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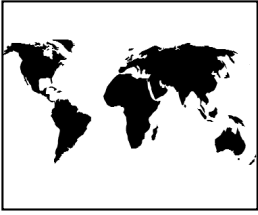
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Developing citizenship among urban youth in conflict with the law

A paper commissioned by the Safer Cities Programme of UN-HABITAT, compiled by Margaret Shaw and Lullu Tschiwula

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SUMMARY: *This paper summarizes the outcome of an international conference on addressing the issue of urban youth in conflict with the law in Africa. It discusses the most effective responses to youth crime and violence which centre on prevention and inclusion (especially of youth in government) rather than exclusion, punishment and incarceration. It also highlights the key role for local governments in developing effective local responses that draw in and support all key local actors (parents, schools, police, businesses).*

I. INTRODUCTION

EVERY COUNTRY IN the world is concerned with the safety and well-being of its children and young people. They represent our future and our potential, but are also extremely vulnerable. Young people are more likely to be victimized and are more frequently involved in delinquent behaviour and breaking the law than all other age groups in society. Not every child becomes involved in delinquent behaviour but it is a rite of passage for many. The majority outgrow it, but for some it is the beginning of a longer and more serious career. This article is the outcome of an international conference held in Port Elizabeth, South Africa, in June 2002 to address the issue of urban youth in conflict with the law in Africa.

II. BACKGROUND

SOCIAL AND ECONOMIC changes in many countries over the past two decades, as well as civil wars and health problems, have had a marked impact on the lives of children and youth. There is growing youth unemployment, changes in family patterns, increasing income disparities between wealthy and poor, increasing migration and immigration, the recruitment of child soldiers, the impact of AIDS and HIV, and the virtual exclusion of sections of populations living in inner cities or poor rural areas from the increased prosperity experienced by others.

In the past ten years, countries in the South, especially in urban areas, have experienced significant increases in population, in crime and in prison populations.⁽¹⁾ There have been large increases in the numbers of street children, in the incidence of youth gangs, in alcohol and drug use, in truancy and school dropout rates, and in physical and sexual violence by and

towards children and young people. This is in contrast to trends over the same period in many countries in the North, where levels of crime by young people began to decline from the mid-1990s. There is no universal agreement on the causes of the escalating youth crime and violence in the South, but inequality and social exclusion have been identified as two of the most significant factors. Offending and victimization among young people are often highly predictable and closely linked, the outcome of a variety of circumstances and experiences in the lives of children and young people which can lead to serious consequences as they grow up.

Three terms are commonly used to distinguish between three groups of young people: *young offenders* are those already subject to the criminal justice system, having been found guilty and sentenced; *youth in conflict with the law*, a broader term, includes those known to the justice system but not prosecuted, those reported to the police, and those charged with offences and found guilty; and *youth at risk*, those children and young people whose circumstances, lifestyle and/or behaviour puts them at risk of offending in the future. All three groups could include street children, those in youth gangs and those who drop out of school or become truant. The focus of the Port Elizabeth conference was on the complementary role that local government and community institutions and organizations can play in assisting each of these groups of young people, but especially those at risk and in conflict with the law, and in preventing a deterioration of behaviour and future offending and social problems.

This article highlights some global trends and specific developments in preventive programmes and strategies targeting young people in conflict with the law or at risk.

