2008)*.

¹⁴ Cohen & Felson 1979: 589.

¹⁵ Miró 2014: 1.

¹⁶ Degarmo 2011: 585-586

¹⁷ Cohen & Felson 1979: 589.

behaviour.¹⁸ For adults, these influences may include family members or close associates.¹⁹ Guardianship is also emphasized, with formal guardians, such as police and security personnel, alongside informal guardians like parents and neighbours, contributing to the prevention of crime. Consequently, the likelihood of criminal occurrences diminishes with the presence of strong guardianship. Critically, the Routine Activity Theory has faced scrutiny for its tendency to focus on victimization while neglecting the motivations of the perpetrator, thereby shifting the responsibility for safety onto the victim.²⁰ This perspective may obscure the underlying issues related to the perpetrator's behaviour.

Children in detention settings, whether awaiting trial or serving sentences, often face heightened risks of victimization by peers and care workers.²¹ Such environments may expose them to various forms of abuse, including psychological harm and physical violence, particularly in settings lacking adequate supervision. Vulnerability increases for children housed in single dormitories compared to those in shared accommodations.²² Moreover, children charged with more serious offenses, such as murder or rape, frequently endure harsher treatment,²³ rendering them more susceptible to exploitation due to their precarious emotional states.

3.3 BRONFENBRENNER'S ECOLOGICAL SYSTEMS THEORY

Bronfenbrenner's Ecological Systems Theory is widely recognized as a comprehensive framework for understanding the impact of social environments on human development. This theory posits that the environments to which individuals are exposed throughout their formative years significantly influence various aspects of their lives.²⁴ Bronfenbrenner conceptualizes child development as a multifaceted system of relationships that are shaped by multiple environmental levels, ranging

¹⁸ Cohen & Felson 1979: 589.

¹⁹ Cohen & Felson 1979: 589.

²⁰ Miró 2014: 6.

²¹ Williams & McShane 2013.

²² Schultz & Schultz 2013; Mustaine & Tewksbury 1999.

²³ Pratt *et al.* 2010.

²⁴ Paquette & Ryan 2001: 1.

from immediate contexts such as family and school to broader societal influences, including cultural values, legal frameworks, and customs.²⁵ In examining a child's development, it is essential to consider not only the individual child and their immediate surroundings but also the interactions that occur within the larger ecological context.

The Ecological Systems Theory offers a holistic perspective that encompasses all systems in which children and their families are involved, effectively reflecting the dynamic nature of familial relationships.²⁶ The family structure plays a critical role in child development, serving as the primary environment where children learn to distinguish between right and wrong, often imitating behaviours observed in their daily lives.

However, it is important to recognise that the theory may lead to assumptions about individuals lacking development due to insufficient positive ecological support. While this may be true in certain circumstances, many individuals can achieve well-rounded development despite the absence of favourable influences within their ecological systems. For example, it would be erroneous to assert that all children raised in impoverished neighbourhoods or by single parents are destined to engage in criminal behaviour. Conversely, children from affluent backgrounds and quality educational institutions can also commit crimes, often influenced by their social circles. The relationship between a child's family and community background is complex, making definitive predictions challenging. Nevertheless, research suggests that children from families with criminal histories have a 24% likelihood of being convicted for similar offenses.²⁷ Furthermore, there is evidence of generational patterns in which children of convicted parents are more likely to follow in their predecessors' footsteps.

The Ecological Systems Theory has been instrumental in linking psychological and educational theories to early childhood education curricula and practices. Central to

²⁵ Bronfenbrenner 1979: 23.

²⁶ Hayes & O'Toole 2017: 9.

²⁷ Eriksson et al. 2016: 254.

this theory is the developing child, with all components of the five ecological systems designed to promote the child's well-being within the educational setting. The theory advocates for the prioritization of the child's best interests in all developmental endeavours.

To enhance the ecological systems within Child and Youth Care Centres, collaboration among relevant stakeholders—including the Departments of Education, Health, Social Development, Public Works, and Justice—is imperative. Effective communication and cooperative efforts among these entities are essential for fostering the child's development. The Department of Social Development, in particular, must be attuned to the social and economic challenges that the families of these children face within the various ecological systems. According to the theory, strong relationships among stakeholders should yield positive outcomes for child development; conversely, neglect by any single system can adversely affect the entire ecological framework.

Moreover, children within these centres must actively engage in their learning processes, demonstrating a willingness to work hard and participate in matters that concern them. Encouraging teamwork and involvement in meaningful learning experiences fosters a sense of responsibility among children, thereby enhancing their social networks and reducing their vulnerability to negative environmental influences.²⁸ The social-ecological model posits that human development progresses through mutual interactions between individuals and their environments, which are interdependent within their ecological systems.²⁹

Bronfenbrenner delineates the various environmental contexts into five distinct systems: the microsystem, mesosystem, exosystem, macrosystem, and chronosystem.³⁰ Each of these systems plays a vital role in shaping the developmental trajectory of the individual within the broader social context.

²⁸ Bronfenbrenner 1979: 16.

²⁹ Bronfenbrenner 1979: 16.

³⁰ Bronfenbrenner 1977: 89.

3.3.1 Five ecological systems of a person's environment

Bronfenbrenner posits that a child's environment is characterised by a nested arrangement of structures, each existing within the confines of the next. He delineates these structures in terms of their relative impact on child development. The five systems he identifies are interrelated, suggesting that the influence of one system on a child's development is contingent upon its interactions with the other systems.³¹ Figure 3.1 presents an illustration of these five ecosystems, which will be examined in detail in the subsequent subsections.

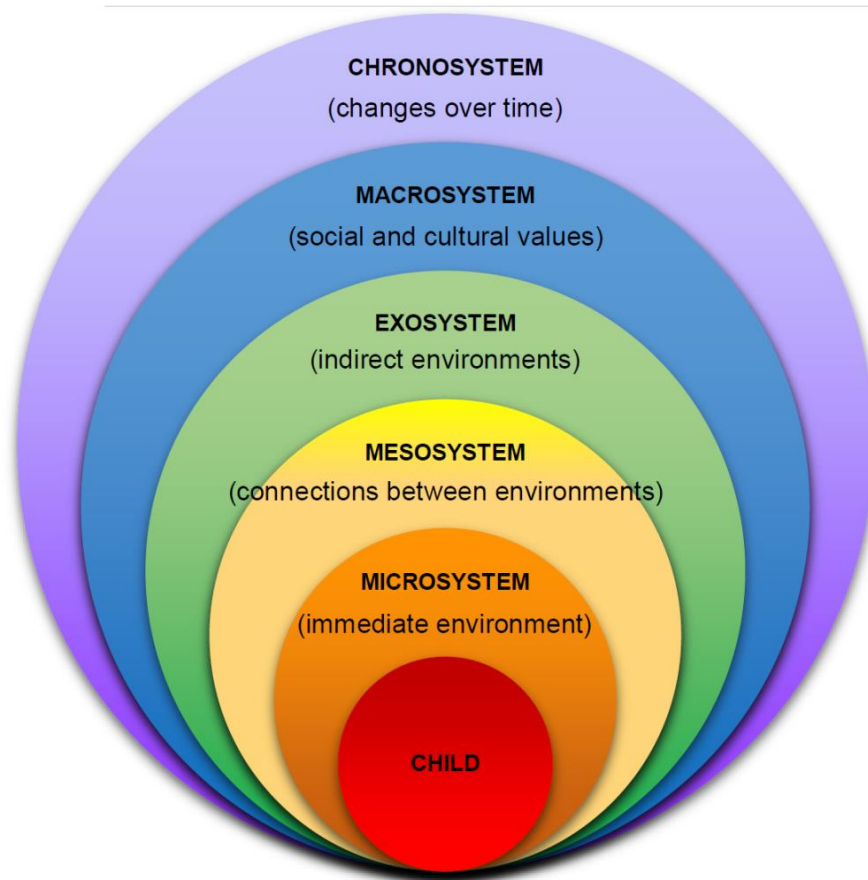


Figure 3.1 Bronfenbrenner's five ecological systems

(Source: <https://rotel.pressbooks.pub>)

³¹ Bronfenbrenner 1977: 89.

The figure presents a conceptual framework for understanding different levels of environmental influences on an individual, particularly a child. While this framework is not specifically focused on children in conflict with the law in South Africa, it can provide a useful lens for analysing the various factors that may contribute to such situations.

3.3.1.1 Microsystem

The microsystem represents the first level of Bronfenbrenner's ecological systems theory, focusing on the immediate environment in which a child is situated. This includes direct interactions with primary caregivers, siblings, educators, and peers within the school context. As the most influential layer within this theoretical framework, the microsystem encompasses the settings that are closest to the developing child, notably the family and educational institutions.³² For children in conflict with the law, the microsystem may include factors like dysfunctional family dynamics, negative peer influences, or lack of support and guidance.

Relationships within the microsystem are characterized by bi-directionality; children not only absorb influences from their surroundings but also possess the capacity to affect the beliefs and behaviours of those around them.³³ This dynamic interaction underscores the potential for children to acquire maladaptive behaviours, such as aggression, from various sources including familial figures, their broader environment, and media influences.³⁴

In contexts where children are in conflict with the law, the establishment of positive relationships with personnel and peers in institutional settings becomes critical, as these environments often serve as their new homes. Adjusting to such an altered family structure can pose significant challenges for affected children. Consequently, it is imperative for personnel members to cultivate a safe and supportive atmosphere. Conversely, when personnel exhibit violent or aggressive behaviours,

³² Paquette & Ryan 2001: 1.

³³ Berk 2000: 23-38.

³⁴ Williams & McShane 2013: 14.

children may internalise these actions as normative, leading to the replication of such behaviours.

The manner in which a child engages with individuals within their microsystem significantly influences reciprocal interactions.³⁵ These relationships are deeply personal and play a vital role in nurturing the child's overall development. Experiences of conflict, neglect, bullying, or social rejection within these immediate settings can disrupt the microsystem, potentially culminating in adverse outcomes such as diminished academic performance, social withdrawal, and various mental health challenges.³⁶ Furthermore, an inadequately supportive microsystem may impede the child's developmental trajectory, ultimately hindering their ability to thrive and realise their full potential.

3.3.1.2 Mesosystem

Mesosystem represents the connections and interactions between the different microsystems, such as the relationship between the family and the school. For children in conflict, the mesosystem may involve a disconnect or lack of coordination between these key environments.

The mesosystem refers to the interplay among a child's various microsystems, illustrating how experiences within one microsystem can significantly affect experiences in another. For instance, a child who faces neglect within their family may struggle to cultivate a positive attitude toward teachers in the school environment. This neglect can lead to difficulties in forming relationships with peers, potentially resulting in social isolation. Similarly, a child raised in a community characterized by crime may gravitate toward peers who share similar experiences, which could further entrench them in a lifestyle associated with criminal behaviour. Such dynamics can adversely affect the child's academic performance and may contribute to disruptive behaviours.

³⁵ Quinn & Sutphen 1994: 23.

³⁶ Burke 2010: 32.

This concept also extends to children in Child and Youth Care Centres, where the experiences of these children—many of whom are still engaged in their educational pursuits—can be reflective of their environment within the centre. The family and school represent two primary microsystems in a child's life; thus, it is crucial that parents and caregivers actively support the child's educational goals and extracurricular activities while also monitoring their social interactions both within and outside the school context.³⁷

The mesosystem highlights that microsystems do not operate in isolation; rather, they are interconnected and exert mutual influence on one another. For example, positive relationships between personnel and children within a centre can foster a supportive environment that promotes healthy development, ultimately yielding beneficial outcomes for the child. In essence, the mesosystem can be understood as a complex network of microsystems, where the interactions among these systems play a critical role in shaping a child's behaviour and overall development.³⁸

3.3.1.3 Exosystem

The exosystem refers to the indirect environments that still impact the child, such as the local community, social services, or the criminal justice system. It encompasses various formal and informal social structures that, while not directly containing the child, exert an indirect influence on their development by affecting one or more of the microsystems in which the child is embedded.³⁹ For children in conflict, the exosystem may include factors like poverty, lack of access to resources, or ineffective social support structures. For instance, although a child may not interact directly with a parent's workplace, the parent's long working hours can significantly affect the child's development.⁴⁰ The lack of available parental support may lead the child to seek attention and a sense of belonging outside the home, potentially resulting in associations with negative peer groups.

³⁷ Ettekal & Mahoney 2017: 7.

³⁸ Bronfenbrenner 1970: 85.

³⁹ Borg *et al.* 2009: 51.

⁴⁰ Crawford 2020: 2.

Additionally, other exosystem elements, such as gang affiliations or social media dynamics, can similarly influence a child's behaviour, particularly in the absence of protective guidance from parents or caregivers. An illustrative example of how an exosystem can impact a child's development is when conflicts arise within these external social structures. For instance, if a gang member attempts to exert control or intimidate a child, such experiences may adversely affect the child's behaviour and emotional well-being within their immediate microsystem, such as at school or in other social environments. This highlights the importance of understanding the interrelatedness of various social systems and their potential implications for child development.

3.3.1.4 Macrosystem

The macrosystem represents a crucial component of Bronfenbrenner's ecological systems theory, emphasizing the influence of cultural elements on child development. This system encompasses a range of factors, including socioeconomic status, wealth, poverty, and ethnicity. It is characterized by "the set of overarching beliefs, values, and norms, as reflected in the cultural, religious, and socioeconomic organization of society."⁴¹ The macrosystem operates at a societal level, distinguishing it from other systems within Bronfenbrenner's framework, which focuses on the immediate environments surrounding an individual child. Specifically, the macrosystem encompasses the established societal and cultural contexts in which a child develops.⁴² This includes not only socioeconomic status and ethnicity but also geographic location and prevailing cultural ideologies.⁴³

For instance, a child raised in a developing country may experience developmental challenges that differ significantly from those faced by a child in a wealthier nation. Additionally, a child from a low-income background may encounter limitations in accessing recreational activities, such as sports, due to financial constraints or other barriers. Thus, the macrosystem plays a pivotal role in shaping the opportunities

⁴¹ Ettekal & Mahoney 2017: 5.

⁴² Wasserman & Clair 2011: 12.

⁴³ Paquette & Ryan 2001: 1.

and experiences available to children, profoundly influencing their developmental trajectories.

3.3.1.5 Chronosystem

The fifth and final level of Bronfenbrenner's Ecological Systems Theory is termed the chronosystem. This system encompasses the various environmental changes that transpire throughout an individual's lifetime, significantly influencing their development. Such changes may include major life transitions and historical events, which can range from normative life transitions—such as starting school—to non-normative ones, such as involvement in gang activities. Within the microsystem, peers play a crucial role by providing a sense of belonging and validation. However, when peers engage in specific behaviours or adopt particular beliefs, they may exert pressure on the child to conform. The chronosystem is concerned with ecological transitions that impact human development and are perceived as shifts within the microsystem, resulting in alterations to its composition.⁴⁴ For instance, the birth of a new sibling or the death of a family member can transform a child's microsystem, potentially leading to significant changes in behaviour. In extreme cases, such changes may culminate in involvement in criminal activities, particularly when the child lacks adequate support.

A critical aspect that is often overlooked within the framework of Ecological Systems Theory is recidivism, defined as the tendency of an offender to reoffend after undergoing rehabilitation.⁴⁵ This phenomenon poses a significant challenge globally, with estimates of recidivism rates exceeding 70% in various countries.⁴⁶ In South Africa, many adult offenders began their criminal trajectories in childhood, and interventions aimed at reintegrating them into society frequently fail, perpetuating a cycle of recidivism.⁴⁷

⁴⁴ Crawford 2020: 2.

⁴⁵ UNODC 2018b: 7.

⁴⁶ UNODC 2018b: 7.

⁴⁷ Mogano, Rapholo & Ramphabana 2022: 691.

The role of families and communities becomes particularly salient when considering children in conflict with the law, especially those who have participated in diversion programmes. These social structures constitute the children's mesosystem and exosystem. In South Africa, insufficient familial and community support has contributed to elevated recidivism rates.⁴⁸ This underscores the necessity for more personalized interventions that incorporate an understanding of social-ecological factors influencing children and youth in legal conflict prior to their reintegration into society. Bronfenbrenner's Ecological Systems Theory emphasises that an individual's environment exerts a powerful influence on behaviour.⁴⁹ Therefore, addressing the multifaceted dimensions of a child's ecological context is essential for reducing recidivism and promoting successful reintegration into society.

3.4 SOCIAL BOND THEORY

Social Bond Theory, formulated in the 1960s by American criminologist Travis Hirschi, emerged from his investigations into the motivations behind criminal behaviour. Hirschi identified a recurring pattern among individuals who engage in criminal acts: those who struggle to establish positive social bonds within their communities are more inclined to exhibit deviant behaviours.⁵⁰ The theory comprises four primary elements: attachment, commitment, involvement, and common values. Attachment refers to the connections formed with family, friends, and community members, which foster commitments to social bonds and reinforce the desire to maintain positive relationships. The degree of an individual's involvement with their social bonds and community is contingent upon the level of attachment and commitment they experience. These elements are interconnected with common values that influence individual behaviour.

Involvement suggests that individuals who are focused on personal goals and aspirations, and who are committed to achieving them, are less likely to engage in

⁴⁸ Mogano et al. 2022: 696.

⁴⁹ Sheerin, Brodell, Huey Jr & Kemp 2023: 14.

⁵⁰ Chriss 2007: 689.

antisocial behaviour or become victims of crime.⁵¹ For instance, children who participate in prosocial activities—such as volunteering—are less likely to divert their attention towards criminal activities.⁵² Conversely, youth without access to extracurricular activities may experience boredom, leading them to wander their neighbourhoods and potentially experiment with substances or associate with negative influences.⁵³ Moreover, some children and adolescents may harbour a distrust of law enforcement, perceiving the police as untrustworthy. This perception can drive them toward gang affiliations, particularly in high-crime areas.⁵⁴ This situation underscores a failure on the part of the community and government to provide safe environments and to engage youth in stimulating activities that extend beyond traditional educational settings.

Hirschi's theory posits that delinquency is more likely to occur when individuals possess weak or absent social bonds.⁵⁵ Such deficiencies in social bonds result in a diminished sense of commitment, making it easier for these individuals to take risks.⁵⁶ Frequently, children in conflict with the law come from backgrounds characterised by neglect and insufficient social bonds, which predispose them to make poor choices, including criminal behaviour. The impact of one's environment on behaviour is further elucidated by Bronfenbrenner's Ecological Systems Theory. Nevertheless, it is essential to recognize that these social dynamics can be addressed and improved through targeted interventions, as discussed in subsequent theories.

3.5 BEHAVIOUR MODIFICATION THEORY

Behaviour can be defined as the activity of an individual resulting from interactions with the environment. It encompasses how individuals react or respond to various situations within their surroundings. These behaviours can be categorized as either

⁵¹ Negrete 2022: 38.

⁵² Negrete 2022: 38.

⁵³ Khoury-Kassabri, Blit Cohen, Ajzenstadt & Jeries-Loulou 2023: 7.

⁵⁴ Khoury-Kassabri et al. 2023: 8.

⁵⁵ Hirschi 1969: 5.

⁵⁶ Gentle-Genitty 2007: 13.

overt or covert.⁵⁷ Overt behaviours are those that can be directly observed and measured, such as noise-making, sleeping, talking, and jumping. In contrast, covert behaviours refer to internal activities that are not readily visible to others and are challenging to quantify objectively; they may include smoking, drinking, suicidal tendencies, and anger.⁵⁸

Behaviour is a complex set of activities influenced by both biological and environmental factors.⁵⁹ According to Sharma, Malawade, and Shrikhandes, "behaviour is the mirror in which everyone shows their image."⁶⁰ The behaviour of an individual is shaped by four primary factors: biological factors (such as age and gender), interpersonal interactions, cultural influences, and situational challenges. The authors also emphasize the significant impact of interpersonal relationships on behaviour.⁶¹ Behaviour can be categorized as common, unusual, acceptable, or unacceptable. The evaluation of behaviour acceptability is often guided by social norms, while social control mechanisms regulate behaviour in society. Moral values further influence perceptions of behaviour, determining what is considered common, usual, acceptable, or unacceptable in relation to others⁶². Notably, certain behaviours exhibited by children in response to specific conditions can impede their rehabilitation and the overall goals of Child and Youth Care Centres.

Modification refers to the act or process of changing something to enhance its effectiveness or acceptability. Behaviour modification is a structured learning approach wherein new skills and behaviours are acquired, undesired reactions and habits are diminished, and children are motivated to engage in positive changes. To effectively modify behaviour, particularly in children, a systematic and scientific approach is essential.⁶³ Research indicates that behaviour modification is more successful than traditional methods, such as corporal punishment, in addressing

⁵⁷ Obibuba 2020: 25

⁵⁸ Obibuba 2020: 25

⁵⁹ Egbule 2009: 77.

⁶⁰ Sharma, Malawade & Shrikhandes 2018: 39.

⁶¹ Sharma, Malawade & Shrikhandes 2018: 39.

⁶² Obibuba 2020: 26.

⁶³ Mmaduakolam 2008: 14.

disruptive behaviour among children in conflict with the law.⁶⁴ This approach fosters adaptive responses, whereas traditional punitive measures may yield inconsistent results.⁶⁵

It is widely accepted among psychologists that behaviours can be learned and unlearned through various psychological principles. Child and Youth Care Centres can implement a range of behaviour modification techniques to mitigate disruptive behaviours. These techniques include restorative justice, diversion programmes, prevention and early intervention strategies, assertiveness training, timeout, life modelling, role-playing, and self-management. Each of these techniques is grounded in established learning theories relevant to counselling relationships.⁶⁶

To maintain order within these centres, children's behaviours must be recognized and accepted by care workers, social workers, teachers, security personnel, and all personnel members. The application of fundamental principles of behaviour modification by management can promote more acceptable behaviours among children. For example, acknowledging that many maladaptive behaviours stem from negative backgrounds can inform rehabilitation programmes designed by educators and caregivers, thereby fostering more meaningful learning experiences. Research has shown that factors like parental conflict and aggression are predictive of property crime and disruptive behaviours in children.⁶⁷ Asalu further notes that children are more likely to resort to violence if they observe violent dynamics within their familial relationships.⁶⁸

Behaviour modification techniques can effectively enhance desired behaviours across various populations and settings.⁶⁹ These techniques have been successfully applied to address children's problematic behaviours, improve instructional methods in educational contexts, enhance classroom conduct, teach

⁶⁴ Podder, Das, SL, Chatterjee 2016: 2.

⁶⁵ Podder, Das, SL, Chatterjee 2016: 1.

⁶⁶ Obibuba 2020: 25.

⁶⁷ Anna Sutherland 2014: 49.

⁶⁸ Asalu 2012: 42.

⁶⁹ Sarafino 1996.

self-help skills to developmentally disabled children, reduce substance abuse, alleviate depression and anxiety, promote health, prevent illness, and improve workplace productivity and safety.⁷⁰ Egbule asserts that the techniques employed in behaviour modification are highly adaptable.⁷¹ Operant conditioning techniques, for instance, focus on consequences that reinforce target behaviours. Positive reinforcement involves the introduction of a favourable stimulus following the desired behaviour, while negative reinforcement entails the removal or reduction of an aversive condition contingent upon the occurrence of the target behaviour.⁷²

3.5.1 Techniques of behaviour modification

The primary aim of behaviour modification is not to elucidate the origins or mechanisms of specific behaviours; rather, it focuses exclusively on altering these behaviours through various methodologies. Key techniques employed in behaviour modification include positive reinforcement, negative reinforcement, punishment, flooding, systematic desensitization, aversion therapy, and extinction.⁷³

Positive Reinforcement involves the association of a favourable stimulus with a desired behaviour.⁷⁴ For instance, educators and social workers may reward children for exhibiting positive behaviour by providing them with stickers or privileges. Conversely, Negative Reinforcement entails the removal of an adverse stimulus following a particular behaviour, thereby increasing the likelihood of that behaviour being repeated.⁷⁵ An illustrative example is a child who throws a tantrum to avoid attending an anger management programme, resulting in the removal of their lunch snacks.

Punishment serves to diminish undesirable behaviours by introducing an unpleasant stimulus.⁷⁶ A common practice is isolating children from their peers as a consequence of inappropriate conduct. In contrast, Flooding involves exposing

⁷⁰ Sarafino 1996.

⁷¹ Egbule 2009: 4.

⁷² Egbule 2009: 4.

⁷³ Vijayalakshmi 2019: 20.

⁷⁴ Vijayalakshmi 2019: 20.

⁷⁵ Vijayalakshmi 2019: 20.

⁷⁶ Obibuba 2020: 28.

individuals to their fears in an intense manner, while Systematic Desensitization gradually teaches clients to maintain composure when confronting their fears.⁷⁷ For example, an individual with a pronounced fear of bridges may begin by viewing photographs of bridges, progressing to visualizing standing on a bridge, and ultimately walking across an actual bridge.

