



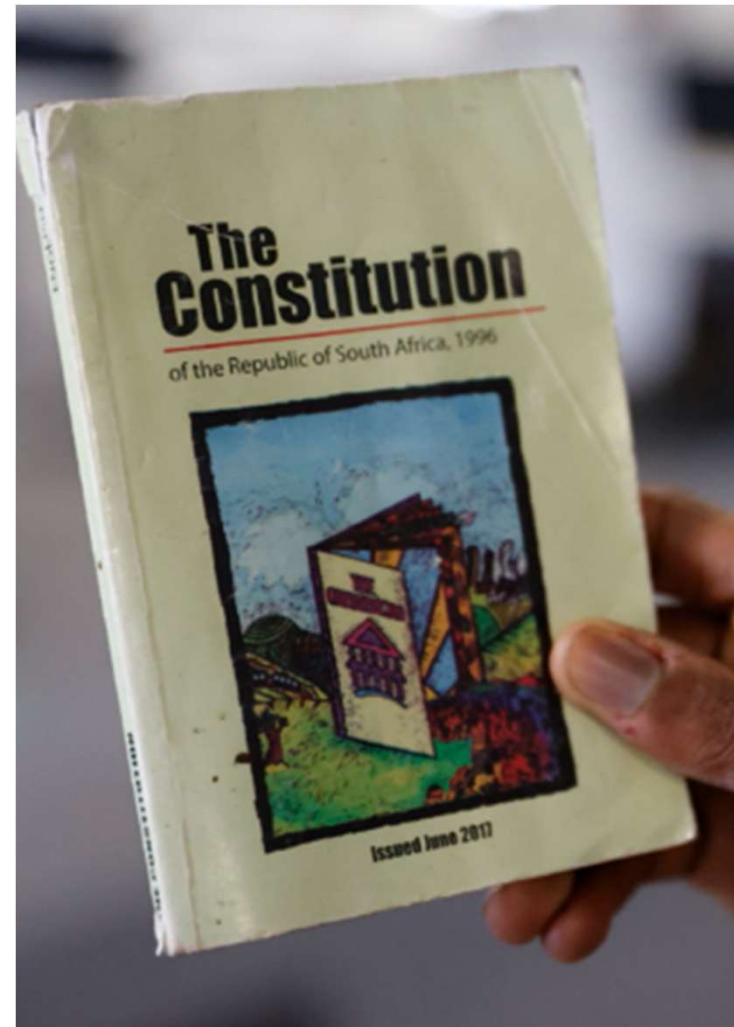
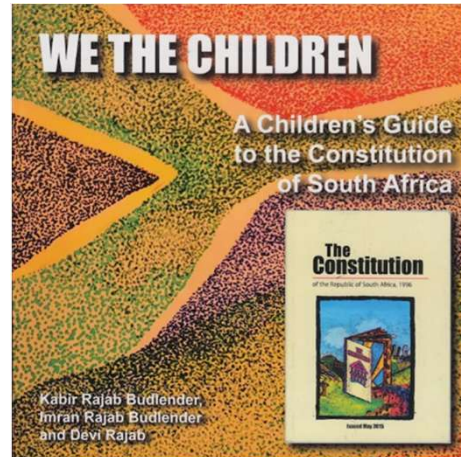
Stellenbosch

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saam vorentoe

Youth in conflict with the law

Tasneemah
Cornelissen-Nordien





Children's rights are human rights

Section 28 Constitution of South Africa



Children's Rights are stipulated in the Constitution's Bill of Rights:

All children have a right to basic nutrition,
shelter, basic health care
services and social services
and

Protection from maltreatment, neglect,
abuse or degradation

Protection from exploitative labour practices which
are inappropriate for a child or place at risk the
child's well-being, education, physical or mental
health or spiritual, moral or social development



HumanRightsMonth #HumanRights



government
communications
Department
Government Communication and Information System
REPUBLIC OF SOUTH AFRICA



Historical influences on youth in South Africa

Ethnocentric influences

- Cultural divides in discipline
- White / black discipline different
- Black: severe punishment
- Abandonment accepted
- Development of the new world
- Black caught between culture & western tradition
- Started adopting western culture
- Black/Coloured children still affected