- Internationally, there is a developing consensus on giving greater priority to *investing in and supporting* young people and their families through preventive approaches rather than excluding, punishing or incarcerating them.
- A growing number of countries now have *national strategies*, which include the development of preventive programmes for children and young people. These place considerable emphasis on the development of *partnerships* at the local and community level to *plan, implement and evaluate* programmes. There is growing evidence internationally of the *cost-effectiveness and cost-benefits* of preventive approaches for young people.
- The circumstances which place young people *at risk* either as victims or as offenders, or which exclude them from mainstream society, are now widely recognized and appear to be similar across both North and South. These include the links between *poverty, physical and mental ill-health, parental and educational problems, and offending and victimization* among young people. These are also points for intervention and protection.
- More programmes now attempt to take account of *gender and diversity* – of the different needs and experiences of girls, boys, young women and young men, and those who belong to minority groups in their society.
- Approaches which *recognize young peoples' rights to public space* and which *include young people* themselves in the planning and delivery of programmes have become much more prominent.
- Prevention practices which are grounded in *restorative approaches* have multiplied, and there is an increased understanding of their potential for dealing with youth victimization, offending and re-offending.⁽²⁾

But other trends should also be acknowledged. The past ten years have seen some extreme attempts to deal with increasing youth crime, some with serious and costly side-effects. Some countries, faced with what

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1. Kibuka, E (2001), *Prisons in Africa*, paper presented at the UN Programme Network Institute Technical Assistance Workshop, Vienna, Austria May 10, 2001, UNAFRI, Kampala.

2. ICPC (2001), *Investing in Youth 12-18: International Approaches to Preventing Offending and Victimization*, International Centre for the Prevention of Crime, Montreal, www.crime-prevention-intl.org

3. For example, a high proportion of juvenile offenders in the USA report physical and sexual abuse

and neglect during their childhood: Schneider, H J (2000), *Victimological Developments in the World During the Last Three Decades; A Study of Comparative Victimology*, paper for the 10th International Symposium on Victimology, Montreal, August. Studies of the young homeless in Canada and Australia find they experience high levels of physical and sexual victimization from their peers and are the least likely to report offences to the police or seek help for injuries. See, for example, Baron, S W (1997), "Risky lifestyles and the link between offending and victimization", *Studies on Crime and Prevention* Vol 16, No 1, pages 53–71; also Hagan, J and B McCarthy (1997), *Mean Streets: Youth Crime and Homelessness*, Cambridge University Press, Cambridge; Alder, C (1991), "Victims of violence: the case of homeless youth", *Australian and New Zealand Journal of Criminology* Vol 24, No 1, pages 1–14; and NCP (1999), *Living Rough; Preventing Crime and Victimization among Homeless Young People*, National Crime Prevention, Attorney General's Department, Australian Capital Territory.

4. McWhirter, J J, B T McWhirter, A M McWhirter and E H McWhirter (1998), *At-risk Youth: A Comprehensive Response*, Brooks/Cole Publishing Company, Pacific Grove.

5. University of Cape Town (1999), *Youth Violence in Schools*, Joint Framework Document, Secretariat for Safety and Security, the Institute of Criminology, University of Cape Town, published in Pretoria, South Africa.

6. See reference 2.

7. See reference 2; also ICPC (1999), *Crime Prevention Digest II*, International Centre for the Prevention of Crime, Montreal, www.crime-prevention-intl.org

seems to be increasing incidents of violent crime involving young people, have responded to public and media calls for increasing security and deterrent measures, with tougher responses and zero-tolerance policies. This article considers alternative responses, and is concerned with the long- and the short-term benefits of investing in young people and developing programmes which help to build safe and healthy communities for all citizens.

III. VICTIMS AND OFFENDERS

YOUNG PEOPLE TEND to victimize others who are known to them, whether through violence or property offences. The majority of their victims are other young people, their age or younger, living in the same communities, attending the same schools and, less often, adults, businesses or shops.

Young offenders have often been victimized themselves in childhood and begin to victimize others as they grow older. Sometimes, their offending behaviour places them in much riskier situations, which invite victimization. The behaviours and circumstances that lead to law-breaking are often similar to those leading to victimization. Those who are isolated or excluded may turn to bullying or offending in order to survive on the street.⁽³⁾ Levels of family violence among the young homeless are usually high, and are the major reason for leaving home.