Aversion Therapy seeks to foster a more positive perception of individuals by emphasizing their commendable traits rather than their faults. This approach acknowledges that not all behaviours warrant aversion.⁷⁸ Finally, Extinction aims to eliminate unwanted behaviours through the removal of reinforcement. For example, a child placed in isolation for disruptive behaviour may eventually cease that behaviour as a result.

3.5.2 Technique of positive reinforcement

The principle of positive reinforcement holds that positive reinforcement will increase the frequency of any behaviour it follows. This technique has been widely used in controlling disruptive behaviour among children.⁷⁹ A behaviour contract is also called contingency management and it refers to a written agreement between the centre and the children. This agreement specifies the rights that children have when they are at the centre and the privileges the centre will provide if children behave in a certain desirable way. Also, specified in the contract, are bonuses for outstanding performance, penalties the children or centre must pay for failing to meet the terms of the contract, the conditions under which the contract may be negotiated as well as a termination date.⁸⁰

The principle of positive reinforcement posits that the introduction of a positive stimulus following a behaviour will enhance the frequency of that behaviour. This technique has been extensively utilized to manage disruptive behaviours among children.⁸¹ A Behaviour Contract, often referred to as contingency management,

⁷⁷ Obibuba 2020: 27.

⁷⁸ Obibuba 2020: 27; Vijayalakshmi 2019: 20

⁷⁹ Obibuba 2020: 25.

⁸⁰ Okoli 2002: 23.

⁸¹ Obibuba 2020: 25.

constitutes a formal agreement between the institution and the children. This contract delineates the rights of the children while at the centre, the privileges afforded to them for exhibiting desirable behaviours, as well as the bonuses for exceptional performance and the penalties for failing to adhere to the contract. It may also outline conditions for renegotiation and specify a termination date.⁸²

Ear Shooting is another behaviour modification technique aimed at fostering and maintaining desirable behaviours among children. This technique involves praising a child's positive behaviour within earshot of a significant individual in the child's life.⁸³ For instance, a teacher may commend a child with a history of disruptive conduct in the presence of their parents, thereby reinforcing the child's positive behaviour through social validation.

The Token Economy system reinforces expected behaviours through the provision of tokens, which can later be exchanged for rewards. Tokens may take various forms, such as faux currency, stickers, or symbols, while rewards can include snacks, privileges, or activities.⁸⁴ Nwankwo defines the token economy as a technique that enables therapists to provide conditioned reinforcers to individuals exhibiting targeted behaviours. The effectiveness of a token economy is contingent upon consistent reinforcement of positive behaviour; for example, rewarding a previously disruptive child for maintaining good conduct over a week can incentivize continued positive behaviour.⁸⁵

Shaping, as a technique, is employed to teach new behaviours by reinforcing successive approximations of the desired behaviour rather than waiting for the complete achievement of that behaviour.⁸⁶ The educator or social worker begins by clearly defining the target behaviour and reinforcing initial behaviours that resemble it. This process entails breaking down complex tasks into manageable steps and

⁸² Okoli 2002: 23.

⁸³ Dandapani 2002: 63.

⁸⁴ Obibuba 2020: 25.

⁸⁵ Nwankwo 2007: 4.

⁸⁶ Obibuba 2020: 27.

progressively reinforcing behaviours that increasingly align with the target behaviour until the child consistently demonstrates the desired behaviour.⁸⁷

The insights gained from this study are expected to be beneficial for both the centres and the children involved. Children will develop an understanding of the connection between achievement and behaviour modification, while centre management can employ these strategies to enhance behavioural outcomes among the youth in their care.

3.6 SOCIAL CONTROL THEORY

Social Control Theory is a significant sociological framework that underscores the importance of preventing juvenile delinquency and aiding children in avoiding legal conflicts.⁸⁸ This theory posits that criminal behaviour varies across different life stages, particularly emphasising a decline in criminality from early adulthood onward. It operates on the assumption that all individuals possess the inherent capability and motivation to commit crimes; however, many are deterred by the social consequences associated with deviant behaviour.

The foundation of Social Control Theory lies in the strength of an individual's social bonds—such as those to family, religious institutions, and community groups. Strong social bonds are believed to correlate with a decreased likelihood of criminal behaviour, as they foster adherence to the shared values and norms prevalent within these groups.⁸⁹ Additionally, the theory suggests that an individual's beliefs play a crucial role in deterring criminality. However, it also posits that merely manipulating these beliefs is insufficient if the broader social realities remain unchanged. Increased law enforcement efficiency, for instance, does not necessarily alter individuals' beliefs or reduce criminal activity.

⁸⁷ Okoli 2002: 23.

⁸⁸ Kumara 2021: 30.

⁸⁹ Schrek & Hirschi 2009: 307.

In the context of youth, the influence of peer associations is particularly salient. Peer delinquency can significantly shape beliefs and choices, potentially leading young individuals toward criminal involvement.⁹⁰ This interplay between beliefs, social associations, and morality underscores the complexity of decision-making processes concerning the acceptability of certain actions.⁹¹ The significance of social bonds is paramount, as they instil foundational belief systems, such as those derived from religious teachings. Therefore, a comprehensive approach is essential for effectively preventing delinquency among children and adolescents. This approach should encompass the involvement of families, communities, social services, and law enforcement agencies. In instances where criminal behaviour has already occurred, tailored rehabilitation strategies become necessary to prevent recidivism, as will be discussed in the subsequent section.

3.7 DESISTANCE THEORY

Desistance Theory focuses on the processes through which criminal offenders cease their offending behaviour, emphasizing the roles of various stakeholders, including the justice system and relevant organizations. This framework is critical for understanding how these entities can provide adequate support to children in conflict with the law. Individuals employ diverse mechanisms in their efforts to disengage from criminal activities, which may include psychological factors (internal influences), biological changes (such as brain maturation), sociological factors (e.g., social turning points like relocation), and labelling mechanisms (where individuals attain a refined social identity through destigmatization or redemption).⁹²

Research indicates that individuals are particularly vulnerable to criminal behaviour during late adolescence and early adulthood; however, they are also more likely to desist from such behaviours after this developmental stage. Consequently, punitive interventions within the criminal justice system that target children and emerging adults may disrupt an otherwise declining trajectory of criminal behaviour. The

⁹⁰ Schrek & Hirschi 2009: 309.

⁹¹ Costello & Laub 2020: 36.

⁹² Bucklen 2021: 3-4.

overrepresentation of minority youth at all stages of the juvenile justice process—including arrest, pre-trial detention, and sentencing—exacerbates the negative stigma associated with criminal justice responses, disproportionately affecting marginalized groups.⁹³

Bias in the justice system is evident in discrepancies between self-reports and official records, with continuity in offending being more pronounced in formal documentation.⁹⁴ A child with prior police encounters may face heightened sanctions for subsequent offenses. While the decision to abandon criminal behaviour may be made, the transformative journey often includes relapses and setbacks before achieving sustained desistance.⁹⁵

Three interrelated concepts are central to the study of criminal behaviour cessation: recidivism, termination, and desistance. Recidivism refers to repeat offending and serves as a metric for evaluating the effectiveness of juvenile justice interventions, typically measured by the commission of new crimes. Termination indicates the point at which an individual commits their final offense. In contrast, desistance represents a process rather than a singular event, broadly defined as “the process involving a series of cognitive, social, and behavioural changes leading up to the cessation of criminal behaviour”.⁹⁶ The desistance paradigm underscores the importance of monitoring both positive and negative life changes, offering valuable insights into the experiences of children in conflict with the law and the efficacy of juvenile justice interventions.

There is a pressing need for guiding principles to develop and implement interventions that promote desistance. Complete cessation of offending behaviour is unlikely to occur abruptly, particularly among children who have engaged in criminal activities from a young age.⁹⁷ Understanding desistance as a process rather than a discrete event has yet to be fully integrated into South African policies and

⁹³ Howell Feld & Mears 2012: 23.

⁹⁴ Farrington Piquero & Jennings 2013: 52.

⁹⁵ Kazemian 2021: 4.

⁹⁶ Kazemian, 2015a: 12.

⁹⁷ Kazemian, 2015a: 12.

practices. Many interventions adopt a result-oriented approach, prioritizing recidivism as a success indicator, which may obscure progress in other behavioural, cognitive, and social domains. Recidivism is often employed as an inverse measure of desistance, likely due to the convenience of available data.⁹⁸

Assessment of desistance should ideally extend beyond mere offending outcomes to encompass improvements in mental health, cognitive patterns, emotional regulation, social connections, and reintegration efforts.⁹⁹ The child justice system limits its effectiveness by focusing solely on negative outcomes as indicators of success, neglecting to track and identify positive changes.¹⁰⁰ The relationship between the child justice system and the youth typically concludes upon the child's reintegration into the community, leaving the child's progress reliant solely on their individual efforts. Positive youth development serves as a programmatic framework that encourages service providers to focus on the capacity of all children to thrive within supportive and safe environments characterised by positive relationships and meaningful activities.¹⁰¹ This paradigm involves monitoring not only recidivism but also various positive outcomes that can facilitate the desistance process, such as healthier relationships, academic or vocational engagement, improved self-esteem, conflict resolution skills, stress management, empathy, and compassion.

Evidence suggests that restorative strategies within law enforcement can contribute to preventing recidivism and supporting the desistance process.¹⁰² Restorative policing includes meetings between individuals accused or convicted of crimes and those affected by the offenses, facilitated by law enforcement, aimed at achieving some level of reconciliation.¹⁰³ Studies indicate that children randomly assigned to restorative justice interventions are less likely to re-offend compared to their counterparts who do not participate in such programmes.

⁹⁸ Kazemian, 2015a: 12.

⁹⁹ Howell Feld & Mears 2012: 23.

¹⁰⁰ Butts Pelletier & Kazemian 2018: 6.

¹⁰¹ Butts Pelletier & Kazemian 2018: 1.

¹⁰² Sherman & Strang, 2007: 26.

¹⁰³ Kazemian 2021: 4.

Moreover, courts, prosecutors, and judges play crucial roles in the desistance process through their case processing decisions. Disparities in sentencing practices disproportionately impact racial and ethnic minorities, particularly the economically disadvantaged. Key considerations regarding the relationship between court practices and desistance from crime include the detrimental effects of custodial sentences on reoffending rates, the discretionary powers held by prosecutors, and the consideration of age in sentencing decisions.¹⁰⁴

For practitioners and policymakers, transitioning from a focus on recidivism to a desistance-oriented paradigm requires a commitment to: (1) broaden assessments beyond behavioural outcomes to include known correlates of desistance, (2) monitor both progress and setbacks, and (3) acknowledge that relapses are an inherent part of the change process.¹⁰⁵ This shift is essential for fostering a more comprehensive understanding of and approach to juvenile offending and desistance.

3.7.1 Explaining the roles and duties of stakeholders in CYCCs

3.7.1.1 Department of Police

The Department of Police bears the responsibility of promptly notifying the parents or guardians of a child upon their arrest. This notification must include comprehensive details regarding the time, location, and date of the child's court appearance. In cases where the nature of the offense warrants, the arresting officer should consider the possibility of releasing the child to their parents or guardians. Additionally, police officers are tasked with verifying the child's age during this notification process. This initial step is crucial in safeguarding the child's rights and ensuring that the actions of law enforcement contribute positively to the child's rehabilitation and deter future criminal behaviour.

3.7.1.2 Department of Justice and Constitutional Development

The Department of Justice and Constitutional Development plays a pivotal role by supporting the Department of Social Development in facilitating access for probation

¹⁰⁴ Kazemian 2021: 12.

¹⁰⁵ Kazemian 2021: 12.

officers to all children appearing in court. This is operationalized by designating a specific court within each district to handle youth matters and, where feasible, channelling regional court cases involving children through a singular regional court. Sufficient time must be allocated for assessments, allowing for informed decisions regarding suitable placements, including the availability of spaces in recommended facilities. Proper execution of these responsibilities is vital to prevent overcrowding in CYCCs, which can hinder adequate rehabilitation and increase the likelihood of recidivism among children.

3.7.1.3 National Prosecuting Authority

Following the completion of assessments, probation officers are required to submit the assessment forms to the prosecutor. The prosecutor must familiarize themselves with the assessment contents, alongside the case docket, to determine the appropriateness of prosecution. Should the case require further investigation or a trial, considerations regarding the child's placement become paramount. The probation officer must inform the prosecutor about the availability of placements in various facilities. If the child can potentially be released into the custody of a parent or guardian who is not present in court, the prosecutor should request that the probation officer and investigating officer make efforts to ensure the guardians' attendance. Due to resource limitations within both the police and the Department of Social Development, immediate efforts to locate parents may not be feasible, necessitating the temporary detention of the child.

3.7.1.4 Department of Health

In instances where a child's age is uncertain and there is suspicion that the child may be over 18, the magistrate may estimate the child's age pursuant to Section 337 of the Criminal Procedure and Child Justice Act. Information gathered during the probation assessment can aid the court in this determination. While the Child Justice Act allows for age assessment by district surgeons or medical officers, referrals may be impeded by their unavailability. Additionally, children exhibiting psychological issues post-admission to secure care facilities may require observation or treatment in a psychological ward. However, challenges in accessing such services can result in these children remaining in care facilities ill-equipped to

address their needs, thereby increasing their vulnerability to abuse and negative influences from peers.

3.7.1.5 Department of Public Works

The Department of Public Works is tasked with the maintenance of secure care facilities. However, maintenance is often not prioritized, leading to significant deterioration of these facilities, which can become vandalized and uninhabitable. This neglect compromises the safety of the children housed within, infringing upon their human rights to adequate shelter and care. While not widely documented, the psychological ramifications of such neglect may lead children to perceive a lack of concern for their safety and well-being.

3.7.1.6 Social workers

Social workers are responsible for assessing children in need of healthcare, mental health support, and occupational therapy. They must ensure continuity of services by conducting developmental assessments as part of a multidisciplinary team and developing care and individual development plans. Therapy—both individual and group—should be informed by these plans and conducted by a team that includes social workers, child and youth care workers, psychologists, occupational therapists, and nursing personnel. Regular reviews of these plans are essential. Furthermore, ongoing communication between the residential care facility and the probation officer is critical, as the probation officer must maintain contact with the child, their family, and the secure care centre, participating in care plan reviews.

3.7.1.7 Child and youth care workers

Child and youth care workers are responsible for the reception and admission of children into the dormitory and facilitating their adjustment to the new environment. This process requires accompanying documentation, including the J7 form, body receipts, assessment reports, and birth certificates. Immediate needs such as food, bathing, and clothing must be addressed. Each child should be assigned a room, and their admission must be documented in the occurrence book and registers. Additionally, child and youth care workers should contact the child's family to inform

them of the child's admission and provide an adequate orientation about the centre's operations and expectations.

3.8 CONCLUSION

This chapter delineates the theoretical framework underpinning the research, wherein several key theories were employed to elucidate and contextualize the study. These theories not only clarify the motivations behind human behaviour but also articulate the relationships among the concepts pertinent to the investigation. The Classical Theory provides a foundational understanding of the rational decision-making processes that individuals, particularly adults, engage in when contemplating criminal activity. However, this raises critical questions regarding the capacity of minors specifically those under the age of 18 to make such rational choices. In this context, the Routine Activity Theory posits that children may be susceptible to manipulation or grooming by influential figures, such as parents or relatives. Consequently, the role of guardianship becomes paramount, as it is essential for caregivers to ensure that a child's environment does not foster criminal behaviour.

Further emphasizing the significance of environmental influences, Bronfenbrenner's Ecological Systems Theory offers insights into human development by asserting that a child's growth is shaped by their immediate surroundings as well as broader contexts, including schools, communities, and social media. These varying environments can significantly impact a child's susceptibility to criminality and conflicts with the law. The implications of this environmental influence extend to children in conflict with the law who reside in Child and Youth Care Centres, where the environment plays a critical role in their rehabilitation and decisions to disengage from criminal activities.

Additionally, the Social Bond Theory and Social Control Theory reinforce the assertions made by both the Classical Theory and Ecological Systems Theory, highlighting the impact of social associations on individual behaviour. This indicates that social bonds and community involvement are influential factors for children and adolescents when contemplating participation in criminal acts or victimization.

Beyond familial and peer relationships, engagement in recreational and sporting activities, as well as other constructive pursuits within neighbourhoods, significantly affects the behaviour of youth. A lack of stimulating activities can lead to boredom, potentially driving children towards delinquency, substance abuse, and other risky behaviours. Both theories emphasize the necessity of instilling robust belief systems in children, fostering strong moral values that may deter them from engaging in criminal conduct.

The concept of transformation is addressed through the Behaviour Modification Theory, while the mechanisms for disengaging from a life of crime are elucidated by the Desistance Theory. Collectively, these frameworks underscore the importance of comprehensive support from various organizations within the justice system to facilitate rehabilitation and encourage positive behavioural change among youth in conflict with the law. Although individual factors are relevant, the roles of institutions and officials become crucial when minors are placed in CYCCs.

In summary, this chapter illustrates that children in conflict with the law are embedded within a complex structure of governmental and non-governmental institutions. It highlights the necessity of a robust and supportive framework for the healthy development of children. A weak structural system increases the likelihood of criminal behaviour among youth. Furthermore, even after engaging in criminal offenses and being referred to CYCCs, these children remain part of a systemic framework. Failure of the various stakeholders to provide necessary services constitutes a violation of their rights, underscoring the imperative for each stakeholder to assume responsibility for the welfare and protection of children in CYCCs. The subsequent chapter will detail the methodology employed in the study, including data collection and analysis techniques.

CHAPTER 4

RESEARCH METHODOLOGY

4.1 INTRODUCTION

Research is defined as a systematic process of collecting and logically analysing data for a specific purpose. The methods employed in research refer to the techniques used to gather and analyse this data. These methods are designed to facilitate the reliable and valid acquisition of knowledge. A systematic and purposeful research methodology is carefully planned to yield insights into a particular research problem.¹

This chapter elucidates the research process, detailing the methodology employed in this study and providing a rationale for its selection. It outlines the various stages of the research, including participant selection, data collection, and data analysis. The chosen methods and techniques were deemed appropriate for addressing the specific research questions posed in this study.

A research methodology or strategy is determined by the research question(s) and the subject being investigated. As a result, the research format used in an investigation should be seen as a tool to answer the research question(s).² This research was guided by the following research questions:

- a) What types of violations, crimes, and acts of violence are prevalent in Child and Youth Care Centres?
- b) What are the measures taken by governmental and non-governmental role players to address these challenges faced in Child and Youth Care Centres?
- c) Is the treatment of children in Child and Youth Care Centres consistent with the law protecting their rights?
- d) Why, despite comprehensive legislation, constitutional imperatives, and extensive human rights developments, are children in conflict with the law

¹ McMillan & Schumacher 2010.

² Denzin & Lincoln 2005: 92.

still suffering high rates of multiple human rights violations, crimes, and acts of violence in South African Child and Youth Care Centres?

- e) Are children in conflict with the law allowed to be involved in or respond to any decisions affecting them?

This research employed a qualitative methodology that encompassed both a literature review and primary data collection. The researcher engaged in observation, discovery, description, comparison, and analysis of themes and underlying dimensions related to children in conflict with the law within Child and Youth Care Centres. Interviews were conducted across six different CYCCs located in the Free State and Eastern Cape provinces to identify the violations, crimes, and acts of violence most prominently affecting children in these facilities. The selected research method proved advantageous, enabling the researcher to explore not only basic statistics but also the opinions, feelings, and experiences of children regarding the violations, crimes, and acts of violence they encountered in CYCCs. Furthermore, the qualitative approach allowed for an exploration of diverse attitudes while observing participant behaviour, thereby fostering a deeper understanding of the investigated concepts.³

4.2 RESEARCH GOAL AND OBJECTIVES

A research goal is defined as “the intended outcome one seeks to achieve following the completion of a study”.⁴ It serves to guide the exploration, description, and explanation of specific concepts related to the chosen research topic.⁵ The researcher perceives the goal as a focal point that necessitates deliberate coordination to attain. In this context, the primary goal of the present research is to develop a comprehensive understanding of the violations, crimes, and acts of violence encountered by children in conflict with the law, particularly at the hands of

³ Daniel 2016: 95

⁴ Descombe 2011: 49

⁵ Mouton and Marais in De Vos, Strydom, Fouche & Delport, 2005:105.

their peers and the officials tasked with their protection within Child and Youth Care Centres.

Objectives are essential components that inform planning and strategic activities, functioning as the foundation for policy formulation and performance evaluation.⁶ They delineate the individual, measurable steps necessary to achieve the overarching research goal within a specified timeframe.⁷ The researcher understands objectives as aspects that one plans to achieve, which are measurable. To achieve the mentioned goal the following objectives were formulated for the study:

- a) To explore the treatment of children in conflict with the law by childcare officials and other inmates in Free State and Eastern Cape Child and Youth Care Centres.
- b) To assess the role that governmental and non-state actors play in ensuring the protection of children in conflict with the law.
- c) To examine whether the criminal justice system considers the best interest of the child in dealing with children in conflict with the law.

The subsequent subsection will detail the research approach employed to achieve these goals and objectives.

4.3 RESEARCH APPROACH

This research project employed a qualitative approach, aimed at gaining an in-depth understanding of social phenomena within their natural contexts. A fundamental characteristic of qualitative research is that it often arises from direct observation. As articulated in the literature, qualitative research “is a procedure that operates within a naturalistic, interpretive domain, guided by the standards and principles of a relative orientation, a constructivist ontology, and an interpretive epistemology”.⁸

⁶ Hope & Timmel 2007:119.

⁷ Fouche in De Vos, Strydom, Fouche & Delpont, 2002:108.

⁸ Sarantakos 2013: 36-37.

This method can be characterized both by the types of data it generates and the analytical techniques it employs.⁹

Qualitative research serves as a means to explore and comprehend the meanings that individuals or groups assign to social or human issues. The research process is dynamic, incorporating emerging questions and procedures that shape the direction of the inquiry. This involves the collection of data that aligns with overarching themes and the subsequent interpretation of that data by the researcher.¹⁰ Common to all qualitative approaches is a focus on phenomena occurring within natural settings, emphasizing the complexity of these occurrences.¹¹ The purpose of qualitative research is to deepen the understanding of the phenomena of interest.¹²

The researcher's conception of qualitative research encompasses the exploration, description, understanding, and analysis of unstructured data. The defining characteristics of qualitative research include:¹³

- a) Conducting research in natural, rather than laboratory, settings.
- b) The researcher serving as the primary instrument for data collection.
- c) Collecting data from multiple sources, rather than relying on a singular data point.
- d) Engaging in an inductive process for data analysis.
- e) Focusing on the meanings that participants attribute to the phenomena under investigation.
- f) Utilizing an emergent research design that is flexible rather than predetermined.
- g) Emphasizing interpretive practices.
- h) Adopting a holistic perspective.

⁹ Remler & Van Rayzin 2011: 65-57.

¹⁰ Creswell 2009: 4.

¹¹ Leedy & Ormrod 2013: 139.

¹² Bouma *et al.* 2012: 46

¹³ Creswell 2009: 175-176.

The qualitative research approach was deemed suitable for this study as it aimed to preserve and analyse the situational context, content, and experiences related to social location. This method facilitated the gathering of open-ended information regarding the experiences and challenges faced by children in conflict with the law within Child and Youth Care Centres. The qualitative approach was selected for its capacity to explore and elucidate the complex experiences and challenges encountered by these children. Qualitative research encompasses various forms of non-numeric data, including interviews, written texts or documents, visual images, behavioural observations, and case studies. In this study, qualitative methods assisted in evaluating and understanding the unquantifiable aspects of the rights violations experienced by children in conflict with the law, drawing upon insights derived from the reviewed literature.

4.4 RESEARCH DESIGN

Research design serves as a systematic framework guiding an investigation aimed at uncovering specific information. It outlines the methodology for data collection and analysis, providing a structured approach to the research process. As articulated in scholarly literature, “the research design explains in detail how the researcher intends to conduct the work and how the questions posed by each research question will be addressed”.¹⁴ The research design comprises two primary phases: the planning stage and the execution stage. During the planning phase, researchers formulate a comprehensive design and outline for the study. In the execution phase, they proceed to collect and analyse the data. The research design functions as a “blueprint for fulfilling objectives and answering questions”, thus ensuring that the research is both coherent and systematic.¹⁵

The selection of an appropriate research design can be complex due to the wide array of available methods, techniques, procedures, protocols, and sampling plans. Researchers may opt for various approaches, such as secondary data analysis,

¹⁴ Sarantakos 2013: 120.