Typical Cape Town Township:
High rates of poverty, violence, GBV,
alcohol and drug abuse and unemployment

The Cape Flats:
Known for
gangsterism,
unemployment,
poverty, GBV &
various forms of
social ills



Apartheid 1948 - 1994

Blameworthy of the state of Cape Flats & Townships

- Sever impact on black/coloured South Africans
- Dubbed the lost generation:
- No education
- Lack of opportunities
- Result: frustration & aggression
- No child justice
- Children increasingly subject to oppression

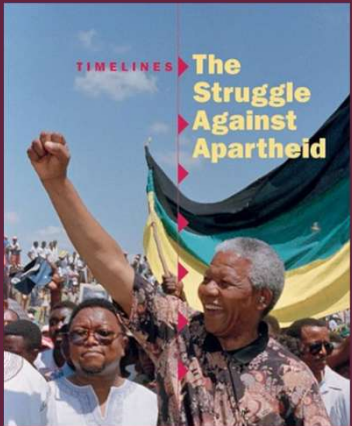




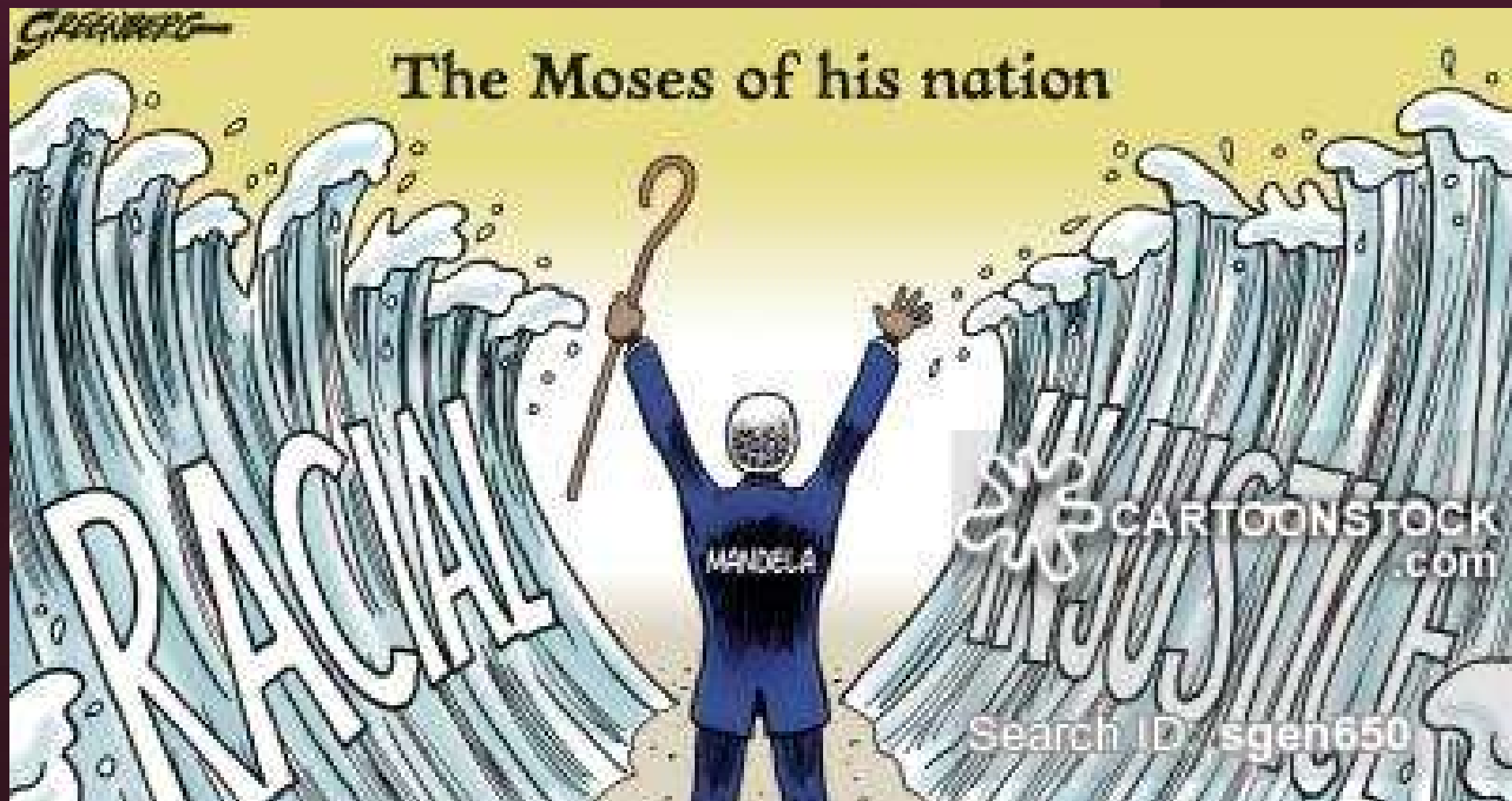
1976 Soweto
uprising:
Hector Pietersen

The struggle against oppression

- Positive outcome = democracy
- Negative consequence = youth grew up in of culture violence
- Freedom gained through conflict & negative energy
- Example violent protests & strike action still evident in current day SA
- On-going service delivery protests
- Lack of legislation to protect children in conflict with the law



The Moses of his nation



The struggle for youth continues despite reform and positive changes

The current situation

- Poor / No education
- Tradition getting lost to children
- Parental loss of control
- Little/no supervision
- Lack of day care
- Child-headed households (HIV/AIDS)
- Huge disparities / High poverty/unemployment
- Technological advances: SA not equipped
- Legislative reform = Child Justice Act 75 of 2008



The need for the Child Justice Act 75 of 2008



Amended Child Justice Act 28 of 2019



**THE CHILDREN'S ACT, 2005
(ACT 38 OF 2005)**

Some provision of the Act

- Special Criminal Justice System for children
- Avoid children treated as adults
- Prevent children from being kept in same prison as adult
- Guideline: age of criminal capacity

Child Justice Act 75 of 2008

Aims of the Act

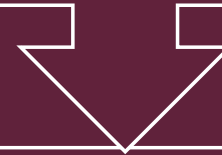
- Establish a CJS for children
- Expand and entrench the principles of restorative justice in the CJS
- Prevent crime through emphasis on rehabilitation and reintegration of children
- Balance the interests of children in conflict with the law and those of society – rights of victims



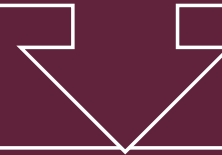
Age of criminal capacity



In Section 3(b) of the Child Justice Amended Act 28 of 2019 the age of criminal capacity has been adjusted to 12 years



