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Editorial policy

South African Crime Quarterly (SACQ) is an inter-disciplinary peer-reviewed journal that promotes professional discourse and the publication of research on the subjects of crime, criminal justice, crime prevention and related matters, including state and non-state responses to crime and violence. South Africa is the primary focus of the journal but articles on the above-mentioned subjects that reflect research and analysis from other African countries are considered for publication, if they are of relevance to South Africa.

SACQ is an applied policy journal. Its audience includes policymakers, criminal justice practitioners and civil society researchers and analysts, including academics. The purpose of the journal is to inform and influence policymaking on violence prevention, crime reduction and criminal justice. All articles submitted to *SACQ* are double-blind peer-reviewed before publication.

Policy on the use of racial classifications in articles published in *South African Crime Quarterly*

Racial classifications have continued to be widely used in South Africa post-apartheid. Justifications for the use of racial descriptors usually relate to the need to ensure and monitor societal transformation. However, in the research and policy community racial descriptors are often used because they are believed to enable readers and peers to understand the phenomenon they are considering. We seem unable to make sense of our society, and discussions about our society, without reference to race.

South African Crime Quarterly seeks to challenge the use of race to make meaning, because this reinforces a racialised understanding of our society. We also seek to resist the lazy use of racial categories and descriptors that lock us into categories of identity that we have rejected and yet continue to use without critical engagement post-apartheid.

Through adopting this policy *SACQ* seeks to signal its commitment to challenging the racialisation of our society, and racism in all its forms.

We are aware that in some instances using racial categories is necessary, appropriate and relevant; for example, in an article that assesses and addresses racial transformation policies, such as affirmative action. In this case, the subject of the article is directly related to race. However, when race or racial inequality or injustice is not the subject of the article, *SACQ* will not allow the use of racial categories. We are aware that some readers might find this confusing at first and may request information about the race of research subjects or participants. However, we deliberately seek to foster such a response in order to disrupt racialised thinking and meaning-making.

Editorial

Persistent failures and one victory?

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In the past week – the last in June 2019 – a Durban court sentenced a 25-year-old man to almost 300 years in prison for a litany of offences,[1] and Cape Town cemented its dubious reputation as South Africa's most violent city with a reported 18% jump in murder rates in just one month.[2] Fuelled by the city's rampant gang problem, the statistics stand in sharp contrast to the promises made by President Cyril Ramaphosa in his State of the Nation address just a week earlier: to decrease the country's levels of violent crime by a half or better, to increase the number of trained police by 40% and to implement comprehensive plans to address gender-based violence. The President's speech outlined an impressive array of initiatives, including building partnerships between the community and police as part of a reinvigorated community policing strategy, improving resources for police and communities to proactively prevent crime, strengthening specialised units, expanding the number of Thuthuzela Care Centres and sexual offences courts and improving the police's record-keeping capacity.[3]

Yet these promises seem far removed from the day-to-day realities of those who come into contact with a criminal justice system that is overburdened, poorly managed and in crisis. The example of the Western Cape illustrates the depth of the problem, as political parties have lobbed blame across the aisle and allegations have surfaced of power struggles between rival units within the South African Police that have significantly undermined their ability to respond to the province's crime problem.[4] The burden of these failures is felt every day by ordinary people across the country.

The intractability of the crime problem, post-apartheid, is striking, as is the inability of the criminal justice system to respond. The articles in this edition of *South African Crime Quarterly* bear testimony to these failures. The persistence of deaths in custody, victimisation and fear of crime, women's offending and incarceration and the breakdown of youth justice all raise important questions about the ways that our system and agencies are tackling the problem of crime, and about the vision of their role as both a system and its constituent parts. Each of the articles challenge us to think of ways that we can (and should) re-envision our response to the problem at hand.

This issue

Eleanor Ross and Shahana Rasool draw our attention to the issue of campus safety and students' fear of crime at South African universities. Intrigued by reports in the media of the spate of crimes on university campuses, the authors conducted a qualitative study on the experience of crime among students at a large urban university in Gauteng. Using interview data, the article shows that,

consistent with routine activity theory, the students appeared to be vulnerable targets, who were preyed on by motivated offenders under conditions of a lack of guardianship. The most common crimes reported by the students included the theft of laptops and cell phones, and robberies at their places of accommodation. The article shows that, as cognitive behavioural theory would predict, the incidents had profound psychological, financial and academic consequences for the students, who endeavoured to cope by adopting a variety of cognitive and behavioural strategies. The article presents the students' own recommendations for enhancing safety, which included increased security measures such as patrols and CCTV surveillance cameras, and students adopting self-protection measures such as walking in groups, being more vigilant, and not walking with headphones on. The authors argue that the recommendations for enhancing guardianship on the part of university protection services and police, coupled with self-protection strategies on the part of students, can potentially reduce the risks of students becoming targets of criminal offenders.

This edition of *SACQ* continues the conversation on incarceration that was the focus of our December 2018 Special Edition on decolonising prisons, presenting one research article and one comment and analysis piece that deal with women in prison and youth incarceration, respectively. Nontyatyambo Pearl Dastile and Biko Agozino highlight that African women's crime and incarceration have been predominantly understood using Western theoretical frameworks, thereby missing an important opportunity to develop an African-centred epistemology on the topic. Based on interviews with 55 incarcerated women, the paper argues that these women's experiences of womanhood in the criminal justice system are shaped by race, gender and class, which produce different forms of subjectivities and embodied selves. The authors show how the women do not have fixed identities given differences across race, ethnicity, class, religion, sexuality, nationality and (dis)ability, and how particularly racialised, gendered and class inequalities impact their identities, positions and their own modes of survival, as well as those of their children. In presenting these women's stories, the paper challenges the western canon in criminology on women and incarceration.

In their comment and analysis piece, Lisa Marqua-Harries, Grant Stewart and Venessa Padayachee argue that South Africa urgently needs to rethink crime and punishment, especially for youth. These authors argue that the crisis of the country's high crime rates, recidivism and overburdened criminal justice system show that the time is right for a radical rethinking of the way we respond to the problem of crime and punishment. They point out that simply 'adopting a few well-meaning tweaks to a broken system' falls well short of the kind of paradigm shift that is required. Instead, they argue that the system should be completely reformed into one that is trauma-informed, infused with an ethos of restorative justice, and that emphasises community-owned interventions to respond to, and reduce the crime problem. The article presents a number of proposals and recommendations towards implementing a more effective criminal justice system, based on these principles.

In our 'On the record' feature Sally Gandar, the Head of Advocacy and Legal Advisor for the Scalabrini Centre, and Popo Mfubu, an attorney at the Refugee Rights Unit, talk to Kelley Moult about a recent judgment on refugee rights that was handed down by the Western Cape High Court on 19 June. The order, which was made after successful negotiations with the Department of Home Affairs (DHA/The Department) means that wives, husbands, children and other dependents of asylum-seekers and refugees are now able to document themselves in South Africa as 'dependents' of the principle asylum applicant in a process commonly known as 'family-joining'. The order

confirms a set of Standard Operating Procedures (SOPs) that define the procedures through which refugees can apply, clarifying for example, how refugees can provide evidence of dependency where documents like marriage certificates or birth certificates are not available. The SOPs also provide for DNA testing to confirm the validity of parents' claim over their child. These changes mean that asylum-seeking and refugee families can now be documented together, ensuring their rights to family unity and dignity in South Africa.

Note

1   T Head, Why this Durban criminal will spend the next 202 years behind bars, *The South African*, 28 June 2019, www.thesouthafrican. com/news/longest-jail-sentences-south-africa-mhlonipheni-mjadu-durban/ (Accessed 1 July 2019).

2   A Sicetsha, Cape Town murder rate rises by more than 18% in one month, *The South African*, 28 June 2019, www.thesouthafrican. com/news/cape-town-murder-rate-rises-one-month/ (accessed 1 July 2019).

3   The Presidency, Republic of South Africa, *State of the nation address by President Cyril Ramaphosa*, Parliament, Cape Town, 20 June 2019, http://www.thepresidency.gov.za/speeches/state-nation-address-president-cyril-ramaphosa%2C-parliament%2C-cape-town (accessed 1 July 2019).

4   M Thamm, Cop vs cop: rival Western Cape police units at each other's throats, *Daily Maverick*, 26 June 2019, www.dailymaverick. co.za/article/2019-06-26-cop-vs-cop-rival-western-cape-police-units-at-each-others-throats/ (accessed 1 July 2019).

'You go to campus with fear and come back with fear'

University students' experiences of crime

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In view of reports in the media on the spate of crimes plaguing South African universities, a qualitative study was conducted regarding the experience of crime by students from one urban-based university. The research formed part of a group project in which fourth-year social work students each conducted five interviews with students who were not their friends. Consistent with routine activity theory, students who were interviewed appeared to be vulnerable targets with a lack of guardianship, who were preyed on by motivated offenders. The most common crimes included theft of laptops and cell phones, and robberies at their places of accommodation. In line with cognitive behavioural theory, the crime encounter had profound psychological, financial and academic consequences for students. Students endeavoured to cope with the trauma of crime by adopting a variety of cognitive and behavioural strategies. Students' recommendations for enhancing safety included universities increasing security measures through increasing patrols and CCTV surveillance cameras, and students adopting self-protection measures such as walking in groups, being more vigilant, and not walking with headphones on. These recommendations for enhancing guardianship on the part of university protection services and police, coupled with self-protection strategies on the part of students, can potentially reduce the risks of students becoming targets of criminal offenders.

Crime in South Africa is a serious social problem that impacts either directly or indirectly on all the country's citizens, including university students.

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Police crime statistics for the period 2015/16 – 2016/17 reveal that South Africans were 13% more likely to be murdered, than they were five years ago. On average, there were 50 attempted murders and 61 home robberies per day. As many as 136 sexual offences were committed daily, with 109 being rape cases. Forty-six vehicles were hijacked on a daily basis, and there were 16 aggravated (violent) robberies every hour. More than half of all armed robberies were street robberies, with 79 878 recorded in

the 12 months preceding 31 March. Every day an average of 219 cases of street robbery were reported. Most crimes were reported in the Western Cape and Gauteng with the busiest police stations being Cape Town Central, Johannesburg Central and Mitchells Plain.[1] However, these statistics are merely the tip of the iceberg as many crimes go unreported and unrecorded.[2]

In South Africa crime and violence are inextricably linked with poverty, under-development and the history of repression, marginalisation, alienation and violence associated with the legacy of apartheid in the country.[3] A South African Human Rights Commission conference on crime indicated that the main causes of crime include socio-economic factors – particularly inequalities and their psychological impacts; historical factors where violence was institutionalised within the state; weak regulatory systems; inefficient police services; and an overburdened social justice system. Other contributory factors are social disorganisation, substance abuse, overcrowding of prisons and the high rate of recidivism.[4]

Crime has the ability to disrupt people's lives, diminish the victim's sense of control and self-worth and create a state of uncertainty in the country.[5] It also has physical and financial costs and negatively affects the quality of life of individuals, their families and communities.[6] Furthermore, crime adversely affects perceptions about South Africa internationally and negatively affects the country's economy and the flow of direct foreign investment because of these negative perceptions.[7] According to the Victims of Crime Survey conducted by Statistics South Africa for 2016/17, although South Africans had actively taken measures to protect their property, the fear of crime prevents them from engaging in various activities such walking in open spaces, allowing children to play outside and walking to town.[8]

It is widely recognised that the impact of criminal victimisation is a highly individualised experience and that the impact of crime does not necessarily correspond to the seriousness of the crime based solely upon the crime type.[9] Moreover, crime can also affect one by being experienced vicariously through being exposed to it through someone with whom one has contact, or via the media.[10] For example, Morral et al found that fear of crime existed in both victims and non-victims of crime.[11] Anxiety was experienced by 62.1% of victims and 65.1% of non-victims; lack of confidence (in oneself as well as those who are expected to protect one) was reported by 35.3% of victims and 38.3% of non-victims; and sleeping difficulties were experienced by 32.2% of victims and 27.4% of non-victims.[12] In the aftermath of crime, victims of crime may encounter an extensive array of immediate, short-term and long-terms effects.[13] In addition, the greater the fear of being a victim of crime, the more likely the person is to engage in protective behaviour, such as avoiding threatening situations, carrying a weapon or learning self-defence techniques.[14]

Internationally, crime on college and university campuses has become increasingly prevalent.[15] Universities are social microcosms of the broader society and are not insulated from crime as previously believed;[16] hence university students cannot escape some of the negative forces, such as crimes that impinge on the country's safety and security.[17] According to Forbes-Mewett, McCulloch and Nyland, university students are particularly vulnerable to opportunistic crime simply because they tend to have many items of value that are attractive to thieves, such as laptops, mobile phones, iPods and wallets.[18] Robinson and Mullen studied perceptions and realities of crime at a regional, comprehensive university campus in North Carolina, USA. The majority of respondents believed that the most crime occurred in the hours of darkness (20h00 – 04h00). They reported that the typical criminal

offender on campus was a student, and areas of concern were isolated places, such as parking lots and tunnels.[19] Fox et al maintain that experiences of crime, particularly robbery of gadgets such as cell phones and laptops, affect students' academic performance on university campuses as it exacerbates the existing stresses of university life.[20] Jenning, Gover and Pudrzynska studied 564 undergraduate students at a large south-eastern non-urban university in the United States and found that students made use of behavioural changes or 'constrained behaviour' in an effort to reduce the likelihood of victimisation.[21]

There were also significant gender differences in perceptions of fear, safety, perceived risk, and engagement in constrained behaviour.[22] In a follow-up study of 997 students attending an urban university in Colorado, Tomsich, Gover and Jennings found that 8% of students had experienced at least one type of crime since enrolling at the university. Respondents indicated low-to-moderate levels of fear and perceived risk of victimisation on campus and regarded the campus as being moderately safe. In contrast with previous research, which has consistently shown that while females are less likely to be victims of crime, they tend to be more fearful of crime than men, Tomsich et al found gender differences, with females having higher levels of fear, higher perceived risk of victimisation, higher rates of constrained behaviour, and lower perceptions of overall safety on campus, than males.[23] Fisher and May explored the gendered nature of fear-provoking cues and crime-related fears of students at a public university in the southern United States. They found that fear-provoking cues such as lighting, foliage, group loitering and visibility of police were not gendered for fear of larceny-theft or fear of assault.[24] In contrast with earlier studies, Chockalingham and Murugesan, in their study of university students in India and Japan, found that the experience of victimisation was not related to fear of victimisation.[25]

Mabolaji and Ehigie studied 281 university students in Nigeria and found that students who resided at off-campus accommodation reported higher levels of fear of crime than those who resided in on-campus accommodation.[26] However, both those living on and off campus experienced crime. Kahari studied experiences of crime by students at the University of Cape Town and found that not all crimes were reported to the police because the incident was regarded as too trivial or the belief that there was nothing the police could do.[27] Morrall et al also found that the majority of university students who were surveyed in the UK did not report the crime to the police.[28]

In view of reports in the media on the spate of crimes plaguing South African universities,[29] a qualitative study was conducted regarding the experience of crime by students from a Gauteng-based university, which is located in a metropolis that is known for its high crime rates. While the majority of studies on campus crime have taken the form of large-scale quantitative surveys, analysed via inferential statistics, a lacuna in the research literature is the paucity of qualitative phenomenological studies, which allow the voices of targets of crime to be heard. Specific objectives of this qualitative study were to examine: (1) the kind of crimes students had experienced; (2) the impact of crime on students and how they felt following this experience (3) how the students coped following exposure to acts of crime; and (4) to make recommendations for preventing crime and enhancing safety of students. The assumption underpinning the study was that we would be able to interpret the findings in respect of kinds of crime, impact on students, their coping strategies and their recommendations, based on the two theories underpinning the study, thereby contributing to the growing body of research on campus crime.

Theoretical framework

The theoretical lens guiding the study was based on cognitive behavioural theory and routine activity theory. Knaus states that cognitive behavioural theory assumes that victims of crime experience social anxiety, which prevents them from being in places where they need to be. This fear is a rational response to a perceived threat of harm.[30] This type of anxiety is understandable if one considers that criminal incidents can cause shock, post-traumatic stress disorder, anger and lack of trust on the part of victims.[31] In a similar vein, Wilcox, Land and Hunt explain that victims of crime tend to fear crime and the places where it occurred.[32]

Routine activity theory is similar to lifestyle activity theory and emphasises how the likelihood of an individual becoming a victim of crime is predetermined by routine activities of lifestyle.[33] Routine activities are defined as any regular and common spatial and temporal patterns of activities that individuals need to engage in, including school, work and leisure. According to routine activity theory, crime takes place when a motivated offender approaches a suitable victim in the absence of other persons who may prevent the occurrence of the crime.[34] Developed by Cohen and Felson (1979), routine activity theory is at the core of 'environmental criminology' and requires the existence of three elements for a crime to occur, namely a motivated offender with criminal intentions and the capacity to act on these intentions; a suitable victim or target; and the absence of a capable guardian who can prevent the crime from happening.[35] Unarmed students living away from the security of home and walking alone are particularly vulnerable targets, and carrying valuable items such as cell phones and laptops is a further contributory factor in target attractiveness.[36] Student lifestyles that involve many nighttime activities, social events and involvement in drinking and the use of

recreational drugs can further increase student exposure to crime.[37] Guardianship can take the form of the physical presence of a person who is able to act in a protective manner, such as a policeman, landlord, parent or passer-by, or in the form of more passive devices such as video surveillance. Guardianship also exists at the formal (official and institutional) and informal (personal) levels including individual self-protective behaviour.[38] In terms of policy and prevention, routine activity theory has been predominantly linked to situational crime prevention and policing, particularly areas identified as 'hot spots'.[39] Having described the main features of the two theories underpinning the study, we now proceed to explain the research methodology.