¹⁵ Cooper and Schindler 2014: 82.

case studies, surveys, experiments, or simulations, depending on the specific objectives of the study. In this context, the research design is characterised as a “plan or strategy specifying how and from where participants will be selected, the data gathering techniques to be employed, and the methods of data collection”.¹⁶ In this study, the researcher has collected data in the form of qualitative observations and narratives to gain a comprehensive understanding of the violations, crimes, and acts of violence experienced by children in conflict with the law within Child and Youth Care Centres.

4.4.1 Exploratory, descriptive, and contextual research design

The exploratory research design is particularly valuable for elucidating causal explanations of phenomena that are either unfamiliar or inadequately understood by the researcher. This approach is instrumental in conducting preliminary investigations into relatively uncharted areas of study. Researchers adopting this method typically engage in an open, flexible, and inductive approach, seeking to uncover new insights into the phenomena under investigation.¹⁷ It is essential for exploratory research designs to articulate the strategies for data collection and the sources from which information will be obtained. As noted in the literature, exploratory studies serve three principal purposes:¹⁸ (1) to satisfy the researcher’s curiosity and enhance understanding, (2) to assess the feasibility of conducting a more extensive study, and (3) to refine the methods to be employed in subsequent research endeavours. This form of research is foundational in developing knowledge about a problem or question and is particularly effective for examining phenomena where existing knowledge is limited.

The descriptive research design is characterised by its focus on identifying the attributes of an observed phenomenon or exploring potential associations among multiple phenomena.¹⁹ Unlike experimental approaches, descriptive research does not aim to alter or manipulate the situation being studied; rather, it seeks to examine

¹⁶ Nieuwenhuis in Maree 2007: 70.

¹⁷ Swaraj 2019: 666.

¹⁸ Babbie 2007: 89.

¹⁹ Neuman 2006: 33.

and document the situation as it exists. This descriptive nature facilitates a clearer interpretation of events and behaviours within their contextual framework.²⁰ Descriptive qualitative research encompasses both the identification of characteristics of observed phenomena and the exploration of associations among them.²¹

Contextual research design aims to describe and understand events within their concrete and natural settings. A comprehensive understanding of events requires consideration of the broader context in which they occur, as this context confers meaning to the events in question.²² Contextual research focuses on identifying existing elements within the social world and examining their manifestations.²³ This design is particularly pertinent as it investigates phenomena in specific contexts, thereby allowing for a richer understanding of the subjects studied.²⁴ The integration of contextual research design is justified by its commitment to exploring how social dynamics shape experiences, especially in relation to the child justice system. The researcher selected these research designs due to their suitability for qualitative case studies involving human subjects. Together, these approaches facilitated an exploration of the experiences and challenges faced by children who have interacted with the child justice system, thereby enriching the overall understanding of this critical issue.

4.5 RESEARCH POPULATION

The research population constitutes the primary focus of a study, encompassing a diverse range of entities such as individuals, groups, organisations, human products, events, and the conditions to which these entities are subjected. Specifically, the research population refers to any collective of individuals, events, or objects that share a common characteristic, thereby representing the entirety of

²⁰ Leedy & Ormrod, 2013: 81

²¹ Webb & Auriacombe 2006: 33.

²² Babbie & Mouton 2001: 13.

²³ Ritchie & Lewis 2005: 27.

²⁴ Ritchie & Lewis 2005: 27.

cases relevant to the investigation.²⁵ In the context of research, a population is defined as the complete set of elements that a study aims to examine, from which the researcher intends to conclude.²⁶ It serves as the foundation for generalising the results derived from sampled cases.²⁷ Importantly, these cases are not exclusively limited to human subjects; they can also encompass various non-human elements.²⁸

For this particular study, the researcher conceptualises the population as a group of individuals who share similar experiences, specifically focusing on children within Child and Youth Care Centres. The research population comprised detained, awaiting trial, and sentenced children residing in six CYCCs. The decision to conduct the study in the Free State and Eastern Cape provinces was informed by the hypothesis that children's experiences within CYCCs may vary significantly across different geographical locations. Consequently, it is essential to capture a breadth of perspectives regarding the conditions these children encounter. The study involved a sample of 100 children whose rights were reportedly not protected within the CYCCs at the time of data collection. This population is critical for understanding the broader implications of institutional care on vulnerable youth.

4.6 SAMPLING AND SAMPLING TECHNIQUE

Sampling is defined as “a portion or subset of the population that will be selected for inclusion in the study”.²⁹ This concept is further articulated as “part of a whole or a subset of measurements drawn from the population in which a researcher is interested, and should be representative of the population of the study”.³⁰ The purpose of sampling is to enable researchers to investigate a relatively small

²⁵ Fox & Bayat 2007: 52.

²⁶ Babbie 2007: 115

²⁷ Bless & Higson-Smith 2006: 23.

²⁸ Fox & Bayat 2007: 52

²⁹ Yegidis & Weibach 1996 cited in Alpaslan, 2010-2013: 19.

³⁰ Strydom cited in De Vos et al., 2010: 197.

segment of the target population while still obtaining data that accurately reflects the characteristics of the entire population.³¹

A sample is typically derived from a larger population, allowing researchers to infer that the characteristics identified in the sample are likely representative of those within the broader population. In this context, the researcher views the sample as a small, representative portion of research participants that embodies the larger population of interest. For this study, a sample of 100 children in conflict with the law was selected. These children had experienced infringements of their rights and shared similar experiences concerning Child and Youth Care Centres (CYCCs). Participants were informed about the study and voluntarily chose to take part.

The researcher established specific criteria for inclusion in the sample, ensuring that only participants who met the following conditions were selected:

- a) Children who reside in the Free State and the Eastern Cape provinces
- b) Children who are available and willing to participate in the study who have been fully informed of what the study entails, and who participated out of their own free will.
- c) Children who had been detained for more than 24 hours, and who were awaiting trial and sentencing.
- d) Children of both genders.

The subsequent subsection will provide details on the data collection methods employed to gather the necessary information for this study's findings.

4.7 DATA COLLECTION

4.7.1 Duration of visits at CYCCs

The duration of visits to Child and Youth Care Centres was influenced by various factors, including the objectives of the visit, the characteristics of the facility, and the population of children present. Consequently, the time allocated for preparation was reflective of these considerations. Short visits, lasting only a few hours, were

³¹ Paten 2004: 45.

inadequate for a comprehensive understanding of the operational dynamics within the CYCC environment. It is important to note that the primary aim of the researcher was not to evaluate the functions of the CYCCs but rather to conduct interviews with the children residing in these facilities.

In practice, the duration of interviews varied significantly, ranging from a single day to two weeks, with an average visit length of three days specifically for correctional facilities or CYCCs. During the preparatory phase, the researcher ensured that adequate time was allocated to each institution, taking into account the size of the facility and the nature of the interviews to be conducted. Research activities typically spanned one day at each centre, utilizing two distinct sets of questionnaires one for individual interviews and another for group discussions.

In the morning, all children completed their individual questionnaires, which were designed to be filled out within a two-hour timeframe. These individual interviews were conducted discreetly, ensuring that children were out of earshot and sight of the personnel. Measures were taken to safeguard against any potential reprisals for participating children. In the afternoon, the children were organised into two focus groups. The focus group discussions, lasted for three hours, and provided valuable insights into the shared experiences of the children within the CYCCs and facilitated the identification of common challenges as well as an understanding of the prevailing atmosphere and culture within the centres.

The nature and purpose of the interviews dictated the researcher's approach, which was predefined prior to the study. The centres selected for the research were chosen at random, and not all children within each centre were interviewed. The researcher conducted interviews with 17 children from each centre, deeming the allocated time sufficient for comprehensive data collection. The researcher's thorough preparation facilitated a smoother interview process.

4.7.2 Data collection methodology

Data collection is a systematic process employed to gather information, and the collection of qualitative data involves various methodologies that differ across

disciplines.³² Data collection methods encompass the procedures that specify the techniques, measuring instruments, and activities to be employed in the execution of a research study.³³ The researcher conceptualizes data collection methods as a multi-faceted process of information gathering through diverse approaches.

To collect data, the researcher utilized semi-structured interviews that included a series of open-ended questions outlined in an interview guide. This approach focused on specific topics of inquiry, allowing for an interactive dialogue. Semi-structured interviews facilitate both one-on-one interactions and focus group discussions, typically conducted in face-to-face settings. This format provides a flexible structure that enables the researcher to explore emergent themes organically.³⁴

Interviews are widely recognized as one of the most effective data collection techniques within research. The development of a high-quality interview questionnaire is crucial for ensuring the validity and reliability of the collected information.³⁵ Various types of interviews exist, including structured and unstructured formats. In this study, data was also collected through structured questionnaires to establish a demographic profile of participants. These questionnaires yielded high-quality data, capturing the state of affairs at a particular moment, as well as the opinions of participants.

Focus group interviews and participant observation are prevalent methodologies for qualitative data gathering.³⁶ An interview, in this context, serves as a purposeful conversation aimed at allowing children to articulate their experiences in detail and in an environment where they feel comfortable. A focus group interview involves assembling a small group to discuss specific issues, guided by a researcher with a predetermined list of topics. Participant observation entails the direct observation and recording of data, necessitating that the researcher immerse themselves in the

³² Fox & Bayat, 2012: 70.

³³ Richard and Grinnell 1993: 440.

³⁴ Alpaslan 2010: 22.

³⁵ Jarbandhan & Schutte, 2006: 674.

³⁶ Fossey, Harvey, McDermott, & Davidson 2002: 726.

culture being studied.³⁷ In this study, the researcher engaged with participants within the same setting, facilitating a clearer understanding of the children's behaviours and interactions. The use of semi-structured interviews was particularly beneficial, as it allowed for the exploration of children's knowledge, views, experiences, and coping strategies elements that are integral to understanding their social reality.³⁸ In both semi-structured and focused interviews, the researcher utilized questions included in the interview guide to maintain focus on the relevant issues.

4.8 DATA ANALYSIS

This research study employed a thematic data analysis method to interpret the perspectives and experiences of children in conflict with the law within Child and Youth Care Centres. This systematic approach enabled the researcher to quantify the frequency of identified themes, thereby enhancing the overall interpretive depth of the research findings.³⁹ The principal themes were derived from the study's research objectives; however, additional subthemes emerged during the data analysis process.⁴⁰ The researcher adhered to a non-linear sequence of phases, which are outlined below:

Phase 1 involved the researcher becoming acquainted with the data. This phase included an immersive engagement with the data, during which the researcher documented initial thoughts and theories, maintained comprehensive records of raw data, and made supplementary notes. Phase 2, termed generating initial quotes, involved the practice of triangulation, whereby the researcher employed various methods and data sources to gain a holistic understanding of the phenomena under investigation.⁴¹ Records of all meetings and discussions were meticulously kept during this phase. Phase 3 focused on theme identification. This phase required the researcher to establish connections among the identified themes while also discerning the hierarchical relationships between them and related concepts. Phase

³⁷ Steubert & Carpenter 2007: 459.

³⁸ Mason 2009: 63.

³⁹ Lincoln and Guba's 1985: 223

⁴⁰ Lincoln and Guba's 1985: 223

⁴¹ Carter et al. 2014: 245.

4 consisted of reviewing the identified themes. The researcher revisited the raw data to ensure that the themes adequately represented the data and the research objectives. Phase 5 entailed the definition and naming of themes, supplemented by debriefing sessions with peers and experts in the field. This collaborative process served to validate the identified themes and enhance the rigor of the analysis. Phase 6 involved the development of the research study, during which the researcher articulated the theoretical frameworks, methodological approaches, and analytical choices employed throughout the research process. These elements were thoroughly discussed in the methodology chapter.

By following these systematic steps, the researcher aimed to achieve a high level of trustworthiness in the findings. Further details regarding the data analysis process are elaborated upon in the subsequent subsection.

4.9 TRUSTWORTHINESS

In qualitative research, the absence of numerical measurements necessitates a rigorous approach to establishing the credibility, transferability, dependability, and confirmability of findings. It is imperative for researchers to implement strategies that mitigate bias and enhance the overall trustworthiness of their studies.⁴² The qualitative research process is often characterized by a non-linear interplay among data collection, interpretation, and analysis. Consequently, researchers must meticulously document and articulate their methodologies to foster confidence in the integrity of their studies. This involves ensuring that ethical principles are adhered to throughout the research process, from planning to execution and reporting.

4.9.1 Credibility

The various phases outlined above are instrumental in ensuring the credibility of this study. Credibility is understood as the degree to which the findings authentically represent the phenomena under investigation. In this study, the researcher employed triangulation as a primary strategy, which involved cross-verifying data

⁴² Stahl and King 2020: 26.

against multiple sources to identify patterns and ensure consistency.⁴³ The researcher exclusively utilised peer-reviewed articles and sourced organizational reports from accredited websites, thereby enhancing the reliability of the information gathered. Additionally, the incorporation of diverse data collection methods and the engagement of peers and field experts served to further bolster the credibility of the study.

4.9.2 Transferability

Transferability pertains to the applicability of the study's findings to other contexts and situations.⁴⁴ To facilitate this, the researcher provided detailed contextual information that enables readers to relate the research to their own circumstances or analogous situations. This process involves sharing comprehensive details about the population, sampling frame, methodologies, and results. The researcher posits that these disclosures will assist readers in drawing meaningful comparisons and understanding the broader implications of the findings.

4.9.3 Dependability

Dependability refers to the consistency and reliability of research findings, as well as the thoroughness with which research methods are reported. The methodology must be articulated in such a way that independent auditors can follow, assess, and critique the research process.⁴⁵ This dimension of trustworthiness underscores the study's capacity for reproducibility. The researcher meticulously detailed each step taken throughout the research process, thereby enabling other researchers to replicate the methods and potentially yield similar results. Furthermore, this thoroughness in reporting not only benefits external validation but also enhances the researcher's understanding and efficiency in conducting the study.⁴⁶

⁴³ Stahl and King 2020: 27

⁴⁴ Johnson, Adkins, & Chauvin 2019: 8

⁴⁵ Stahl and King 2020: 27

⁴⁶ Nowell, Norris, White, and Moules 2017: 3.

4.9.4 Confirmability

Confirmability relates to the extent to which the findings can be substantiated as a reflection of the participants' narratives, free from researcher bias.⁴⁷ The researcher acknowledges that confirmability is crucial for establishing confidence in the authenticity of the study's findings. To achieve a satisfactory level of confirmability, the researcher compared the results of this study with those from other published works, ensuring alignment with existing literature. This comparative analysis is presented in chapter five of the study, where the researcher contextualises the findings within the broader corpus of qualitative research.

In summary, the dimensions of trustworthiness, credibility, transferability, dependability, and confirmability are key in qualitative research, guiding researchers in establishing the integrity of their studies and fostering confidence among readers.

4.10 ETHICAL CONSIDERATIONS

In qualitative research, ethical considerations are paramount, particularly due to the sensitive nature of the information provided by participants.⁴⁸ Researchers must implement specific measures to protect study participants, especially when engaging with vulnerable populations. The current study highlights the heightened ethical responsibilities associated with interviewing children, as they may experience feelings of frustration and overwhelm during the data collection process.

To uphold ethical research principles, participants provided voluntary informed consent by signing consent forms, thus affirming their willingness to participate in the study. The researcher ensured that participants, specifically children, received comprehensive information regarding the study's purpose, its motivations, and the expectations for their involvement. Furthermore, ethical approval was obtained from the Ethics Committee of the University of the Free State, underscoring the commitment to conducting the research responsibly and ethically. The researcher's ethical clearance number is UFS-HSD2022/0006/22.

⁴⁷ Johnson *et al.* 2019: 8.

⁴⁸ Arifin 2018: 30.

Confidentiality and anonymity were rigorously maintained, with no identifying information disclosed that could link participants to the study.⁴⁹ Importantly, the children were not offered any incentives for their participation. Instead, the researcher emphasised the significance of their contributions, outlining how their involvement could lead to meaningful and positive changes in the relevant field.

4.11 CONCLUSION

This chapter delineates the methodologies and techniques employed by the researcher to fulfil the objectives of the study. The systematic presentation of the steps undertaken, along with the rationale for each, elucidates the researcher's approach to investigating the treatment of children in conflict with the law by childcare officials and fellow inmates within Child and Youth Care Centres in the Free State and Eastern Cape regions. Additionally, the chapter assesses the roles of governmental and non-state actors in safeguarding the rights of these children and examines whether the criminal justice system prioritises the best interests of the child in its dealings with children in conflict with the law. The subsequent chapter will present the results and discussions, ultimately leading to a comprehensive overview of the study's findings.

⁴⁹ Ryerson University 2017: 3.

CHAPTER 5

LAW VERSUS PRACTICE – A CRITICAL ANALYSIS OF CHILD PROTECTION IN THE EASTERN CAPE AND FREE STATE CHILD AND YOUTH CARE CENTRES

5.1 INTRODUCTION

Data analysis involves organizing, structuring, processing, and summarizing information to give it meaningful context and interpretation. There is a disconnect between the rights of children in conflict with the law as established in the Constitution and other legal instruments versus the actual implementation of those rights. Chapter 2 provides a comprehensive discussion of the legal protections for children in conflict with the law, and this chapter aims to examine how effectively those rights are applied in practice and evaluate whether children truly benefit from the rights granted to them.

This chapter further explores the treatment of children in conflict with the law by personnel and other inmates at Child and Youth Care Centres in the Free State and Eastern Cape provinces, which may constitute violations of their rights. Details on the data collection methodology were provided in Chapter 3. It was indicated that interviews were conducted at five different CYCCs using qualitative and quantitative methods to understand children's experiences, opinions, and problems.

Two questionnaires were distributed to the children – one focused on personal information, centre conditions, family contact, education, and rights, while the second focused on their treatment and the overall atmosphere and culture within the CYCCs. In total, 200 questionnaires were collected. This chapter provides the analyses of the interview findings to determine if there is a gap between the legal protection and the actual implementation and experiences of the children.

A total of 100 children in conflict with the law from five Child and Youth Care Centres completed the questionnaires accurately. Among them, 69 children were unsentenced and awaiting trial, while 31 had already been sentenced.

Table 5.1 Logistics of the CYCCs that were investigated in the Free State and Eastern Cape provinces

Province	Name of the centre	Total capacity	Number of children who participated
Free State	Bloemfontein Secure Care Centre	50	11
Free State	Thabo Mofutsanyana Secure Care Centre	68	8
Eastern Cape	John X Merriman Secure Care Centre	100	30
Eastern Cape	Enkuselweni Secure Care Centre	50	28
Eastern Cape	Bhisho Secure Care Centre	100	23

The CYCCs in the Eastern Cape and Free State provinces are facilities aimed at caring for and rehabilitating children who have come into conflict with the law. These centres' primary goal is to ensure the safety and security of these children while emphasising rehabilitation over punishment. They offer a range of programmes designed to assist young offenders' reintegration into society, including educational and vocational training, counselling, and life skills development. The main objectives are to lower recidivism rates, foster social reintegration, and create a supportive environment for personal growth.

The Eastern Cape has a much higher participation rate, with 81 children, compared to the Free State, with only 19 children participating. Additionally, both centres in the Free State exhibit low participation rates, particularly the Thabo Mofutsanyana Secure Care, which has the lowest at just 8 children. In contrast, the Enkuselweni Secure Care Centre in the Eastern Cape stands out, with a participation rate of 38 children.

5.2 INFORMATION ABOUT CHILDREN IN CONFLICT WITH THE LAW

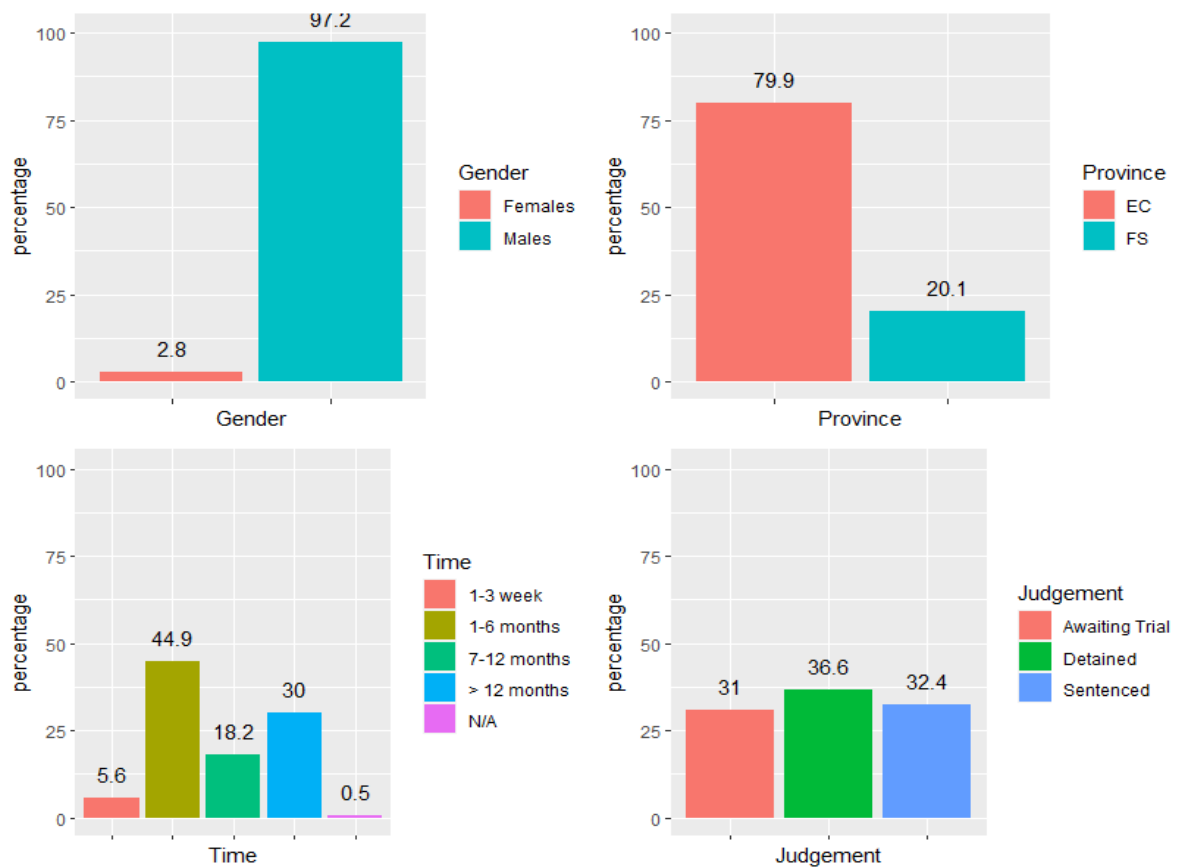


Figure 5.1 Summary of responses regarding personal information and judgment.

Gender

The data in Figure 5.1 (first graph) shows that the majority of the respondents (97.2%) were male, while females made up a smaller proportion (2.8%) of the total

respondents. All of the female participants were housed at the John X Merriman Secure Care Centre, separately from the male participants.

Where are you from?

The data in Figure 5.1 (second graph) indicate that the majority of the children who participated are from the Eastern Cape province. Out of the 100 participants, 81 reside in the Eastern Cape. The Eastern Cape province accounts for 79.9% of the respondents in the sample, while the Free State province makes up the remaining 20.1%.

The higher proportion of children from the Eastern Cape province who were in conflict with the law can be attributed to the fact that the study investigated three centers in the Eastern Cape province with a larger total capacity than the two centers surveyed in the Free State province, which had a total capacity of less than 100.

How long have you been at the centre?

The respondents stayed for various lengths of times in the centers, ranging from as short as one week to more than 12 months. The data in Figure 5.1 (third graph) show that 44.9% of participants had been in the centers for one to six months, followed by 30% of respondents who had been in the centres for 12 months or longer.

Detained, awaiting trial or sentenced?

Figure 5.1 (fourth graph) depicts the distribution of different judicial outcomes for the participants. The three main categories are:

1. Detained
2. Awaiting trial
3. Sentenced

The detained category represents the highest percentage, making up 36.6% of the total respondents. Most respondents were in detention, while those currently serving sentences comprise 32.6%. Additionally, 31% of the respondents were awaiting trial. Children may be sentenced to a CYCC for a period that can vary from a few months to several years, depending on their offenses.