Previously according to the Child Justice Act 75 of 2008
- Under 10 jaar



Over 12, under 14 - presumed lack of criminal capacity

Proof beyond
reasonable doubt

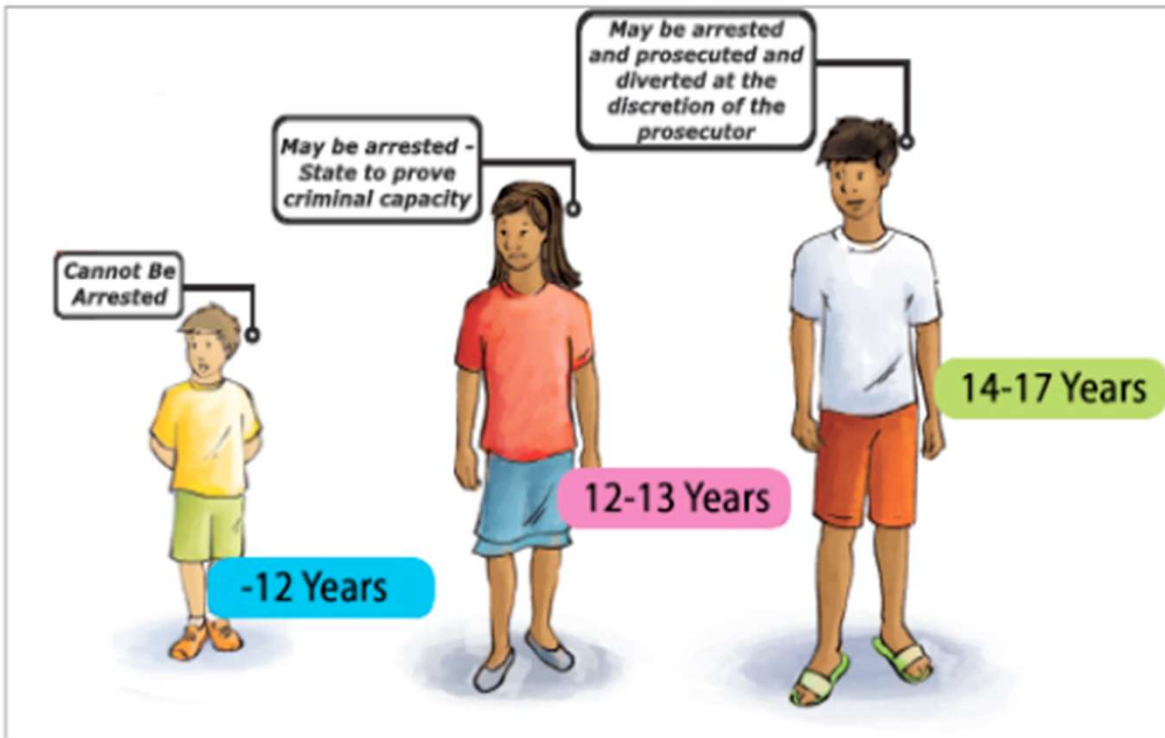
Able to know
right from wrong

Probation officer
report

Evaluation
criminal capacity

Criminal Capacity

Criminal Justice Act as amended 28 of 2019



- *In Section 3(b) of the Child Justice Amended Act 28 of 2019 the age of criminal capacity has been adjusted to 12 years from age 10*
- *Over 12, under 14 - presumed lack of criminal capacity*
 - *Proof beyond reasonable doubt*
 - *Able to know right from wrong*
 - *Probation officer report*
 - *Evaluation criminal capacity*

What does this mean for children in conflict with the law?

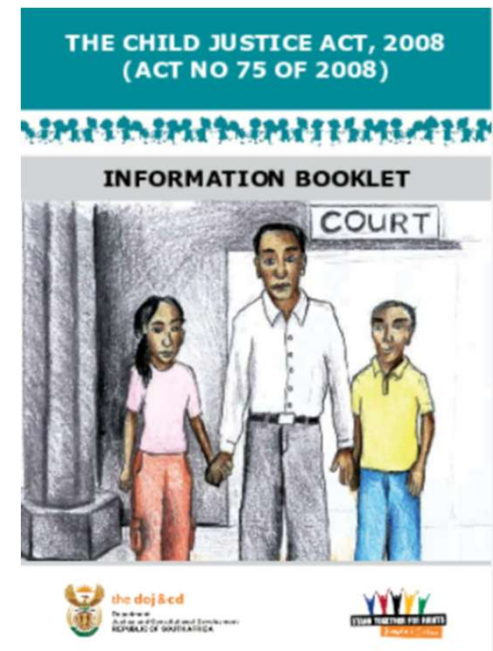
- Under 12 = no criminal capacity
- Over 12 under 14 = lack of criminal capacity
- Under 12:
 - Cannot be arrested
 - Custody of caregiver
 - Probation officer (qualified, registered social worker): assess within 7 days
 - Child may be diverted
 - Preliminary inquiry