Method

Setting for the study

The study was conducted at the main campus of a large, multi-campus, urban South African university. A busy arterial highway runs past the northern side of the main campus. There is a shopping mall on the eastern side and a provincial hospital on the western boundary. Most of the southern area is taken up by residential houses, many of which have been converted into student lodgings in response to the growing need for student accommodation. While unemployment rates for the area are not available, the unemployment rate for the country as a whole stood at 27.5% according to the third Quarterly Labour Force Survey conducted by Statistics South Africa.[40]

The university is situated in Gauteng Province. According to information on crime trends from South African Police Services (SAPS) for Gauteng for 2017/18, murders increased by 3.2%; robbery with aggravating circumstances decreased by 3.9%; truck hijacking increased by 6.0%; attempted murders decreased by 8.4%; robberies at residential properties

decreased by 4.6%; carjacking decreased by 4.0%; bank robberies increased by 500%; cash in transit robberies increased by 142%; sexual offences increased by 5.7%; and stock theft increased by 1.1%.[41] Drunk driving continued to be the highest offence in Johannesburg according to 2018 statistics by the metro police.[42]

The impetus for selecting this particular university was the reporting of two criminal incidents targeting students. In one case a student was kidnapped at gunpoint in the university parking lot and pushed into the boot of a car after which the perpetrator then drove off with her to the bank so that he could withdraw the victim's money. When the police traced the vehicle, it was revealed that the perpetrator was also a student at the same university. In the second incident, a group of students walked off campus to buy food, and on their way back, just outside the campus gate, they were approached by two men who attempted to rob them. One of the students was shot but survived.[43] More recently in 2018 a student was killed by a taxi driver outside an off-campus residence of the same university.[44]

In response to these incidents the university's protection services conduct security foot patrols 24-hours a day, seven days a week on all four campuses. Protection services also collaborate with the South African Police Service (SAPS), Johannesburg Metro Police Department (JMPD) and the city of Johannesburg to promote a safe environment both within and around the university's campuses. Together with the Brixton SAPS, the university embarked on a continuing awareness campaign to further ensure the safety of students, encourage students to be 'street smart', to plan their routes in advance, and to be alert. While all campuses have perimeter fencing, CCTV cameras and finger print access control booms, at the time of the study the university was exploring the installation of smart cameras on various routes leading to campuses, as well as the expansion of the mySOS application for emergencies.[45]

Research design

The study took the form of a phenomenological approach located within a qualitative paradigm. Phenomenology professes to concentrate its efforts on getting a clear picture of the things experienced by people first-hand – in this case the experience of the phenomenon of crime.[46] In line with the phenomenological perspective, the researchers focused on students' subjective experiences of crime and analysed their responses by searching for meaningful themes.

The research formed part of a group project in which the class of 91 fourth-year social work students each conducted five interviews with students who were not their friends, making a total of 455 interviews. Purposive sampling was employed to recruit participants who met the following inclusion criteria: first, they needed to be currently registered as undergraduate students at the university where the study was conducted, and could be doing any qualification. Second, they needed to be in their second, third or fourth year of study for an undergraduate degree. Third, first-year students were excluded because they were still transitioning from school to university. Fourth, participants needed to have experienced at least one criminal act during their time at university. Those who agreed to participate completed a consent form for participation and a consent form for audio recording of the interview.

For the purposes of this article, instead of analysing all 455 interviews, a systematic random sample of every seventh interview was analysed, making a sample of 65 participants. Thematic analysis of the data involved searching for the themes that emerged from the responses. Ethical clearance was granted by the university's Faculty of Humanity's Ethics Research Committee.

Limitations

As the study was located within a qualitative paradigm, we did not include quantitative data such as prevalence and types of crime across the sample; place, day and time in which crimes occurred; responses from campus security and SAPS; distinction between crime on-campus and off-campus; or prevalence of kidnapping and hijacking. A further limitation was the use of a non-probability sample which precluded generalisation of the results to other universities.

Results

Profile of participants

Of the 65 interviews that were analysed, 30 interviewees were male and 35 were female. Their ages ranged from 20 to 25 years. The vast majority (61 or 93.8%) were black students with only four (6%) being white. In terms of year of study, 22 interviewees (33.8%) were in second year, 29 (44.6%) in third year and 14 (21.5%) in fourth year. They were all registered for undergraduate degrees. The degrees included a range of courses across the faculties of Humanities, Engineering, Law and Commerce.

Results are presented in accordance with the three objectives of the study and analysed in terms of the two key theories underpinning the study, namely routine activity theory with its threefold emphasis on crimes committed by a motivated offender, lack of guardianship, and the availability of a vulnerable target; and cognitive behavioural theory with its emphasis on the impact of crime on victims and their coping responses.

Motivated offenders

In terms of objective one, we did not focus on specific types of crime but instead asked participants about the types of crimes they had experienced. The most common types of crime experienced by students were robbery, or the taking of property from another person by force or intimidation, and theft or taking of someone's money, property or services with the victim not necessarily being present.[47] For example, many participants reported that they had been robbed of their technology items such as laptops and cell phones as well as money, as reflected in the following responses:

> I was walking facing down listening to music and the time I took my head straight I see him coming. He had a bag and when he came close to me he just, his hand was inside the bag, and he just took out the gun. I was so ... like I froze ... I gave him the phone ... he took my wallet as well because he wanted the money.

> Like he took a knife out of his pocket. He was like give me your bag or I will stab you.

> They were driving a car. The car just park[ed] and someone came out from the car and pull[ed] out the gun and told me that I should stand. Then they took everything and then after that the car left.

It was apparent from the responses that students had been targeted by a motivated offender with the specific intention of committing a crime.

Lack of guardianship

It is concerning that students were not only exposed to crime off campus, but that crime also occurred in places where students assumed their property was safe, within the university environment. A participant explained how he experienced theft of a laptop in the library:

> What really happened is that I was studying at the library and then I had to go to the loo (restroom), so I left my laptop on the study desk with my iPad. When I came back from the toilet my iPad was not there. And I asked people whom I was sitting with.

They told me that some guy came and he knows me and we are friends so he took my iPad. So only to find out that I do not know the guy. So I went to the securities to ask for CCTV footage so that I can see who the guy was. So actually there was no camera where we were sitting. So there was no further investigation, nothing happened. I just moved on, like I forgot about the thing.

This student tried to obtain help from campus security, but was not assisted, underlining the limitations of the CCTV system as a guardian. Another student reported losing her valuables while writing exams: 'My laptop was stolen outside the exam venue ... we were not allowed to bring our bags inside the venue,' suggesting a complete lack of guardianship.

Students as vulnerable targets

Students were also vulnerable to crime in their communes and residences, which should be safe places, and a home environment. For example, students reported that:

Our commune was broken into at the beginning of the year. It was very late at night when we were woken up by commotion outside. They broke the kitchen window using a brick and were able to gain access into the house. We were then shuffled into a corner at gunpoint while five other guys went room to room stealing electrical appliances. They stole laptops, cell phones, laptop chargers, iPads, tablets, the microwave and the kettle.

Some people came into our room at res. They stole my roommate's (hair) straightener, my straightener and her phone.

As vulnerable targets, students also reported kidnapping and hijacking incidents. For example, in one case, a student was abducted and forced to withdraw funds from his bank account

I experienced crime when I was kidnapped on the way back from campus to my commune late in the evening. A car pulled up next to me and the front passenger asked for directions. While responding one of the guys pointed a gun at me and told me to climb into the back seat. They then drove to another suburb about 10 kilometres away where I was forced to empty my bank account. They ran off with R3 000 and left me stranded in an open veld.

It seems that students were not only vulnerable to crime on campus but were also vulnerable to serious crime when off campus. The above student was abducted, but was not harmed. In another incident, a student was hijacked and badly injured, as he relates: 'It was a car hijacking and kidnapping…And one of them pulled out a screw driver and he stab[bed] me on my back.'

In many of the incidents related by students, they were threatened with weapons and even kidnapped during robberies. Exposure to such serious crimes could have various psychological impacts on these students as discussed below.

The impact of crime on students

In terms of the second objective, we explored the impact of crime on students from a cognitive behavioural theory perspective. Understandably, fear was one of the overarching impacts of crime as highlighted in the quotes below:

You go to campus with fear and come back with fear.

I am afraid now to travel alone during around half past six because I am afraid that maybe I will be attacked again.

I feel so insecure every time I have to go back home or to school … anything can happe ... a car can park and then someone could get out of the car and then someone can request your stuff with a weapon.

As a consequence of fear, students became more vigilant.

It made me to be more vigilant as a student that certain places are not safe as other[s], especially at certain times. And another thing, you know this kind of stuff it happens now, it is happening to me you know. It is frustrating because you want to be comfortable and safe wherever you stay, but there is other people with other intentions, they see it as an opportunity.

The fear and hyper-vigilance led students to feel distrustful of people in general.

It is going to make it harder for an individual to earn my trust, just because of that experience. So another thing is humanity is perceived in a 'beastful' manner and in a very selfish way. Because they don't care how one feels or how one's life value is, you know? Because for me I actually seemed like an animal because this is the behaviour we are treating each other with you know.

They also felt disillusioned with the police, the university and university security, who they felt had neglected to protect them or assist them in dealing with incidents of crime. This disillusionment with the lack of guardianship is conveyed in the following quotes:

The security guys are never helpful. All they ever do is give excuses. You ask them to take you to (name of university residence) they tell you it's against university policy. What is their job actually? The police will ask you what happened but

at the end of the day there is nothing they can do.

I feel disappointment towards the university. When I left the security of my home the university was supposed to offer me that security.

I felt violated as someone committed an act of crime against me and the people employed to protect me could not do anything about it. They did not seem to care at all.

As a result of the above, students experienced varying psychological responses, including anger.

I was emotionally affected because I felt a lot of anger towards the perpetrators because of their actions. I was angry at the police because they responded very late and did not take our call as an urgent matter. I was angry at the landlord because he failed to install burglar bars. I was angry at myself for believing that the landlord would deliver on his promise of installing the latest security systems. We are in an all-female commune.

Some students experienced sleep problems, flashbacks and nightmares.

Immediately after the incident I could not sleep at all. I spent countless hours worrying about the criminals returning. I constantly check[ed] that the doors and windows were locked.

The only thing I was thinking about was the gun pointed at me and I was just scared from that time. I went home [to] my room and I just slept. I couldn't stop thinking about it even if I tried sleeping I couldn't sleep and from that time I just thought going to campus was too risky.

I was physically and emotionally affected as I had flashbacks and nightmares about the crime and my studies suffered too as I

could not focus or study due to lack of sleep.

In addition to the psychological impacts expressed above, students were also adversely affected in terms of their personal sense of security, financially because of the loss of equipment and money, and academically.

The incident affected my sense of security a lot because I did not feel safe at all outside campus or my commune. I was affected financially as my bank account was emptied … My studies also suffered because I failed a module from second year as I did not attend evening lectures for the remainder of the semester.

Losing my laptop also affected my studies as I had to rely on campus computers meaning that I left the campus late which also left me vulnerable to muggings … I am now very protective over my gadgets and super cautious about where I leave them.

My academics were affected. I got delayed because I lost some of my work.

Despite exposure to some horrendous crimes and the lack of support and assistance received, some students expressed an ability to exercise resilience as captured in these responses:

Yeah I was actually on immediate bounce back because my friend was traumatised by this whole situation, she was crying hysterically … but I felt like I had to be the stronger, so, if my friend is crying I can't also be crying. Like it's too much to take in so I just moved on with life. I was assisting her in her trauma but I just ... I thank God that we didn't get hurt ... our lives, everything else is still intact. So they are just prized possessions – if they are gone you can still get another one, it's fine.

It's just a matter of moving on and just accepting things as they are and just hoping that they don't happen again you know.

In summary, in the aftermath of the crime, students experienced fear, disillusionment, increased vigilance, sleep problems and flashbacks. Yet some responded with resilience.

Dealing with the trauma of crime

In terms of the third objective, we examined the coping strategies students used to deal with the trauma of crime and make themselves less vulnerable as targets. These strategies can be divided into cognitive and behavioural strategies Cognitive strategies involve attempts at trying to change one's thought processes about the situation, while behavioural strategies involve tangible and observable changes, such as withdrawing from others or conversely seeking social support or problem avoidance.[48]

Examples of cognitive coping strategies included the following:

I had to sit myself down and counsel myself you know and try to actually face the situation.

I'm trying my best because one of my friends gave me an advice that eh, I must be strong as a man and stand still.

If it's not a drastic thing, then I'm going to be like just keep calm … deal with it. It shouldn't go that far, pretty much no one died. Then it's fine. If I didn't lose the most important things, then it's okay.

Students also utilised behavioural coping strategies. A common strategy was to go for counselling.

Initially I did not go for counselling. But after I failed a semester module I went for therapy. It was beneficial because it helped me to deal with my security issues

which prevented me from living my life and attending late lectures.

I went for counselling, but then I could not get help there because these guys they ask you there what happened? What do you think must happen? So I would go there thinking that they will provide solutions to my life but they give me more problems so nothing has changed in my life. Basically I am still the same person that I was last year.

I suffered from anxiety and I went for counselling. They did help me to overcome the stress, other emotions and how to cope with my studies and with myself. And yeah it did help me. That's how I was able to overcome whatever I was experiencing.

Some students sought support from friends and family.

The girls at the commune supported each other through the ordeal and we voiced our grievances with the landlord who then upgraded the security system.

I told one of my roommates, I trusted her and I told her what happened and she told me, No, just calm down. You'll be okay. Things like this happen.

I just spoke to my parents about it.

Spirituality, prayer and religion became a source of solace.

All you can do is pray. I trust in God for all my protection. Once I have prayed I feel at ease.

I pray the entire moment … until such time when I get to campus and on my way back … which is not visible [to outsiders]. I will not put in headsets.

I will not leave my room without praying.

Others became more vigilant.

You just become more aware of your surroundings.

I am always cautious, because of what happened at the back of my mind. Whenever I am walking, I try to view everyone at a negative perspective because I can't trust anyone.

Some students adapted to the experience of crime by changing their way of dressing and consciously avoided displaying gadgets. In this way they attempted to be less vulnerable targets for criminals.

Since the crime, even the way I dress has changed … I must not attract them (criminals) and carry less gadgets.

I switch off my phone when I'm going to walk. Even if I did not switch it off but I'll try to put it in pockets.

A further strategy for reducing vulnerability was walking with others and avoiding walking alone.

I also take the precaution of trying to find out from my housemates where I stay who is going to campus at a certain time so that at least there is safety… that you are walking with someone else.

In contrast to this approach of safety in numbers, some students chose to be alone.

I wouldn't go out and interact like I actually stayed in my room a lot after that because I was already alone at res. I had like one or two friends but now it was just like I don't want contact, don't come close to me, just leave me alone.

In summary, cognitive coping strategies included keeping calm and accepting the situation, while behavioural coping strategies included going for counselling, seeking support from family and friends, praying, and avoiding displaying gadgets.

Recommendations offered by students

In terms of the study's fourth objective, students were asked to make recommendations to address crime and improve safety. The first set of recommendations related to universities increasing security measures or guardianship.

> I think that the management needs to take crime seriously because I am not the first person to experience crime, I know that. So, we should install more security inside the library not to just check when people get in. Also, inside there should be people standing there watching everybody. What are they doing? What are they there for? Having ... what do you call this security service where you can go and put our stuff so they can be safe?

> The security around campus must be tightened up because late at night people are being robbed inside the campus and a few girls have filed for rape. So it is no longer safe even in the campus that we are studying in. So we just need some strong security and some CCTV footage.

> Protection services must ensure that all cameras are working and the staff can also show empathy towards victims of crime… We need a community policing forum, escort services from protection services and students can create a crime watch group where they can notify each other of suspicious activities.

While students expected the university to create a more secure environment and improve options for identifying and dealing with criminals, they also suggested options for how students could protect themselves and reduce their vulnerability to crime.

> Students can take security measures for themselves by carrying a can of pepper spray or a taser to ensure that crime does not affect them the way it has affected me.

> Another precaution which maybe they could take is offer us self-defence classes.

> Walk without music, like don't have your earphones on. Don't make yourself an unnecessary target.

> Walk in groups. Don't walk alone during the nights or during the day because it is not also safe during the day as well.

Having presented the key results from the study, we now proceed to interpret and discuss these findings.

Discussion

The most common crimes reported by students were those perpetrated by a motivated offender and included theft of laptops and cell phones, being abducted and having funds stolen from one's bank account, being hijacked and injured, experiencing a robbery at a commune or student residence, and having one's belongings stolen after being threatened with a knife or gun. These types of crimes were consistent with those documented by Kury and Winterdyk who conducted an international study and found that the most common kinds of crimes experienced by students included criminal damage, theft/robbery and burglary.[49] Students were unfortunately vulnerable to crime both on and off campus, including in their residences and communes. Many were held up at gun or knife point, with serious impacts. In terms of routine activity theory, unarmed students walking alone could be regarded as highly vulnerable targets for criminals. Moreover, many students live in university residences or student accommodation off campus and do not have the security, protection and guardianship of parents and home environments.