5.3 CHILDREN’S PERSPECTIVES OF THE CONDITIONS AT THE CENTRES

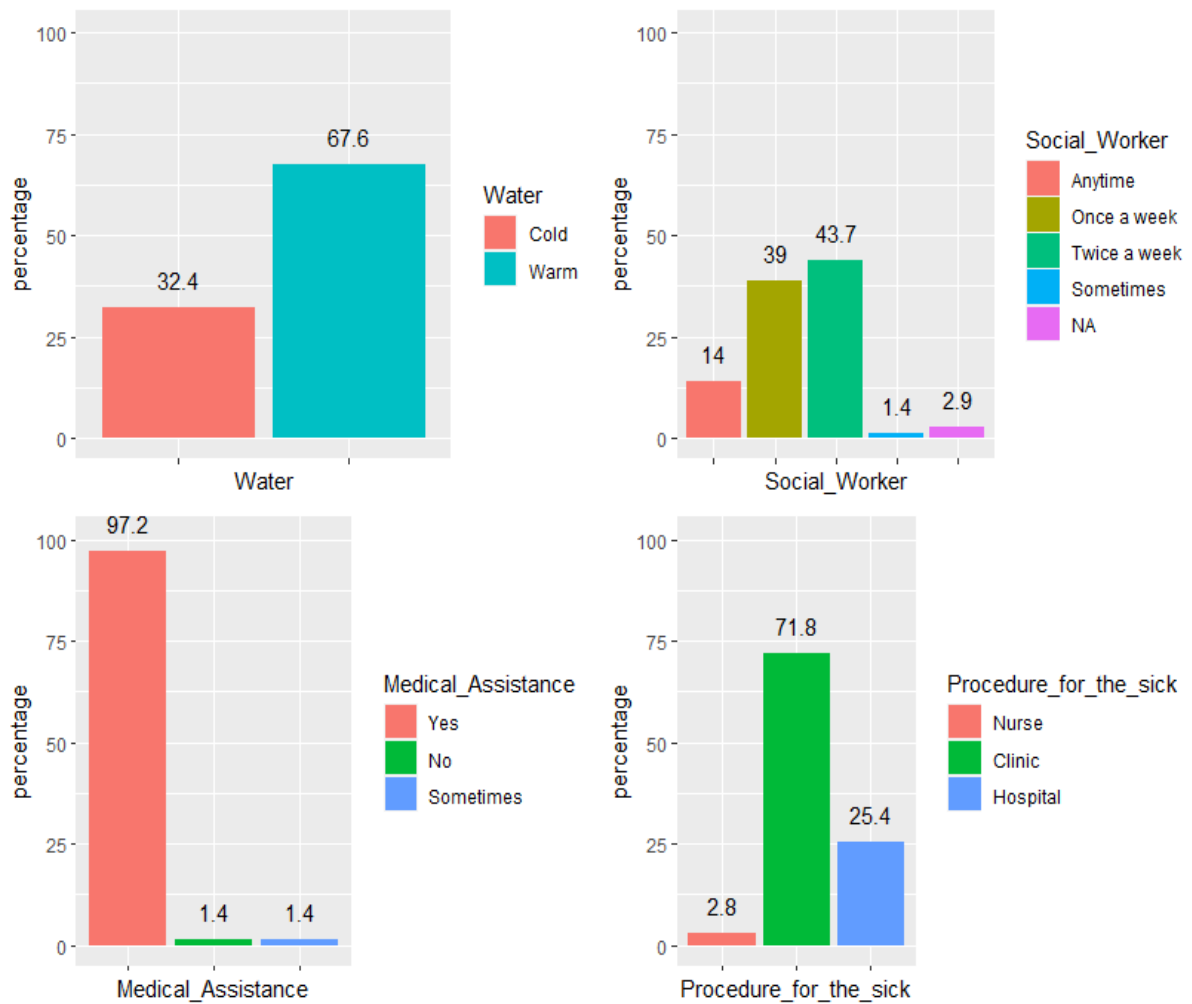


Figure 5.2 Comparison of responses regarding the conditions of the Centres.

Is there access to warm and cold water?

The data in the first graph of Figure 5.2 show that 32.4% of respondents claimed to have access only to cold water for bathing, whereas 67.6% claimed that they had access to warm water as well. Those using cold water mentioned they were told the geysers were out of order, a situation that had persisted for several months. It is essential for all children to have access to both cold and hot water.

Do you have contact sessions with a social worker?

The data in the second graph of Figure 5.2 reveal that a large number of respondents engage with a social worker regularly. The most frequent interaction occurs twice a week, with 43.7% of respondents reporting this level of contact. Furthermore, 39% meet with a social worker once a week. A smaller group, 14%, interacts occasionally, while 2.9% have access to a social worker at any time, highlighting a strong level of availability and support. The trend suggests that respondents make use of social workers' services.

Do you receive any medical assistance?

When children at the centres fall ill, the usual course of action is to seek medical help. The data in the third graph of Figure 5.2 indicate that a significant majority, 97.2%, report receiving medical care when they are unwell. In contrast, a small portion, 1.4%, state that they do not seek medical assistance, while another 1.4% mention that they only sometimes do. Overall, the use of medical services at the centres is very high, with almost all participants (97.2%) accessing care when they are sick.

When you are sick what is the procedure used at the centre?

The data in the fourth graph of Figure 5.2 indicate the different medical services accessed by children when they are ill. Most, 71.8%, relied on nursing care. Approximately 25.4% sought treatment at a hospital, while a small fraction, 2.8%, visited a clinic for medical procedures or treatments. Additionally, the responsibilities of the Department of Health in secure care centres are to ensure that all children have access to health care services and to address issues related to a lack of medication and equipment.

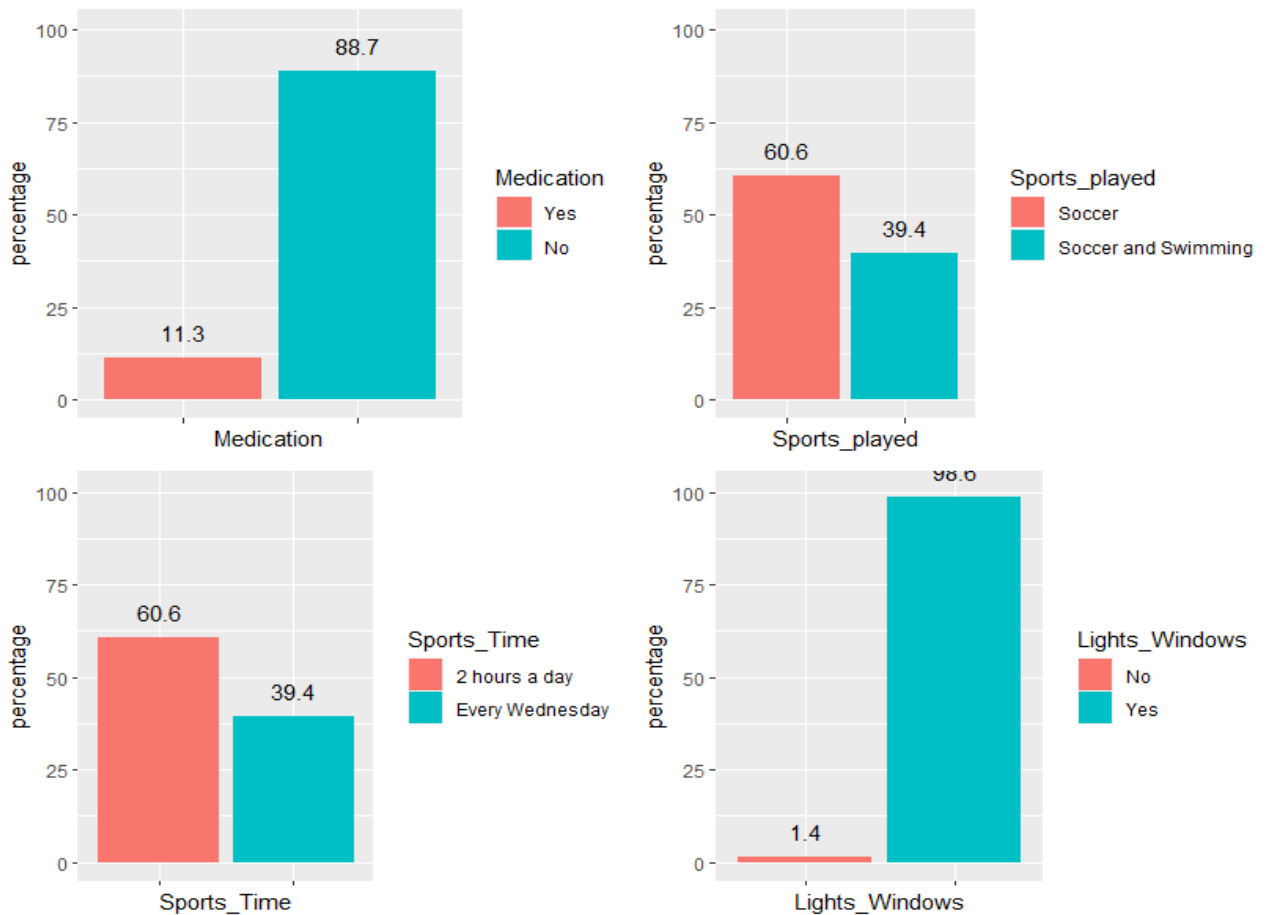


Figure 5.3 Summary of responses regarding medical conditions, sports, and adequate lighting.

Do you have a medical condition that requires medication?

The first graph of Figure 5.3 shows that only 11.3% of the surveyed respondents reported having medical conditions that require daily medication. In contrast, 88.7% do not have such conditions that necessitate taking medication every day. Among the 11.3% who need daily medication, the data suggest they are getting the required treatment.

What sports do you participate in?

As can be seen in the second graph of Figure 5.3 not every child, regardless of their legal history, is inclined to engage in sports. While one might suggest that participation in sports should be compulsory for all children, this presents a complex dilemma, as some indicated little to no interest in athletics. According to reports,

60.6% of respondents play soccer, while 39.4% participate in both soccer and swimming.

In a CYCC, sports can be seen as beneficial, though some might perceive it as punitive. Engaging in sports and physical activities can offer structure, discipline, and positive social interactions, aiding the rehabilitation and reintegration of young offenders. Team sports, in particular, can impart essential life skills, such as cooperation, communication, and conflict resolution. However, access to sports programmes may be limited, especially in under-resourced communities where many youth offenders reside, such as in the Eastern Cape province.

Despite the clear potential advantages, most experts advocate for a more comprehensive, voluntary approach that includes various rehabilitative options – sports being just one of them – tailored to the unique needs and circumstances of each young offender. The emphasis should be on fostering positive, supportive environments that empower youth to make better choices, rather than imposing punitive requirements.

How frequently and for how long are you allowed to participate in sports?

More than 60.6% of respondents reported dedicating two hours each day to sports, whereas 39.4% engaged in sports activities every Wednesday, as indicated in the third graph of Figure 5.3.

Is there adequate lighting and ventilation in the facility?

Proper lighting and ventilation are crucial for creating a safe and healthy environment in CYCCs. The fourth graph of Figure 5.3 indicates that more than 98.6% of respondents reported having sufficient lighting and ventilation, while 1.4% disagreed. It is important to regularly upgrade these systems to ensure that they adapt to the changing needs of the centres.

5.4 CHILDREN'S PERCEPTION OF THE REALISATION OF THEIR CONSTITUTIONAL RIGHTS

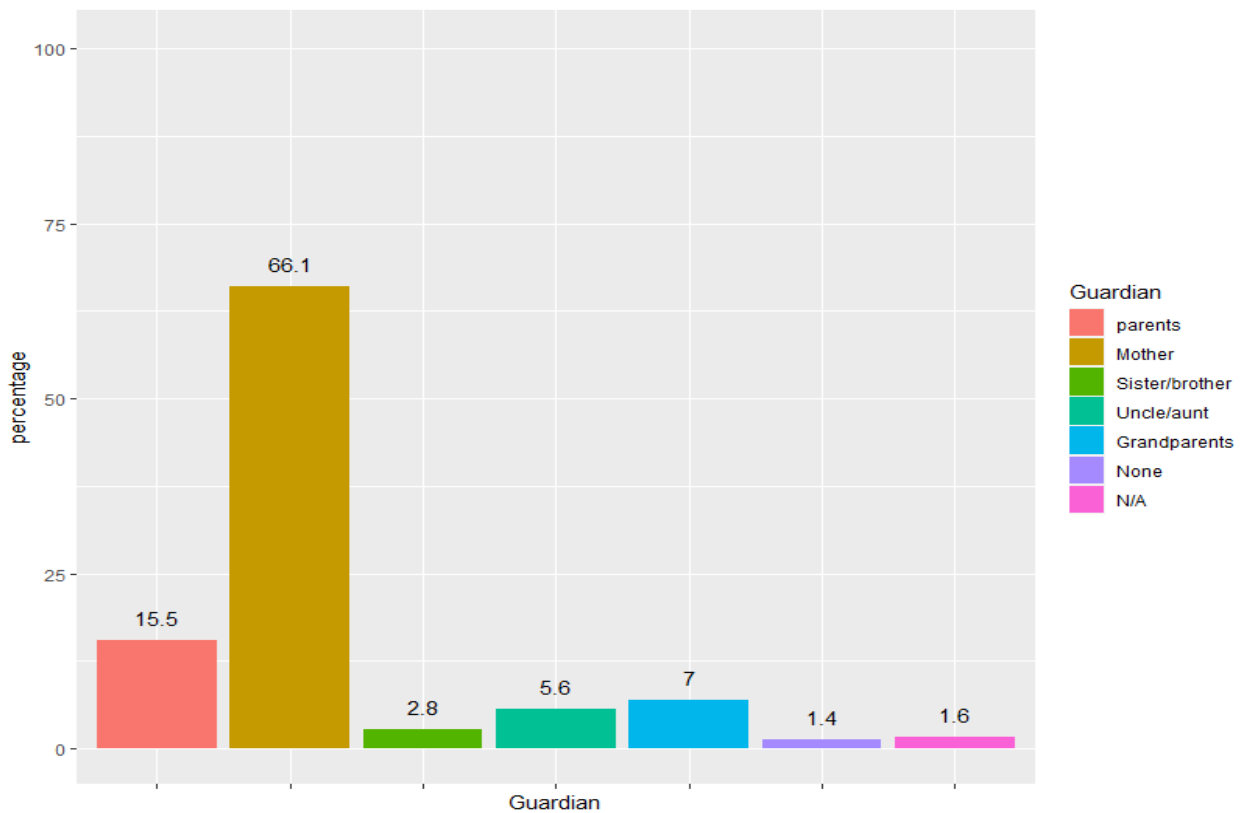


Figure 5.4 Comparison of responses regarding the contacts with family or guardians

Who is your guardian at home?

Figure 5.4 illustrates the percentage of individuals in various guardian roles. The key identified roles were mother, parents, sister/brother, uncle/aunt, grandparents, none, and N/A (not applicable). Respondents were asked the question regarding who their guardians were or who cared for them. The data reflect that the highest percentage, at 66.1%, is attributed to the role of the mother, indicating that most respondents live solely with their mothers.

The next highest percentage indicates parents, at 15.5%, signifying that this proportion has both a mother and father as guardians. The remaining roles have significantly lower percentages: sister/brother accounts for 2.8%, uncle/aunt for 5.6%, grandparents for 7.0%, and none for 1.4%. The N/A category stands at 1.6%,

likely representing children without parents or whose parents are absent due to work, necessitating care from other relatives or independent living.

Overall, the data indicate that the majority of participants (66.1%) are raised exclusively by their mothers, while a smaller group (15.5%) has both parents as guardians, with other roles representing a minor share. The fact that most children are raised by their mothers without a father figure could contribute to their criminal behaviour. It often happens that a child's issues arise from a troubled family environment, meaning the child's behaviour reflects or responds to broader family problems that require professional help.¹ For instance, a child living with an alcoholic parent may be prompted to engage in similar behaviour.

Diversion is widely regarded as the most effective approach for addressing children in conflict with the law. According to Section 28(2) of the Constitution, the best interests of the child are of utmost importance in all matters concerning them, and this provision also applies to parents.² Additionally, Section 28(1)(b) establishes that every child has the right to family or parental care, or suitable alternative care if they are removed from their family due to legal issues.³ Section 18 of the Children's Act holds parents accountable for the care and support of their children.⁴ Children raised in nurturing and loving environments, where parents are actively involved in their upbringing, are more likely to develop strong morals and values, increasing their chances of success in life.⁵

¹ Kruger & Adams 1998: 65.

² *Section 20(2) of the Constitution.*

³ *Section 28(1)(b) of the Constitution.*

⁴ *Section 18 of the Children's Act.*

⁵ Malesa & Mashaba 2024: 16.

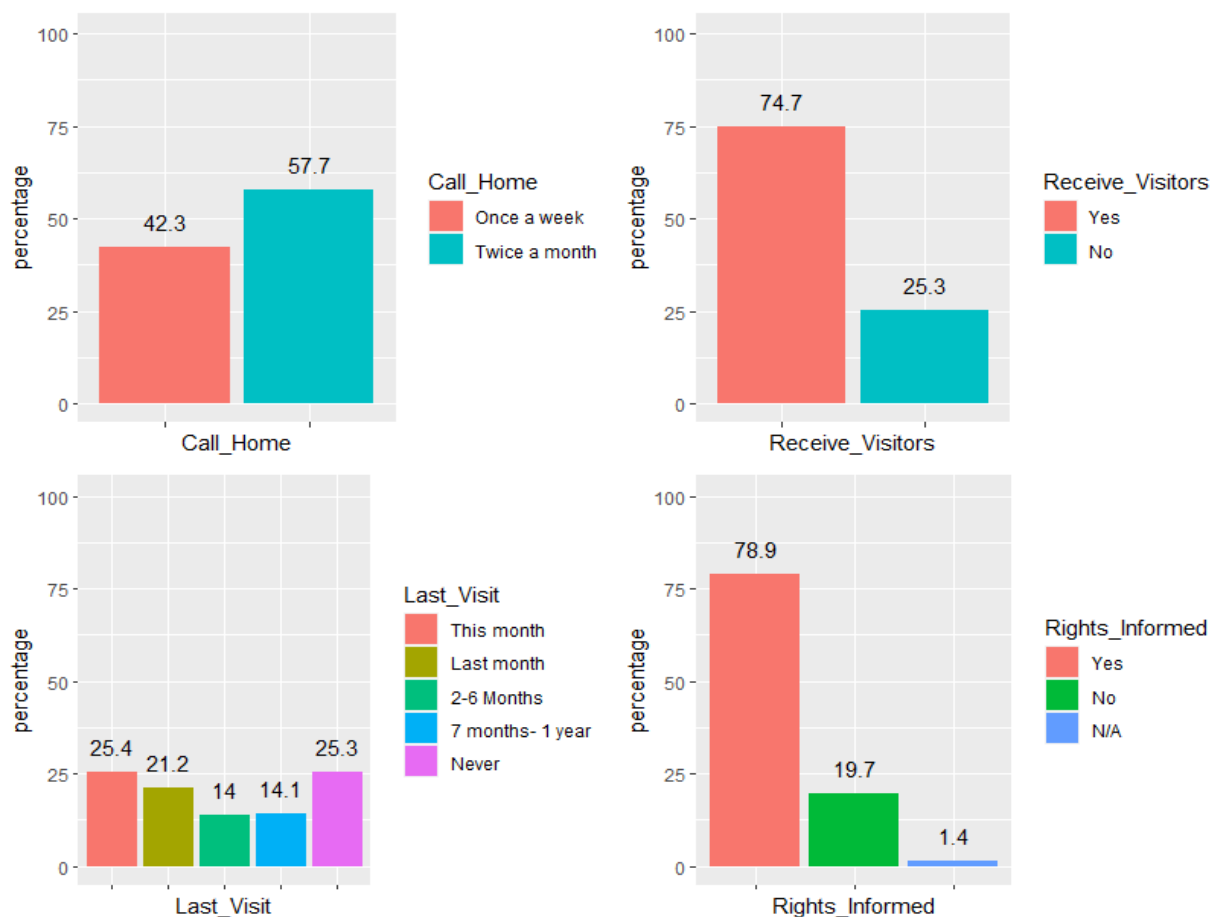


Figure 5.5 Summary of responses regarding visitation

The above data show the findings from information collected on various factors, such as how often calls were made, the number of visitors received, the date of the last visit, and whether individuals were informed of their rights at the centres.

How often do you call home?

The first graph in Figure 5.5 shows that most respondents claimed that they are allowed to use a phone, but not on a daily basis. Some indicated that this right can be taken away or used as a punishment for misbehaviour. Approximately 42.3% of respondents reported calling home once a week, while 57.7% do so twice a month. In CYCCs, using a phone is not a privilege but a fundamental right. The data shows a significant violation of this right to phone access. The data indicates a serious breach of section 35(2)(f)⁶, which states that anyone who is detained while awaiting

⁶ Section 35(2)(f) of the Constitution.

trial or sentencing has the right to communicate. In this case, communication encompasses phone calls.

Do you receive visitors?

As can be seen in the second graph in Figure 5.5 most respondents indicated that they are allowed to have visitors. The data reveal that 74.7% of respondents receive visitors, while 25.3% do not. Many of these children come from rural or isolated areas, far from major cities. As noted earlier, some respondents do not have anyone to visit them. Alternative measures should be implemented in these situations to ensure compliance with Section 35(2)(f) of the Constitution.

To enhance the effectiveness of visitation programmes, it is crucial to establish clear policies and procedures, including scheduled visitation hours, visitor screening, and proper supervision. Furthermore, efforts should be made to promote and facilitate visitation, such as offering transportation support or enabling virtual visits when in-person meetings are not feasible.

Prioritizing visitation for children in conflict with the law can foster their rehabilitation, support their emotional and social well-being, and increase their chances of successful reintegration into society.

When was the last time you had a visitor?

The third graph in Figure 5.5 indicates that 25.4% of respondents reported having a visitor in the current month, 21.2% had had a visitor in the previous month, 14.0% had been visited two to six months earlier, 14.1% had been visited seven months to a year earlier, and 25.3% had not had any visitors. Visitation helps children preserve and enhance their bonds with loved ones, which is vital for their social and emotional growth and aids in their eventual reintegration into society. Research indicates that children who keep strong family and community ties while in the juvenile justice system are less likely to reoffend once released.

Were you informed of your rights?

Responding to the right to be informed of their rights, the fourth graph in Figure 5.5 indicates that 78.9% were informed of their rights, while 19.7% were not informed, and 1.4% did not provide a response. It is essential to clearly communicate these

rights to children in a language that they can easily understand and use effectively. Equipping children with this knowledge empowers them and reinforces their basic rights. It is concerning that 19.7% answered “no” to the question, given that it is essential to educate children about their basic rights.

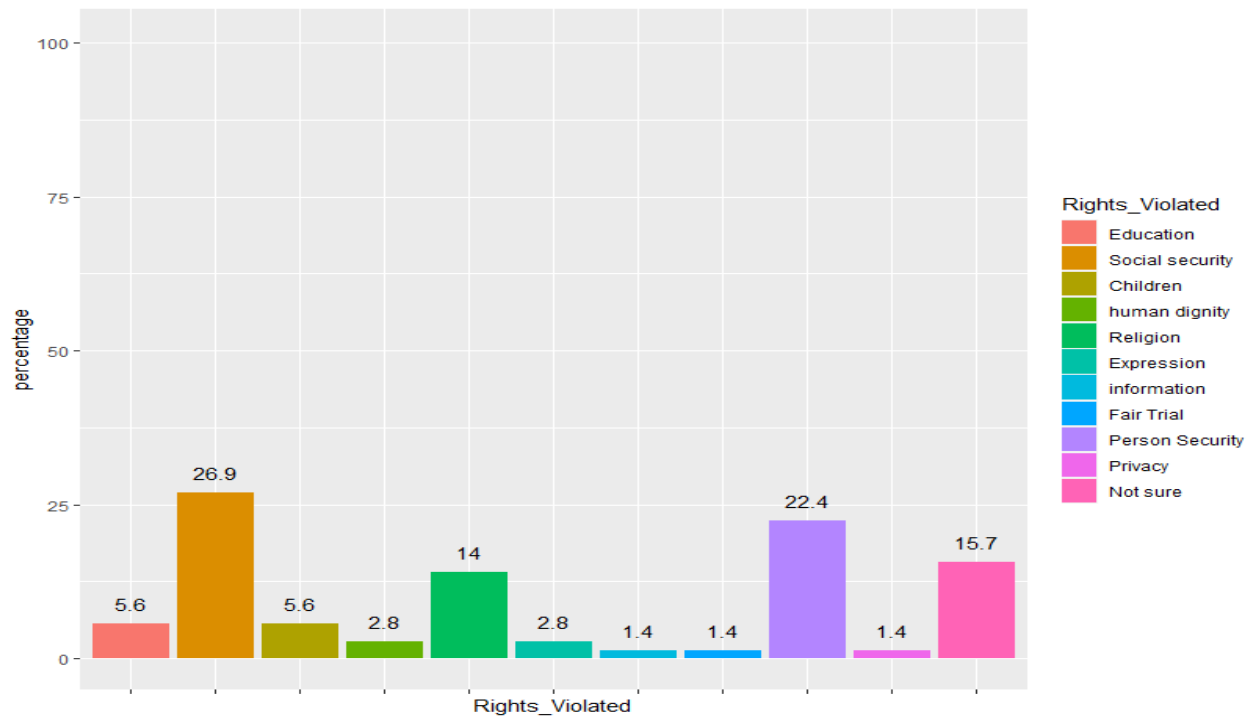


Figure 5.6 Comparison of responses regarding violation of rights.