IV. RISK FACTORS FOR YOUTH OFFENDING

YOUTH AT RISK are a distinctly separate group from those already in conflict with the law. McWhirter and others define the concept of "at risk" as "...a set of presumed cause-and-effect dynamics that place the child or adolescent in danger of negative *future events*.... at risk designates a situation that is not necessarily current, but that can be anticipated in the absence of intervention."⁽⁴⁾

There is now widespread agreement in the North and the South on factors that place children and young people at risk of offending. In South Africa, for example, the following risk factors for violence in schools have been identified:

- poverty, poor environment;
- harsh, erratic parenting;
- poor supervision;
- early aggressive behaviour;
- parental conflict, family violence;
- lack of facilities or jobs; and
- poor schooling, truancy, exclusion.⁽⁵⁾

Accumulated experience demonstrates that when good programmes are targeted at children, families or areas most at risk, there is a reduction in crime as well as other social problems.⁽⁶⁾ There is also excellent evidence of the cost-effectiveness of such approaches.⁽⁷⁾

V. TRENDS IN YOUTH CRIME

THERE IS A dearth of reliable data on youth offences in Africa. Africa needs to share information, to learn from the experiences of others and

make maximum use of limited resources. It is clear, however, that in Africa, as elsewhere in the global village, crime rates are invariably linked to the age structure of a population. In Namibia, for example, almost half of the population is aged under 15; in South Africa, 44 per cent of the population is aged under 20.⁽⁸⁾ Countries in Africa have poverty in common, with its cumulative problems which exacerbate youth risk factors. Some countries also experience other problems, for example, the problem of child soldiers who can be seen both as victims and as youth at risk of serious offences. There are cases where children are drugged, brutalized and threatened with physical abuse or death if they fail to comply with orders to commit atrocities, sometimes even victimizing other children.⁽⁹⁾

A central feature of African legal systems has been a concern to shame the offender and then reincorporate him/her once the initial expression of community repugnance has been demonstrated. Traditional African courts tended to avoid as far as possible the segregation of the offender or marginalization of him/her into a sub-community of similar social rejects.⁽¹⁰⁾ These principles are compatible with the approach of restorative justice, with its focus on the protection of the innocent and a restoration of balance rather than the punishment of the guilty. The concept of restorative justice gives a new name and structure to the traditional African concept of *ubuntu*, which recognizes the connections of all people and the importance of relationships and of building communities.

It should be noted, however, that responses to how children are adjudicated differs from country to country, depending on governments and the extent to which they adhere to the ideals of democracy. What is noteworthy is the universal reference point of the Convention on the Rights of the Child (CRC), ratified by all African countries except Somalia. Some countries have also ratified the African Charter on the Rights and Welfare of the Child, and adhere to other guidelines such as the Beijing and Riyadh rules.

VI. RESPONSES TO YOUTH CRIME

SOME AFRICAN COUNTRIES have responded to youth crime by changing their youth justice systems to be compatible with the CRC and the other related instruments. Examples include:

Uganda, which has brought aspects of restorative justice and a greater emphasis on the welfare of the child into the "normal" justice system:

- a child statute is in force for two years;
- family and children's courts have been gazetted and spread through the courts; and rules of conduct for these courts have been enacted and made available to all courts and probation and welfare officers;
- the establishment of court users' groups in some districts has improved coordination and has contributed to a reduction in the number of children in remand;
- probation and welfare officers have been recruited as key players in districts where they do not exist;
- a legal aid clinic has opened at the Law Development Centre in Kampala;
- the children's statute has been simplified in English and translated into six major languages, and training guides have been prepared.⁽¹¹⁾

Malawi, which has built on the work undertaken by government, NGOs and development partners:

- the least possible use of police and prison custody for children and

8. Super, G (1999), Article 40, *African Focus: Juvenile Justice in Namibia* Vol 1, May 6-7; also Dickson-Tetteh, K and S Ladha (2000), *South African Health Review*, www.rhru.co.za

9. Amnesty International Reports (2000), *Child Soldiers: Criminals or Victims?* and *Sierra Leone Childhood – A Casualty of Conflict*, June and August, International Secretariat, London.

10. Consedine, J (1999), *Restorative Justice Healing the Effects of Crime*, Ploughshare Publication, Lyttelton.

11. Kakama, P T (1999), *Juvenile Justice in Uganda*, paper prepared for the Conference on "Juvenile Justice in Malawi, Time for Reform", 23-25 November.

12. Penal Reform International (2000), *Juvenile Justice: International Standards and Overview of Main Issues*, <http://www.penalreform.org/>

13. Kamwanyah, J and R Mukonda (2000), *Namibia: Legal Assistance Centre, Penal Reform International*, <http://www.penalreform.org/>

14. Skelton, A (2000) *Implementing the United Nations Convention on the Rights of the Child: Myth or Reality*, IPSCAN Conference, Durban, pages 1–7.

youth is recommended;

- community-based measures such as prevention, diversion, non-custodial and restorative justice are encouraged as the most effective ways of dealing with children in conflict with the law.⁽¹²⁾

Namibia, which has put forward a model for reform which includes:

- strategies for minimizing the risk of children committing crime and coming into contact with the law;
- a child friendly service delivery system, including legal representation and welfare services and a move to non-custodial sentencing;
- specialized training for magistrates, prosecutors, police officers, social workers, life skills facilitators and prison officers to build capacity and foster professionalism;
- a monitoring structure to enforce accountability;
- policy and legislation to complement practice;
- research on juvenile justice issues for planning purposes.⁽¹³⁾

VII. TARGETING YOUTH AT RISK – THE SOUTH AFRICAN MODEL

AS A RESULT of ratifying the Convention on the Rights of the Child (CRC) in 1995, South Africa was obliged to establish laws, procedures, authorities and institutions specifically applicable to children in conflict with the law.⁽¹⁴⁾ The country embarked on a journey of re-evaluating approaches to youth and the law, and international trends were examined to find examples appropriate to a South African context. South Africa has learnt from the experiences and processes of countries like New Zealand, Scotland and Canada, and has also looked at indigenous customs and “legal” practices of the African people.

An aspect that seems to be lagging behind at this time is the move from a reactive to a more proactive approach to justice. At present, a lot of energy is spent reacting to criminal acts and those who perpetrate them instead of controlling the rate of crime through prevention. In many ways, communities seem to be “looking the other way” while individuals’ lives become more and more out of control, or “at risk”, and then reacting with justice once these people have clashed with the law. One question has been whether resources should be allocated to dealing with youth at risk at the same level as resources given to dealing with youth offenders.

The Inter-Ministerial Committee (IMC) on Young People at Risk was set up by the government of South Africa to deal with policy in the field of child and youth care, including the management of children in conflict with the law. The IMC set up a number of pilot projects, including the One-Stop Centre, later to become the successful model, Stepping Stones One-Stop Youth Justice Centre, in Port Elizabeth.

In 1996, South Africa also responded with a National Crime Prevention Strategy (NCPS), a coordinated effort between the departments of Correctional Services, Defence, Intelligence, Justice, Safety, and Security and Welfare. The NCPS consists of four pillars:

- the criminal justice process;
- community values and education;
- environmental design; and
- transnational crime.

Two examples of attention to youth fall under the headings of criminal justice process and community values and education, as follows.

Diversion programmes are an option given to youth offenders, who can be diverted away from the criminal justice system, provided they are prepared to take responsibility for what they have done. These programmes were initiated by an NGO, the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), in 1992, and are supervised and conducted by qualified social workers employed by NICRO. As an alternative to regular court procedures and sentencing, young offenders are given a second chance. A variety of methods is used, including life skills programmes, family group conferences, victim-offender mediation, community service and (for selected groups who are particularly vulnerable to re-offend) "The Journey". This is an adventure camp where diversion workers and youth offenders spend time together in challenging outdoor activities. The aim is to model appropriate behaviour for youth, teach them additional life skills and show them the benefits of teamwork and a sense of community.⁽¹⁵⁾

A **national school safety project** is the result of government concern to address issues that impact negatively on teaching and learning in schools. These include reducing firearm violence, substance abuse, sexual violence, child abuse and preventing HIV/AIDS.

VIII. WHAT ARE THE PROBLEMS, WHAT ARE THE PRIORITIES?

CHILDREN AND YOUNG people in Africa, along with their national and local governments, are faced with enormous challenges. Working groups at the Port Elizabeth conference provided an opportunity for all participants to consider these challenges and to synthesize different perspectives; these groups included young people. The following group themes were identified as some of the most pressing issues to be tackled:

- street children;
- youth gangs;
- alcohol and drugs;
- young offenders – boys and girls;
- valued citizenship programme; and
- youth in urban governance.

a. Street children

One of the fastest-growing concerns in Africa, street children are those with disrupted or no family ties, who survive in urban areas on the streets. As the report *Street Children and Gangs in African Cities* indicates, they tend to be seen as a nuisance or a menace and are generally excluded and discriminated against.⁽¹⁶⁾ They include the following groups:

- children sent out by parents on a daily basis to earn money by whatever means – usually returning home at night;
- children with loose family contact, occasionally returning home to their families;
- children without any family contact, living in temporary shelters and with other street children in gangs; and
- children of street children or adolescents.

Street children often live in slums or deserted or dilapidated areas of the city. They have their own territories and their gangs may specialize in certain crimes – pickpocketing, prostitution, begging. They are themselves

15. Undated information document published in Cape Town by The National Institute of Crime Prevention and Reintegration of Offenders (NICRO), website: www.nicro.org.za, e-mail: nicro@wn.apc.org

16. UMP (2000), *Street Children and Gangs in African Cities: Guidelines for Local Authorities*, Urban Management Programme Working Paper Series 18, UNCHS (Habitat), Nairobi.

especially vulnerable to victimization.

While short-term assistance (e.g. shelter, food) is sometimes provided by NGOs, dealing with the problem of street children requires a major initiative on the part of local authorities, and not one involving prosecution or punishment. Poverty, squatter settlements and slum conditions all contribute to the problem; better housing, education, health conditions and support for families will all help to prevent their entry into a life of crime. Working directly with street children and developing alternative protection (shelter, food, clothing, education, health, alcohol or drug treatment, counselling and friendship) will help them get off the street and reintegrate into neighbourhoods and family life. Some of the needs of girls and boys will be different – since girls are more likely to be sexually exploited or active and their health risks may be greater.

Both approaches require good national policies, local city plans and protocols, partnerships with businesses and organizations, advocacy and education to sensitize the public. And, most importantly, the children themselves need to be involved. An example of constructive intervention is Undugu, an NGO dealing with street children in Nairobi, Kenya, which has struggled to promote youth activities, mainly in the areas of sports and recreation.⁽¹⁷⁾

17. See reference 16.

b. Youth gangs

Youth gangs are a concern in many countries and cities. Not all are dangerous to others, although they put their members at risk of law breaking. A gang can be seen as a group of young people who form an allegiance for a common purpose. There are many types of gangs, including:

- “wannabes” – a term used in North America for groups of young people, mostly boys, who want to become members of a gang and hang out together;

- social gangs – youths who gather at a typical street corner or landmark as their hangout, by and large engaging in acceptable behaviour but also running errands for older boys who may reward them with cigarettes or *dagga* and thereby placing them at risk for anti-social behaviours;
- defence gangs – more organized and structured, engaging in unlawful acts such as “taxing” or fighting rival groups; and
- violent gangs, for example prison gangs, mob-like groups which tend to attract youths with conflict orientation (an example in South Africa would be the “26 and 28s”. who are responsible for trade and sex in

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