The crime encounter had profound psychological, financial and academic consequences for students. Participants developed a fear of crime, criminals and returning to the place where the crime had

occurred. They also experienced trauma-related symptoms such as anger, sleep problems, flashbacks and nightmares. These emotional effects are consistent with those reported by Morrall et al where victims experienced feelings of anger, shock, fear and depression after experiencing crime.[50] While these are the common short-term responses, they may turn into long-term depressive effects, including anxiety, insomnia, panic attacks and flashbacks, which are manifestations of post-traumatic stress disorder (PTSD) that can last for months or even years.[51] The experience of crime also affected students' academic performance. Participants also experienced a lack of trust in people and disillusionment with agencies mandated to protect citizens. In a similar vein, Shapland and Hall reported that victims experienced shock and loss of trust and faith in society, particularly in the local community or in relation to the social group or place where the offence occurred.[52] This limitation on mobility was reported in the present study too. However, despite the emotional, financial and academic impacts, some students demonstrated resilience and the ability to move on with their lives.

These findings provide support for the cognitive behavioural theory guiding the study, which argues that victims of crime experience fear and social anxiety, which prevent them from being in places where they need to be, such as the library, lectures and university residences.[53] According to cognitive behavioural theory, fear is a rational response to a perceived threat. Fear of crime has two components, namely the emotional fear of victimisation and the cognitive perceived risk of victimisation.[54] The findings are also in line with routine activity theory, which emphasises how the likelihood of an individual becoming a victim of crime is predetermined by routine activities of lifestyle.[55] In the case of participants in the study, routine activities included studying at the library, attending lectures, shopping for groceries and so forth.

Students endeavoured to cope with the trauma of crime by adopting a variety of cognitive and behavioural strategies. Cognitive strategies employed included positive self-talk, confronting the situation and taking control of one's life. Behavioural coping strategies included deriving support from friends and family, becoming more vigilant, changing one's way of dressing and avoiding displaying gadgets, walking with others, and choosing to be alone. These are examples of what Jennings, Gover and Pudrzynska refer to as 'constrained behaviour', designed to reduce their victimisation risk.[56] They can also be regarded as self-protective behaviours, which Tewksbury and Mustaine consider to be a form of guardianship, highlighted in routine activity theory.[57] While the strategy of isolating oneself could be positive and therapeutic in affording the person time to process what had happened, it could also be negative by isolating the person from potential sources of support. Unlike Morrall et al's finding, where only a minority of students sought health intervention, several students in the present study reported making use of psychological counselling services offered by the university.[58] Other students found solace in prayer and religion. In this regard, Greef and Loubser maintain that religion and spirituality play important roles in helping people to survive life stressors.[59]

Students' recommendations for enhancing safety included universities increasing security or guardianship measures through increasing patrols and CCTV surveillance cameras. They also recommended that students adopt self-protection measures to reduce vulnerability to crime such as self-defence courses, walking in groups, being more vigilant, and not walking with headphones on.

Conclusions and recommendations

University campuses are generally perceived to be relatively secure places; however, results from this research show that they are not immune to crime. In line with routine activity theory, results

indicate that students were vulnerable targets of motivated offenders and often lacked guardianship. The findings from the study also provide support for Wasserman and Ellis's contention that crime can affect victims psychologically, socially, financially, physically and spiritually,[60] as well as academically, which is consistent with cognitive behavioural theory.

While most South African universities have policies and services in place to protect students and staff, universities, in conjunction with police, need to enhance security through increased visible patrolling of areas not only within but also adjacent to campuses, especially in the evenings. University authorities need to provide transport for students when evening classes are scheduled, when they need to attend off-site internship training, and when they return from the library to student residences late at night. The university where the study was conducted must be commended for addressing many of these issues.

Students need to be made conscious of crime around and within the campus precincts and alerted to crime hotspots based on police statistics. They need to avoid displaying their valuables, carrying excess cash and should leave identity documents and licences in safe places. Students need to be encouraged to walk in groups, memorise emergency contact numbers and report crimes to both the university as well as the South African Police Service. There is also a need for strategies to improve the public's trust in the police and the criminal justice system.

Consistent with routine activity theory, these policy and prevention recommendations for enhancing guardianship on the part of university protection services and police, coupled with self-protection strategies on the part of students, can potentially reduce the risks of students becoming victims/targets of criminal offenders who prey on vulnerable students.

However, colleges and universities need to collate statistics on campus crime and evaluate the effectiveness of their programmes to make campuses safer.

Acknowledgements

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Notes

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1   Africa Check, *Factsheet: South Africa's Crime Statistics for 2016/17*, 24 October 2017, https: africacheck.org/factsheet/south-africas-crime-statistics-2016/17 (accessed 7 February 2018).

2   A Altbeker, *A country at war with itself: South Africa's crisis of crime*, Johannesburg: Jonathan Ball Publishers, 2007.

3   L Patel, *Social welfare and development in South Africa*, 2nd ed, Cape Town: Oxford University Press, 2015.

4   South African Human Rights Commission (SAHRC), *Crime and its impact on human rights: Ten years of the Bill of Rights*, Paper presented at the SA Human Rights Commission Crime conference, Sandton, Johannesburg, 22–23 March 2007.

5   E Wasserman and CA Ellis, Impact of crime on victims, National Victim Assistance Academy, Track 1: Foundation-Level-Training 2010, https://ce4less.com/Tests/Materials/E075Materials.pdf, (accessed 18 June 2019).

6   RF Hanson, GK Sawyer, AM Begle and GS Hubel, The impact of crime victimization on quality of life, *Journal of Trauma and Stress*, 23:2, 2010. doi: 10.1002/jts.20508.

7   Altbeker, *A country at war with itself*.

8   Statistics South Africa, *Victims of Crime Survey 2016/2017*, 28 September 2017, http://www.statssa.gov.za/?p=10521 (accessed 20 January 2018).

9   E Wedlock and J Tapley, *What works in supporting victims of crime: a rapid evidence assessment*, London: Victims' Commissioner's Office, 2016.

10   KA Fox, MR Nobles and ER Piquero, Gender, crime victimization and fear of crime, *Security Journal*, 22:1, 2009, https://doi.org/10.1057/sj.2008.13.

11   P Morrall, P Marshall, S Pattison et al., Crime and health: A preliminary study into the effects of crime on the mental health of UK university students, *Psychiatric and Mental Health Nursing*, 1, 2010, https://doi org/10.1111/j.1365-2850.2010.01594.x.

12   Ibid.

13   Ibid.

14   EK Ascencio, M Meryl and M Steiner, Self-esteem, the fear of crime, and the decision to protect oneself from victimization,

15 Wasserman and Ellis, Impact of crime on victims.

16 C Chekwa, E Thomas Jr and V Jones, What are college students' perceptions about campus safety?, *Contemporary Issues in Education Research (CIER)*, 6:3, 2013, https://doi.org/10.19030/cier.v6i3.7903.

17 WG Jennings, AR Gover and D Pudrzynska, Are institutions of higher learning safe? A descriptive study of campus safety issues and self-reported campus victimization among male and female college students, *Journal of Criminal Justice Education*, 18:2, 2007, https://doi.org/10.1080/10511250701383327.

18 H Forbes-Mewett, J McCulloch and C Nyland, *International students and crime*, London: Palgrave Macmillan, 2015.

19 MB Robinson and KL Mullen, Crime on campus: A survey of space users, *Crime Prevention and Community Safety: An International Journal*, 3:4, 2001, https://doi.org/10.1057/palgrave.cpcs.8140104.

20 Fox, Nobles and Piquero, Crime victimization and fear of crime.

21 Jennings, Gover and Pudrzynskal, Are institutions of higher learning safe?

22 Ibid.

23 EA Tomsich, AR Gover and WG Jennings, Examining the role of gender in the prevalence of campus victimization, perceptions of fear and risk of crime, and the use of constrained behaviors among college students attending a large urban university, *Journal of Criminal Justice Education*, 22:2, 2011, https://doi.org/10.1080/10511253.2010.517772.

24 BS Fisher and D May, College students' crime-related fears on campus: Are fear provoking cues gendered? *Journal of Contemporary Criminal Justice*, 25:3, 2009, https://doi.org/10.1177/1043986209335013.

25 K Chockalingham and M Srinivasan, Fear of crime victimization: A study of university students in India and Japan, *International Review of Victimology*, 16, 2009, https://doi.org/10.1177/026975800901600105.

26 FT Mabolaji and BO Ehigie, Influence of traumatic events and location of residence on fear of crime: A case study of undergraduate students in Nigeria, *International Journal of Psychology and Counselling*, 11, 2014, https://doi.org/10.5897/IJPC2014.0291.

27 I Kahari, *An exploratory study of first year residence students' perceptions regarding safety and security at the University of Cape Town*, Unpublished Master's dissertation, University of Cape Town, 2010.

28 Morrall et al., Crime and health.

29 N Mtshali, 'Petty crime' plagues SA universities, *IOL News*, 1 October 2013, www.iol.co.za/news-south-africa/gauteng/petty-crime-plagues-sa-universities-1585293 (accessed 21 February 2018).

30 WJ Knaus, The *cognitive behavioural workbook for anxiety: A step-by-step program*, 2nd ed, Oakland, CA: New Harbinger Publications, Inc., 2014.

31 AW Burgess, C Regehr and AR Roberts, *Victimology: Theories and applications*, London: Jones and Bartlett Publisher, 2010.

32 P Wilcox, KC Land and SA Hunt, *Criminal circumstance: A dynamic multi-contextual criminal opportunities theory*, New York, NY: Aldine de Gruyter, 2003.

33 MJ Miller, CJ Schreck and R Tewksbury, *Criminological theory: A brief introduction*, 3rd ed, New York, NY: Prentice Hall, 2010.

34 Ibid.

35 L Cohen and M Felson, Social change and crime rates: A routine activity approach, *American Sociological Review*, 44, 1979, https://www.jstor.org/stable/2094589.

36 Miller, Schreck and Tewksbury, *Criminological theory*.

37 Tomsich, Gover and Jennings, Examining the role of gender in the prevalence of campus victimization.

38 R Tewksbury and EE Mustaine, College students' lifestyles and self-protective behaviors: Further considerations of the guardianship concept in routine activity theory, *Criminal Justice and Behavior*, 30:3, 2003, https://doi.org/10.1177/0093854803030003003.

39 Cohen and Felson, Social change and crime rates.

40 Statistics South Africa, *Quarterly Labour Force Survey for 3rd quarter of 2018*, 31 July 2018, www.statssa.gov.za/?p=11361 (accessed 23/12/2018).

41 News24, Infographic: A closer look at 2017/18 crime stats across SA, *News24*, 12 September 2018, www.news24com/SouthAfrica/News/infographic-a-closer-look-at-crime-stats-across-sa-20180912 (accessed 20/12/2018).

42 S Ngqakamba, JHB crime stats: Drunken driving continues to be the highest offence in Joburg, *News24*, 29 October 2018, www.news24.com/SouthAfrica/News/jhb-crime-stats-drunk-driving-continues-to-be-highest-offence-in-joburg-20181029, (accessed 20/12/2018).

43 Mtshali, 'Petty crime' plagues SA universities.

44 E Mabuza, Allow police to investigate, UJ asks students after speculation around death of student, *Timeslive*, 2 March 2018, www.timeslive./co.za/news/south-africa/2018-03-02-allow-police-to-investigate-uj-asks-students-after-speculation-around-death-of-student/ (accessed 2 March 2018).

45 C Maepa, *Security measures: Safe routes maps around the four UJ campuses*, Memorandum from Co-ordinator: Internal Communications, Strategic Communications, University of Johannesburg, 14 November 2018.

46 M Denscombe, *The good research guide: For small-scale research projects*, 5th ed, Berkshire: Open University, 2014, 95.

47 P Bergman and SJ Berman, *The criminal law handbook*, 15th ed, Berkely, CA: Nolo, 2018.

48 CA Gutner, SL Rizvi, CM Monson and PA Resick, Changes in coping strategies, relationship to perpetrator, and posttraumatic distress in female crime victims, *Journal of Traumatic Stress*, 19:6, 2006, https://doi.org/10.1002/jts.20158.

49 H Kury and J Winterdyk (eds), *Fear of crime and punitiveness: Results from international student surveys*, Crime and Policy Series, vol 9, Hagen: Brockmeyer, 2013.

50 Morrall et al., Crime and health.

51 Ibid.

52 J Shapland and M Hall, What do we know about the effects of crime on victims?, *International Review of Victimology*, 14:2, 2007, https://doi.org/10.1177/026975800701400202.

53 WJ Knaus, *The cognitive behavioural workbook for anxiety*.

54 Ascenzio, Meryle and Steiner, Self-esteem, the fear of crime, and the decision to protect oneself.

55 Miller, Schrek and Tewksbury, *Criminological theory*.

56 Jennings, Gover and Pudrzynska, Are institutions of higher learning safe?

57 Tewksbury and Mustaine, College students' lifestyles and self-protective behaviors.

58 Morrall et al., Crime and health.

59 AP Greef and K Loubser, Spirituality as a resilience in Xhosa-speaking families in South Africa, *Journal of Religion and Health*, 47:3, 2008, https://doi.org/10.1007/s10943-007-9157-7.

60 Wasserman and Ellis, Impact of crime on victims.

Decolonising incarcerated women's identities

Looking through the lens of prison abolitionism

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Criminological discourses among people of African descent globally continue to suffer from a crisis of application of Western explanatory frameworks with gross implications for the development of African-centred epistemologies and frameworks. One of the central arguments in this paper is that criminological discourses, specifically on class-specific, racialised-gendered identities of incarcerated women, are not free of the colonial matrices of power that underpin imperialism. What will emerge in this article is that incarcerated women's identities should be reconstructed as women's criminalisation continues to be framed and presented in monolithic law-and-order ways. A focus on reconstruction is important to decolonise women's imprisonment by imperialist, white supremacist patriarchy, particularly focusing on how their pluralistic identities, which often collude and collide, shape their trajectories in unpredictable and criss-crossing ways to subject them to criminalisation. An analysis of case studies presented in this article will reveal how Black women's experiences of womanhood in the criminal justice system are shaped by race, gender and class, which produce different forms of subjectivities and embodied selves. The underlying question therefore is: how can incarcerated women's identities be reconstructed to challenge the hegemony of the western canon in criminology?

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This article seeks to reconstruct the identities of incarcerated women as something other than the monolithic homogenous group that is depicted by dominant criminological discourses. We can then properly appreciate how their plural identities collude and collide to shape their trajectories to incarceration in unpredictable, intersectional or criss-crossing ways. This deconstruction is important as it makes women's identities visible and, most importantly, it is an attempt to answer the question: why do some women, faced with similar circumstances, avoid

incarceration? We argue that, while women may face similar circumstances, their experiences of womanhood remain profoundly shaped by race, gender and class and produce different forms of subjectivities and embodied selves. Trying to understand women's routes to incarceration without taking account of these factors is limiting, and produces criminological discourses that fail to capture the subtle micro-social and macro forms of oppression and resistance, deviance and social control. This article draws on qualitative interview data from a larger study on women's trajectories to incarceration and presents narratives through which women told their stories and pathways from childhood.

Reimagining incarcerated women's identities

When individual identities are masked, they conceal a person's understanding of their existence and the individual self is hidden. Identities 'are visibly marked on the body itself, guiding if not determining, the way we perceive and judge others and are perceived and judged by them'.[1] The importance of individual identities has been considered by Hall[2] and Lowe,[3] who argue along similar lines. Lowe states that while people may be seen as a 'collective block, it is also important to introduce a critical vocabulary to explore how individuals are materially – socially, culturally and economically distinct.'[4]

In deconstructing incarcerated women's identities, we consider that, within a given sample of women in correctional centres, such as the one in this article, there are heterogeneous, hybrid and multiple identities that characterise these women. Contrary to the dominant approach of labelling them as female offenders,[5] we suggest that women in prison should be identified as female prisoners given that wrongful convictions cannot ever be ruled out entirely. Heterogeneity denotes 'the existence of differences and differential categories within a bounded category'.[6] As is shown in the

discussion below, generational, economic and citizenship issues affect women's identities, thus pointing to the plurality of identities, even among similar categories of women. Such heterogeneous identities are further 'produced by histories of uneven and unsympathetic power relations', namely hybridity.[7] These include racial as well as linguistic factors that may be traced to a 'history of survival within relations of unequal power and domination' in societies.[8]

A combination of heterogeneity among similar groups of women with hybrid identities result in a multiplicity of participants/subjects and subjective experiences among women in the correctional centres. For instance, women as subjects are located within social realities that continue to be determined by different axes of power, such as capitalism, patriarchy and race relations. Lived realities within these conditions of power produce and shape women's identities in ways that may influence them to come into contact with the criminal justice system as offenders.

To uncover identities, it is important to unmask differences between one's existence and related realities. It is within these distinct individual differences that the body (self) resides. Linda Martin Alcoff suggests that to unmask social identities in conjunction with a person's lived experience, the aim is to demystify the taken-for-granted assumptions about a particular population.[9] Ndlovu-Gatsheni argues that to understand one's identity in the South African context requires an understanding of one's 'belonging, citizenship' both in terms of their racial and ethnic layers.[10] This is demonstrated by the ethnic orientations of the sample of women, which comprised women of Zulu, Tswana, Xhosa, Pedi, Shangaan, Swazi and Ndebele ethnicity.