Figure 5.6 illustrates the percentage of various human rights violations, grouped into categories such as education, social security, person security (freedom and security of the person),⁷ human dignity, religion, freedom of expression, access to information, fair trial, privacy, and an unspecified category.

The data reveal that freedom and security of the person is the most frequently violated right, at approximately 49.3%, followed by education at 15.7% and human dignity at 14%. The rights violated the least include privacy, access to information, the right to a fair trial, and the unspecified category, all at around 1.4% or lower.

⁷ Section 12(1)(e) of the Constitution

Overall, this information visually represents children's awareness of their rights within CYCCs and their understanding of when these rights are infringed upon. This awareness is valuable for recognising and addressing human rights issues in the CYCCs.

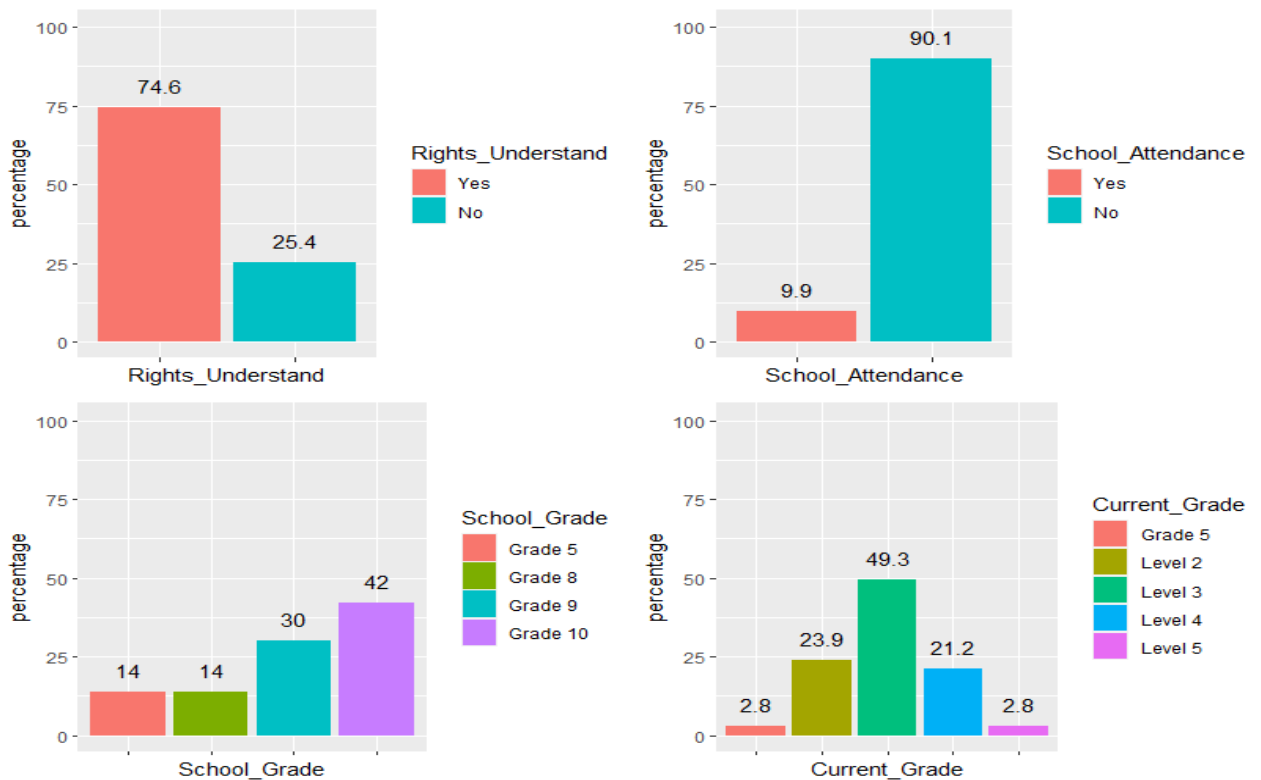


Figure 5.7 Summary of responses relating to the right to education

Do you understand your rights?

As can be seen in the first graph in Figure 5.7, 74.6% of the participants indicated that they understood their rights, while 25.4% said they did not. When children are aware of their rights, they can engage more effectively in their defense, promoting fairness in the legal process and safeguarding due process. This awareness can help avoid wrongful convictions and excessive penalties. Understanding their rights enables children to advocate for themselves, fosters trust in the justice system, and encourages active involvement in their cases, which can positively influence their personal growth and future prospects.

Were you attending school before you came to the centre?

Before being admitted to the CYCCs, 90.1% of respondents were enrolled in school, while 9.9% had dropped out, as indicated in the second graph in Figure 5.7. Many children in the juvenile justice system face interruptions in their education due to suspensions, expulsions, or frequent changes in schools and placements. These disruptions can create learning gaps and hinder the children's academic progress.

If yes, which grade?

The highest percentage (42%) was in Grade 10, followed by Grade 9 at 30%, and both Grade 8 and Grade 5 at 14%. This is shown in the third graph in Figure 5.7. To address these challenges, South Africa should focus on more comprehensive, rehabilitative strategies that emphasize access to quality education, vocational training, and extensive support services for youth in legal trouble. Achieving this will necessitate better collaboration across sectors, enhanced funding, and a change in societal attitudes towards a restorative justice approach.

Which grade are you doing now at the centre?

When children exit CYCCs they frequently face difficulties reintegrating into regular schools due to educational gaps, social stigma, and insufficient support systems. Moreover, there is a lack of specialized educational and rehabilitation programmes tailored to the specific needs of children in conflict with the law, including trauma-informed methods and vocational training. The fourth graph in Figure 5.7 shows that the highest enrollment is in Grade 5 at 49.3%, followed by Level 2 at 23.9%, Level 4 at 21.2%, and Levels 3 and 5 at 2.8% each. Additionally, the quality of educational programmes in CYCCs is often inadequate, characterized by limited resources, outdated curricula, and poorly trained teachers, which can further hinder these children's academic progress. The respondents from the Free State province provided their grades, whereas those from the Eastern Cape province specified their educational levels. This gap reflects a gross violation of the right to education.

If no, explain when did you drop out of school?

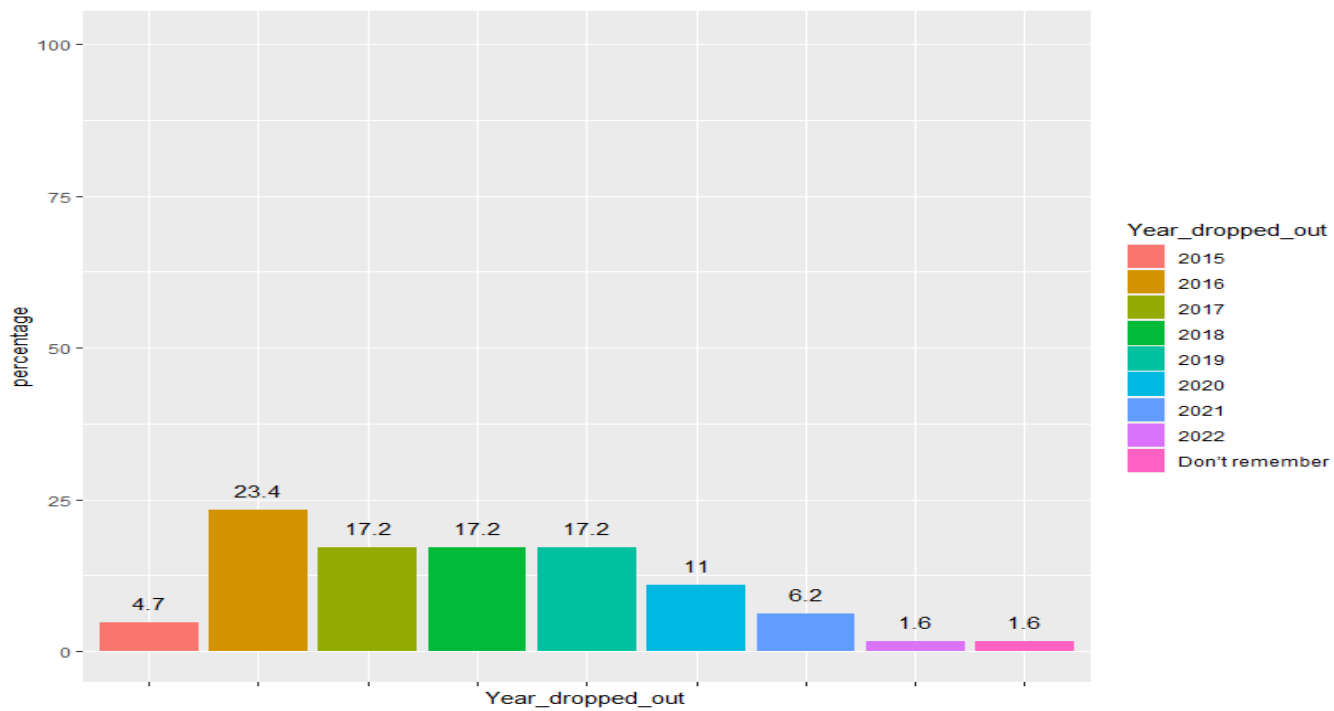


Figure 5.8 Comparison of responses relating to school dropout

Figure 5.8 illustrates the percentage of children who discontinued their studies from 2015 to 2022. The color-coded bar chart represents each year. Various factors, including family instability, trauma exposure, mental health challenges, substance abuse, and inadequate support, lead to elevated dropout rates among youth in conflict with the law. Dropping out poses a significant risk, potentially reinforcing the school-to-prison pipeline, as students who leave school are more prone to reoffending and deeper entanglement in criminal behaviour.

The data indicate that the peak school dropout rate occurred in 2016, at approximately 23.4%. Following that year, the dropout rate consistently decreased, dropping to about 17.2% in 2017, 2018, and 2019. It then decreased further to around 6.2% in 2021 and 1.6% in 2022.

5.5 EXPERIENCES AND TREATMENT OF CHILDREN IN CONFLICT WITH THE LAW IN CYCCS

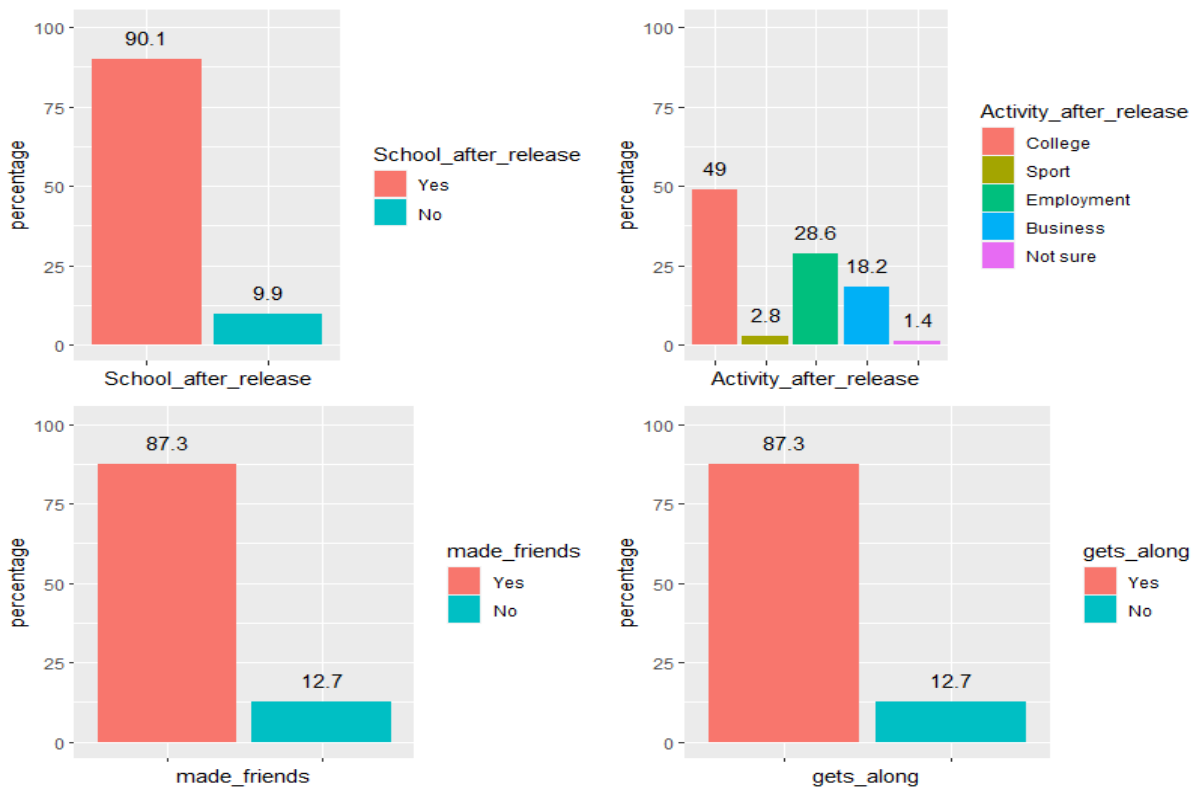


Figure 5.9 Summary of responses relating to their experiences

Are you still going to continue with school after your release?

The first graph illustrates the percentage of respondents who replied “Yes” or “No” to whether they plan to continue their education after their release. A significant majority (90.1%) claimed they would pursue further schooling post-release. Many children in the juvenile justice system face challenges in accessing formal education, often attending school irregularly or not at all. This can be attributed to issues such as frequent relocations, poor coordination between the justice and education systems, and societal stigma. Additionally, disruptions in their education caused by time spent in detention and the difficulties of reintegrating into school after their incarceration pose major obstacles.

Other activities after release

The data in the second graph of Figure 5.9 show the activities respondents planned to pursue after their release, including enrolling in colleges, continuing with sports, seeking jobs, and starting businesses. Specifically, 49% of respondents expressed their intention to enrol in college, while 28.6% planned to look for employment, and 18.2% aimed to launch their own businesses.

Have you made friends at the centre?

As can be seen in the third graph of Figure 5.9, the majority (87.3%) responded affirmatively, suggesting they could make friends at the centre, while 12.7% said they could not. Younger children might find it easier to connect and build positive relationships than older youth, who may face more deep-rooted behavioural challenges. Additionally, factors such as individual personality traits, trauma history, and mental health needs influence how well children interact with their peers in the care environment.

Do you get along with everyone at the centre?

The fourth graph of Figure 5.9 shows the percentage of respondents who answered “Yes” or “No” to the question of whether they get along with everyone at the centre. Again, the majority (87.3%) answered yes, suggesting that they were able to get along with others at the centre. The environment and programmes at the CYCCs can greatly impact how the children interact. Centres that focus on rehabilitation, counselling, and teaching social skills tend to have more positive peer interactions. Children with more serious or violent offenses may have a harder time getting along, as there may be tension and conflict among them. Therefore, careful monitoring and intervention by personnel are important.

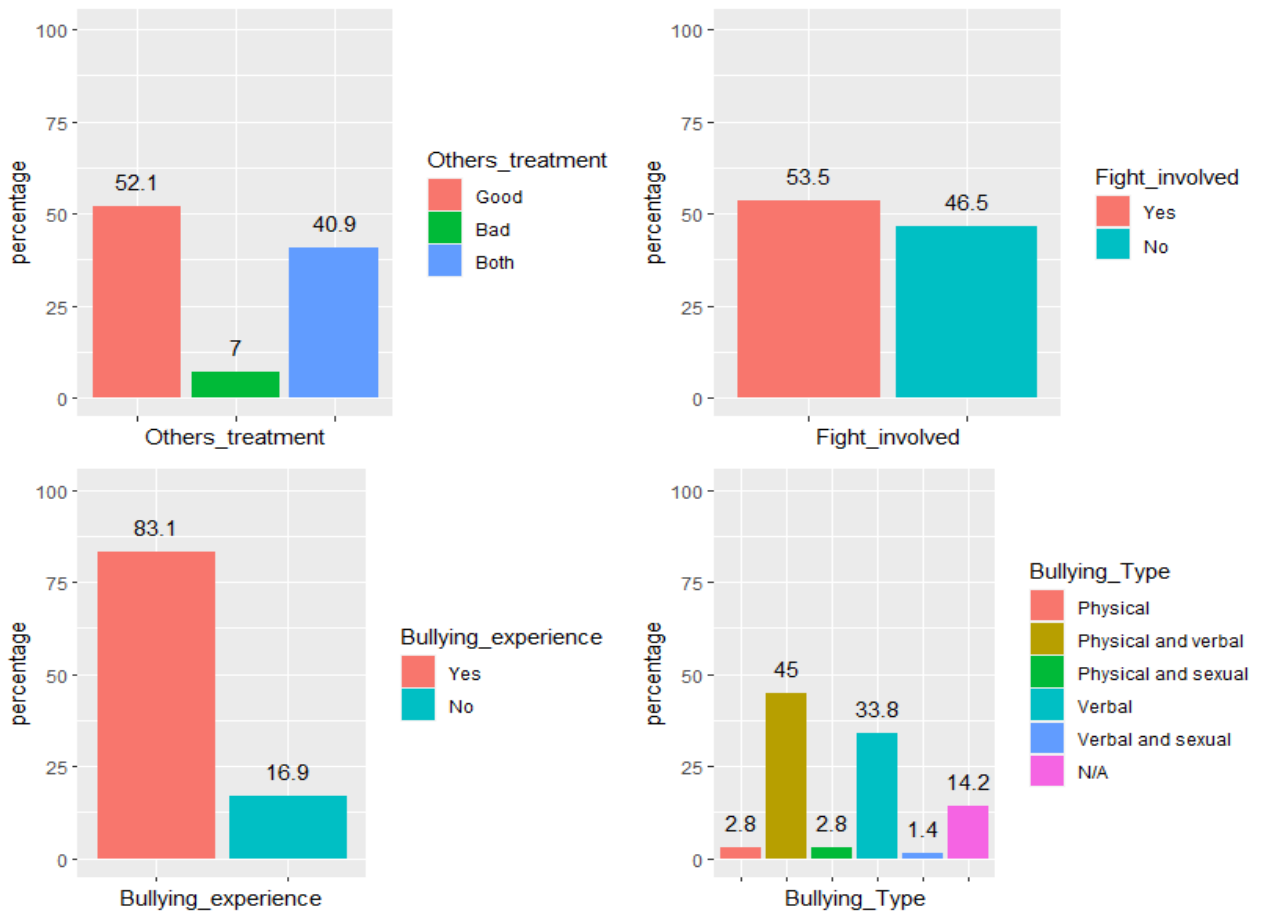


Figure 5.10 Comparison of responses regarding treatment

How do others treat you?

This section outlines the percentage distribution of how participants were treated. As can be seen in the first graph of Figure 5.10, 52.1% reported receiving good treatment, 7% reported bad treatment, and 40.9% experienced a mix of both. Many children in these centres come from difficult backgrounds and may struggle with social skills and conflict resolution, potentially leading to tensions, bullying, and disputes among residents. Personnel must closely monitor peer interactions and intervene to encourage positive behaviour. Ultimately, CYCCs aim to foster a safe and supportive environment that addresses the specific needs and challenges of the children they serve. Continuous personnel training, mental health support, and conflict resolution strategies are essential for promoting positive peer interactions and relationships.

Have you been involved in a fight?

The second graph in Figure 5.10 indicates the proportion of individuals who have been involved in fights. Specifically, 53.5% reported being involved in fights (Yes), whereas 46.5% did not (No). Many children in these centres have faced trauma, abuse, or mental health challenges, impacting their ability to interact positively with their peers. Specialized support and frequent therapeutic interventions are required.

Have you observed or experienced bullying from other children?

Of the respondents, 83.1% reported experiencing bullying, while 16.9% did not, as depicted in the third graph in Figure 5.10. Some children may engage in aggressive or antisocial behaviours as a coping mechanism for the stresses and challenges of living in a residential facility, which can result in conflicts among residents.

Have you experienced physical, verbal, or sexual assault from other children?

The most common type of bullying, as depicted in the fourth graph in Figure 5.10 above, was physical, representing 45% of cases, followed by a combination of physical and verbal bullying at 33.8%. Verbal bullying accounted for 14.2%, while physical and sexual bullying was 2.8%, and verbal and sexual bullying was 1.4%. Additionally, 2.8% of cases were marked as not applicable. To promote safety and foster positive behaviour among residents, it is crucial to establish a well-organized and supervised environment with clear expectations and consequences.

Table 5.2 Do you think the management is treating you with dignity?

Yes	No	Total
29.6%	70.4%	100%

Addressing the needs of children involved in legal conflict is a crucial and delicate matter. These children should ideally be treated with dignity and compassion, and in alignment with their rights, emphasizing rehabilitation and reintegration into society. Nonetheless, past concerns have highlighted issues such as abuse,

neglect, and inadequate support in certain CYCCs. A survey indicated that 70.4% of respondents felt they were not treated with respect, while 29.6% disagreed. When someone is not treated with respect, it violates their right to human dignity.⁸ The data show a severe violation of this fundamental right.

Table 5.3 Have you had disagreements with any member of management?

Yes	No	Total
25.4%	74.6%	100%

The data show that 74.6% of respondents reported experiencing disagreements, while 25.4% did not. Children in conflict with the law placed in CYCCs are occasionally in conflict with the personnel. The structured environment and rules of a CYCC can conflict with the behaviours and experiences some children are used to, leading to misunderstandings about expectations. Many children in these centres face underlying mental health issues, trauma, or behavioural challenges, which can exacerbate conflicts with personnel, particularly if the personnel is not trained to address these needs effectively.

⁸ *Section 10 of the Constitution.*

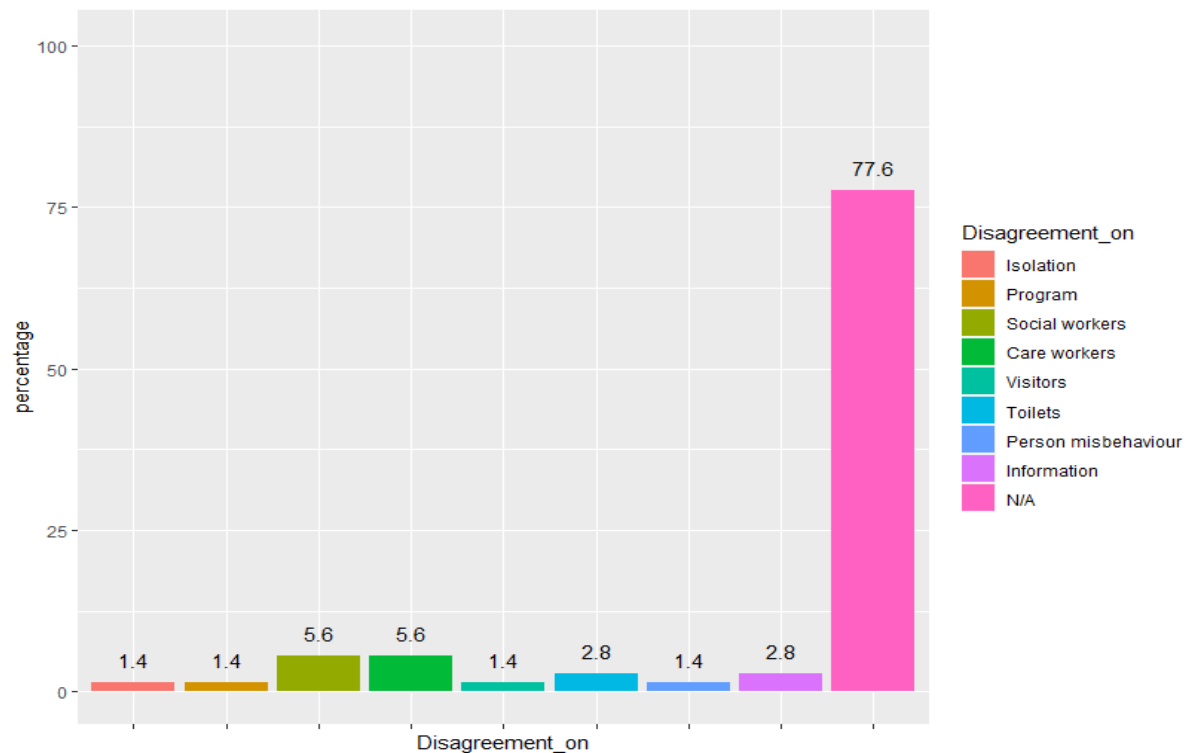


Figure 5.11 Punishment for disagreeing with personnel or management.