Challenges with implementation of the Child Justice Act 75/2008

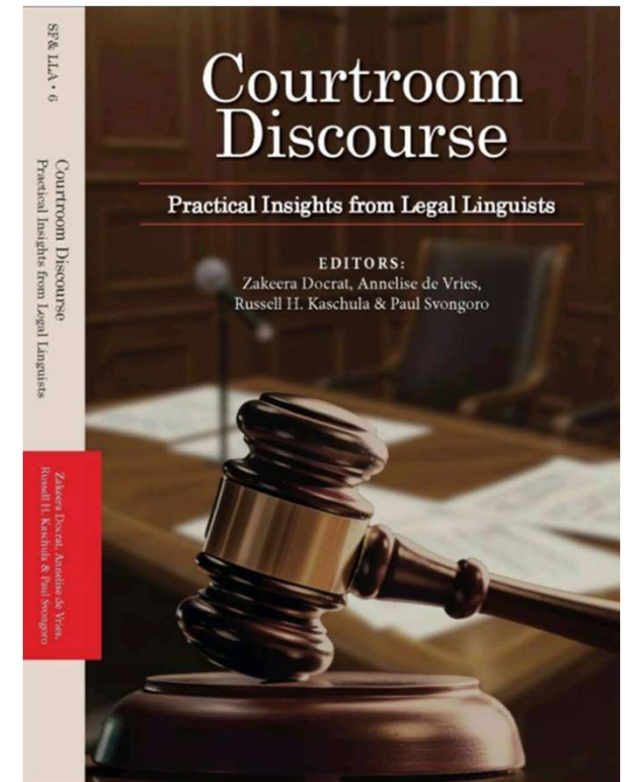
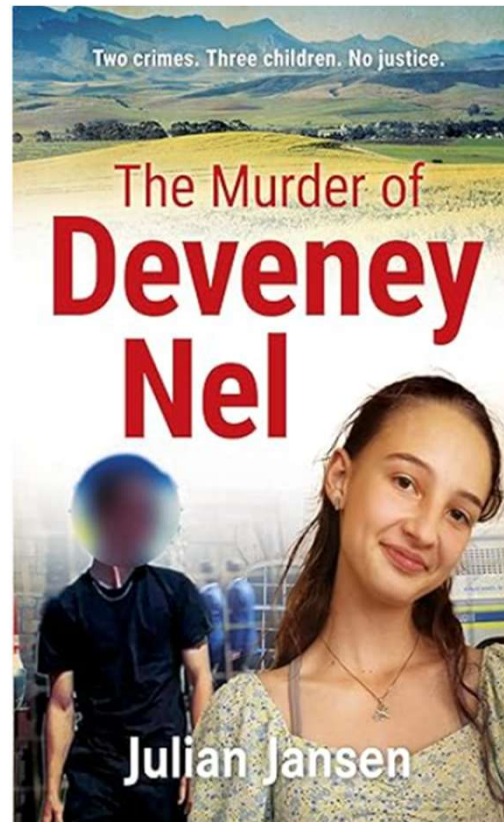
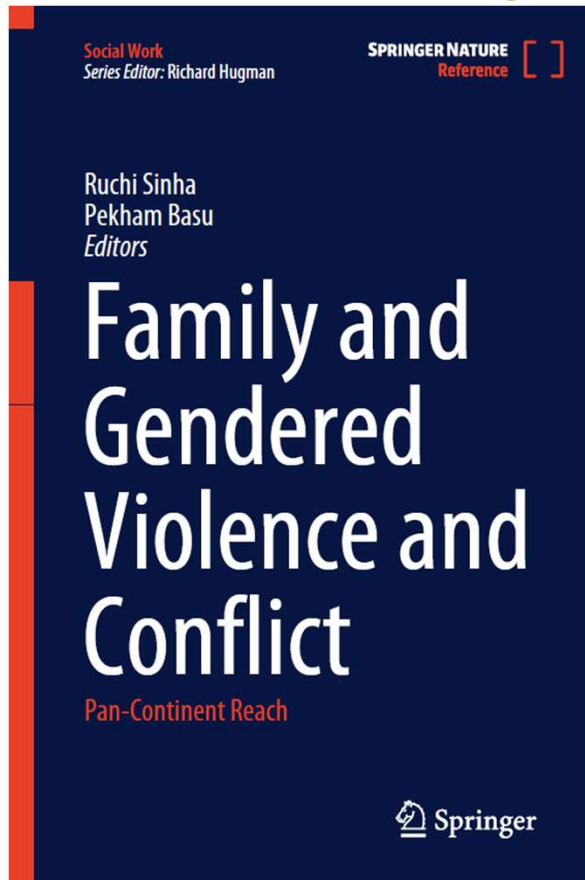


- Lack of resources
- Lack of cooperation and capacity between stakeholders, general lack of training for implementation
 - Government and NGOs
 - Government:
 - Police (SAPS)
 - Department of Justice
 - Department of Social Development
 - Department of Health
 - NGOs:
 - Child and Family Welfare organisations
 - Diversion programme
 - Child and Youth Care Centers (CYCCs)



Justice denied for victims and perpetrators

Monolingual justice system in a multilingual society



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