In the East London female correctional centre, it was interesting that, while the Xhosa-speaking women spoke the same language, they came from different clans, which in itself presented diverse cultural backgrounds in terms of their

belief systems and cultural practices. The influence of belonging to a particular clan was an important consideration when addressing women by their names or clan names. For instance, at this correctional centre, three women expressed their desire to be called by their clan names rather than their first names. These women were all in the age category of 50 years and above. Referring to women by their clan names was a sign of respect for their dignity. As Manyathi (55) indicated, for some women, being invited to narrate their stories using their clan identities re-assured them that they would be understood. This enabled them to tell their stories in a way they felt comfortable with, and which validated their stories. For instance, in a conversation with Manyathi, she said:

> Call me Mamu Manyathi. You know there are so many things that happen in our lives. You know what happens here, for instance there was this old man called Nomnqa and he used to understand me. I was very close to doing what I think I will do with you because he could listen. So now if I have to speak English, which I cannot, what can I say and how do I say it. Then I have to change everything and not say the things and out them the way I want to.

Acknowledging ethnic orientation is valuable to highlight differences among women and some ethnic groups, and also to validate the women's self-hood. It serves as a reminder that a person still belongs to a clan, even while incarcerated. When women presented themselves and voiced their preference for being called by their clan names, they engaged in a process of self-reclamation. In describing women's identities here, the aim is not to emphasise the features they share, nor to dehumanise these women, but rather to point out the significance of these different ethnic identities and belief systems, which may have formed a component of their trajectories to criminality. Ethnic identities further

impacted on how the women responded to each other and how they may be marginalised by other women within correctional centres.

The Shona inmates, for example, are mostly from Zimbabwe, and Naledi Mbotha (26) mentioned that they are always referred to as *makwerekwere*, a derogatory term used in Zimbabwe and in South Africa to describe Africans from neighbouring countries. Even though this is a non-South African marker that relates to citizenship, the term is used in this context as an ethnic reference when women speak about their ethnic orientations. For instance, South African Shona people have different belief systems from non-South African Shona people, and different ways of presenting themselves. All these differences and diversities have an impact on how women are accepted and treated by other women in correctional centres. Hence cultural sensitivity to the existence of culturally pluralistic identities is an important consideration.

These identities and the associated challenges are also inherent in society, where cultural and ethnic identities may create an impression that some ethnic groups are more prone to violence than others. Tonry argues that it is still important to examine 'distinctive patterns' among certain groups in order to move beyond single-focused analysis and to develop theories that are culturally relevant for intervention and rehabilitation in correctional facilities.[11] But most importantly, especially among Black women, ethnic orientations also underscore the significance of women's place of birth. Thirty-five of the 55 women (64%) in the sample were born in rural areas. With the exception of one Asian woman, who was also born in a rural area, all these women were Black. Of the sample, 11 women (20%) indicated that they were born in township areas. Five women (13%) indicated that they were born in urban or suburban areas. Two (Black) women indicated

that they were born in an informal settlement. Interestingly, when one examines the racial profiles of these women, all the women who indicated that they were born in rural and township areas were Black.

Eva de Leon Relucio argues that a woman's identity should reflect her peculiarities in order to 'give her the ability to construct her own theoretical space that challenges some appropriation and negation that assigns her as the other'.[12] As colonial discourse imposed an objectification of women on Sub-Saharan Africa as the 'underdeveloped, domestic and ignorant'[13] the othering of women was entrenched. As this state of affairs continued, often women's interests and needs became marginalised.[14] Henke argues that women cannot be 'reduced to threatening emblems of the flesh allied with the chaos of nature'.[15] Any scholarship on African women in particular has to avoid categorising women in 'refrigerated worlds of aesthetic stasis and transforming her into a disembodied muse … controlled by the male imagination'.[16] Nowhere is this marginalisation more evident than among incarcerated women whose voices remain silenced, though a growing body of arts activists are increasingly working especially in women's prisons to help to provide agency for the voices of the incarcerated.

Similar to weaving a cloth of many colours, particularities and women's different histographies (such as their place of birth) are discussed in the next section in order to reflect on women's place of belonging and how it shapes their lives and lived realities. The aim is to produce theories and identities that do not hide histories of colonialism, racism and sexism as forms that have affected, influenced and indeed effected women's identities.

Methodological approach and sample

The sample comprised of 55 women whose age ranged between 18 and 75 years. Most of the participants were Black women. The focus on Black African women was not deliberate. Instead, in the three correctional facilities, Black women formed a majority of sentenced offenders who volunteered to participate in the study. Permission to conduct the study as well as ethical clearance were obtained from the Department of Correctional Services and also from the institution where the researcher was registered for a Doctoral qualification.

The sample comprised of women from four indigenous groups: Xhosa, Zulu, Pedi and Venda. The dominant language of communication was Zulu and because one of the researchers is a Xhosa-speaking woman, this limited language barriers with the researchers. The implication of the varied ethnic representations presented an opportunity for the nuances related to traditional, ethnic and cultural practices to emerge. Due to this, it became clear that Black woman's standpoint, a Black feminist methodology which explains the specific experiences of Black women, would best fit the study.[17] Feminist standpoint is not only a theory, but a methodological approach and an analytical tool to bring subjugated indigenous knowledges about certain groups into the forefront of knowledge.[18] Thus, Black women's standpoint was necessary to contextualise the experiences of young women in order to 'disrupt the valorization of young girls incarcerated for offences as "nasty little madams".'[19] Hill-Collins further explains that the use of Black feminist standpoint methodological frameworks is predicated on the premise that the '… role for Black female intellectuals is to produce facts and theories about the Black female experience that will clarify a Black woman's standpoint for Black women'.[20]

As narratives facilitated an illumination of both individual and collective life stories, a thematic narrative analysis was used as a data analysis tool. According to Bamberg and McCabe, narrators 'create themes, plots and drama. In

so doing narrators make sense of themselves, social situations and history'.[21] Based on this, the themes from the narratives were categorised to demonstrate areas where there were shared experiences. Though the experiences remained complex and fluid there were intersecting and common themes that influenced the choice of a thematic narrative analytical tool. These shared experiences necessitate the reading of Black women's lives in ways that rupture the silences and misconceptions of who these women are. The emphasis on standpoint crystalises into a methodological tool that identifies 'connections between experiencing oppression, developing a self-defined standpoint on that experience, and resistance'.[22] hooks describes this process as examining women's lives 'both from the outside and from the inside'.[23] This implies understanding both worlds in order to reveal aspects of women's lives that would otherwise be 'obscured from reality' and from existing knowledge.[24]

Racialised, class-specific, gendered identities

Michel Foucault describes incarceration as an imprisonment of the mind and body.[25] This is particularly significant, because Black women, compared to white, Indian and coloured women, are more likely to be affected by high unemployment rates and underemployment,[26] which are leading trajectories to incarceration among Black women.[27] The racial profiles of women incarcerated in correctional centres in South Africa reveal a numerical overrepresentation of Black women. International trends regarding incarcerated women also reveal the overrepresentation of Black and African-American women in correctional centres.[28]

It is imperative to locate an analysis of Black women's incarceration within the contextual realities of Black women's positions in South Africa. A majority of black women's incarceration was due to having committed economic offences.[29] Trajectories to shoplifting reveals specific historical realities of limited economic opportunities, low levels of education and limited access to viable forms of income. One of the challenges of post-apartheid South Africa is chronic unemployment and underemployment, particularly among underprivileged groups. Several reasons for this have been cited, including the 'historic inequalities', which are a legacy of apartheid and related histories of colonialism. The symptoms of such inequalities in the criminal justice system are evident in 'the poor being underrepresented in privileged institutions yet overrepresented in prisons'.[30] These observations are evident in the correctional settings, and in the wider community, where higher unemployment rates, not only in South Africa but also in other settler-colonial locations like the United States, Australia, New Zealand and Canada are to be found among indigenous communities, as shown by West.[31]

In addition to historic inequalities, Black women, particularly young women, remain marginalised because of a complex range of interrelated factors, such as access to education, cultural constraints and early teenage pregnancies. Given this background, it is not surprising to note that in a sample of 55, the majority (34 women) reported that they had never been employed. The young women under the age of 25 cited reasons such as lack of funding or financial assistance to pursue university or college education (Lerato, 20), lack of interest in school (Thembakazi, 22), forced marriages at an early age, leading to homelessness with no emotional or financial support (Noluntu, 24). Teenage pregnancy, depression and anxiety over neglect by her mother, and not knowing who her own father is were cited by some of the younger women. Other reasons included loss of interest in pursuing college or university

education, despite the ability of parents to provide financial support (Naledi, 28).

A point of interest was how women survived in their communities. Several of them, because they had children, indicated that as a form of survival they depended on their live-in partners (Matlou, 25, Fumi, 30, Mudzhanani, 29), parents, mostly their mothers (Lerato, 20, Patience, 20, Noxolo, 19, Peace, 19, Eva, 18, Nancy, 22), extended family members (Naledi, 28), survival sex (Lebo, 26) and grandmothers and uncles (Noluntu, 24). All the reasons given are not explored in their entirety because they are so multifaceted, but it is important to note from this summary of reasons that there is not one single factor that can be isolated to explain women's unemployment status. Some of these examples resonate with the available literature, but in the African context there is a myriad of cultural factors in Black communities especially, which can impede the employability and the education of women, even among adult women.

The participants also included women who indicated that they had never been formally employed. Upon discussing the women's familial structures, it emerged that seven of these women were self-employed. They occupied entrepreneurial positions such as company director, owner and principal of a day-care centre, restauranteur, shebeen owner and taxi owner. Because of the varied positions that the women occupied, their formal educational qualifications varied. Largely, the women in directorship positions held the highest educational qualifications, while those who indicated that they were shebeen and taxi owners mostly had lower educational achievements. One of the interviewees was Ntombifikile (55):

> Ntombifikile: I did all my businesses without any education. I did it all without education. My kids never went to bed without food. Look even my son went as far as Standard 6 and the two passed their matric and I sent them to school even though I had only passed a Standard 4. I don't want the school anymore.
>
> Researcher: What about something on business skills?
>
> Ntombifikile: Even that I don't want because I did my business and excelled at it without any education.

These women are respected in both township and rural locations. Outside of their own communities, they are likely to be misrepresented as uneducated and uninformed, although their status within their communities does not tally with the urban conception of what employment and earning an income should be. Owning shebeens and taxis are indeed everyday forms of survival common in township and rural areas through which women earn an income and provide for their families.

Among the women who indicated that they were formally employed, ten women, of whom eight were Black and two were coloured, indicated that they held low-paying jobs (these women were employed as cashiers, cleaners, a shop assistant, a sex worker, a metal polisher in a scrapyard, and domestic helpers). The women's educational achievements were also relatively low. Matlou (25), who dropped out of school due to limited finances, indicated that her lack of skills impeded her ability to apply for most jobs, and so she worked as a hairdresser, earning R50 a day at a construction company. Fumi (30) worked in a scrapyard because she had run away from poverty and an abusive stepfather. Nomsa May (21) dropped out of school due to an undiagnosed illness, which resulted in her grandmother chasing her away from home, being neglected by her mother, abused by her stepfather, and finally moving to the city to be employed as a domestic worker. Yvonne (22) also dropped out of school due

to a teenage pregnancy, and was employed as a cleaner. Buhle (21), who left Zimbabwe when her parents could not afford to pay for her education, arrived in South Africa and worked on smallholdings as a farm labourer, and as a street vendor. The two coloured women in this age group were also lowly employed. Anna (25) described having left school early because of a lack of emotional support, and depression caused by neglect by her father and an absent mother due to work commitments. She sporadically got jobs, including ones as a cleaner and a waitress. Joyce (19) worked as a cashier in a local shop, and also dropped out of school due to a teenage pregnancy. Such blue-collar jobs pay low wages. Some women, for instance, indicated that they could barely afford their daily living expenses and that of their children (the women's position vis-à-vis their children is discussed in the next section). Some women earned as little as R50 a day, while some (Nomsa May, 21, and Grace, 18) indicated that they earned R700 per month as domestic helpers.

Coquery-Vidrovitch argues that among Black women, unemployment, underemployment and illiteracy levels point to a lack of emancipation and development.[32] This situation is exacerbated by the fact that 'group rights are still favoured over individual rights'.[33] In the struggle for gender equality in employment and other sectors of the economy, calls for women's rights fail to account for the domestic and private spaces that thwart the development and emancipation of women. For women in urban areas, or *ekasi*, the practice of trading in front of one's home, at the taxi rank and in neighbourhood stalls still prevails. As husbands' income became reduced or where husbands failed to earn an income or send it home, women's work purpose changed. Therefore, city life and this informal trading is an impetus for providing 'daily bread'.[34] Tiny profit margins lead some women to engage in shoplifting.

Offence categories and incarceration

In the South African context, the official criminal classifications include economic, aggressive, sexual, narcotics and many other categories of crime. In the sample of 55 women, the offence categories ranged from women incarcerated for economic offences, aggressive, narcotic offences and other crimes (stock theft, perjury and defeating the ends of justice, parole violation, accessory to murder). The official classification provided by the Department of Correctional Services fails to include women who are incarcerated for dual or multiple offences, like Ivonne (45), who has been incarcerated for theft and assault, which falls under both economic and aggressive offending. Because of this, one can argue that this classification is too narrow, and that it is vital to classify inmates per criminal category or offence type to enable a more nuanced understanding of the women's criminal identities. The specific offence categories revealed that 14 women were incarcerated for shoplifting, 22 women were held for murder, six for theft, five for fraud, three for assault, three for drug trafficking and one for perjury and defeating the ends of justice.

In the murder cases, 19 of the women were incarcerated for killing people they knew – a husband (n=4), fiancé (n=1), boyfriend (n=1), girlfriend's lover (n=1), lover (n=1), own child (n=3), friend's husband as an accomplice (n=1), and brother (n=2). The analysis of murder categories is particularly significant, as it not only affects the security placement of women in correctional centres, but it may also assist in the formulation of correctional sentence plans.

Most of the women incarcerated for murder were first-time offenders with no prior convictions or arrests. In the current study, the exceptions were Manyathi (55) and Eveshnee (56). Both were incarcerated for murder-related incidents, and are repeat offenders. What is interesting in their narratives is how insignificant

they considered their first offending to be, compared to the seriousness of offences for which they were convicted. Manyathi, for instance, narrates the circumstances related to her first offence:

> Manyathi: The one thing that made things worse for me is that in 2001 my car was stolen and instead of sentencing the person who stole the car, I was sentenced.
>
> Researcher: What happened?
>
> Manyathi: I shot a person who was stealing my car. I was trying to shoot at the wheels of the car and someone who was at the back of the bakkie came out as I was shooting the tyres and I accidentally shot him. My car had already been stripped of most of the parts and I had received a tip-off that on that day it was being driven in town, so then I followed the lead. The police also failed, I found all the missing parts of my car.
>
> Researcher: When did this happen?
>
> Manyathi: In 2004. So this is what made me to be sentenced heavily [now] because in this case I had received a suspended sentence. The person had died but I buried the person because I had no grudge against him. I don't even know how he died because he was injured in the arm when I visited him in hospital. But I think he might have died of a heart attack because of the shock. Nothing major happened. This was a woman who had apparently hired the bakkie to transport traditional beer. Even her family did not hold a grudge against me.

Eveshnee (56) recalls her previous offence:

> I was a 'naughty girl' because of the shoplifting. I had been arrested seven times for shoplifting. I started shoplifting in the 1980s. One day I stole a chocolate; I was sentenced for a few months in 1987 and was released on parole in 1988.

It is clear that these women did not regard their previous arrests and sentencing as a significant factor, because they did not consider their actions as 'serious'. Such attitudes may stem from the fact that the women received lenient sentences (a suspended sentence and a short time in prison respectively). This may point to a correlation between the length of time a person spends in a correctional centre, the rehabilitative intervention provided within this time frame and the propensity to re-offend.

To support this argument, 19 of the 55 women had histories of previous arrests. Of this number, ten were arrested and/or incarcerated for shoplifting. In this category, Naledi (28), in the narrative explanation below, had the highest number of arrests, detentions and suspended sentences, but only two convictions:

> I was … I was in and out of police stations ... But maybe in my life since I started in 2001 to 2007 maybe I have been arrested about 80 times which meant 80 cases … No I shoplifted over many times I can't recall. But the 80 times are some of the arrests. I was arrested many times. In most cases I was released on bail after that I never went to court. That's why I accumulated cases. I could afford bail. Then I had all the records and cases.

Other women convicted of shoplifting also had significantly higher numbers of arrests. These numerous arrests demonstrate the relative leniency with which some cases of shoplifting are handled by the criminal justice system. While this is in line with legislation, given the fact that shoplifting is classified as a less serious offence, it would seem from these narratives that leniency and a lack of punitive treatment against shoplifters failed to deter these offenders from more serious offences. A false

sense of agency among shoplifters and would-be shoplifters is fostered. Common among this category of women with previous arrests is also that they were arrested for similar offences, which may point to the failure of intervention and offence-specific rehabilitative programming for this class of offender.