As previously noted, some participants have expressed disagreements with the management of the centres, and punishment for that is categorized as follows:

1. Forced isolation: 1.4%
2. Forced to attend programmes: 1.4%
3. Ill-treatment by social workers: 5.6%
4. Ill-treatment by care workers: 5.6%
5. Denied visitors: 1.4%
6. Cleaning toilets: 2.8%
7. Punishing everyone for one person's misbehaviour: 1.4%
8. Access to information: 2.8%
9. N/A (not applicable): 77.6%

The majority (77.6%) indicated N/A when asked this question which indicate that a significant number of respondents did not specify their experiences with the listed issues. This may suggest that many did not encounter these problems or opted not to share their experiences.

The categories of ill-treatment by social and care workers show relatively higher percentages (5.6%), highlighting concerns about how respondents are treated by personnel occupying these roles. In contrast, issues such as forced isolation, mandatory programme attendance, and visitor restrictions are less common (1.4%), implying these may not be widespread. Nonetheless, it is troubling that respondents might be denied their freedom of choice and visitation rights.

Table 5.4 Have you been physically, verbally, or sexually assaulted by members of management

Yes	No	Total
83.1%	16.9%	100%

The data regarding experiences of assault by management members reveal that a substantial majority (83.1%) of respondents indicated they had faced some type of assault (physical, verbal, or sexual) from management. This highlights a serious problem within the management framework. Conversely, only 16.9% of respondents stated they had not experienced assault, implying that the environment may not be hostile or unsafe for some individuals.

Table 5.5 If yes, please explain

Beating	Discrimination	Name-calling	Insults	Shouting	Humiliation	N/A	Total
21%	16.8%	7%	5.6%	5.6%	19.6%	24.4%	100%

Table 5.5 displays the percentages of various assault types, with Beating leading at 21%, followed by Discrimination at 16.8%, Name calling at 7%, Insults at 5.6%, Shouting at 5.6%, and Humiliation at 19.6%. Notably, 24.4% of cases are marked as N/A (not applicable).

The table illustrates the relative frequency of these assault types, highlighting Beating and Humiliation as the most prevalent, while Name calling, Insults, and Shouting occur less often. The high percentage of N/A cases indicates potential gaps or respondents opted not to share their experiences.

Overall, this table effectively conveys the distribution of assault types, aiding in the understanding of these incidents' nature and patterns. Beating (21%) represents a significant concern regarding physical violence. Section 12(1)(e) of the Constitution affirms that everyone has the right to be free from cruel, inhuman, or degrading treatment or punishment. As a result, corporal punishment has been held to be unconstitutional.⁹ It followed the Constitutional Court's 1995 decision in the case of *S v Williams and Others* that the caning of children in conflict with the law was unconstitutional. Additionally, 21% of respondents reported experiencing beatings, highlighting a significant violation of this right.

Meanwhile, the notable percentages for Discrimination (16.8%) and Humiliation (19.6%) point to the importance of emotional and social aggression, which can have enduring psychological impacts. Although Name-calling (7%) and Insults (5.6%) are less frequent, they still contribute to a culture of verbal abuse that can be harmful over time. Shouting (5.6%) appears to be less common than other aggressive behaviours.

Table 5.6 When you have done something wrong how are you punished?

Cleaning toilets	Isolation for 2 days without food	Physical beating	Take away the privilege of watching TV	Total
14%	38%	42.4%	5.6%	100%

⁹ [1995] ZACC 6, 1995 (3) SA 632 (CC), 1995 (7) BCLR 861 (CC).

Children in conflict with the law who are placed in CYCCs can unfortunately experience various forms of abuse by personnel members. The data indicate different types of punishment or disciplinary actions taken when participants misbehave at the centres.

Breakdown of punishments

Cleaning Toilets (14%)

This is the least severe punishment and may be considered a minor consequence for inappropriate actions. It serves as a practical method to promote responsibility and accountability.

Isolation for two days without food (38%)

This represents a more serious consequence, indicating that isolation is frequently used as a disciplinary measure. The lack of food raises concerns about the respondents' well-being and is perceived as a harsh punishment.

Physical beating (42.4%)

This is the most severe form of punishment documented. The high percentage suggests that such actions are alarmingly common, raising significant ethical concerns about the use of violence and its effects on respondents.

Taking away the privilege of watching TV (5.6%)

This form of punishment is the least employed, implying it may be viewed as ineffective or less impactful than other methods. It reflects a milder approach to discipline.

Overall, the data above show a tendency toward severe punishments, especially isolation and physical beating, which raises ethical questions about how respondents are treated. The low incidence of non-violent measures, such as revoking TV privileges, indicates a preference for harsher disciplinary methods, suggesting a culture of strict discipline. This situation highlights the need for training or reform in disciplinary approaches, emphasizing constructive methods that encourage positive behaviour without resorting to violence or extreme isolation.

Table 5.7 Are you well taken care of here?

Yes	No	Total
98.6%	1.4%	100%

The care provided to children in different CYCCs and jurisdictions can vary widely. In 98.6% of cases, children received adequate care, but in 1.4% of cases, they did not. There are concerns that some CYCCs still adopt a punitive approach, lacking sufficient resources and training for personnel to effectively aid in the rehabilitation and reintegration of these children. Issues such as overcrowding, poor living conditions, and insufficient individualized care may also exist in some centres. Furthermore, ensuring that the rights and best interests of children are prioritized within the justice system poses challenges, especially for marginalised or disadvantaged children who face additional obstacles in accessing the necessary support. Ongoing monitoring, evaluation, and reform are likely needed to guarantee that these vulnerable children receive comprehensive, trauma-informed, and rehabilitative care.

Table 5.8 Do you miss home?

Yes	No	Total
98.6%	1.4%	100%

Being separated from family and familiar environments can be very upsetting for children, even those involved in unlawful activities. They might experience homesickness, loneliness, and anxiety about being away from loved ones. In 98.6% of cases, children missed home, while in 1.4% of instances, they did not. Although the structured atmosphere of a CYCC is essential for rehabilitation, it can feel confining compared to the freedom of home. Children often yearn for the comfort and routines they had at home. Depending on the circumstances, they may feel

guilty, ashamed, or concerned about how their family is managing without them, which can intensify their homesickness. Younger children may struggle more with adapting to life in a CYCC, showing clear signs of missing home, such as crying, acting out, or refusing to engage in activities.

However, the level of homesickness can differ significantly based on the individual child, their family dynamics, and the quality of care and support available at the CYCC. Trained personnel can assist children in dealing with separation anxiety and help them maintain healthy relationships with their families whenever possible.

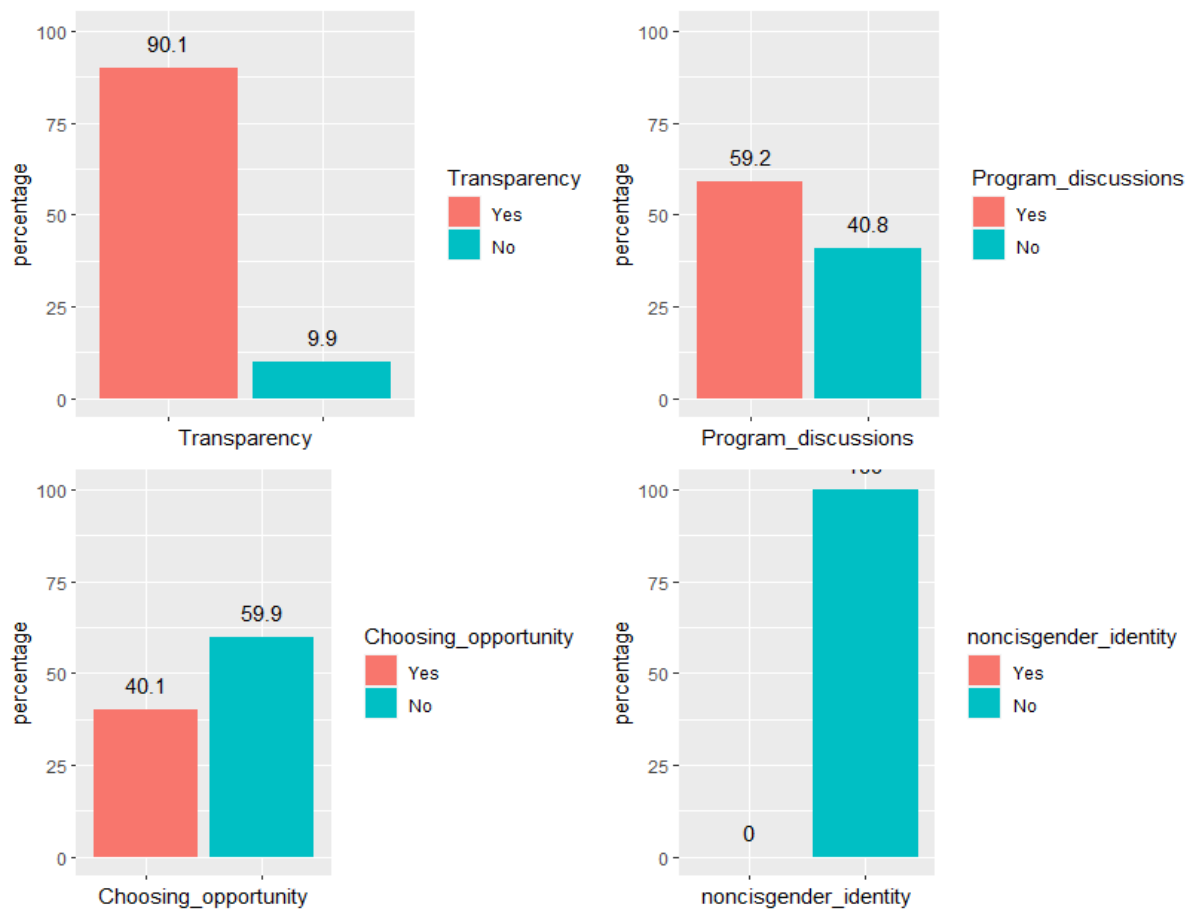


Figure 5.12 Comparison of responses relating to access to information and opinion.

Is the management open and transparent with information and decisions made regarding your stay/detention?

The data in the first graph in Figure 5.12 reflect a strong perception of openness and transparency within the management, but attention to the minority's concerns could lead to improved overall satisfaction and trust. The majority (90.1%) of respondents feel that management is open and transparent about information and decisions related to their stay or detention. This suggests a generally positive perception of communication from management. Only 9.9% of respondents indicated a lack of transparency. This low percentage may indicate that issues regarding communication are not widespread, though it is still important to address the concerns of this minority.

Does the social worker discuss the programmes with you?

The data in the second graph in Figure 5.12 indicate responses to the question about whether a social worker discusses CYCC programmes with respondents. A majority (59.2%) of respondents indicated that social workers do discuss CYCC programmes with them. This suggests a positive engagement and communication between social workers and respondents regarding available programmes.

A notable 40.8% of respondents answered “No”, indicating that a substantial portion of respondents may not be receiving information about these programmes. This could point to a gap in communication or engagement that might need to be addressed. The data reflect a gross violation of the right to access information as provided for by the Constitution.¹⁰

Do you have an opportunity to choose or have a say in the programmes you want to participate in?

The data in the third graph in Figure 5.12 reflect responses to a question about whether respondents have the opportunity to choose or have a say in the CYCC programmes they want to participate in. A significant majority (59.1%) of respondents indicated that they do not have a choice or say in the CYCC

¹⁰ *Section 32 of the Constitution*

programmes. This suggests a potential area of concern regarding participant agency and satisfaction.

Only 40.9% feel they have a say. This indicates that less than half of the respondents feel empowered in their programme selection. The results may point to issues in programme design, communication, or participant engagement. It could be beneficial to explore why a majority feels excluded from the decision-making process and to consider strategies for increasing involvement. The data indicate a significant violation of section 28(2) of the Constitution, which states that “a child's best interests are of utmost importance in all matters related to the child”. This highlights the necessity of including children in discussions and decisions that affect them.

Do you identify as lesbian, gay, bisexual, transgender, intersex, or other non-cisgender (a person who does not conform to their gender of birth) identity?

The data in the fourth graph in Figure 5.12 indicate that none of the respondents identify as part of the LGBTQ+ community or as non-cisgender.

Table 5.9 Have you ever experienced discrimination, humiliation, abuse, or violence from facility personnel or other residents because of your sexual orientation or gender identity?

Yes	No	Total
0%	100%	100%

A 100% “No” response could suggest none of the respondents identified as part of the LGBTQ+ community.

5.6 DISCUSSION

The safeguarding of children's rights, particularly those involved in legal conflicts, represents a fundamental aspect of a humane and equitable society. This chapter examines the findings of research concerning the treatment of children within Child

and Youth Care Centres (CYCCs) in South Africa, comparing established legal frameworks with the prevailing practical realities. Despite the existence of robust constitutional protections and adherence to international standards aimed at safeguarding children's rights, significant discrepancies remain in their implementation.

The South African Constitution offers an extensive legal framework dedicated to the protection of children's rights. Notably, Section 28 delineates these rights, including the entitlement to dignified treatment, access to legal representation, and detention only as a last resort. However, the enforcement of these rights has proven inconsistent. Research findings indicate that numerous children within CYCCs face violations of their rights, frequently stemming from systemic deficiencies within the justice and social service systems.

International instruments, such as the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, underscore the necessity for appropriate treatment of children in conflict with the law. These documents advocate for environments conducive to rehabilitation rather than punishment. Nonetheless, the reality in many CYCCs starkly contrasts this ideal, with conditions often resembling punitive institutions rather than supportive rehabilitative settings.

The research highlights troubling conditions in CYCCs, including overcrowding, inadequate healthcare, and limited educational opportunities. Many children report experiences of violence, intimidation, and neglect, which fundamentally contradict the rehabilitative principles espoused in both national and international laws. Such environments not only fail to address the underlying causes of delinquent behaviour but also perpetuate cycles of trauma and reoffending.

The perspectives of the children themselves are crucial to understanding the efficacy of the CYCC system. Many express feelings of isolation, neglect, and diminished self-worth, illustrating the need for a paradigm shift in societal views and treatment of children in conflict with the law. There is an urgent need to transition from a punitive approach to one that prioritizes rehabilitation and reintegration into society.

Child and Youth Care Workers (CYCWs) play a critical role in the lives of children in CYCCs. However, research indicates that CYCWs frequently encounter challenges, including insufficient training and support, which hinder their capacity to provide effective care. Enhancing the professional development and resources available to CYCWs is essential for fostering a nurturing environment for children.

Effective collaboration among various government departments—such as social development, education, and health—is imperative for creating a cohesive support system for children. The research emphasizes the importance of integrated approaches that address the multifaceted needs of children in conflict with the law, as opposed to isolated interventions that overlook their comprehensive well-being.

To bridge the gap between legal provisions and practical implementation, significant policy reforms are necessary. This includes revisiting existing legislation to ensure alignment with international best practices and adequately addressing the needs of children. Policies should promote diversion programmes and alternative interventions that divert children away from the criminal justice system whenever possible.

Investing in the training and resources for CYCWs and other stakeholders is essential. Specialized training in trauma-informed care, conflict resolution, and restorative justice can enhance the quality of care provided to children in CYCCs.

Establishing robust monitoring and accountability mechanisms is crucial for ensuring compliance with children's rights. This should encompass regular inspections of CYCCs, feedback systems enabling children to voice their concerns, and transparent reporting mechanisms that hold facilities accountable for their treatment of children.

While South Africa has made significant progress in establishing a legal framework for the protection of children's rights in conflict with the law, the practical implementation of these rights remains inadequate. The experiences of children in CYCCs reveal entrenched issues that compromise their dignity and potential for rehabilitation. By confronting these challenges through comprehensive reforms and nurturing a culture of care and support, South Africa can advance toward a justice system that genuinely prioritizes the best interests of children.

This chapter presents an analysis of data collected from children in conflict with the law residing in Child and Youth Care Centres (CYCCs) in the Free State and Eastern Cape provinces. The findings reveal significant discrepancies between the legal rights afforded to these children and their actual experiences within the system. The discussion focuses on the implications of these findings, particularly concerning the treatment of children, access to rights, and the overall effectiveness of rehabilitation efforts.

The constitutional rights of children in South Africa are designed to provide comprehensive protection and support to vulnerable populations. However, the analysis indicates a troubling gap between these rights and their practical realization within CYCCs. While the legal framework, as outlined in Chapter 2 of the relevant document, establishes various protections, the data collected from the children suggests that these rights are often inadequately upheld.

A significant proportion of respondents reported violations concerning their personal security, with 49.3% indicating that their rights were not adequately protected. This discrepancy raises critical concerns regarding the effectiveness of current legal frameworks and the necessity for improved enforcement mechanisms to ensure that children's rights are actively upheld rather than remaining theoretical.

Children's perceptions of their treatment within CYCCs reflect a mixed experience. While 52.1% reported good treatment, 40.9% experienced a combination of positive and negative interactions, and 7% reported outright poor treatment, including incidents of bullying and violence. Alarming, 83.1% of respondents indicated they had experienced bullying, and an equivalent percentage reported physical assault by management. These findings suggest that environments intended to facilitate rehabilitation may instead contribute to additional trauma and distress.

The data reveals that 53.5% of children reported involvement in fights, and 42.4% experienced physical punishment. These findings raise ethical questions about the methodologies employed in CYCCs. The reliance on punitive measures rather than constructive disciplinary approaches undermines the rehabilitative goals of these centres and may perpetuate cycles of aggression and conflict among youth.

While 97.2% of respondents reported adequate access to medical assistance, the data indicates inconsistencies in access to social workers. A significant proportion of children noted limited contact with social workers, which can hinder their emotional and psychological well-being—elements critical for effective rehabilitation.

The study underscores the importance of family connections, with 98.6% of respondents expressing a sense of missing home. This emotional disconnect can adversely affect their mental health and rehabilitation process. Facilitating regular family engagement and support can enhance the emotional stability of children during their time in CYCCs.

The analysis also reveals substantial educational interruptions faced by these youth. Although 90.1% attended school prior to detention, many struggles to reintegrate into educational systems post-release due to educational gaps and societal stigma. Many children reported being placed in lower grades upon admission to the centres, indicating a significant violation of their right to education. Tailored educational programmes that incorporate trauma-informed approaches are essential for facilitating learning and reintegration.

The findings presented in this analysis highlight the urgent need for reform within the child justice system, particularly concerning the treatment of children in CYCCs. Addressing the discrepancies between legal provisions and actual practices is critical for creating a more just and rehabilitative environment for children in conflict with the law. Ensuring that these children are treated with dignity and respect is not only a legal obligation but a moral imperative that can significantly influence their future and societal reintegration. Stakeholders must collaborate to bridge these gaps and promote the rights and well-being of vulnerable youth.

5.7 CONCLUSION

Legally or on paper, children in conflict with the law are protected in South Africa. However, the study's findings indicate that the law is not the problem – instead, the implementation of the law is. It is submitted that, while the legislative mandate is

commendable in terms of its objectives to assist and safeguard the best interest of children, certain elements can still be seen as stumbling blocks to their effectiveness and implementation. South Africa has a comprehensive legal framework to ensure the protection of children's rights, including those who are in CYCCs. The Constitution of South Africa¹¹, the Child Justice Act¹², and the Children's Act¹³ are the key legal instruments governing children in conflict with the law. In South Africa, government institutions are liable for the realisation, implementation, protection, and fulfilment of the rights of children in conflict with the law. Therefore, when those institutions fail to provide services, they infringe on the rights of children. For example, if the Department of Education fails to provide quality education to children in CYCCs equal to that of children who are not in the juvenile justice system, then they deny children in conflict with the law their right to education.

The study notes that the protection of the rights of children in conflict with the law in South Africa is not perfect, but there has been significant progress in ensuring that they are treated in a manner that is consistent with their rights and best interests. In this case, the study suggests that the state can improve in its attempt to protect the rights of children in conflict with the law. There is still much work that needs to be undertaken to create a safe and harmonious environment for children in conflict with the law.

Violence against children continues to be a challenge, particularly within the CYCC environment, and is prevalent with all forms of abuse, including physical, sexual, emotional, and psychological abuse. Even though South Africa's legislative framework is commensurate with international human rights standards, the requisite adjustments to the allocation of resources, standards of service delivery, and accountability mechanisms are all lagging.

¹¹ *The Constitution of the Republic of South Africa, 1996.*

¹² *The Child Justice Act 75 of 2008.*

¹³ *The Children's Act 38 of 2005.*

CHAPTER 6

RECOMMENDATIONS AND CONCLUSION

6.1 INTRODUCTION

The primary conclusion drawn from the data analysis presented in the previous chapter is that the constitutional rights of children in conflict with the law in South Africa are insufficiently protected and enforced. While this assertion encompasses a broad range of issues, it is crucial to differentiate between various dimensions of children's rights. Notably, rights related to healthcare and access to information are well implemented. In contrast, significant concerns persist in other areas, warranting attention.

Children represent society's most valuable resource and embody the best hope for the future; thus, any violation of their rights is indefensible. This concluding chapter synthesises the extensive discussions from prior chapters concerning the protection of the rights of children in conflict with the law. A significant finding is the pronounced gap between legal provisions and their practical implementation. While the Constitution articulates the rights of children, translating these rights into effective practice remains a considerable challenge. It is one thing to provide for children's rights in the Constitution, but it is a different matter altogether to actually implement them in practice.¹

This study aimed to explore the treatment of children in conflict with the law by childcare officials and fellow inmates in the Child and Youth Care Centres (CYCCs) of the Free State and Eastern Cape provinces. It also sought to assess the roles played by governmental and non-state actors in safeguarding the rights of these children and to evaluate whether the criminal justice system prioritises the best interests of the child.

¹ Mubangizi 2001: 195.

The issue of children in conflict with the law entails a complex interplay between established legal frameworks and the realities of their implementation. Many of these children report feeling that their constitutional rights are not adequately protected or enforced. Although legal frameworks are designed to promote the protection and rehabilitation of these children, the actual conditions within care facilities can differ markedly.

6.2 SUMMARY OF IMPORTANT FINDINGS OF THE STUDY

This study examined the alignment of experiences and treatment of children in conflict with the law within CYCCs in South Africa with established legal standards. The findings indicate a significant disparity between legal frameworks and actual practices.

South Africa has ratified several international agreements designed to protect the rights of children in conflict with the law. Notably, the country ratified the United Nations Convention on the Rights of the Child in June 1995,² along with the United Nations Guidelines for the Prevention of Juvenile Delinquency³ in 1990, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules)⁴ in 1985, and the United Nations Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty⁵ in 1990. Additionally, the African Charter on the Rights and Welfare of the Child⁶ was ratified on 7 January 2000. In the domestic legal framework, the South African Constitution provides a robust foundation for the protection of children's rights. This is further reinforced by specific legislation, including the Child Justice Act,⁷ which came into effect on 1 April 2010, and the Children's Act.⁸

² United Nations Convention on the Rights of the Child 1989.

³ United Nations Guidelines for the Prevention of Juvenile Delinquency 1990.

⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985.

⁵ United Nations Standards Minimum Rules for the Protection of Juveniles Deprived of their Liberty 1990.

⁶ African Charter on the Rights and Welfare of the Child 1999.

⁷ Child Justice Act 75 of 2008.

⁸ Children's Act 38 of 2005.

The study reveals a mixed implementation of rights within these centres. While some rights are well upheld, others remain inadequately addressed. This inconsistency highlights the ongoing challenges in aligning practice with legal standards, underscoring the need for continued advocacy and reform to protect children's rights.

6.2.1 Parental involvement – communication and visitation

The predominance of maternal upbringing presents potential challenges in child development and the efficacy of support systems. Notably, the correlation between single motherhood and an elevated risk of criminal behaviour necessitates further investigation, as it may illuminate broader societal issues. A comprehensive understanding of these dynamics could facilitate the implementation of targeted interventions aimed at supporting single mothers and their children, thereby mitigating the risks associated with criminal behaviour.⁹

1. Parental involvement is critical in fostering healthy relationships between children and their parents or guardians. The data reveals that, while most respondents have access to a phone, this access is not granted daily. This pattern suggests a controlled environment where phone usage is restricted. Although communication occurs, it is very infrequent and insufficient to adequately support the emotional and psychological well-being of the child. Furthermore, the data indicates a significant violation of Section 35(2)(f) of the Constitution, which guarantees the right to communicate for individuals detained, awaiting trial or sentenced.¹⁰ The restriction to phone access is characterised as a serious infringement of this legal right.¹¹ Section 35(2) states:

(2) “Everyone who is detained, including every sentenced prisoner, has the right

(f) to communicate with, and be visited by, that person’s –

(i) spouse or partner;

(ii) next of kin;

⁹ See Figure 4 in Chapter 5.

¹⁰ Section 35(2)(f) of the Constitution.

¹¹ See Figure 5 in Chapter 5.

- (iii) chosen religious counsellor; and
- (iv) chosen medical practitioner.”¹²

The data presented reveals critical challenges related to social interaction and isolation experienced by respondents, particularly among those residing in rural areas. This situation necessitates the implementation of targeted interventions aimed at supporting individuals who lack social visitors. Such measures would align with legal frameworks designed to protect the rights and well-being of these individuals. Notably, the reference to Section 35(2)(f) of the Constitution emphasizes a legal foundation that advocates for the rights of individuals, specifically in relation to their social interactions and support systems. This implies that the absence of visitors may constitute a violation of their rights, thus emphasising the necessity for intervention.

6.2.2 Right to be informed of their rights

The analysis of survey results concerning the extent to which children at the CYCCs are informed of their rights reveals a significant area of concern. Specifically, 19.7% of respondents reported that they were not informed of their rights. This statistic is alarming, as it indicates a substantial communication gap that may leave a considerable number of children unaware of their entitlements. The fact that one in five children lacks this essential information suggests an imperative need for improved educational strategies within CYCCs.

According to Section 35(2) of the relevant legal framework, every individual who is detained, including sentenced prisoners, has the right to be informed promptly of the reasons for their detention and to choose and consult with a legal practitioner, with timely notification of this right.¹³ Additionally, Section 35(4) stipulates that any information required to be communicated must be provided in a language that the recipient understands.¹⁴

¹² Section 35(2) of the Constitution.

¹³ Section 35(2)(a)(b) of the Constitution.

¹⁴ Section 35(4) of the Constitution.

These provisions underscore a fundamental legal principle affirming that all individuals, including minors, have the right to be informed of their rights. The specific mention of children in conflict with the law highlights a particularly vulnerable population that often lacks both the knowledge and resources necessary to navigate complex legal systems. Thus, the right to information is crucial for safeguarding their interests and ensuring their ability to advocate effectively for themselves.

6.2.3 Treatment and experiences

The analysis reveals a systemic failure in safeguarding fundamental human rights, particularly in relation to personal safety and dignity. The marked disparity between the most and least violated rights highlights critical areas in need of urgent intervention to foster a more equitable and just society. Notably, the infringement of the right to freedom and security of the person is particularly prominent, accounting for approximately 49.3% of all reported violations. This statistic underscores the urgency of addressing issues pertaining to personal safety and freedom, which may indicate a significant prevalence of violence, arbitrary detention, and various forms of repression.¹⁵

Section 28 of the Constitution explicitly delineates the rights of children, stating that:

Every child has the right –

- (a) to a name and a nationality from birth;
- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services, and social services;
- (d) to be protected from maltreatment, neglect, abuse, or degradation;
- (e) to be protected from exploitative labour practices;

¹⁵ See Figure 6 in Chapter 6.

(f) not to be required or permitted to perform work or provide services that

–

(i) are inappropriate for a person of that child's age; or

(ii) place at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development;

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 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;

(h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

(i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section, "child" means a person under the age of 18 years."¹⁶

Moreover, Section 12(1) emphasises that:

"Everyone has the right to freedom and security of the person, which includes the right –

(a) not to be deprived of freedom arbitrarily or without just cause;

(b) not to be detained without trial;

¹⁶ Section 28 (1)(2)(3) of the Constitution.

(c) to be free from all forms of violence from either public or private sources;

(d) not to be tortured in any way; and

(e) not to be treated or punished in a cruel, inhuman, or degrading way.¹⁷

The data collected reveals significant insights into the prevalence and types of bullying among respondents, with a substantial 83.1% reporting experiences of bullying. This indicates a high incidence of bullying within the surveyed group, while only 16.9% reported not experiencing such behaviour. The findings underscore a pervasive issue of bullying, particularly in its physical and verbal manifestations. To effectively address this concern, it is imperative to cultivate a culture of safety and respect through structured environments and clear behavioural guidelines.¹⁸

Furthermore, the data indicates that a vast majority of respondents have faced some form of assault, suggesting that these experiences are not isolated incidents but part of a broader trend. The survey data presents a concerning picture of management practices, with a striking 83.1% of respondents reporting that they have been assaulted in either physical, verbal, or sexual form.¹⁹

Additionally, the analysis reveals a troubling trend towards severe disciplinary measures, including isolation and physical punishment. In summary, the data reflects a troubling disciplinary culture that necessitates immediate attention and reform to ensure ethical treatment and the well-being of children. The trends observed suggest gross violations of children's rights and highlight the urgent need for systemic reform.

6.2.4 Human dignity

According to Section 10 of the Constitution, “everyone has inherent dignity and the right to have their dignity respected and protected.”²⁰ This provision underscores the fundamental principle that human dignity is a cornerstone of individual rights. Table

¹⁷ Section 12(1) of the Constitution.

¹⁸ See Figure 10 in Chapter 5.

¹⁹ See Table 4 and 5 in Chapter 5.

²⁰ Section 10 of the Constitution.

5.5 in Chapter 5 illustrates critical dimensions of emotional and social aggression, particularly emphasising the significant percentages associated with discrimination and humiliation. The elevated rates of these forms of aggression indicate an urgent need for targeted interventions aimed at mitigating emotional and social aggression across various contexts.²¹

Furthermore, Section 9 of the Constitution enshrines the right to equality. It articulates several key points:

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality encompasses the full and equal enjoyment of all rights and freedoms. To promote equality, legislative and other measures may be implemented to protect or advance individuals or groups disadvantaged by unfair discrimination.

(3) The state is prohibited from unfairly discriminating, either directly or indirectly, against any individual based on grounds such as race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.

(4) Individuals are also prohibited from unfairly discriminating against others on these grounds, as specified in subsection (3). National legislation must be established to prevent or prohibit such unfair discrimination.

(5) Discrimination based on the aforementioned grounds is deemed unfair unless it can be demonstrated that the discrimination is justified.²²

This trend highlights the fact that a violation of one right may lead to the infringement of multiple rights, illustrating the interconnectedness of human rights and the necessity for comprehensive protective measures.

²¹ See Table 6 in Chapter 5.

²² Section 9 of the Constitution.

6.3 RECOMMENDATIONS FOR THE PROTECTION OF THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW IN SOUTH AFRICA

This study concludes that more serious issues still need to be addressed to provide protection of the rights of children in conflict with the law. The study makes the following recommendations:

6.3.1 Right to education

The Department of Education holds the crucial responsibility of upholding Section 29 of the Constitution, which enshrines the right to education.²³ In order to enhance the educational quality for children in conflict with the law within CYCCs, a comprehensive strategy is imperative. This study presents several recommendations for the Department of Education to consider in its efforts to fulfil this mandate. Firstly, the Department should develop personalised education plans tailored to the unique needs and interests of each child. These plans should integrate life skills, vocational training, and social-emotional learning into the curriculum. Creating a secure and nurturing classroom environment is essential, as it fosters engagement and cultivates a sense of belonging among students. Additionally, employing interactive and practical teaching methods can significantly enhance children's involvement in their education.

Moreover, it is vital to provide training for teachers in trauma-informed approaches and cultural awareness. Such training will equip teachers to effectively address the specific challenges faced by these children. Recruiting teachers with expertise in special education and behavioural management is also recommended to further support this initiative. Incorporating mental health services into educational programmes is another crucial aspect. Providing counselling and support groups can offer essential emotional and psychological support. Collaborating with mental health professionals to deliver ongoing support for both learners and teachers will contribute to a more holistic educational experience.

²³ Section 29 of the Constitution.

Furthermore, initiatives should be established to assist children in transitioning back into mainstream education or vocational training upon leaving the CYCC. Providing mentorship and support during this transition is vital for encouraging positive outcomes. Regularly evaluating educational programmes is equally important; adjustments should be made based on feedback from children, teachers, and mental health experts. Establishing a monitoring system for progress and outcomes will ensure continuous improvement in educational practices. Lastly, including extracurricular activities that promote physical, social, and emotional development, such as sports, arts, and community service initiatives, should be prioritised. Encouraging participation in these activities can enhance self-esteem and foster teamwork skills.

6.3.2 Right to adequate health care for children in conflict with the law

The Department of Health must undertake substantial measures to ensure that quality healthcare is provided within CYCCs for children in conflict with the law. Enhancing healthcare services for this vulnerable population can be achieved through a variety of strategic initiatives. Firstly, the implementation of regular health screenings – encompassing physical, mental, and developmental assessments – should be prioritised. Early identification and intervention for existing health issues are crucial to preventing long-term adverse consequences. Secondly, it is essential to guarantee access to mental health professionals, including psychologists and counsellors who specialise in trauma-informed care. Establishing group therapy and support sessions can effectively address the emotional and behavioural challenges faced by these children. Moreover, educational initiatives aimed at promoting health, nutrition, and personal hygiene are important. These programmes should also encompass topics such as substance abuse prevention and the importance of fostering healthy relationships.

In addition, training programmes for staff at CYCCs should be developed to enhance their ability to recognise and manage health concerns pertinent to this demographic. Continuous professional development in areas such as mental health, trauma-informed practices, and child development is essential for ensuring high-quality care.

Furthermore, it is important to consistently evaluate the effectiveness of existing health programmes and make necessary adjustments. Incorporating feedback from children and their families can significantly enhance the responsiveness and relevance of healthcare services. Collaboration among healthcare providers, social workers, and legal professionals is also critical to adopting a comprehensive approach to the healthcare needs of these children. Forming multidisciplinary teams can help address the diverse and complex requirements of this population. Additionally, ensuring that healthcare services are readily accessible within CYCCs is crucial in minimising barriers to care. When off-site medical appointments are necessary, providing transportation options can facilitate access to essential services. Finally, South Africa should advocate for policies that prioritise the health and well-being of children in conflict with the law. Efforts should be directed toward integrating health services within the juvenile justice system. By implementing these strategies, the Department of Health can significantly enhance healthcare services for children in conflict with the law, thereby promoting better health outcomes and supporting their rehabilitation.

6.3.3 Right to freedom of expression

Children should be allowed to actively engage in proceedings and articulate their views and concerns. In this context, it is recommended that CYCCs adopt the following strategies to enhance children's participation. Firstly, it is essential to establish environments where children feel secure in expressing their thoughts and emotions. This can be achieved by fostering trust through reliable and nurturing relationships with staff members. Additionally, CYCCs should provide creative activities, such as art, drama, or music, which serve as outlets for children to express themselves and share their personal narratives. Furthermore, forming support groups can facilitate connections among children, enabling them to share experiences and provide mutual support. Secondly, children should be encouraged to participate in decision-making processes that affect their lives, including care plans and daily activities. Regular feedback sessions can be instituted to allow children to voice their thoughts and ideas. It is also crucial to continuously evaluate

participation methods to identify areas for improvement, ensuring that children's feedback is used to enhance programmes and practices.

Moreover, educating children about their rights and the importance of their involvement in decision making is vital. Providing training in communication and advocacy can empower them to articulate their thoughts and feelings effectively. Engaging families in discussions about their child's care and rehabilitation further strengthens this process. By implementing these strategies, CYCCs can cultivate a more inclusive environment that empowers children to actively participate in their rehabilitation and care. Such initiatives not only uphold children's rights but also contribute to their overall well-being and development.

6.3.4 Right to humane treatment in CYCCs

The treatment of children within the legal system must prioritise their dignity and respect. Any form of detention must occur in environments that are appropriate and conducive to the well-being of children. To ensure that the staff of the Department of Social Development effectively uphold the rights of children involved in legal matters, a comprehensive and multifaceted approach is essential. This study proposes the following recommendations in this regard:

1. All employees should receive thorough training focused on children's rights, relevant legal frameworks, and ethical guidelines. Workshops should be organised to deepen understanding of the impacts of abuse on children and to underscore the importance of safeguarding their rights.
2. A comprehensive code of conduct should be developed, outlining acceptable behaviours and detailing the consequences for any violations. Additionally, clear and accessible reporting channels must be established for both staff and children to report instances of abuse or misconduct.
3. Regular evaluations and audits of staff practices should be conducted to ensure adherence to established policies. It is crucial to implement systems that hold staff accountable for any breaches of children's rights.
4. Mental health resources and assistance should be provided to staff to help them navigate the challenges inherent in their roles. Consistent supervision

and support from management should be ensured to address any challenges and ethical dilemmas that may arise.

5. Detailed assessments of each child should be performed to tailor interventions that respect their rights and meet their individual needs. Mechanisms should be developed to allow children to provide feedback regarding their treatment and experiences.
6. All staff must be well-versed in and comply with both national and international laws pertaining to children's rights. Keeping the team informed about legislative updates and best practices related to child welfare is essential for sustained compliance.

By implementing these recommendations, the Department of Social Development can create an environment that prioritises the rights and welfare of children, while simultaneously minimising the potential for staff misconduct. This approach not only upholds the principles of humane treatment but also fosters a legal system that respects and values the dignity of every child involved.

6.3.5 Right to equality

To ensure that every child has access to competent legal representation, it is essential to provide free legal assistance. Legal procedures should be reformed to enhance accessibility and comprehension for children, employing age-appropriate language and methods that resonate with their developmental stages. Training for staff within CYCCs must be prioritised, focusing on children's rights, diversity, and non-discrimination. This training should cultivate a welcoming and inclusive environment for all children, incorporating cultural sensitivity to respect and address the diverse backgrounds of those in conflict with the law.

Moreover, the establishment of independent oversight organisations is crucial for monitoring conditions within CYCCs and ensuring compliance with children's rights. Collecting and analysing data on children's experiences in these settings will help identify inequalities and highlight areas requiring improvement. By strengthening the right to equality for children in conflict with the law, South Africa can safeguard their dignity and facilitate their successful reintegration into society. The study also recommends implementing standardised services across all Child and Youth Care

Centres to ensure that every child receives an equitable level of care, irrespective of their backgrounds or circumstances. Such an approach aims to mitigate disparities in treatment and outcomes, thereby promoting fairness and consistency in service delivery.

The educational and health experiences provided to children in the Eastern Cape differ significantly from those available in the Free State CYCCs. This disparity represents a substantial form of systemic inequality. Therefore, budget allocations for CYCCs must prioritise enhancements to their educational and health services.

6.3.6 Rehabilitation of families and the communities

Mere rehabilitation of children is insufficient if they return to communities unprepared to accept them. Rehabilitation efforts must also engage families and communities, collaborating with organisations such as National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and the Safer South Africa Foundation. This holistic approach supports the reintegration process. The study recommends that the Department of Social Development actively involve families in rehabilitation efforts, offering parenting classes, family therapy, and necessary support. Addressing family-level risk factors that may contribute to a child's delinquency is vital. Moreover, ensuring a smooth transition back into the community following any period of sentencing or detention is essential for long-term success.

Research conducted by Malesa and Mashamba²⁴ in South Africa underscores the importance of parental involvement in diversion programmes, a recommendation echoed in this study. Despite some successes in diversion initiatives, significant challenges remain in their implementation. A notable concern is the lack of a comprehensive policy framework that delineates the role of parents in these programmes. This absence of clear guidelines hampers effective implementation. Many young individuals engaged in criminal behaviour come from unstable family environments characterised by relational issues. This context suggests that a disconnect may exist between parents and their children, complicating parental

²⁴ Malesa & Mashamba 2024:175.

involvement, particularly when children are required to participate in diversion programmes. Unfortunately, in numerous instances, parents are not actively engaged in their children's diversion processes, which further exacerbates the challenges of rehabilitation and reintegration.

6.3.7 Level of education for child and youth care workers

The challenges inherent in working with children who have engaged in criminal behaviour can be significant, often impacting the coping mechanisms of the staff involved. Therefore, this study advocates for the implementation of comprehensive programmes aimed at enhancing the professional development and well-being of child and youth care workers. Such programmes may include structured training initiatives, employee wellness programmes, and opportunities for online supervision. Moreover, there exists a notable shortage of adequately trained professionals within South African CYCCs. This deficiency hinders the capacity of these institutions to provide appropriate care and to uphold the best interests of the children they serve. Considering these findings, the study emphasises that the qualifications of staff should be a critical consideration during the hiring process for positions within CYCCs. It is recommended that prospective employees undergo a year-long training course that integrates both theoretical knowledge and practical experience, akin to the training programmes designed for police and correctional service officers. This approach aims to ensure that child and youth care workers are equipped with the necessary skills and knowledge to effectively support and rehabilitate the vulnerable populations they serve.

6.3.8 Screening of all workers at the CYCCs by the Department of Social Development

The screening of staff who interact with children in conflict with the law at CYCCs is a critical component of safeguarding this vulnerable population. Implementing a robust screening procedure is essential for ensuring that only qualified and trustworthy individuals work with these children, thereby enhancing their rehabilitative experiences and overall well-being.

By systematically screening CYCC staff, the potential risks to children can be significantly mitigated. This process is designed to exclude individuals with histories

of abusive behaviour or criminal conduct, thereby fostering a secure environment conducive to positive interactions between children and caregivers. Furthermore, such screening aligns with the regulations and guidelines established by the Department of Social Development, reinforcing the commitment to child safety and welfare. The screening process should encompass comprehensive background checks including criminal record checks, Child Protection Registry checks, and verification of employment history. In addition to these checks, structured interviews should be conducted to assess the candidates' suitability, motivations, and understanding of child welfare. Engaging with previous employers or professional references is also vital in gathering insights regarding the candidate's past behaviour and performance. Moreover, all workers must receive training in child protection, trauma-informed care, and relevant legal frameworks. This training will not only equip staff with the necessary skills and knowledge but also underscore the importance of creating a safe and nurturing environment for children in CYCCs.

6.3.9 Early childhood education on the consequences of crime and misbehaviour

Understanding the significance of rules and boundaries is essential for children's development. Teachers play a pivotal role in imparting the idea that rules are primarily established to ensure safety and fairness, which in turn cultivates a sense of accountability among young learners. It is imperative to explain to children that rules exist not merely as restrictions but as important mechanisms for maintaining safety and fairness within their communities. Teachers should use stories and role-playing activities that vividly illustrate the connection between misbehaviour and its negative repercussions. These methods help children internalise the consequences of their actions in a relatable manner. Moreover, incorporating stories that emphasise the value of good behaviour and the repercussions of poor choices is crucial. Such narratives serve as effective tools for moral education.

Teachers should create scenarios in which children can enact various situations allowing them to explore the potential impacts of their decisions, fostering critical thinking and empathy. They should consistently exemplify positive choices and behaviours, demonstrating the tangible benefits of making wise decisions. This modelling reinforces the importance of accountability. Incorporating reward systems

by the Department of Education can effectively reinforce positive actions, encouraging children to engage in constructive behaviour. In addition, local partnerships, such as collaborations with police officers and community leaders, can provide real-world context to discussions about rules and responsibilities, enhancing children's understanding of societal norms. Providing resources and training for parents is essential so they can discuss the impacts of crime and misbehaviour at home, thereby creating a cohesive approach to behavioural expectations. Ensuring that teachers and parents present a unified message regarding the importance of rules and the consequence of misbehaviour is vital for reinforcing these concepts. The study recommends fostering an environment that allows children to learn about the repercussions of their actions in a safe and supportive context, we can effectively deter future criminal behaviour and promote responsible citizenship.

6.3.10 Early release for good conduct

Early release for good conduct within the juvenile justice system refers to policies that permit young offenders to be released from detention prior to the completion of their original sentences, contingent upon their demonstrated positive behaviour and active participation in rehabilitation efforts during their time in custody. This approach is integral to fostering rehabilitation and mitigating the long-term negative impacts of incarceration on youth. It embodies the principle that children possess the capacity for change and should be afforded opportunities to reintegrate into society effectively.

The adoption of early-release policies will serve several critical functions. Firstly, it will promote rehabilitation by incentivising positive behaviour among young offenders, thereby encouraging them to engage constructively in their rehabilitation process. Secondly, early release can contribute to a reduction in recidivism rates, as it allows youth to transition back into their communities more swiftly, facilitating their reintegration and reducing the likelihood of reoffending. To qualify for early release, CYCCs should consider the following criteria: firstly, young offenders must exhibit consistent positive behaviour while in detention, which reflects their commitment to personal growth and rehabilitation; secondly, participate in educational initiatives and rehabilitation programmes, as it underscores the

offender's efforts to acquire skills and knowledge that contribute to their successful reintegration; and lastly, recommendations from detention staff or assessment committees should play a crucial role in the decision-making process, providing insights into the offender's progress and potential for successful reintegration. Most importantly, it is imperative to ensure that decisions regarding early release are conducted with fairness and consistency. Additionally, the study recommends monitoring the behaviour of released individuals and providing adequate support for their reintegration into society are essential components of an effective juvenile justice system.

6.3.11 Recidivism

Research consistently shows that children who maintain strong ties to their families and communities while going through the juvenile justice system are much less likely to reoffend after their release. Therefore, interventions need to specifically address the criminal risk factors linked to an individual's likelihood of recidivism, recognizing that these factors can differ widely from one child to another. Effective programmes should tackle these varied risk factors to help reduce recidivism rates.

Several strategies can be employed to further lower recidivism among youth. Community-based alternatives to incarceration, such as diversion programmes that link children to local resources instead of directing them into the juvenile justice system, have proven beneficial. A restorative justice approach focuses on accountability, victim restitution, and reintegrating youth into their communities, promoting a sense of responsibility while minimizing the negative effects of incarceration. Additionally, providing ongoing support during the transition back into their communities is essential to help children manage the challenges of re-entry, thus decreasing the chances of reoffending.

Another key strategy involves using trauma-informed and developmentally appropriate approaches. Recognizing the widespread impact of childhood trauma is crucial, and interventions should be customized to address the cognitive, emotional, and social developmental needs of each child, ensuring they are both trauma-sensitive and suitable for their developmental stage. Finally, it is vital to confront systemic biases and inequalities that disproportionately impact specific groups of

children within the juvenile justice system. Addressing these disparities can lead to fairer treatment and outcomes, ultimately helping to lower recidivism rates.

6.4 CONCLUSION

This concluding chapter presents recommendations and draws conclusions based on the findings of the study. The research critically examined the alignment – or lack thereof – between the treatment of children in conflict with the law in South Africa and the established legal standards designed to protect their rights. Despite the country's ratification of numerous international agreements and the existence of robust domestic legal frameworks, significant disparities persist between these legal standards and actual practices within Child and Youth Care Centres (CYCCs).

The findings revealed alarming gaps in the implementation of children's rights, particularly concerning parental involvement, communication, and access to information about their rights. The restrictive environment surrounding communication limits emotional support for these children, leading to potential violations of their constitutional rights. Furthermore, the data indicated a troubling lack of awareness among the youth regarding their rights, with nearly one in five children unable to articulate their entitlements. This underscores an urgent need for educational strategies that effectively inform children of their rights, enabling them to advocate for themselves within the justice system.

Additionally, the study highlights systemic failures in ensuring the safety and dignity of children within CYCCs. The high incidence of bullying and assault reported among respondents points to a pervasive culture of violence and inadequate management practices. Such findings necessitate immediate reforms aimed at fostering a safe and supportive environment for children, aligning practices with constitutional mandates that prioritize their well-being.

The interconnectedness of various rights is also evident, as violations in one area often lead to broader infringements. This complexity emphasizes the necessity for a holistic approach to children's rights, wherein interventions should not only address individual rights, but also the systemic issues that contribute to their violation.

Ensuring the protection of the rights of children in conflict with the law is not only a legal obligation, but a moral imperative that requires collective action from policymakers, practitioners, and society at large. Only through sustained efforts can we hope to create a just and equitable environment that respects and upholds the dignity and rights of all children.

In conclusion, it is essential to acknowledge that the South African Constitution is widely regarded as one of the most progressive in the world, further substantiated by the country's commitment to protecting and enforcing the rights of children. This study critically analysed the gap between legal protection and the realities faced by children in CYCCs, emphasizing the need for systemic reforms to ensure that the rights and dignity of these vulnerable individuals are upheld. The findings highlight the urgent need for effective implementation of laws protecting children's rights in South Africa, as many children in conflict with the law continue to experience significant challenges and violations of their rights within the current system.

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APPENDIX A REQUEST: RESEARCH APPROVAL



OFFICE OF THE HEAD OF DEPARTMENT

University of the Free State
Attention: Ms. Thembisa Leeuw
General/Human Research Ethics Committee (CHREC)
BLOEMFONTEIN

Per email: tleeuw@sahm.org.za

Dear Ms. Leeuw

RE: REQUEST FOR PERMISSION TO CONDUCT RESEARCH

1. I acknowledge with appreciation your request on the above, contents of which are noted.
2. Permission is hereby granted for you to conduct research at our departmental Secure Care Centres.
3. Kindly make contact with the Chief Director: Special Social Services, Mr. L Maphalala, who is herein copied on 066 431 6646, email address: Linda.Maphalala@fssocdev.gov.za
4. It will be highly appreciated if you can share your findings with the Department.