In addition to the high numbers of shoplifters who were repeat offenders, two women, Anna (25) and Jane (30), who both served previous sentences for assault, were incarcerated again for similar offences. Although this number is small compared to that of shoplifters, the ineffectiveness of rehabilitative and intervention programming caused in part by the short sentences and the limited intervention (because of the limited time these women spent in a correctional facility) still requires reconsideration. It is clear, from the histories of previous offending presented in this study that some of the short-term offenders with numerous criminal histories receive limited intervention strategies that may help them to desist from future offending. What might further impede restorative or rehabilitative efforts is the fact that some of the women return to similar environments because of a lack of post-incarceration intervention. Aside from the fact that some of these women re-offend, it is also important to examine whether they take responsibility for their actions, or apportion blame to another party. Acknowledgment of guilt determines individual behaviour and attitudes towards rehabilitative and intervention programming in a correctional centre.[35]

Given the situation of Black women in Africa, Ogundipe-Leslie argues that, in discussing the circumstances that lead women to prison, an analysis of the marginalisation of particularly a Black woman should consider seven areas, namely, 'her body, her person, her immediate family, her society, her nation, her continent and her location'.[36] What she advocates is

an analysis of Black women's lived realities in relation to 'the oppression from outside in the form of colonialism and neo-colonialism, oppression from traditional structures, her own backwardness, her man, her colour or her race, and how the woman herself has internalised these oppressions'.[37] In relation to colonialism and neo-colonialism, Thiam observes that the positions of Black women in Africa require continuing struggles against racist-imperialist patriarchy while their European counterparts may be engaged only in identity politics.[38]

Hence, it remains important that the existential realities of Black women in South Africa are analysed from Thiam's viewpoint in order to highlight the legacies of colonialism, neo-colonialism and apartheid struggles, and the indelible marks they have left on women's lives. The social location and positioning of Black women have a huge impact on women's access to basic resources, such as education, employment and better living conditions.[39] The majority of the Black women interviewed were unemployed or underemployed. They had to rely on child income grants for their own survival, particularly younger Black women. They had left school at an early age, which impacted negatively on their livelihoods. As Thiam argues, 'the Black African woman, be she town-dweller or villager, married, divorced or single, has a deplorable life',[40] though, today, the middle-class Black women may have access to better jobs and education due to class privileges.

Women's ethnic identities

Black women's identities cannot be subsumed under one category as they belong to different ethnic groups and even nationalities. One of the main flaws of criminal classifications is the absence of ethnic identifiers in classification schemes.[41] The Department of Correctional Services does indicate nationality in the statistical

representation of inmates, but it fails to delineate ethnic identities among the incarcerated population. It is therefore impossible to make any comparisons on the basis of ethnic identities to determine the groups most likely to be incarcerated, especially politicised ethnicity that particularly expose women to sexual violence as a weapon of war. Ethnic representations are important as they 'enable one to theorize how different generations living in the diaspora can understand their ethnic and national backgrounds'.[42]

An examination of ethnic identities among women may shed light on the customs and cultural practices that have an impact on women's lives. Describing her ethnic identity, Monica Mase (45) said:

> Monica Mase: As VhaLemba, we are not pure Venda. Originally we come from Zimbabwe, right next to the border.
>
> Researcher: Are you totally different from VhaVenda?
>
> Monica Mase: Yes totally different. The language (if we are together as VhaLemba we don't speak the same language). Even when we are together we have different religions. She [pointing to one of the inmates seated outside] is also VhaLemba. There are only three of us in this prison. No, we are Venda but not the same things. We have our own beliefs.

Monica Mase points to the importance of stratifying women on the basis of ethnic orientations, as Blackness alone does not necessarily define a woman's identity. The effect of the failure to classify women rests on the insufficiency in handling cultural nuances of women during rehabilitation and intervention. The social recognition of the subjectivities, identities, beliefs and spiritualism in inmates such as Mase may be disregarded.

As mentioned previously, despite these ethnic strata, Black women's lived realities are inherent in histories of colonialisms and apartheid, which led to hierarchies of human superiority and inferiority. Grosfoguel, Oslo and Christou argue that those who live in places deemed inferior thus occupy zones of non-being where their skin colour intertwine with class, gender, ethnicity, culture or religion to further their oppressed conditions.[43] One might argue that being in prison itself also provides a qualitatively distinct experience than those who live lives outside the prison confines. Women's positionalities and inherent experiences of gendered oppression within the correctional system are further worsened by limited gender sensitive treatment.

A call for de-homogenising incarcerated women's identities

In problematising identities of women incarcerated in correctional centres, one therefore is able to argue that Black women's incarceration should be analysed in relation to histories of colonialisms and apartheid. Because identities are less over-riding theories than colonialism and apartheid in the Southern African context and therefore criminology should, as a start, rid itself of colonial criminological discourses. It is crucial for criminological discourses to demystify the myths of colonial criminology and delink itself from patriarchal discourses that lead to Black women's silences.[44] In this paper, we subvert the known profiles of women as majority Black and poor. Rather we argue that there is a fluid nature of incarcerated women's identities in ways that defy the patriarchal canon. Women's voices are therefore unmuted and are able to locate themselves within the discipline instead of being reduced to gibberish.[45] Once they speak, they break out of a prison of verbal constraint.[46]

Conclusion

The discussion in this paper reveals that women do not have fixed identities, given race, ethnicity, class, religion, sexuality, nationality, disability differences. Incarcerated women shift positions, which has an impact on their modes of survival and indicates the extent to which histories of racialised-gendered-class inequalities severely affected their survival and that of their children. The location of their birthplaces cannot be the only precursor for involvement in incarceration. Numerous lived circumstances intersect, leading to trajectories to deviance and incarceration. It is therefore important to demystify and disrupt existing identity constructions about incarcerated women, in order to avoid viewing certain forms of behaviour as abnormal and in need of treatment and the inferiorisation of women in correctional centres. Acknowledging different identities within the community of incarcerated women may be a first step towards self-reclamation and may lead to positive responses towards rehabilitative and intervention programmes with emphasis on penal abolitionism. Angela Davis answered her rhetorical question, 'are prisons obsolete?' affirmatively.[47] We agree with her analysis that female prisons may pave the way for the abolition of prisons because most incarcerated women do not belong in barbaric institutions, which were absent in Africa until they were imposed by Europeans for the purpose of controlling others.

Further criminological discourses with a focus on correctional matters cannot continue to deny racism as a common feature that lead Black women to incarceration.[48] Criminology on the African continent, which continues to treat racism and colonialism as a thing of the past, produces cultural knowledge that claims to be non-racist. This despite the fact that colonial/racial subjects, in the zones of non-being, experience higher unemployment rates,

higher poverty rates, higher dropout rates, lower quality of education in public schools, lower salaries for the same jobs as white workers or are placed in the dirty jobs of the labour market, as evidenced above in the sample of Black incarcerated women. One therefore cannot produce knowledge that seems to support arguments that only refer to incarcerated women as merely the mostly unemployed and uneducated, without reference to the positionalities they occupy in post-apartheid South Africa. Meritocratic discourses in public spaces or culturalist social capital approaches in academia contribute to the invisibility and perpetuation of the problem.[49] Knowledge is not detached from racial/colonial domination and we conclude that a broad penal abolitionism approach should be the core of a decolonial strategy.[50] Precolonial Africa had no prisons for women and postcolonial Africa should strive for the abolition of prisons in Africa to be replaced with the Ubuntu praxis of forgiveness, truth, reconciliation and restorative justice, as has been suggested by Angela Davis who found prisons to be obsolete, and by Tutu and Tutu who offered forgiveness as a better response to wrong-doing.[51] Arlene Africa also concluded that the monolithic identity of 'violent women' does not exist because women involved in violence (though she still referred to them as violent women) construct different identities, as we argued above.[52]

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Notes

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1   LM Alcoff, *Visible identities: Race, gender and the self*, Oxford: Oxford University Press, 2006, 5.

2   S Hall, Cultural identity and diaspora, in JE Braziel and A Mannur (eds), *Theorising diaspora*, Malden: Blackwell, 2003.

3   L Lowe, Heterogeneity, hybridity, multiplicity: Marking Asian-American difference, in JE Braziel and A Mannur (eds), *Theorising diaspora*, Malden: Blackwell, 2003.

4   Ibid.,132.

5   E Cauffman, Understanding the female offender, *Future Child*, 18:2, 2008.

6   Lowe, Heterogeneity, hybridity, multiplicity, 138

7   Ibid, 138

8   Ibid., 138.

9   Alcoff, Visible identities.

10   SJ Ndlovu-Gatsheni, Racialised and ethnicised races: reflections on the making of South Africanism, *Third World Quarterly*, 33:1, 2012, https://doi.org/10.1080/14725843. 2012.692550.

11   M Tonry, *Ethnicity, crime and immigration: comparative and cross-national perspectives*, Chicago, IL: University of Chicago Press, 1997, 18–19.

12   MA Relucio, Centrality of experiences and third world women, *MP: An Online Feminist Journal*, July, 2008, 1.

13   C Mohanty, Under the Western eyes: feminist scholarship and colonial discourses, in CT Mohanty, A Russo and L Torres (eds), *Third world women and the politics of feminism*, Indianapolis: Indiana University Press, 1991, 333–334.

14   A Imam, Engendering African social sciences, in A Imam, A Mama and F Sow (eds), *Engendering African social sciences*, Dakar: CODESRIA Book Series, 1991, 105.

15   SA Henke, *James Joyce and the politics of desire*, New York: Routledge,1990, 17.

16   Ibid, 18

17   K Crenshaw, Mapping the margins: Intersectionality, identity politics and violence against women of color, *Stanford Law Review*, 43:6, 1991, 1241–1243. https://doi. org/10.2307/1229039.

18   RE Harding, *A refuge in the thunder: Condomblé and alternative spaces of Blackness*, Bloomington and Indianapolis: Indiana University Press, 2000.

19   L Gelsthorpe and G Sharpe, Gender, youth crime and justice, in B Goldson and J Muncie (eds), *Youth crime and justice*, London: Sage, 2006, 24.

20   P Hill-Collins, Learning from the outsider within: The sociological significance of Black feminist thought, *Social Problems*, 33:6, 1986, 6. S14–S15 http://www.jstor.org/ stable/800672.

21   M Bamberg and A McCabe, Editorial, *Narrative Inquiry*, 8:1, 1998, iv.

22   P Hill-Collins, The social construction of Black feminist thought, *Signs, Journal of Women in Culture and Society*, 14:4, 1989, 745, https://www.jstor.org/stable/3174683 21.

23   b hooks, *Belonging: A culture of place*, New York, NY: Routledge, 1984, vii.

24   Ibid, viii.

25   M Foucault, *Discipline and punish: the birth of the prison*, New York: Pantheon Books, 1977.

26   Africa Check, Are 37.5% of jobless young S. Africans black women, and 31.5% white men?, 19 November 2014, https://africacheck.org/reports/do-Black-women-make-up-37-5-of-unemployed-south-africans-aged-15-34/ (accessed 26 June 2019).

27   J Prinsloo and A Hesselink, A quantitative analysis of female crime trends in Gauteng South Africa, *Acta Criminologica*, 28:1, 2015, https://hdl.handle.net/10520/EJC177476.

28   B Agozino, *Black women and the criminal justice system: Towards the decolonization of victimization*, Brookfield: Ashgate, 1997, 3; B Richie, *Compelled to crime: The gender entrapment of battered, Black women*, New York: Routledge, 1996, 16.

29   Prinsloo and Hesselink, A quantitative analysis of female crime trends in Gauteng.

30   B Agozino and A Kaluta-Crumpton, *Pan-African issues in crime and justice*, Aldershot, UK: Ashgate, 2004, 1.

31   C West, Learning to talk race, in FL Hord and JS Lee (eds), *I am because we are: Readings in Black philosophy*, Amherst: University of Massachusetts Press, 1995.

32   C Coquery-Vidrovitch, *African women: A modern history*, New York: Westview Press/HarperCollins, 1997, 231.

33   Ibid., 232.

34   Ibid., 137.

35   B Agozino. *Black women and the criminal justice system: Towards decolonization of victimisation*, Brookfield: Ashgate, 1997.

36   M Ogundipe-Leslie, African women, culture and development, in SM James and APA Busia (eds), *Theorising Black feminisms: The visionary pragmatism of Black women*, London: Routledge, 1995,103.

37   Ibid.

38   A Thiam, *Black sisters speak out: Feminism and oppression in Black Africa*, London: Pluto Press,1986, 53.

39   KS Newman, *After freedom: The rise of the post-apartheid generation in democratic South Africa*, Boston: Beacon, 2014.

40   Thiam, *Black sisters speak out*, 63.

41   Ibid., 8.

42   R Radhakrishnan, Ethnicity in an age of diaspora, in JE Braziel and A Mannur (eds), *Theorising diaspora*, Malden: Blackwell, 2003, 116.

43   Ibid.

44   Henke, James *Joyce and the politics of desire*.

45   Ibid.,14.

46   Ibid., 17.

47   AY Davis, *Are prisons obsolete*? New York: Seven Stories Books, 2003.

48   W Wilbanks, Myth of a racist criminal justice system, *Journal of Contemporary Criminal Justice*, 3:2, 1987, https://doi. org/10.1177/104398628700300209.

49   Ibid.,11–12.

50   Ibid., 12.

51   D Tutu and M Tutu, *The book of forgiving: the fourfold path of healing ourselves and our world*, New York: Harper Collins, 2014.

52   A Africa, Standpoint: "Murderous women"? Rethinking gender and theories of violence, *Feminist Africa*, 14, 2010, http://www.agi.ac.za/sites/default/files/image_tool/ images/429/feminist_africa_journals/archive/14/fa_14_-_ standpoint_adelene_africa.pdf (accessed 28 June 2019).

Towards transforming a system

Re-thinking incarceration for youth (and beyond)

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Rethinking crime and punishment, especially with regard to youth,[1] is a priority for South Africa; a country with high crime rates, recidivism and an overburdened criminal justice system. The present punitive and retributive system often only exacerbates many underlying causes of crime and violence, especially in young people. The failure of the existing system suggests that the time is right for a paradigm shift in society's response to crime and punishment. A challenge to implementing any alternative justice model is to ensure that it does not continue to prop up the under-resourced, overburdened and dysfunctional criminal justice system it seeks to reform. The current systemic crisis demands radical reform, not merely adopting a few well-meaning tweaks to a broken system. This article argues that the system and its various forms (including residential options but with an emphasis on community-owned interventions) need to be both trauma-informed and infused with an ethos of restorative justice. We articulate our explanations with youth as the focus and make proposals in light of this and suggest a path towards implementation.

South Africa, in common with most other nations, uses imprisonment as the norm for the execution of serious criminal justice sanctions.[2] In addition, remand detention is used excessively and for long periods without justification.[3] South Africa's criminal justice system has undergone reforms aimed at reflecting the tenets of the Constitution and undoing the legacy of our oppressive past. The direction of these institutional changes, therefore, has placed greater emphasis on human rights and included a more restorative vocabulary in policy documents.[4] The Department of Correctional Services (DCS) states that its mission is to contribute 'to a just, peaceful and safer South Africa through effective and humane incarceration of inmates, rehabilitation and social reintegration of offenders.'[5] However, with prisons continually struggling with the recurring issues of

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overcrowding and accompanying violence, these ideals have not been met.[6] This should not be surprising: it is a global problem. What follows is relevant to all age cohorts, however, the focus here is on youth due to their vulnerability and the significance of developmental needs.

An incarceration legacy

Incarceration, for many, is synonymous with criminal justice, even though it is a relatively recent phenomenon as penal policy.[7] Prior to incarceration, corporal and capital punishment were the practiced norm,[8] with prisons predominantly used for those awaiting trial, the execution of sentences or housing of debtors, vagabonds and others that were considered as social undesirables.[9]

Without delving into the complex evolution of incarceration, it is worth noting that the generally accepted purpose of imprisonment is to deprive the individual, who has transgressed, of their liberty and thereby achieve the goals of retribution, incapacitation, deterrence and rehabilitation.[10] Purpose, though, is best determined by practice rather than by stated intention. Thus, prisons in fact function primarily as a tool for maintaining the socio-economic stratifications in a society, with the overwhelming majority of those incarcerated being the poor and oppressed.[11] Another way of stating this is that prisons serve the role of 'hiding' the poor, providing cheap labour and preserving the racial hierarchy.[12] We can see this in South Africa's past, where housing compounds for African migrant labourers provided a blueprint for many of the prisons still in operation today.[13]

It is well known that the apartheid justice system was a repressive tool in the hands of the state and that incarceration made little, if any, distinction between activists, criminals, children and adults.[14] Since 1994 there have

been moves to reform the criminal justice system away from the apartheid legacy. Guided by a constitutional demand for safe, secure and humane incarceration, prisons were demilitarised (although, it is interesting to note, that a military-like staff uniform was retained) and corporal punishment banned.[15] Restorative justice vocabulary and practice has also become part of the discourse with, for example, this model being officially adopted by the national government's Justice Crime Prevention and Security Cluster as a policy objective to be included in criminal justice, civil law, family law and African traditional justice.[16] The White Paper on Corrections[17] and the Child Justice Act 2008 (Act 75 of 2008) perhaps best defines this shift. Grounded in restorative justice, these policy documents aimed to fundamentally change the way in which children in conflict with the law were to be treated.[18]

There is a gap, though, between intentions, policies and practice. Despite the encouraging changes, incarceration has remained the de facto penalty for crime and, in addition, has not been sufficiently reformed, remaining largely unchanged within an increasingly punitive criminal justice system.[19] This is evident in recurring issues of, inter alia, rights violations, corruption, lawlessness, overcrowding, violence and a lack of access to services.[20] The Child Justice Act has provided notable changes and successes, however, it has not been sufficiently resourced and has faced challenges in implementation.[21] Poor or misunderstood application of the law has meant that the police may be arresting fewer children;[22] diversion programmes and secure care facilities often do not distinguish between the different needs of youth;[23] and secure care facilities for young offenders face issues of rights violations, violence and poor conditions and operate as incarceration in all but name.[24]

A different way of thinking

Regardless of location or how they are labelled, prisons do not work. They have a tendency towards abuse – a feature that may even be inherent to the system.[25] Walgrave, for example, argues that '[r]elying on punishment for dealing with crime leads to more imprisonment, more human and financial costs, weaker ethics and less public safety.'[26] And when we consider the suffering experienced by many in marginalised and oppressed communities, prison is often an extension of community experience, including a space for gang organisation and networking.[27] Reguillo describes that '[w]hen death, instability, uncertainty, hopelessness and detachment become rooted as everyday experiences, punishment by example is irrelevant.'[28]

And yet, despite the evidence of their ineffectiveness, the use of prisons is expanding across the globe.[29] If we hope to remedy the problems with the system, mere programmatic or policy change will not suffice. What is needed is a different way of thinking about crime and punishment – a more ambitious vision that not only changes prisons but transforms the criminal justice system as a whole and which challenges its role in reinforcing poverty, inequality and violence. Interventions require a broader understanding of the origins of crime and violence and must provide programming that is spiritual, psychological as well as social in nature.[30] To make these changes would be no small feat: we only need to look at how long it took to pass the Child Justice Act for proof.[31] We acknowledge the complexity of the sometimes divergent goals of safety for citizens, the pursuit of justice and social development. We argue, however, that it starts by ensuring that the system itself becomes trauma-informed and restorative justice infused, with an emphasis on youth.

Trauma-informed and restorative justice-infused

Trauma-informed

Using the word 'trauma' can be controversial as doing so too often assumes that the problem lies within the individual rather than the environment in which the individual lives.[32] Behaviour, even criminal behaviour, can be viewed in a different way if one takes into consideration the real and ongoing external threats experienced by many people, coupled with their historical oppression.[33] In these environments, aggression, callousness and hyper/hypo arousal can be understood as a natural and adaptive survival response in threatening environments, rather than as symptomatic of a disorder.[34] Furthermore, using a 'disease' approach can obscure the agency[35] in individuals' actions in the face of oppression, exclusion and marginalisation.[36] For the purposes of this article and to incorporate these dynamics we define trauma as 'the subjective experience of loss, threat, powerlessness and exclusion that results in a negative change in how we view ourselves, our relationship to others and our place in the world.'[37]

Research has shown that people in South Africa, especially those from socio-economically marginalised communities, have been exposed to multiple forms of violence across multiple settings over extended periods.[38] This has massive implications for human development: the field of neuroscience has recently highlighted the profound impact that these lived realities can have on the brain.[39] The problems and challenges that result manifest across the different domains of society, including the criminal justice arena.[40] These problems often are related to a dysregulated or sensitised state of threat that manifest in, among other things, impulsive and/or aggressive behaviour as well as in learning challenges.[41] Numerous studies have demonstrated that these challenges are present

in the majority of youth involved in the criminal justice system.[42]

When we include the practices and discourses of racial and economic exclusion and racial profiling we see how these situational factors play a significant role in why many young people come into conflict with the law.[43] Punitive practices and threatening environments are therefore often ineffective, especially since prison is another threatening space.[44] More often incarceration will result in worse behaviour.[45] It is crucial, then, that we develop a justice framework that factors in the lived realities of violence and exclusion of many who enter the system.[46]

Restorative justice

Restorative justice is a natural fit with a trauma-informed approach. While there is no universally accepted definition of restorative justice, often leading to confusion and even misuse,[47] a simple definition that draws on several elements of the paradigm is that it is 'a theory of justice that emphasises repairing the harm caused or revealed by criminal behaviour. It is best accomplished through inclusive and cooperative processes.'[48] There is far more agreement on the values and principles that makes restorative justice distinguishable from other approaches to crime and punishment, including that:[49]

• crime is fundamentally a violation of people and interpersonal relationships;

• violations create obligations and liabilities; and

• restorative justice seeks to heal and put right the wrongs.[50]

The goals of restorative justice are also pertinent. These include putting key decisions in the hands of those most affected by crime and violence; making justice more healing and ideally more transformative; and reducing the likelihood of future offences.[51] Restorative justice offers a more participative, reconciliatory,

healing and problem-solving approach to crime and punishment than the current overly-punitive criminal justice system. The punitive approach is founded on a faulty belief that incarceration, with degradation, humiliation and dehumanisation will transform the offender into a more honest or docile person upon release.[52] Instead, we argue, it only adds to the disconnection and brokenness of society.

Restorative justice should not merely be seen as an alternative to punishment but should instead be adopted as a foundation upon which justice is administered. It should not be an ad hoc programme to be implemented at any specific stage in the criminal justice process, but should rather be an underlying philosophy and guiding practice. Unless restorative justice is grounded in a set of clearly articulated values and principles, there is real danger that its potential can be subverted by the conventional justice system.[53] Furthermore, we argue that this model is not limited to criminal justice, but can be applied in various settings such as schools, using a variety of restorative processes and interventions.

In light of the above, we recommend that the South African criminal justice system be re-conceptualised such that its foundation is trauma-informed and restorative justice-infused. Over the long term that would mean that all players along the criminal justice spectrum, from police to prosecutors, judges to correctional officials, act in ways that are grounded in this philosophy. The system can then still be tough on crime, but do so through a practice that is more restorative in the way that it deals with those who offend and their communities. We believe that community-based processes should be the primary focus of the criminal justice system in South Africa, with institutional care being kept as the option of last resort.

To work towards a more appropriate criminal justice system model for youth we suggest the

following guiding principles for its development:[54]

- *A system-wide understanding of trauma and restorative practices.* This means the broader justice system integrates this understanding into policy, practice and implementation at relevant institutions.[55]

- *Safety.* This is a constitutional imperative. In addition, from a neuroscience perspective we know that individuals who feel safe are less likely to overreact and more able to engage with new skills and behaviour.[56] We should therefore be seeking to expand safe spaces within the wider criminal justice system beyond children's courts and sexual offences courts. We should develop strategies to ensure that the police and law enforcement can become trusted actors in communities.

- *Supportive and respectful relationships*. Punitive approaches do not work, especially with youth.[57] Therefore, at an organisational and institutional level we should ensure that trauma-informed strategies and restorative practices inform the responses of adults and/or those in authority.[58] Perry et al. suggest that '[p]romoting relational health by increasing the quality, number and density of supportive, nurturing and trauma-informed people is the most effective and enduring form of intervention.'[59]

- *Self-regulation.* Encouraging self-regulation is a major task, particularly with those individuals who are more aggressive and impulsive. The ability to be aware and respond appropriately when a situation is escalating, requires engagement with higher brain functioning to enable a change in thinking processes and learn new skills.[60] It also includes the ability to resist actions that will compromise future goals – in other words, developing a sense of purpose. This requires not just teaching but modelling regulation.

- *Strength-based behaviour.* This is not just about eliminating negative behaviour but building up areas of strength and developing aspects such as problem-solving skills; viewing people as assets and not liabilities; and providing encouragement and positive feedback.

Empowering communities as frontline responders

The empowerment of communities is key to successful implementation of our proposed model. Communities must be empowered with the capacity to act as frontline responders to transgressions and conflicts that take place within their own community. This could mean working with community leaders, elders and/or those with 'street cred' to enable them to be effective mediators in conflict and for community building. This could take the form of restorative circles, restorative conferences, diversion and victim-offender dialogues. Marginalised communities in South Africa have a history of policing themselves and thus the energy and desire is already present.[61] We agree with Community Connections for Youth that '[t]he community is central not peripheral...too often the communities in which young people reside, and will ultimately return, are engaged only as an afterthought…'[62]

A prime example of success in this regard is that of the Zwelethemba model or Community Peace Programme, started in Worcester, that aimed to practice civil policing and conflict resolution outside of the criminal justice system.[63] This community model has been widely cited but it was shelved due to lack of resources (or rather, we argue, a lack of political will).

Institutional care where necessary

Without being naïve, we also need to acknowledge that there will still be those people who pose a threat to society, as well as to

themselves. A need for residential care therefore remains, even though for youth under18 it should always be a last resort (as per the Child Justice Act).[64] Residential care institutions, especially for youth, must also be designed according to trauma-informed restorative justice principles and values. An example is the monastic model for violent youth proposed by Garbarino, since it 'emphasizes contemplation, reflection, service, cooperation, meditation and peace, instead of confrontation, dominance and power assertion.'[65] These principles must also be incorporated into the architectural design, colour, light and composition of spaces.[66] The architect and designer Deanna Van Buren posits that '[t]he built environment forms the containers for nearly all the activities of our lives. These containers have a profound impact on how we feel and behave…values are inherent in its materials, forms and layout.'[67] In saying this we therefore acknowledge that a redesign of the physical spaces of prisons and the Child and Youth Care facilities is needed.

Conclusion

As far as we are aware, trauma-informed restorative-oriented options are not currently in practice in South Africa, even though legislation such as the Child Justice Act 2008 has brought a much-needed emphasis on a restorative approach along with an awareness of the impact of context. Making the shift to a more restorative system will require the willingness to accept the inherent failings of a systemic legacy inherited from our past and enable us to see that being 'tough on crime' does not require punitive and violent measures.

The integration of trauma-informed and restorative justice principles and values can help lead the way in re-conceptualising the South African criminal justice system. It must form the foundation and basis of thinking in every decision in the system, from policing, to arrest, through to the courts and the decisions made

from there. The chequered history of prison reform in South Africa suggests that changes that are viewed as merely just another reform, will be compromised in their efficacy because of the deep and seemingly intractable problems in the system. Furthermore, the violent nature of imprisonment only exacerbates the trauma of young, and adult, offenders. The criminal justice system can no longer continue doing what it is doing and expect a different result.

We therefore propose a way forward that is based on strengthening community-owned interventions, as well as constructing more transformational structures, especially for youth, where it is necessary. We believe that by using a framework that is trauma-informed and based on restorative justice principles we can rebuild a criminal justice system that can more effectively reduce the levels of crime and violence. Adopting this approach could facilitate opportunities for young offenders to heal and develop healthy ways of being and relating in the world.

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Notes

1   This article uses the UN definition of youth, which is persons between the ages of 15 and 24 years; see www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/ (accessed 24 September 2018).

2   AK Akih and Y Dreyer, Penal reform in Africa: The case of prison chaplaincy, *HTS Teologiese Studies/Theological Studies*, 73:3, 2017, http://dx.doi.org/10.4102/hts.v73i3.4525.

3   C Ballard, *Research report on remand detention in South Africa: An overview of the current law and proposals for reform*, Bellville: Community Law Centre, 2011.

4   D van Zyl Smit, Criminological ideas and the South African transition, in K McEvoy and T Newburn (eds), *Criminology, conflict resolution and restorative justice*, Basingstoke and New York, Palgrave MacMillan, 2003.

5   Department of Correctional Services, About us: mission/vision/values, www.dcs.gov.za/?page_id=174 (accessed 11 September 2018).

6   LM Muntingh, *An analytical study of South African prison reform after 1994*, unpublished PhD thesis, University of the Western Cape, Cape Town, 2012, iii.

7   DH Drake, *Prisons, punishment and the pursuit of security*, Critical Criminological Perspectives Series, Basingstoke: Palgrave Macmillan, 2012; SB Singh, Doing time for crime: the

historical development of the different models (approaches) of treatment for incarcerated offenders at the Westville Correctional Centre, Durban, South Africa, *New Contree*, 70, Special Edition, 2014, http://hdl.handle.net/10394/12859.

8　Ibid.

9　A Coyle, *The prisons we deserve*, London: Harper Collins Publishers, 1994.

10　Drake, *Prisons, punishment and the pursuit of security*.

11　M Alexander, *The new Jim Crow: Mass incarceration in the age of colorblindness*, New York: The New Press, 2012; L Wacquant, *Punishing the poor: The neoliberal government of social insecurity*, Durham: Duke University Press, 2009; HA Thomson, The prison-industrial complex: A growth industry in a shrinking economy, *New Labour Forum*, 21:3, 2012, https://doi.org/10.4179/NLF.213.0000006.

12　Alexander, *The new Jim Crow*; Thomson, The prison-industrial complex

13　Singh, Doing time for crime.

14　A Singh and V Singh, A review of legislation pertaining to children, with particular emphasis on programmes offered to children awaiting trial at secure care centres in South Africa, *Social Work/Maatskaplike Werk*, 50:1, 2014, http://dx.doi.org/10.15270/50-1-18.

15　Muntingh, *An analytical study of South African prison reform after 1994*; S Oppler, *Correcting Corrections: Prospects for South Africa's Prison*, ISS Monograph 29, 1998, www.issafrica.org/publications/monographs (accessed 4 September 2015).

16　Justice, Crime Prevention and Security (JCPS) Cluster, Draft Media Briefing, 13 December 2015, www.justice.gov.za/m_statements/2015/20151213-JCPSClusterMediaBriefingStatement.pdf (accessed 10 September 2018).

17　Department of Corrections, *White Paper on Corrections in South Africa*, Pretoria: Department of Corrections, 2005, www.dcs.gov.za/wp-content/uploads/2016/08/WHITE-PAPER-8.pdf (accessed 11 August 2015)

18　JN Clark, Youth violence in South Africa: the case for a restorative justice response, *Contemporary Justice Review*, 15:1, 2012, https://doi.org/10.1080/10282580.2011.653521.

19　Muntingh, *An analytical study of South African prison reform after 1994*, iii; GJ Super, Punishment, violence and grassroots democracy in South Africa: The politics of populist punitiveness, *Punishment and Society*, 18:3, 2016, https://doi.org/10.1177/1462474516645685.

20　Singh, Doing time for crime.

21　Clark, Youth violence in South Africa; Singh and Singh, A review of legislation pertaining to children.

22　C Badenhorst, *Second year of the Child Justice Act's implementation: Dwindling numbers*, Belville, Cape Town: Open Society Foundation for South Africa and The Child Justice Alliance, 2012, www.childjustice.org.za/publications/BadenhorstCJAImplementation2_2012.pdf (accessed 21 May 2019).

23　Singh and Singh, A review of legislation pertaining to children; A Van der Merwe and A Dawes, Toward good practice for diversion: The development of minimum standards in the South African child justice system, *Journal of Offender Rehabilitation*, 48:7, 2009, https://doi.org/10.1080/10509670903195993.

24　Z Hansungule, *Questionable correction: Independent oversight of child and youth care centres in South Africa*, APCOF Research Paper 19, 2018, http://apcof.org/wp-content/uploads/no-19-child-and-youth-care-center-by-zita-hansungule-.pdf (accessed 20 June 2019); Singh and Singh, A review of legislation pertaining to children.

25　Singh, Doing time for crime.

26　L Walgrave, Has restorative justice appropriately responded to retribution theory and impulses? in H Zehr and B Toews (eds), *Critical Issues in Restorative Justice*, New York: Criminal Justice Press and Devon: Willan Publishing, 2004, 4.

27　A Winton, Analysing the geographies of the 'transnational' gangs of Central America: The changing spaces of violence, *Investigaciones Geográficas* (Mx), 79, 2012; JM Cruz, Central American maras: From youth street gangs to transnational protection rackets, *Global Crime*, 11:4, 2010, https://doi.org/10.1080/17440572.2010.519518.

28　R Reguillo, cited in Winton Analysing the geographies of the 'transnational' gangs of Central America, 146.

29　United Nations Office on Drugs and Crime, *Handbook of basic principles and promising practices on alternatives to imprisonment*, Vienna: United Nations Office on Drugs and Crime, 2007.

30　J Garbarino, Lost boys: *Why our sons turn violent and how we can save them*, New York: Anchor Books, 1999.

31　Clark, Youth violence in South Africa.

32　GM Diamond, JD Lipsitz and Y Hoffman, Nonpathological response to ongoing traumatic stress, *Peace and Conflict: Journal of Peace Psychology*, 19:2, 2013, http://dx.doi.org/10.1037/a0032486.

33　Ibid; CB Roach, Shallow affect, no remorse: The shadow of trauma in the inner city, *Peace and Conflict: Journal of Peace Psychology*, 19:2, 2013, http://dx.doi.org/10.1037/a0032530; G Stevens, G Eagle, D Kaminer et al., Continuous traumatic stress: Conceptual conversations in contexts of global conflict, violence and trauma, *Peace and Conflict: Journal of Peace Psychology*, 19:2, 2013, http://dx.doi.org/10.1037/a0032484.

34　Diamond, Lipsitz and Hoffman, Nonpathological response to ongoing traumatic stress; Roach, Shallow affect no remorse.

35　We take the position that even though agency may be limited by structural factors, individuals still make strategic choices that may even be a form of opposition to that which dominates (even if that may be further limiting, such as incarceration). See C Daiute, *Human development and political violence*, New York: Cambridge University Press, 2010.

36　K Mitton, Public health and violence, *Critical Public Health*, 29:2, 2019.

37　Dr Arlene Benjamin, Director of Restore Reconnect Rebuild (Pty) Ltd and founder of CASE (Community Action Towards a Safer Environment), personal communication, 9 October 2018.

38　P Burton, CL Ward, L Artz et al., *Research bulletin: The Optimus study of child abuse, violence and neglect in South Africa*, Cape Town: University of Cape Town and The Centre for Justice and Crime Prevention, 2015; D Kaminer, B du Plessis, A Hardy et al., Exposure to violence across multiple sites among young South African adolescents, *Peace and*

Conflict: Journal of Peace Psychology 19:2, 2013, http://dx.doi.org/10.1037/a0032487; D Kaminer, G Eagle and S Crawford-Browne, Continuous traumatic stress as a mental and physical health challenge: Case studies from South Africa, *Journal of Health Psychology*, 23:8, 2018, https://doi.org/10.1177/1359105316642831; A Van der Merwe, A Dawes and CL Ward, The development of youth violence: an ecological understanding, in CL Ward, A Van der Merwe and A Dawes (eds), *Youth violence: Sources and solutions in South Africa*, Cape Town: UCT Press, 2013.

39 BD Perry, G Griffin, G Davis et al., The impact of neglect, trauma and maltreatment on neurodevelopment: Implications for juvenile justice practice, programs and policy, in AR Beech, AJ Carter, RE Mann et al. (eds), *The Wiley Blackwell handbook of forensic neuroscience*, 1st ed, Hoboken; John Wiley and Sons Ltd, 2018. (Kindle version)

40 Ibid.

41 Ibid; G Griffin, EJ Germain and RG Wilkerson, Using a trauma-informed approach in juvenile justice institutions, *Journal of Child & Adolescent Trauma*, 5, 2012, https://doi.org/10.1080/19361521.2012.697100.

42 Ibid; J Garbarino, *Listening to killers: lessons learned from my twenty years as a psychological expert witness in murder cases*, Berkeley: University of California Press, 2015.

43 Garbarino, *Lost Boys*; EA Fattah, Victimology's debt to Nils Christie: The outlasting legacy of a free thinker, *Tamida*, 19:2, 2012; J Gilligan, Punishment and violence: Is the criminal law based on one huge mistake, *Social Research*, 67:3, 2000, https://www.jstor.org/stable/40971409.

44 Perry et al., The impact of neglect, trauma and maltreatment on neurodevelopment.

45 G Griffin et al, Using a trauma-Informed approach in juvenile justice institutions.

46 Stevens et al., Continuous traumatic stress.

47 G Johnstone and DW Van Ness, The meaning of restorative justice, in G Johnstone and DW Van Ness (eds), *Handbook of restorative justice*, Devon: Willan Publishing, 2007; S Sharpe, How large should the restorative justice 'tent' be? in H Zehr and B Toews (eds), *Critical Issues in Restorative Justice*, New York: Criminal Justice Press and Devon: Willan Publishing, 2004

48 D Van Ness, *An overview of restorative justice around the world*, Paper presented at Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand, 18–25 April 2005, 3, https://assets.justice.vic.gov.au/njc/resources/c4518c8a-c200-4623-afd1-42e255b62cf9/01%2Ban%2Boverview%2Bof%2Brestorative%2Bjustice.pdf (accessed 12 September 2018); The Child Justice Act 2008 (Act 75 of 2008) defines restorative justice 'as an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to collectively identify and address harms, needs and obligations through accepting responsibility, making restitution, taking measures to prevent a recurrence of the incident and promoting reconciliation'.

49 Van Ness, *An overview of restorative justice around the world*; Pranis, Restorative values, in Johnstone and Van Ness (eds), *Handbook of restorative justice*.

50 H Zehr and H Mika, Fundamental concepts in restorative justice, *Contemporary Justice Review*, 1, 1998.

51 H Zehr and A Gomar, *The little book of restorative justice*, Intercourse, PA: Good Books, 2003, www.unicef.org/tdad/littlebookrjpakaf.pdf (accessed 10 September 2018).

52 EA Fattah, Is punishment the appropriate response to gross human rights violations? Is a non-punitive justice system feasible? *Acta Juridica*, 2007, https://hdl.handle.net/10520/EJC52689.

53 O Vidoni Guidoni, The ambivalences of restorative justice: Some reflections on an Italian prison project, *Contemporary Justice Review*, 6:1, 2003, https://doi.org/10.1080/1028258032000055658.

54 These are informed by Griffin et al., Using a trauma-informed approach in juvenile justice institutions, and A Benjamin, *More than a drop in the ocean: Breaking the cycle of violence*, Cape Town: CASE Publications, 2011.

55 Griffin et al., Using a trauma-informed approach in juvenile justice institutions.

56 Ibid; Perry et al., The impact of neglect, trauma and maltreatment on neurodevelopment.

57 Perry et al., The impact of neglect, trauma and maltreatment on neurodevelopment; Garbarino, *Listening to killers*; Gilligan, Punishment and violence.

58 Griffin et al., Using a trauma-informed approach in juvenile justice institutions.

59 Perry et al., The impact of neglect, trauma and maltreatment on neurodevelopment, Box 31.1.

60 Griffin et al., Using a trauma-informed approach in juvenile justice institutions; DJ Siegel, *Mindsight: The new science of personal transformation*, New York: Bantam Books, 2010.

61 Super, Punishment, violence and grassroots democracy in South Africa.

62 Community Connections for Youth, *Building community capacity to serve youth in the justice system*, South Bronx, NY: Alternatives to Incarceration Training Institute, 2015, introductory page.

63 C Shearing and J Cartwright, *Popular policing video lecture: Part II*, UCT Open Content, 2010, http://opencontent.uct.ac.za/Law/Popular-Policing-Video-Lecture-Part-II (accessed 10 January 2012).

64 Griffin et al., Using a trauma-informed approach in juvenile justice institutions.

65 Garbarino, *Lost Boys*, 233.

66 B Toews and D Van Buren, *Designing justice and designing spaces toolkit*, 2015, www.designingjustice.com/toolkit/ (accessed 01 June 2015).

67 S Sathian, Deanna van Buren is making space for a new kind of justice, *Ozy.com*, 26 August 2015, www.ozy.com/rising-stars/deanna-van-buren-is-making-space-for-a-new-kind-of-justice/40562 (accessed 28 August 2015).

On the record

Sally Gandar and Popo Mfubu

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On 19 June 2019, one day before World Refugee Day, the Western Cape High Court handed down judgment in a case brought by the University of Cape Town's Refugee Rights Unit on behalf of the Scalabrini Centre of Cape Town, which sought to improve the lives of thousands of asylum-seeking families across South Africa. The order, which was made after successful negotiations with the Department of Home Affairs (DHA/The Department) means that wives, husbands, children and other dependents of asylum-seekers and refugees are now able to document themselves in South Africa as 'dependents' of the principle asylum applicant in a process commonly known as 'family-joining'. This aspect of the Refugee Act – outlined at section 3(c) – means that refugee families can be documented together, ensuring their rights to family unity and dignity in South Africa.

The order confirms a set of Standard Operating Procedures (SOPs) that had been agreed on by the applicants and DHA. The SOPs allow for refugees to apply to be documented (either through family joining or on their own grounds) upon provision of certain documents, where possible, such as a marriage certificate or birth certificate or affidavit (in the absence of such documents) – regardless of where the marriage or birth took place. Family joining can now also be completed regardless of whether the dependents in question were included in the applicant's original asylum application or not. The SOPs also provide for DNA testing as a measure of last resort to confirm the validity of parents' claim over their child. These changes mean that asylum-seeking and refugee families can now fulfil their right to access documentation in South Africa. Kelley Moult spoke to Sally Gandar, the Head of Advocacy and Legal Advisor for the Scalabrini Centre, and Popo Mfubu, an attorney at the Refugee Rights Unit, about the ground-breaking case.

Kelley Moult (KM): How does a case like this come about and how do your organisations decide to use the courts to try to shift implementation in this way?

Sally Gandar (SG): Clients approach an organisation like the Scalabrini Centre, or UCT's Refugee Rights Clinic, with a barrier that they are experiencing at the Department of Home Affairs. I am talking about a barrier that is not there in law, but exists in practice. In this case, it was that section 3(c) of the Refugees Act[1] wasn't being applied correctly. Once we get a number of people coming in with the same experience, and we have written letters and gone through the process of trying to overcome that barrier on an individual basis for the person concerned, we will engage with the Department. We will take the next step and write a much

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more formal letter of demand that tries to resolve the problem by referring to what the law says, and how it should be implemented. In other words, we ask the Department to either implement the law properly, or to provide reasons as to why it is not being implemented in that way.

Popo Mfubu (PM): When we launched the case, we were initially concerned that the problem of not allowing dependents to be joined onto a main applicant's asylum-seeker refugee status document, which is often referred to as family joining, may be a problem that is just isolated to the Cape Town refugee reception office. There was a lot of litigation around the future of the Cape Town office … it was meant to be closed to new asylum applicants in 2012, and that decision was challenged, and went all the way up to the Supreme Court of Appeal.[2] And then the office reopened but made the decision to close again in January 2014. We initially therefore thought that the problem may be a result of the fact that the Cape Town refugee office was in a winding down process. We then wrote to colleagues across the country, like the Nelson Mandela University Refugee Rights Clinic in Port Elizabeth, and to colleagues in Durban at Lawyers for Human Rights, and to colleagues in Johannesburg at the Legal Resources Centre, and they all confirmed that the same barrier exists – that people who were dependents or spouses of asylum seekers or refugees were not being documented. And then we realised that the problem was much, much bigger than we had anticipated. We then approached the Department and asked them to rectify the issue and when they did not, we approached the Western Cape High Court for relief.

KM: Can you outline for us what the barrier in practice is then, what happens to the clients?

PM: For many of the rights that people try to access across the country, there is an enormous disjuncture between the written law and how it is implemented. And the fortunate thing is that we have such an amazing framework where refugee protection is concerned in that the rights that it contains are very liberal, and even the way that refugees are meant to be treated is very liberal in the legislation itself. However, the actual implementation is what is the problem. Section 3(c) of the Act says that a person who comes to South Africa and seeks asylum on the basis of their status as a dependent should be granted refugee status and documented with an asylum seeker permit of refugee status document. So for example, if a father flees his country because he is being persecuted because of his political opinions, and has to leave his wife and his children behind, they may be joined to his file as dependents once they join him here in South Africa. Practically what that means is that he should take them to Home Affairs, and they should be issued with an asylum seeker permit or a refugee status document (depending on which document the main applicant has). That document is very important because without it – in other words, without being documented – dependents can't go to school, refugees can't go to the clinics to access health care, spouses can't lawfully work or study or open a bank account. Their whole life comes to a standstill if they are undocumented. So, when we noticed that many people who were bringing their dependents to Home Affairs were being turned away, we took on the case to try to ensure that dependents of asylum seekers or refugees are joined to the original application as provided for in terms of section 3(c) of the Act.

SG: Dependents are also currently widely defined under the law as it stands – there is a Refugees Amendment Act, not yet in force, that redefines dependent and limits the definition considerably. A dependent isn't just a child

or a spouse, but can be a same sex partner (which would fall under a spouse in South Africa), or could also be an aged parent or a destitute member of the family. South Africa's law recognises the multiple iterations of family that exist in our context. The issue, though, also applies to children of refugees who are born here, under our law – someone should be able to get a birth certificate through the Births and Deaths Registration Act[3] – but this also wasn't happening across the board. The child's birth certificate then allows a person to go to the refugee reception office to get the appropriate documentation for the child.

PM: Part of the problem was the manner in which the officials at the Department of Home Affairs were interpreting who falls into the category of 'dependent' and who does not. They were taking a very narrow approach, while our law takes a very liberal approach to what a family nucleus looks like (especially within the context of refugee protection). This is important because if you look at the ways in which people flee their countries, they often don't have time to pack their bags, collect all their children from school and get ready to leave as normal travellers would. People just have to run, and often they have to take children that don't even belong to them, for example a niece or a nephew who flees with them because these children's parents have been killed during times of war or have disappeared completely. In many cases Home Affairs was refusing to join those dependents to the main applicant's files.

SG: There is a process that refugee children go through as unaccompanied or separated minors through which they approach the Children's Court and get documentation. But there are more barriers in that process too, and one of the red flags from Home Affairs' side is that this is a potential danger of trafficking. There is no empirical data to back up this fear that children are being trafficked through the asylum process, but Home Affairs was refusing these applications, nonetheless.

KM: Can you talk a little about what the consequences of not being joined as a dependent are for the refugees concerned?

SG: It is important to distinguish between refugee status and an asylum-seeker permit. An asylum-seeker permit is issued in terms of section 22 of the Act, and is renewed periodically, sometimes even as often as every month. The length of the period for renewal depends largely on the official dealing with your case, although we have seen a trend in Cape Town where more people are getting month-to-month renewals of their permits. If you don't have that asylum-seekers permit, you are essentially undocumented. That means that you can't access social services as easily, and you also don't have the right to work or study, on paper. The Watchenuka case, which was decided by the Supreme Court of Appeal in 2003, held that the right to work and study and be a productive member of society and sustain oneself is linked to the right to dignity. As long as someone has an asylum seeker permit, they ought to be allowed to work and study based on that document.[4] In practical terms, that right is written on that piece of paper. Where people are undocumented, they experience barriers in things like accessing health care. We have also seen through our own empirical research that there is not only a lack of access to health care and services like that, but that it means an inability to access services like the police. If a crime is committed against an asylum-seeker or refugee, they are more likely not to report that crime if they are undocumented. We have seen, for example, a client of ours who was raped, and who knew the perpetrators, but who has not gone to the police, and will not go to the police, because she is undocumented and fears that if she did she would be at risk of being arrested herself for being undocumented.

Refugee status documents, which are issued in terms of section 24 of the Act, are usually valid for four years (although sometimes less) and provide access, in addition to social services, to social grants. A dependent cannot apply for these benefits if they are not joined as a dependent. This includes the child grant, which means that if a refugee's children are not joined onto the original application, those benefits are not available to them.

PM: Being undocumented causes people to have to live in the shadows. Not being able to access the police is obviously a big part of that because in terms of section 41 of our Immigration Act[5] any police officer or immigration official can stop anyone and ask them for identification. And if they don't have identification they can be detained. If they are found to not have any status – in other words, not having applied for an immigration permit or an asylum-seeker permit – they can be detained in terms of section 34 of the Immigration Act for deportation.[6] And we have heard through our own clients and our colleagues that there are many people who deserve asylum, who wanted or tried to apply for asylum but couldn't, or who tried to join their dependents but couldn't and who have been taken to Lindela, which is South Africa's repatriation centre.[7] The unfortunate thing is that refugees can be detained for a period of up to 120 days before they are deported. And if the Department does not deport you before 120 days have passed, they must release you, after which they wait outside the Centre and simply detain you again. So there is this lingering fear that if a dependent is undocumented and are on the taxi or on the train, when they are trying to find some low-skilled employment or taking their kids to the clinic … there is the lingering fear that they can be stopped by the police and can be detained, and deported.

SG: One of the other things to mention is that it may be the case that your family member was one of the people who applied at the Cape Town refugee reception office, when it was still open to new applicants. And then you have arrived later, and you are not able to apply in Cape Town because it no longer accepts applications from newcomers. In such a case, the only pathway to documentation you have, other than family joining, is to travel to one of the other refugee reception offices, in other words, Musina, Port Elizabeth, Pretoria or Durban. So that involves a massive financial commitment, never mind the fact that you can't book a bus ticket on many of our bus lines without documentation. Travel on the kinds of services that don't require documentation (such as hitch hiking or long distance taxis) is often risky and takes a couple of days (even if you're only going to Port Elizabeth). Applicants are only accepted at the refugee reception offices on certain days, and people are often required to wait for a long while before they are able to get a section 22 permit. That means that, if for example you are a pregnant woman, you would have to travel while pregnant. Some women have to do this with newly born babies. They often have to wait outside the office from very early in the morning, or sleep outside overnight, just to try and be the first person in the queue. And then you are not even guaranteed service. Even once you have that permit, you likely have to travel back and forth to renew it. You may be able to renew in Cape Town, but people are being either refused service at the Cape Town office or are given month-to-month renewal. This kind of travel is precarious, and means that refugees are less likely to be able to stay in permanent employment because who is going to give you time off – often at least a week or more – every couple of months, to renew a document that many employers don't know much about. Kids are also more likely to stay out of school under these conditions. All because we haven't been able to join families together.

KM: Tell us about the case itself. Who were the clients on whose behalf you brought the application?

SG: Scalabrini is the institutional applicant, because we have the experience reported by many of our clients who have approached us with this problem. UCT's Refugee Rights Clinic had also seen a number of clients who were in the same position. We selected a set of clients who were representative of the different situations or barriers that people were experiencing. For example, one of the clients who we listed, and who provided a confirmatory affidavit, had undergone a DNA test to show that they were, in fact, a dependent. There is nothing in the law that requires that refugees prove dependency in this way, but we knew that our clients were being required to show that the relationship existed in genetics. This client in fact had the DNA test results, but had still not been able to have the family's files linked together as they should have been. We had an example of a case of a husband and wife who were married through customary law in their country of origin. He had refugee status, but when he arrived and was applying for refugee status, he had declared his spouse using one surname, but when she arrived her surname was listed under her maiden or unmarried name. Home Affairs were arguing that she was not the person who had been declared on the original documentation. She therefore remained undocumented, and they subsequently had a child, who was also undocumented. This creates countless barriers for those people. The lady concerned tried to get documentation in her own right by applying herself for asylum, but it makes much more sense for a family to be documented together, particularly if one family member has refugee status already. It makes sense from Home Affairs' perspective too, as it is much less work for them to deal with members of a family together. We had another client who had a child born in South Africa, and who had a

South African birth certificate, but Home Affairs questioned the legitimacy of the birth certificate, which was issued by themselves.

PM: What is interesting is that having an institutional applicant allows the issue at the centre of the case to be addressed, without getting too stuck in the small details of facts of the individual stories that Home Affairs is trying to pick apart. When we approach the Department with problems like these, Home Affairs can sometimes just go and remedy the issue by bringing in the individual clients, documenting them, and then the case goes away. But it doesn't solve the wider problem. Having Scalabrini as the institutional client negated some of those issues. The Scalabrini Centre has a long track record of working with refugees, and so the court was happy to accept their experiences of what the challenges are for asylum-seekers and their dependents.

KM: When the case went to court, you received a judgment delivered by Judges Davis and Fortuin. Can you tell us a bit about that process?

PM: Initially the judgment was delivered *ex tempore*, which means that it was delivered from the bench in court. As part of this order we negotiated an agreement with the Department of Home Affairs that created a somewhat of a supervisory order where the Department agreed to go away and formulate a standard operating procedure for these cases. One of the biggest issues was that there was (across the country) no clear, detailed written policy that outlined how these cases should be handled. In other words, something that sets out for people who are coming in to join as a dependent that this is what you need in order to qualify, and these are the documents that you are required to bring in as part of your application. The policy also didn't specify under which conditions cases could, and could not, be joined. So, it all depended on the whims of the official who you met on the day

– one official would ask for a DNA test, another would ask for a birth certificate, and another would ask for an affidavit. Sometimes the official would simply not help you and would also not provide reasons for why they were declining to join the files. Part of the original supervisory order issued by Judge Davis and Judge Fortuin was to ensure that Home Affairs drafted the standard operating procedures so there would be clarity and certainty across the country on the manner in which family joining is meant to be done.

SG: I think it's also important to note that although this was a supervisory interdict it operated more like a structural interdict, which is an order through which a court ensures compliance with its order by monitoring its implementation. This framing was very important for the case.

KM: So, what happened after the agreement of 2017 to necessitate going back to court?

PM: They didn't comply, and didn't comply for quite some time.

SG: When they did comply, they did so with a sub-par set of standard operating procedures. So, there was more back and forth between us and the Department, after which we went back to court in February this year because the standard operating procedures were still not what we believed they should have been in order to give effect to section 3(c). In March, Judge Bozalek indicated that we should try to reach agreement with the Department. At that stage we pushed for the involvement of the United Nations Refugee Agency (UNCHR) because they have produced a guiding note on DNA and family unification, which we thought should really be incorporated into the standard operating procedures. We met with the Department and UNHCR, which resulted in an agreement that UNHCR would fund DNA tests on a case-by-case basis (based on a means test). This removed a significant

barrier in that Home Affairs was not willing to fund the DNA tests, and we were adamant that asylum seekers should not be expected to undergo these tests routinely, but that they should only be an option of last resort. We were concerned that if the requirement was written into the standard operating procedures – even as an option of last resort – officials would implement it as routine, or a first port of call. And DNA tests are not uncomplicated in and of themselves – some of the pathology centres will not allow people to undergo tests if they are not documented, and we have cases where Home Affairs officials have refused to accept the results of the tests too. There are barriers with DNA testing too.

PM: The matter has, in the end, had a good outcome. But our initial frustration when the case came back to court was that the standard operating procedures that Home Affairs had submitted to the court did not, in our opinion, comply with the initial order that had been set by Judges Davis and Fortuin. Judge Bozalek's position throughout the matter had been that he was unwilling to make a finding as to whether the policy meets the law or not, and instead encouraged the parties, that are experts in the field, to work together to agree on what would be the best standard operating procedures. The frustration for us was that, because the process took so long, and so many clients remained undocumented for many years, given that the case had been running since 2016. And it was difficult for those clients to understand how there was no final outcome in the matter. Ultimately though, in retrospect, I don't think that a court would have been able to fashion a standard operating procedure that is as broad and liberal and comprehensive as the one that we were ultimately able to craft. The time that the negotiation process took also allowed us to bring in other allies, like UNHCR, who has more clout in making suggestions to the Department. Their involvement wasn't

only limited to the issue of DNA, but they were also able to comment on other areas of the SOP that they felt were problematic, and that we were not able to raise because we were limited to what the initial order had set out. Thinking about it now, it was a good approach by Judge Bozalek to say 'I am going to give you time to go and design, negotiate and finalise an SOP as the experts, but if you are not able to do so, I will make a final decision.' Perhaps this is an indication that judges are taking the position that they don't want to meddle readily in the administration of Home Affairs and other government departments, and if parties are able to reach agreement on their own, then the court will adopt that proposal.

SG: I think that it is useful to recognise that the Department isn't always good at complying with court orders – we have seen this with one of Scalabrini's other cases, which is about the reopening of the Cape Town refugee reception centre's offices. Of course, you can hold them in contempt of court, but where does that really leave you? We are not the only litigant where Home Affairs has failed to listen to a court order. If you sit in the Parliamentary Portfolio Committee meetings these issues are discussed, and Parliament has tried to exercise its oversight function. An order by agreement is a much better outcome.

KM: Now that you have the judgment in hand, what are the barriers to implementation of the agreement by Home Affairs.

PM: Sally touches on an important point around compliance. Home Affairs is notorious for not complying with court orders, for example, the Port Elizabeth refugee reception office was closed but was ordered by the Supreme Court of Appeal to reopen by 2015. It didn't open in 2015 or even 2016. It only opened in October 2018 – it took them almost three years to comply with the court order.

Other orders that we have also got, we have had to follow through with contempt of court applications to force them to comply. So, compliance is going to be a question. We even recognised that when we got the order in our original case, that the real work was going to be to get Home Affairs to comply. I think that the other biggest hurdle, especially for the Cape Town refugee reception office, is going to be capacity. They have not implemented family joining for many, many years, and so there are going to be large numbers of people who will now be approaching them to join their family members. That is going to pose another problem in that the office probably doesn't have the capacity to document everyone timeously, and in the manner in which they are supposed to be documented in terms of the standard operating procedures.

SG: We have already had good reports from colleagues in Durban and Port Elizabeth about family joining applications, despite limited capacity in those offices. Scalabrini have met as a team and have decided that, in terms of implementation, we will initially notify our clients but intentionally not set the bar too high in terms of what we expect from Home Affairs. For example, we are able to draft affidavits for clients in terms of what is required for family joining or to supply them with the letters that would make the process easier. But that means that for people who haven't accessed our services, who don't have those documents and who haven't received that advice, we may well be creating a barrier by making things easier for our clients. Our approach is therefore to start with the lowest possible bar – which is not to provide anyone with letters or affidavits unless absolutely required, but rather just with advice on what the process is, what their rights are, and what the court order says. We have heard from our clients that there doesn't yet seem to be a standard approach by the Cape Town refugee reception office on how they

are handling these cases, but we just don't have enough evidence to show trends yet. It is something that we are watching closely, and we have identified a step-by-step approach in terms of how we will intervene. We will first give advice, then the next step will be to write letters and engage on an individual level with the officials at the Cape Town refugee reception office and track cases so that we can give UCT's Refugee Rights Clinic a call and step in where needed.

PM: I take a slightly more jaded approach where Home Affairs is concerned because my experience is that where the Department can use an outside organisation as a cog in their wheel, they will do so. If you look at how we assist many of our clients to fill in Notices for Appeal, which are used where someone has been interviewed by a Refugee Status Determination Officer and their application is rejected, they have the right to appeal that decision if it is unfounded. The rules say that the applicant has the right to be assisted by an official at Home Affairs to complete that form. But the officials at Home Affairs never do. It's organisations like us, like the Scalabrini Centre, like Lawyers for Human Rights, like the Legal Resources Centre that assist hundreds of people per month to complete those forms. Taking from that experience, I am sure that officials at Home Affairs are not going to take the time to sit with clients and fill out affidavits to document what happened to show why they don't have birth certificates, in order to ascertain whether this person is actually a dependent or not. What they are going to do is to say 'go to UCT, go to Scalabrini'. They often do that …

SG: They actually have our addresses printed out on little slips of paper to hand to people!

PM: So as much as we want to assist our clients, and make the system better, Home Affairs is to a large extent (and especially the refugee section) dysfunctional. It requires us to

perform administrative tasks that we wouldn't ordinarily want to do, but if we don't do them our clients are not going to be assisted. So, my suspicion is that they are just going to refer everyone to us, or to Scalabrini, or to one of the other civil society organisations providing services. And for the first couple of months, in order to implement this order properly, we are going to have to work with them in this way.

KM: And of course, this is what we see across the system. These de facto public/ private partnerships between government and non-governmental organisations that are propping up the criminal justice and other systems, like counselling, rehabilitation and other services, that see little bit of responsibility being carved off and handed over to organisations that are donor funded and who have to make it work for the sake of clients.

SG: I don't think it's even just the criminal justice sector. If you look at the early childhood development sector there is a privatisation of services that should be offered by government, but where government doesn't have the capacity to do so. Those private entities may get funding from the Department of Social Development and private philanthropists, and it ends up being a hollowing out of the state.

PM: It makes the sector very vulnerable. Organisations like ours don't necessarily know whether we will receive our funding or not, and if you look at especially where the UNHCR are concerned, they are cutting and rolling back budgets across the world. They are halving their entire budget because their biggest donor, which is the United States, has cut funding to them quite significantly. If we rely heavily on civil society to do the work that Home Affairs should be doing, it leaves the system vulnerable because when we can no longer operate, people are simply not going to be assisted.

SG: There is also shift in funding with the International Organisation for Migration (IOM) in terms of the Global Compact on Migration. They are putting together a fund, and they will approach donors, both private and state, to contribute to this fund. It is concerning that even a UN body like the IOM has put together a working group to think about funding this work in that way. There is a question about whether those donors, should they choose to fund the IOM initiative, will continue funding research institutions and other civil society organisations as well.

KM: To end off, I want to ask you how refugees who are not the beneficiaries of Scalabrini or UCT Refugee Rights Clinic will know about these changes, and what they can expect when they seek services?

SG: They already know. We got so many phone calls after the press releases went out after the judgment.

PM: It was definitely a huge error to put our personal cell phone numbers on there!

SG: The informal communication networks within different refugee groups have a lot to teach us about spreading the word. The press release from Scalabrini, which we put together after getting this order, was immediately converted into a WhatsApp message, which then went viral in these networks. There was a lot of media interest, and we also got a number of queries and calls from other lawyers and advocates in practice across the country. The information is certainly out there.

KM: Thank you both.

Notes

1   The Refugees Act (Act 30 of 1998).

2   In the case of *Minister of Home Affairs & Others v Scalabrini Centre, Cape Town & Others* [2013] ZASCA 134 (27 September 2013). The Supreme Court of Appeal ruled that the decision to close the refugee reception office was unlawful and should be set aside because proper consultation with stakeholders had not taken place. Thus, effectively what the court ordered was for such consultation with stakeholders to take place, and for a further decision to be made. After the judgment was handed down the DHA purported to consult stakeholders, and then on 31 January 2014 it reached the same decision it had initially taken: to close the Cape Town refugee reception office, and that the office should not assist persons who did not apply there prior to 30 June 2012.

3   Births and Deaths Registration Act (Act 51 of 1992).

4   *Minister of Home Affairs and Others v Watchenuka and Others* (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA) (28 November 2003).

5   Immigration Act (Act 13 of 2002).

6   Technically, an asylum seeker should include an individual who has not had the chance to have their claim adjudicated. So as soon as they express the intention to apply for asylum, they cannot be deported and must be released. However, in practice this doesn't happen.

7   For a discussion of the problems with this centre see, for example, A Kaziboni, The Lindela Repatriation Centre 1996–2014, *South African Crime Quarterly*, 66, 2018.

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• Acknowledgements can be made at the end of the article if necessary.

Articles in Issue 64 confront questions about what proper governance and accountability mean in the criminal justice environment, and how research, law and policy reform may engendering change. Gareth Newham and Brian Rappert reflect on the ways that operations-focused research collaborations between police and external bodies can shape policing in practice. Lukas Muntingh looks into police oversight, in particular the powers and performance of the office of the Western Cape Police Ombudsman. Shifting focus to the public's pushback against inadequate governance, Lizette Lancaster presents data from the Institute for Security Studies' Protest and Public Violence Monitor that shows how wide-ranging and geographically dispersed protest grievances are. Fatima Osman looks at the latest version of the Traditional Courts Bill and asks whether it sufficiently addresses the fundamental objections to previous versions. Bill Dixon reviews two books: Andrew Faull's *Police work and identity: a South African ethnography*; and Sindiso Mnisi Weeks's *Access to justice and human security: cultural contradictions in rural South Africa*. In 'On the Record' Guy Lamb and Ncedo Mngqibisa discuss the in-the-field realities doing of doing a randomised household survey in South Africa.
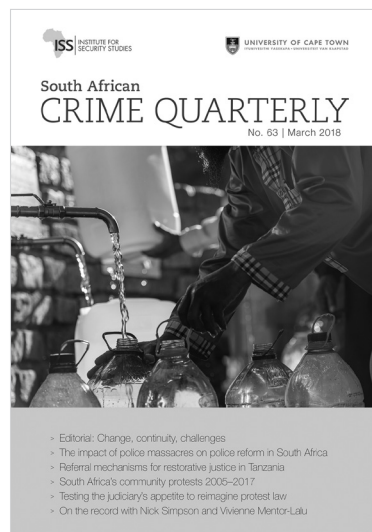
Articles in Issue 63 illustrate or address change, justice, representation and response in criminal justice in South Africa and beyond. Guy Lamb and Ntemi Nimilwa Kilekamajenga ask how systems and agencies learn from periods of crisis and reform. Lamb focuses on the impact of massacres by the police on policing reform, and Kilekamajenga focuses on the options for reform in the overburdened and overcrowded Tanzanian criminal justice and prison systems. Peter Alexander et al. examine the frequency and turmoil of community protests between 2005 and 2017, and challenge us to reconsider the ways in which protest is framed as violent, disruptive and disorderly, and how we measure and represent it in the media and elsewhere. Jameelah Omar provides a case note on the Social Justice Coalition's successful constitutional challenge of provisions of the Regulation of Gatherings Act. In 'On the Record' two scholar/activists, Nick Simpson and Vivienne Mentor-Lalu, discuss the water crisis and its impact on questions of vulnerability, risk and security.

Previous issues

Liebenberg et al discuss issues and/or limitations that affect the detection of drugged driving and propose revisions of the National Road Traffic Act to include a comprehensive statutory definition and detailed provisions for drug testing to deter impaired driving. Brooks examines the policing of protest from the perspective of rank and file officers in the South African Police Service (SAPS) and shows not only the importance of recognising bottom-up perspectives in constructing appropriate responses to protest, but the complexity of SAPS members' own identities as both officers and citizens. Mokoena and Lubaale discuss extradition where states do not have extradition treaties with one another, examining whether states can rely on the United Nations Convention Against Corruption (UNCAC) to extradite individuals for corruption-related crimes. Kinnes reviews Marie Rosenkrantz Lindegaard's book *Surviving gangs, violence and racism in Cape Town: Ghetto Chameleons* concluding that it provides its reader with a new way of seeing and understanding the current gang discourse by showing what how young men in gangs on the Cape Flats use mobility to move and change their cultural repertoires in gang and suburban spaces.
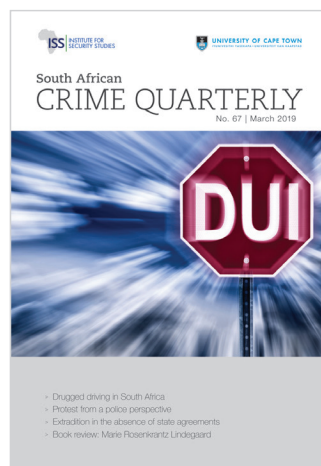
Issue 66 is a special edition on decolonising prisons guest edited by Nontsasa Nako from the University of Johannesburg. In this issue Thato Masiangoako examines the frames of rationalisation employed by migrants and student and community activists, who were victims of police violence, showing how enduring cultural, social and institutional histories shape popular perceptions and may account for 'the enduring nature of prison', despite their experiences of unfair detention. Palesa Madi and Lubabalo Mabhenxa argue that the insistence on verification of address in bail hearings makes it difficult for the poor and marginalised to be released on bail in South Africa. Untalimile Crystal Mokoena and Emma Charlene Lubaale examine bail, or verification of address as a condition for granting bail, and show that remand conditions, as they stand, create unequal access to justice. Anthony Kaziboni uncovers the crude manipulation of social problems and abuses at the Lindela Repatriation Centre by following media reports on Lindela over a period of 18 years. Judge Jody Kollapen suggests in 'On the Record', that decolonisation is a broad concept, and the high rate of crime places undue focus on crime and punishment rather than on the various factors that produce social malaise.

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