Regards



ADV. T.J PHAHLO
ACTING HEAD: DEPARTMENT OF SOCIAL DEVELOPMENT



DATE

Cc: Mr. L Maphalala
Chief Director: Specialist Social Services

Office of the Head of Department
Private Bag X20516, Bloemfontein, 9300
Standard Bank Building, 2nd Floor, Cnr West Burger & Charlotte-Maxwell Streets, Standard Bank Building
Email: hsoipa@fssocdev.gov.za

www.fs.gov.za

APPENDIX B RESEARCH APPROVAL



Beacon Hill Office Park - Corner of Hargreaves Road and Hockley Close - Private Bag X0039 - Bhisho - 5605 - REPUBLIC OF SOUTH AFRICA
Tel: +27 (0)43 605 5237 Fax: 043 605 5612 - Email address: linda.saki@ecdsd.gov.za Website: www.ecdsd.gov.za

01 FEBRUARY 2023

TEMBISA LEEUW
DEPARTMENT OF PUBLIC LAW
125 HALDON ROAD, UNIVERSITAS
BLOEMFONTEIN
9321

Dear Ms. Tembisa Leeuw

REQUEST FOR PERMISSION TO CONDUCT RESEARCH: PROTECTING THE RIGHTS OF CHILDREN IN CONFLICT WITH THE LAW IN SOUTH AFRICA: THE LAW VERSUS THE PRACTICE.

The Department considered your application for permission to conduct the research study in the Eastern Cape, BCM, NMU and Amatole Districts. The application is hereby approved.

You are requested to adhere to the following conditions:

1. You will liaise with

- Ms. Linda Saki: Assistant Director: Population Policy Promotion, Provincial Office to keep her abreast of progress and any issues that might arise when conducting your research. Contact details are.lindasaki93@gmail.com/0718814249
- Mr. Tembisa Toyiya, Chief Director Programme 3, Provincial Office, to facilitate access to the identified respondents. Contact details: tembisile.toyiya@ecdsd.gov.za
- Ms. Shirley Hugo, Chief Director Programme 4, Provincial Office, to facilitate access to the identified respondents. Contact details: Shirley.hugo@ecdsd.gov.za
- Ms. Afika Siziba, District Director BCM, to facilitate access to the identified respondents. Contact Details: afika.siziba@ecdsd.gov.za
- Mr. K Nethe District Director Amathole, to facilitate access to the identified respondents. Contact details: khululekile.nethe@ecdsd.gov.za
- Mr. Tembisa Ngqabayi, District Director Nelson Mandela, to facilitate access to the identified respondents. Contact details: tembisa.ngqabayi@ecdsd.gov.za

2. Interviews with the identified respondents must be conducted with the least disruption of service delivery.

3. The Department must be afforded a fair opportunity to respond to any issues that might arise from the research before publication.

4. After completion of your research, you must provide the Department (Population Policy Promotion Unit) with a written research report. The report will be used to inform Departmental programmes.

APPROVAL LETTER FOR MS. T. LEEUW

Building a Caring Society. Together.

APPENDIX C ETHICAL CLEARANCE



GENERAL/HUMAN RESEARCH ETHICS COMMITTEE (GHREC)

11-Jan-2023

Dear Ms Tembisa Leeuw

Application Approved

Research Project Title:

Protecting the Rights of Children in Conflict with the Law in South Africa: the Law versus the Practice

Ethical Clearance number:

UFS-HSD2022/0006/22

We are pleased to inform you that your application for ethical clearance has been approved. Your ethical clearance is valid for twelve (12) months from the date of issue. We request that any changes that may take place during the course of your study/research project be submitted to the ethics office to ensure ethical transparency. Furthermore, you are requested to submit the final report of your study/research project to the ethics office. Should you require more time to complete this research, please apply for an extension. Thank you for submitting your proposal for ethical clearance; we wish you the best of luck and success with your research.

Yours sincerely

Dr Adri Du Plessis

Chairperson: General/Human Research Ethics Committee

205 Nelson Mandela Drive
Park West
Bloemfontein 9301
South Africa

P.O. Box 339
Bloemfontein 9300
Tel: +27 (0)51 401 9337
adp@ufs.ac.za
www.ufs.ac.za



WHY HAVE YOUR CHILD BEEN INVITED TO TAKE PART IN THIS RESEARCH PROJECT?

Children are invited to participate in this study because they are the main subject of the study. The selected group of children are those that are in Child and Youth Care Centres. The researcher wants to know about their stay at the centres and how they are treated. The researcher advocates for the protection of the rights of children in conflict with the law.

WHO IS DOING THE RESEARCH?

The researcher is Tembisa Leeuw. A PhD student at the University of the Free state conducting research on protection of the rights of children in conflict with the law

HAS THE STUDY RECEIVED ETHICAL APPROVAL?

Still awaiting the ethical approval

Approval number: N/A

WHAT WILL HAPPEN TO YOUR CHILD IN THIS STUDY?

Describe what the participant will be expected to do. Describe all procedures using simple terms and explain any technical or medical term. The participant will be expected to be honest in answering the questions on the condition and their experiences in the centre. Interviews will be conducted, and questionnaires distributed to the Thabo Mufutsanyana Secure Care Centre, Bloemfontein Secure Care, the Matete Matches Secure Care Centre in Kroonstad, John X Merriman in East London, and Enkuselweni Secure Care Centre in Port Elizabeth. The sample used in this study included no more than 100 children, and they met the following inclusion criteria:

- a) Children who resided in the Free State and the Eastern Cape provinces*
- b) Children were available and willing to participate in the study who have been fully informed of what the study entails, and who participate out of their own free will.*
- c) Children who were detained for more than 24 hours, awaiting trial, and sentences*
- d) Children of both genders – males and females.*

CAN ANYTHING BAD HAPPEN TO YOUR CHILD?

1. Emotional distress- Social workers and psychologist on site will assist the researcher. 2. Personal embarrassment- The first step is for children to acknowledge that they have done wrong and are being rehabilitated at the centres. Ensure that children understand that it is not their fault that they are ill-treated at the centres. It is not the researchers place to judge children but to try and understand their situation. 3. Legal jeopardy- The information received from children will not be used against them. 4. Reputation harm- Information will be kept confidential. No pictures will be taken during the interaction with the children

CAN ANYTHING BAD HAPPEN TO YOUR CHILD?

1. Emotional distress- Social workers and psychologist on site will assist the researcher. 2. Personal embarrassment- The first step is for children to acknowledge that they have done wrong and are being rehabilitated at the centres. Ensure that children understand that it is not their fault that they are ill-treated at the centres. It is not the researchers place to judge children but to try and understand their situation. 3. Legal jeopardy- The information received from children will not be used against them. 4. Reputation harm- Information will be kept confidential. No pictures will be taken during the interaction with the children

CAN ANYTHING GOOD HAPPEN TO YOUR CHILD?

There are no personal benefits, however the researcher hopes that the policy makers and the government including all relevant stakeholders would implement the research recommendation to better the lives of those in need of care and protection in Child and Youth Care Centres

WILL ANYONE KNOW YOUR CHILD IS PART OF THE STUDY?

No one will know any child is part of the study. Both the researcher and the participants must have a clear understanding regarding the confidentiality of the result and finding of the study.¹ Participant's information and responses shared during the study will be kept private and the result will be presented in an anonymous manner in order to protect the identities of the participants. To protect the confidentiality of the participants and their activities the researcher made sure that the recordings and details identifying the research participants, are kept confidential instead the researcher used codes

WHO CAN YOU TALK TO ABOUT THE STUDY?

Participants and parents can contact the researcher any time should they encounter problems regarding their participation in the study or should they have questions regarding the study. The researcher can be contacted on 0735428425.

WHAT IF YOU DO NOT WANT YOUR CHILD TO DO THIS?

Participation in this study is strictly voluntary. Should parents feel that it is within their children's best interest not to take part, their decision will be respected.

PLEASE RETURN

¹ Holloway & Wheeler 2010:120.



Name of child: _____

Name of Parent: _____

- Do you understand this research study and are you willing to let your child take part in it? Yes No
- Has the researcher answered all your questions? Yes No
- Do you understand that you can withdraw from the study at any time? Yes No
- I give the researcher permission to make use of the data gathered from my child's participation Yes No

Signature of Parent

Date

I, the undersigned Parent, further confirm that–

1. the Researcher has explained the nature, procedure, potential benefits and anticipated inconvenience of my participation in the Study;
2. I have read (or had explained to me) and understood the Study as explained in the attached information sheet;
3. I have had sufficient opportunity to ask questions and am prepared to participate in the Study;
4. I understand that my participation in the Study is entirely voluntary and that I am free to withdraw at any time without penalty (if applicable);
5. I voluntarily provide the UFS and the Researcher with my personal information and consent to the UFS and the Researcher collecting, disclosing and processing my personal information in order to conduct the Study and any related activities in relation thereto;
6. I hereby acknowledge and confirm that I understand the purpose for which the UFS and the Researcher may collect, store, use, delete, destroy, outsource, transfer or otherwise process, as the context and circumstances may require and as contemplated in terms of POPIA, my personal information as set out herein;
7. I am aware that the findings of the Study will be anonymously processed into a research report, journal publications and/or conference proceedings and that my personal information will be aggregated and deidentified at such stage;
8. I also give the UFS permission to share, without notification, the collected data with other researchers at the UFS or other Higher Education Institutions. This permission is dependent on the same principles of ethical research practices, anonymity/confidentiality, safekeeping of information, and other issues listed above applying.





I, the Parent, agree to the recording of the insert specific data collection method.

Full Name of Participant: _____

Signature of Participant: _____ Date: _____

Full Name(s) of Researcher(s): _____

Signature of Researcher: _____ Date: _____



APPENDIX E PARTICIPANT INFORMATION LEAFLET AND ASSENT FORM



PARTICIPANT INFORMATION LEAFLET AND ASSENT FORM



TITLE OF THE RESEARCH PROJECT: Protecting the Rights of Children in Conflict with the Law in South Africa: The Law versus the Practice

RESEARCHERS NAME(S): Tembisa Leeuw

ADDRESS: 125 Haldon Road, Universitas, Bloemfontein, 9321

CONTACT NUMBER: 0735428425

What is RESEARCH?

Research is something we do to find new knowledge about the way things (and people) work. We use research projects or studies to help us find out more about protection, promotion and fulfilment of the rights of children in conflict with the law. Research also helps us to find better ways of helping, and contributing to existing literature.

What is this research project all about?

The purpose of the study is to determine the extent to which the treatment of children in conflict with the law in South Africa is consistent with the laws protecting their rights. Children in child and youth centres are "more sensitive to the effects of detention than adult inmates and are particularly vulnerable to victimization".¹ This study aims to explore, explain and describe the victimisation, crime and violence faced by such children in conflict with the law. The study identified victimisation, crime and violence faced by children in conflict with the law and assist in developing programmes which will specifically address those violations. The study also examine the protection of the rights of children in conflict with the law as addressed in South African legislation and international and regional instruments. The finding could further necessitate the review and amendment of existing policies and laws in South Africa. The findings will also provide the premise from which suggestions and recommendations may be made and forwarded to policy makers. The study will contribute to the literature concerning children in conflict with the law, their rights and protection, and it will provide information which could aid the further refining and reformulation of policy, to advance the best interest of the child in CYCCs

Why have I been invited to take part in this research project?

Children are invited to participate in this study because they are the main subject of the study. The selected group of children are those that are in Child and Youth Care Centres. The researcher wants to know about their stay at the centres and how they are treated. The researcher advocates for the protection of the rights of children in conflict with the law.

Who is doing the research?

The researcher is Tembisa Leeuw. A PhD student at the University of the Free state conducting research on protection of the rights of children in conflict with the law.

What will happen to me in this study?

The participant will be expected to be honest in answering the questions on the condition and their experiences in the centre. Interviews will be conducted, and questionnaires distributed to the Thabo Mufutsanyana Secure Care Centre, Bloemfontein Secure Care, the Matete Matches Secure Care Centre in Kroonstad, John X Merriman in East London, and Enkuselweni Secure Care Centre in Port Elizabeth. The sample used in this study included no more than 100 children, and they met the following inclusion criteria:

- a) *Children who resided in the Free State and the Eastern Cape provinces*
- b) *Children were available and willing to participate in the study who have been fully informed of what the study entails, and who participate out of their own free will.*
- c) *Children who were detained for more than 24 hours, awaiting trial, and sentences*
- d) *Children of both genders – males and females.*

Can anything bad happen to me?

1. *Emotional distress- Social workers and psychologist on site will assist the researcher.*
2. *Personal embarrassment- The first step is for children to acknowledge that they have done wrong and are being rehabilitated at the centres. Ensure that children understand that it is not their fault that they are ill-treated at the centres. It is not the researchers place to judge children but to try and understand their situation.*
3. *Legal jeopardy- The information received from children will not be used against them.*
- 4.

¹ Kiessl & Würger 2002:300.

1. Reputation harm- Information will be kept confidential. No pictures will be taken during the interaction with the children.

Can anything good happen to me?

There are no personal benefits, however the researcher hopes that the policy makers and the government including all relevant stakeholders would implement the research recommendation to better the lives of those in need of care and protection in Child and Youth Care Centres

Will anyone know I am in the study?

Both the researcher and the participants must have a clear understanding regarding the confidentiality of the result and finding of the study.¹ Participant's information and responses shared during the study will be kept private and the result will be presented in an anonymous manner in order to protect the identities of the participants. To protect the confidentiality of the participants and their activities the researcher made sure that the recordings and details identifying the research participants, are kept confidential instead the researcher used codes



Who can I talk to about the study? Participants can contact the researcher any time should they encounter problems regarding their participation in the study or should they have questions regarding the study. The researcher can be contacted on 0735428425.

What if I do not want to do this?

Participation in the study is voluntary, no child will be forced to participate if they do not want to. Only children who assent will be allowed to participate. Your participation in this study is voluntary. It is up to you to decide whether or not to take part in this study. If you decide to take part in this study, you will be asked to sign a consent form. After you sign the consent form, you are still free to withdraw at any time and without giving a reason. Withdrawing from this study will not affect the relationship you have, if any, with the researcher. If you withdraw from the study before data collection is completed, your data will be returned to you or destroyed.

Do you understand this research study and are you willing to take part in it?

YES

NO

Has the researcher answered all your questions?

¹ Holloway & Wheeler 2010:120.

YES

NO

Do you understand that you can pull out of the study at any time?

YES

NO

Signature of Child

Date

PARTICIPANT INFORMATION LEAFLET AND CONSENT FORM

TITLE OF THE RESEARCH PROJECT: Protecting the Rights of Children in Conflict with the Law in South Africa: The Law versus the Practice

REFERENCE NUMBER:

PRINCIPAL INVESTIGATOR: Tembisa Leeuw

ADDRESS: 125 Haldon Road, Uoniversitas, Bloemfontein, 9321

CONTACT NUMBER: 0735428425

You are being invited to take part in a research project. Please take some time to read the information presented here, which will explain the details of this project. Please ask the study staff or doctor any questions about any part of this project that you do not fully understand. It is very important that you are fully satisfied that you clearly understand what this research entails and how you could be involved. Also, your participation is **entirely voluntary**, and you are free to decline to participate. If you say no, this will not affect you negatively in any way whatsoever. You are also free to withdraw from the study at any point, even if you do agree to take part.

This study has been approved by the Research Ethics Committee at the University of the Free State and will be conducted according to the ethical guidelines and principles of the international Declaration of Helsinki, South African Guidelines for Good Clinical Practice and the Medical Research Council (MRC) Ethical Guidelines for Research.

What is this research study all about?

- The purpose of the study is to determine the extent to which the treatment of children in conflict with the law in South Africa is consistent with the laws protecting their rights. Children in child and youth centres are "more sensitive to the effects of detention than adult inmates and are particularly vulnerable to victimization". This study aims to explore, explain and describe the victimisation, crime and violence faced by such children in conflict with the law. The study identified victimisation, crime and violence faced by children in conflict with the law and assist in developing programmes which will specifically address those violations. The study also examine the protection of the rights of children in conflict with the law as addressed in South African legislation and international and regional instruments. The finding could further necessitate the review and amendment of existing policies and laws in South Africa. The findings will also provide the premise from which suggestions and recommendations may be made and forwarded to policy makers. The study will contribute to the literature concerning children in conflict with the law, their rights and protection, and it will provide information which could aid the further refining and reformulation of policy, to advance the best interest of the child in CYCCs.

Why have you been invited to participate?

- Children are invited to take part as they are the subject of the study.

What will your responsibilities be?

- *The participant will be expected to be honest in answering the questions on the condition and their experiences in the centre. Participants are asked to listen to instructions and ask questions should they need clarity.*

Will you benefit from taking part in this research?

- There are no personal benefits, however the researcher hopes that the policy makers and the government including all relevant stakeholders would implement the research recommendation to better the lives of those in need of care and protection in Child and Youth Care Centres.

Are there in risks involved in your taking part in this research?

1. *Emotional distress- Social workers and psychologist on site will assist the researcher.*
2. *Personal embarrassment- The first step is for children to acknowledge that they have done wrong and are being rehabilitated at the centres. Ensure that children understand that it is not their fault that they are ill-treated at the centres. It is not the researchers place to judge children but to try and understand their situation.*
3. *Legal jeopardy- The information received from children will not be used against them.*
4. *Reputation harm- Information will be kept confidential. No pictures will be taken during the interaction with the children*

If you do not agree to take part, what alternatives do you have?

- *Participation is strictly voluntary, children who do not want to take part in the study will not participate in any other way.*

Who will have access to your personal records?

- *Only the researcher will have access to the records.*

What will happen in the unlikely event of some form of injury occurring as a direct result of your taking part in this research study?

- *Children might have psychological problem during and after the study. Social workers working in the centre will be asked to assist with psychological therapy.*

Will you be paid to take part in this study and are there any costs involved?

No, you will not be paid to take part in the study. There will be no costs involved for you if you do take part.

Is there anything else that you should know or do?

- You should inform your parents and the centre manager that you are taking part in a research study.
- You can contact Tembisa Leeuw at tel 0735428425 if you have any further queries or encounter any problems.
- You can contact the Research Ethics Office at 051 4019398 if you have any concerns or complaints that have not been adequately addressed by the researcher.
- You will receive a copy of this information and consent form for your records.

Declaration by participant

By signing below, I agree to take part in a research study entitled
(insert title of study).

I declare that:

- I have read or had read to me this information and consent form, and it is written in a language with which I am fluent and comfortable.
- I have had a chance to ask questions, and all my questions have been adequately answered.
- I understand that taking part in this study is **voluntary** and I have not been pressurized to take part.
- I may choose to leave the study at any time and will not be penalized or prejudiced in any way.
- I may be asked to leave the study before it has finished if the researcher feels it is in my best interests, or if I do not follow the study plan, as agreed to.

Signed at (place) on (date) 2019.

.....
Signature of Participant

.....
Signature of witness

Declaration by investigator

I Tembisa Leeuw declare that:

- I explained the information in this document to (the participant)
- I encouraged him/her to ask questions and took adequate time to answer them.
- I am satisfied that he/she adequately understands all aspects of the research, as discussed above
- I did/did not use an interpreter.

Signed at Bloemfontein on 16-06-2022.

.....
Signature of investigator

.....
Signature of witness

Declaration by interpreter

I (name) declare that:

- I assisted the investigator (name) to explain the information in this document to (name of participant) Using the language medium of Afrikaans/Sotho.
- We encouraged him/her to ask questions and took adequate time to answer them.
- I conveyed a factually correct version of what was related to me.
- I am satisfied that the participant fully understands the content of this informed consent document and has had all his/her question satisfactorily answered.

Signed at (place) on (date)

.....
Signature of interpreter

.....
Signature of witness

CONSENT FORM FOR CASE REPORTS¹

For a participant consent to the publication of information about them in a journal or thesis

Name of person described in article or shown in photograph: _____

Subject matter of photograph or article: _____

Title of article: _____

Medical practitioner or corresponding author: _____

I _____ [insert full name] give my consent for this information about MYSELF OR MY CHILD OR WARD/MY RELATIVE [insert full name]: _____, relating to the subject matter above ("the Information") to appear in a journal article, or to be used for the purpose of a thesis or presentation.

I understand the following:

1. The Information will be published without my name/child's name/relatives name attached, and every attempt will be made to ensure anonymity. I understand, however, that complete anonymity cannot be guaranteed. It is possible that somebody somewhere - perhaps, for example, somebody who looked after me/my child/relative, if I was in hospital, or a relative - may identify me.
2. The Information may be published in a journal which is read worldwide or an online journal. Journals are aimed mainly at health care professionals but may be seen by many non-doctors, including journalists.
3. Information may be placed on a website.
4. I can withdraw my consent at any time before online publication, but once the Information has been committed to publication it will not be possible to withdraw the consent.

Signed: _____ Date: _____

Signature of requesting medical practitioner/health care worker:

_____ Date: _____

¹ Adapted from *BMJ Case Reports* consent form & Stellenbosch University Ethics Templates

APPENDIX F RESIDENTS' QUESTIONNAIRE

RESIDENTS QUESTIONNAIRE

i. Personal information

1. Gender Male Female
2. How old are you?
3. Where are you from?
4. How long have you been at the centre?
5. Are you detained awaiting trial sentenced

ii. Conditions

6. Are you receiving three meals a day?
7. At what times do you receive your meals?
8. Is there access to warm and cold water? Yes No
9. Are bathing and toilet facilities clean? Yes No
10. Do you have access to a toothbrush, toothpaste, toilet paper and soap?
 Yes No
11. If respondent is female, do you have access to sufficient sanitary towels?
 Yes No

12. Do you have contact sessions with a social worker? Yes No

13. How often do you have sessions with the social worker?

14. Do you have contact sessions with a psychologist? Yes No

15. How often do you have sessions with the psychologist?

16. Do you receive any medical assistance? Yes No

17. When you are sick what is the procedure used at the Centre?

18. Do you have a medical condition that requires medication? Yes No

19. If yes, do you receive the required medication? Yes No

20. What sport are you playing?

21. How frequent and for how long are you allowed to play sport?

22. Is there adequate lighting and ventilation in the facility? (must be checked by interviewer) Yes No

iii. Contact

23. Who is your guardian at home?

24. Are you allowed to use a phone? Yes No

25. How often do you call home? Yes No

26. Do you receive visitors? Yes No

27. When was the last time you had a visitor?

i. Rights

28. Are you informed of your rights? Yes No

29. Do you understand your rights? Yes No

30. If yes, which rights do you think are violated at the centre, and how?

ii. Education

31. Do you attend school at the centre? Yes No

32. Were you attending school before you came to the centre? Yes No

33. If yes, which grade?

34. If no, explain when did you drop out of school?

35. Which grade are you going now at the centre?

36. Is there skills development training at the centre? Yes No

37. If yes, are you attending those classes? Yes No

38. Are you still going to continue with school after your release? Yes No

39. Provide explanation for you answer

APPENDIX G

GROUP QUESTIONNAIRE

iv. Treatment

40. Have you made friends at the centre? Yes No
41. Do you get along with everyone at the centre? Yes No
42. Are there groups or gangs at the centre? Yes No
43. Are you part of any of the groups? Yes No
44. How are others treating you?
45. Have you been involved in a fight? Yes No
46. Have you observed or experienced bullying from other children? Yes No
47. If yes, please explain
48. Have you experienced physical, verbal, or sexual assault from other children? Yes No
49. If yes, please explain
50. Do you think the management is treating you with respect? Yes No

51. Have you had disagreements with any member of management? Yes No
52. If yes, please explain
53. Have you been physically, verbally, or sexually assaulted by members of management Yes No
54. If yes, please explain
55. When you have done something wrong how are you punished?
56. Are you well taken care of here? Yes No
57. Do you miss home? Yes No
58. Is the management open and transparent with information and decisions that have been made regarding your stay/detention? Yes No
59. Does the social worker discuss the programs with you? Yes No
60. Do you have an opportunity to choose or have a say in the programs you want to participate in? Yes No
61. Do you identify as lesbian, gay, bisexual, transgender, intersex, or other non-cisgender (a person who does not conform to their gender of birth) identity? Yes No

62. If yes, do you feel safe in your current accommodation? Yes No

63. If no, what arrangement would you prefer to ensure your safety?

64. Have you ever experienced discrimination, humiliation, abuse, or violence from facility staff or other residents because of your sexual orientation or gender identity? Yes No

65. If yes, please explain: