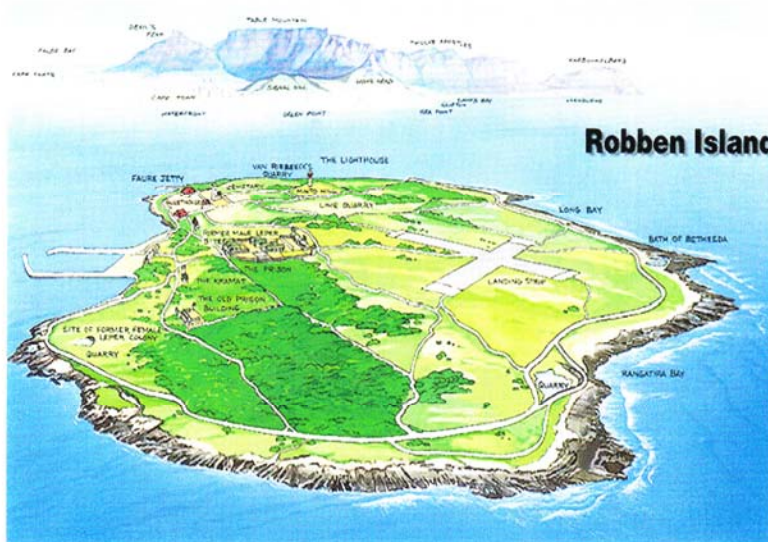




*The way that society treat its prisoners is one of the sharpest reflections of its character. In the prisons of apartheid the inhumanity of that system was starkly evident. We have inherited a system ill equipped to serve the needs of a democratic society founded on a culture of human rights. We recall these facts, not to dwell on the past, but to underline the fact that as we transform our society, the South African Department of Correctional Services faces a very great challenge (Nelson R Mandela)*



*"It is good to see that we have moved away from the culture of apartheid where prisoners were inhumanely treated. By denying the humanity that is in all of us, it robbed prisoners of their dignity. We have to create a culture that will motivate offenders to become law-abiding and productive citizens. They need to be reintegrated back into the community because we want them to contribute to the good of all. Of course, imprisonment is a punishment, and rightly so. Those who break the law must pay the price. But we should also use it as a starting point for development and a process of healing. Offenders are human beings too, they are our brothers and sisters, our sons and daughters who have disappointed us. They have a right to a chance to unlock their potential to better themselves".*

**A Model for Implementation of  
Restorative Justice in the South  
African Correctional System**

**Minette F. Plaatjies**

A Model for Implementation of Restorative Justice in the South  
African Correctional System

by

Minette Feona Platjies

Submitted in accordance with the requirements for

the degree of

DOCTOR OF LITERATURE AND PHILOSOPHY

in the subject

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at the

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Promoter: Prof. CH Cilliers

June 2008

Pretoria

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I, Minette Feona Plaatjies declare that A Model for Implementation of Restorative Justice in the South African Correctional System is my own work and that all the sources that I have used or quoted had been indicated and acknowledged by means of complete references.

Signature: .....

Date: .....

M.F. Plaatjies

## Abstract

Title of thesis: A Model for Implementation of Restorative Justice in the South African Correctional System

By: M F Plaatjies

Degree: D Litt et Phil

Subject: Penology

Promotor: Prof CH Cilliers

### Summary

This report is the culmination of literature study and semi-structured interviews which assisted in developing a Model for Implementation of Restorative Justice in the South African Correctional System. The study explores the use of Restorative Justice as part of rehabilitation in a prison setting.

Literature focuses mainly on Restorative Justice as part of diversion, in cases of first offenders and less serious offences. Restorative Justice with sentenced offenders has been gaining momentum, though. Diversity in terms of language, cultural and religious practice as well as social background, should be considered as it affects the decision to enter into a Restorative Justice process. Restorative Justice with sentenced offenders is challenging and in the main a largely unsupported field. The study draws on experience from other countries, while at the same time advocate for uniquely South African practice.

The involvement of the most important role players, namely victim, offender and the community is emphasized. Attitude and insufficient training seem to be some of the challenges for the implementation of Restorative Justice. Successes are reported in the few sites where Restorative Justice is implemented in the Correctional System, but a change of mindset, of being open to possibilities other

than lock-up and punish in the entire Criminal Justice System is needed. Restorative Justice in the Correctional System seems to have been approached as yet another new programme, and not as a paradigm shift for the entire Criminal Justice System. Dealing with conflict in a restorative way should be at the front end of the chain, with young children whose behaviour can be directed, as changing behaviour of adults proves to be difficult.

Repentance and forgiveness in different cultures and spiritual backgrounds are some of the issues that are grappled with, although forgiveness is nowhere indicated as a requirement for a successful Restorative Justice process. Voluntary participation is required from victims and offenders with support from communities. It remains a deeply spiritual and individual journey for those who choose to turn away from anger, fear and hatred, and start the process of personal healing and restoration. Restorative Justice with sentenced offenders can assist in dealing with the aftermath of crime.

Key terms: Restorative Justice; Corrections; harm; restoration; healing; forgiveness; Victim Empowerment; victim; offenders; communities.

## ACKNOWLEDGEMENT

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My husband, Paulus and two kids, Carmen and Henri-John who continuously pray for me. I will not forget your loving support and patience in me using family time to complete this.

My mother, Eva Fisher, brothers and sisters for support and faith in me since I started my very first diploma in 1984, to finally complete this. My late father left a legacy of reading, and both parents as teachers instilled a love for books in all of us.

My colleagues and friends for valuable inputs, especially those who shared their views through interviews, constructive criticism, proof reading and support.

Prof. Cilliers for professional guidance and encouragement.

To God be the glory for the things He has done – all that I am and ever hope to be I owe it all to the One Who forgives unconditionally.

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# CHAPTER 1

## INTRODUCTION AND GENERAL ORIENTATION

*“Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation, and reassurance” (Zehr 1990:181).*

### 1.1 Introduction

Restorative Justice means different things to different people (Crawford & Newburn 2003:19) in different circumstances and is implemented differently (Umbrecht, Coates & Roberts 2000:216; Gelstorpe & Morris 2002: 243; Presser & Van Voorhis 2002: 163). There really isn't a right or wrong definition, only definitions that are more or less applicable depending on the unique circumstances surrounding the crime (Bazemore & Umbrecht 1995:302; South African Law Commission 1997:6-7; Zehr 1990:21). Van Ness & Strong (2006:41, 42) postulate that an exact definition of Restorative Justice is difficult, because it is a *deeply contested concept*. They propose the following definition: *Restorative Justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders*. In some of the definitions the goals and objectives of Restorative Justice are also included. In support of this approach, the researcher intends to start all chapters with a definition of Restorative Justice to show that there are at least eight (8) different ways to define the concept. The thesis will deal with conceptualization of Restorative Justice in detail where more definitions and objectives will be explored. Hayes & Daly (2004:167) also confirm that there is *considerable debate over how Restorative Justice should be conceptualized and defined*, while Karmen (2001: 320) contends that the ancient

practices of resolving conflict did something *for* the victim and not only *to* the offender.

The researcher will identify problems, gaps and or challenges in the current implementation of Restorative Justice in the South African Department of Correctional Services. Semi-structured interviews have been conducted with correctional officials and other experts in the fields of Corrections and Restorative Justice. The researcher aims to, as an outcome, present a Model for Implementation of Restorative Justice in the South African Correctional System.

Restorative Justice was launched in Correctional Services in 2001 and is being implemented in some prisons/correctional centres in all 6 regions in varying degree, by personnel from different professions, some custodial staff members as well as external role players (Skelton & Batley 2006: 45-46, 102-103; Dlula, personal interview 2 April 2008). In some cases the Correctional officials facilitate the process where external role players offer Restorative Justice Interventions. The researcher will analyse the challenges and positive aspects and make practical suggestions to propose new strategies in order to implement Restorative Justice more effectively. The implementation of Restorative Justice in the Correctional System should benefit all the important role players, namely the offender, victim and community.

In this chapter the researcher explains the interest and specific focus on Restorative Justice with sentenced offenders. The chapter deals with the availability of data, methodology used to gather data as well as what is hoped to be achieved with the research.

The qualitative methodology requires a relatively small number of respondents which was decided on through sampling. Through semi-structured interviews the researcher gained insight into the perspectives of correctional officials, academics and some community based service providers on restorative justice

with sentenced offenders. This knowledge assisted in producing the final product. Some of the views are consistent with the existing body of knowledge which makes it more credible. Throughout the study the researcher refers to the White Paper on Corrections in South Africa (2005) as it covers restorative justice and restoration fairly extensively, as well as the conditions that are relevant to create an environment in which offenders can take responsibility for their crimes. The enabling conditions will be dealt with in chapter 4.

The research report does not claim to have all the answers to the many complex questions and challenges that face the correctional official when applying Restorative Justice in a prison setting. It also does not claim to be the only way of implementing Restorative Justice in the South African Correctional System. It does however, have the potential to open up possibilities for even more research on this and related topics. The researcher does claim to have heard the views of those almost or often forgotten dedicated officials who are convinced that the Restorative Justice approach, together with other programmes in the Correctional System, such as Unit Management, rehabilitation and social reintegration can positively influence the decision offenders make when they are released from prison. The research emphasizes a position where it would be possible for an offender to regain self-respect, a position where offenders, victims and communities can unite in combating the negative consequences of crime. It finally also emphasizes a position of hope for offenders to start over, hope for victims after being heard and vindicated and hope for communities that they are not losing the fight against crime, repeat offending and moral degeneration.

## **1.2 Motivation for the choice of the subject**

The Department of Correctional Services formally adopted the Restorative Justice approach in 2001. Reverend Dlula (personal interview 2 April 2008) at the Correctional Services Head Office explains that the launch followed the forming of a task team, which also developed a Concept document on

Restorative Justice. Correctional Services was part of the National Crime Prevention Strategy since its inception in 1996. Forty (40) correctional officials, mainly from Spiritual Care, Social Work, Psychological Services and Training have been trained in 2002 as master trainers on Restorative Justice. Experts from Queens University in Canada, including Howard Zehr, also referred to as the *grandfather* of Restorative Justice, had conducted the training. The Training section subsequently developed a Restorative Justice Manual as part of the training of the recruits at the training colleges. The question that arises is whether the Correctional System is geared for the implementation of Restorative Justice. Indeed, the study will explore the issues of training and skills of employees, the available resources as well as support from communities to answer this question. Spiritual care-, social workers as well as psychologists and in some cases correctional officials in Correctional Services, started implementing Restorative Justice from 2002/3. However, no formal policy on Restorative Justice is implemented which could address the practical issues around the implementation process. Stumbling blocks such as overcrowding, training challenges and the prison culture make the implementation of programmes or projects like Unit Management and other rehabilitation programmes difficult and one has to wonder about the effect that it might have on the full implementation of restorative justice. The attitude of the community, which is mostly negative towards sentenced offenders, also comes into play. The researcher hopes to show the inter-connectedness of rehabilitation programmes, reintegration challenges, overcrowding, Unit Management and Restorative Justice.

The researcher became aware of the extent of the application of Restorative Justice internationally in the Criminal Justice System as a result of extensive Internet and literature search. The researcher realized that Restorative Justice is implemented in all the different phases of the criminal justice process, i.e. from pre-sentencing until post-sentencing and even while the offender is serving a prison sentence. International trends indicate that Restorative Justice can be

successfully implemented with offenders, even those who have committed serious crimes (Umbrecht 2001b:255). Khulisa, the Centre for Conflict Resolution, Prison Hope Ministries, Prison Fellowship South Africa and the Restorative Justice Centre also practice restorative justice in the South African prisons. Even some offenders in maximum-security prisons are prepared to meet their victims if all parties involved agree to do so (George Lai Thom, personal interview 4 September 2007). Success has been reported about victims and offenders who are satisfied with the outcome of these meetings (Umbrecht 2001b: 264-265; Mostert, correspondence February 2008).

### **1.2.1 Necessity and desirability of the research**

The field of study, namely Restorative Justice, has not been researched to its full extent in South Africa. Internationally, information is available in books, journals and the Internet on the implementation, trials and errors of Restorative Justice. In recent years reporting on Restorative Justice in the South African context has emerged. However, most of the available theory/studies deal with the implementation of Restorative Justice in the pre-sentencing phase, and also specifically regarding diversion of youth offenders (Mbambo & Skelton 2003: 272).

The researcher deems the research necessary as it focuses specifically on restorative justice with sentenced offenders who are serving a prison sentence. The researcher is aware of work that is being done by different non-government organizations, including work with offenders who committed serious crimes. This study will bring all these experiences together, for Correctional Services to use as baseline on which to plan for future interventions. It will also expand the knowledge base in South Africa in this specific field of study.

### **1.2.2 Availability of data**

The researcher referred earlier to the fact that not much is documented regarding Restorative Justice with sentenced offenders in South Africa. While a number of Restorative Justice Initiatives and interventions are taking place within the Correctional facilities, it appears not to be well recorded. The scant literature on the topic in South Africa makes the implementation of Restorative Justice in prison difficult as there aren't enough reliable data available to refer to in practice. The researcher's master's degree was a literature study, which explored Restorative Justice in Correctional Services. The current study takes it a step further in the sense that empirical work had been done with some correctional managers and officials, as well as experts who are practically implementing Restorative Justice or facilitating interventions. The views of some academics have also been solicited. The study reports on the experiences, challenges and successes of implementing restorative justice in the Correctional System.

Data from first world countries is available. Data from two African countries, namely Rwanda and Nigeria is briefly explored. This study will also explore how best practice from other countries can be used and adapted to fit the unique South African prison situation.

### **1.2.3 Interest of the researcher**

The researcher conducted a literature study on the application of Restorative Justice in South Africa, with specific reference to the Department of Correctional Services (Plaatjies 2005). It was apparent that Restorative Justice was applied haphazardly in a rather uncoordinated fashion. The researcher is interested to learn more about the policies of Correctional Services which are relevant to the field of study and involvement of the community in Restorative Justice with sentenced offenders. The researcher is interested in understanding the

challenges, problems and successes the correctional officials face or encounter regarding restorative justice. The information was then consolidated and analysed from a penological point of view, as it is applied with sentenced offenders.

Safe custody, rehabilitation and correcting of offending behaviour are combined efforts in the new strategic direction of Correctional Services, and the researcher is keen to see how a balance is struck between these seemingly difficult concepts. Correctional Services previously concentrated on keeping the public safe by locking up offenders. Developing offenders, rehabilitation and reintegration are now incorporated to make the Department of Correctional Services “one of the best in the world”.

### **1.3 The research question (Actuating questions)**

According to De Vos & Fouche (1998:115-116) research is based on certain questions, which need to be addressed. These questions are also aimed at providing/finding answers to the gaps that have been identified and on which the research is based. In this case the research questions that will guide the study are:

- How could Restorative Justice compliment existing programmes in prison to address the consequences of crime, involving all the relevant role players?
- What would be the role of the sentenced offender in Restorative Justice while serving a sentence?
- Could Restorative Justice Interventions lead to crime prevention and thereby curb re-offending?



- What is expected from victims and communities to make it possible for sentenced offenders to make amends?
- What would be the role and function of multi-disciplinary team members in making Restorative Justice in prison a well-coordinated and widely acceptable process?

#### **1.4 Goals and objectives of the research**

De Vos, Strydom, Fouche & Delpont (2002) postulate that the goals of research “imply the end towards which efforts or ambitions is directed”. The main aim of the study is to explore or investigate Restorative Justice as it is currently applied in the Department of Correctional Services, and as an outcome, develop a Model specifically for the Implementation of Restorative Justice in the South African Correctional System.

##### **1.4.1 Objectives of the research**

- To explore international models of Restorative Justice with sentenced offenders;
- To explore new trends, challenges and gaps both internationally and in South Africa;
- To explore views of some of the role players about the possible impact that Restorative Justice could have in prison with sentenced offenders. This study, through a qualitative research approach, also intends to answer questions about the potential benefits of Restorative Justice, from the perspective of correctional staff, experts and academics; and

- To generate more ideas on the practical implementation of Restorative Justice in a correctional setting and to identify critical areas where more research is needed. It will provide the management of Correctional Services with insight into the training needs and challenges of personnel who are currently dealing with Restorative Justice.

The final outcome is to provide guidelines for good practice in the form of a South African model for the implementation of restorative justice in prisons, taking into consideration differences in provinces, unique circumstances of victims and offenders as well as cultural and religious practices. The outcome will also be based on current services and practice. An important question that will be posed in achieving the goals of the research is whether the experience of Restorative Justice has an effect on the choices that offenders and ex-offenders make regarding involvement in crime. Felson (2002: 50) asserts that all offenders make decisions and that one decision to commit crime might lead to getting involved in more crime.

### **1.5 Demarcation of the study**

The topic, Restorative Justice, is very broad and can obviously not be fully researched in a project of this nature. The literature study guided the researcher on the scope or extent of the project that can realistically be researched when taking time and other resources into consideration, as well as the relevance of including or excluding certain themes (Mouton 2001:51).

Demarcation is according to Silverman (2000:88) the reduction of a group or phenomenon that is going to be studied to a more manageable unit. Restorative Justice is more commonly applied as a pre-sentence option and as a form of diversion from the Criminal Justice System and or imprisonment. In the interest of narrowing down the scope of the study, the researcher focuses on the implementation of restorative justice as a post-sentence intervention.

Restorative Justice with Awaiting Trial Detainees and offenders under Correctional Supervision (probationers) is excluded from this study, although mention is made of these possibilities where applicable.

Demarcation also applies to the theoretical part of the study where the researcher deals with the background and applicability of restorative justice. General information will be touched on, but the main focus is on the implementation of restorative justice in a prison setting in a few countries.

The population sets the boundaries for the study (Strydom & De Vos 1998:190). This also forms the total of possible people or respondents relevant to the study (Grinnel & Williams 1990:118). The researcher limited the empirical part of the study to semi-structured interviews with selected correctional officials, experts in the field as well as relevant academics. Seaberg (De Vos 1998:190) and York (1997:98) define population as the total from which the sample is selected. The sample is a group of elements drawn from the population, which is considered to be representative (York 2000:156). The sample is studied to acquire knowledge and a deeper understanding about the population. In this case the researcher intends to make use of non-probability sampling, which refers to units or elements that are available and which contain the most typical attributes needed for the study.

The respondents will essentially answer questions and give information about their experience of Restorative Justice and their feeling about the practicability of Restorative Justice in the South African prison setting. The researcher is mindful of the fact that where feelings are explored it compromises objectivity, but then again, Restorative Justice is a rather subjective, emotion provoking topic.

## 1.6 Rationale for the research

Until August 2007 the Department of Correctional Services did not have an approved policy for the implementation of Restorative Justice. However, there are sporadic implementation efforts in the different regions. Currently there is no standard procedure on how to deal with applications of offenders who want to engage in any one of the Restorative Justice interventions. The employees of Correctional Services have also not been protected by policy. Every South African, according to the constitution, is entitled to be protected from victimization and secondary victimization from crime. The incidence of crime and re-offending has to be reduced as far as possible by a multi-faceted or multi-disciplinary approach followed by Correctional Services. The ideal situation is for offenders to realize the harm caused by crime and to attempt to heal the wounds of crime. However, if they are not informed about Restorative Justice and how to take responsibility, this will never happen.

The South African government adopted the National Crime Prevention Strategy in 1996 in response to the widely acknowledged high crime rate (White Paper on Corrections in South Africa 2005: 49; Coetzee 2003:3). This aimed to, amongst others, address the needs of victims of crime. This is in line with international trends where the Criminal Justice System was criticised for the lack of or insufficient services to victims of crime (Zellerer 1999: 345). The National Crime Prevention Strategy (1996) was victim-centered and intended to prevent crime, within a restorative paradigm. Correctional Services as a government department accepted its responsibility to victims in the system, but also recognizes the added expectation of creating conditions for offenders to take responsibility for harm done to victims in the community. This department took a further initiative by adopting a Restorative approach, and has policy in place that will guide the implementation of Restorative Justice in its facilities, whether inside prison or in the Community Corrections System (Ntuli, personal interview 1 April 2008). The White Paper on Corrections in South Africa (2005:80-82) also makes

provision for personal, family and community restoration, within a restorative paradigm. It also refers to “restorative rehabilitation” when dealing with crimes/offenses committed inside the correctional centres (White Paper on Corrections in South Africa 2005: 84). Giffard (2002: 35) agrees with this notion and sees Restorative Justice as a way of dealing with disciplinary processes or disputes between staff and offenders. The researcher does not agree with the suggestion that offenders have to do community service to other offenders as part of a Restorative Justice outcome (White Paper on Corrections in South Africa 2005:76). A prison by its very nature is a coercive environment and already some offenders are subjected to forms of violation because of their vulnerability. The researcher is of the opinion that doing work for another offender in prison will be seen, especially in male prisons, as undermining the offender who is doing the work. More creative ways of dealing with Restorative Justice outcomes in a prison setting have to be explored.

Restorative Justice as an approach to deal with crime and its consequences, where offenders take responsibility for their crimes while in prison is to be explored in this study. The escalating crime rate in South Africa and the Minimum sentencing policy, as well as the incidence of re-offending, requires a deeper look into the potential of Restorative Justice interventions during imprisonment. Some studies put the rate of re-offending as high as 50-95% (Muntingh 2001a:6; Prinsloo 1995:4). Semi – structured interviews with some professional people who deal with offenders in prison have also been interesting and insightful. Crime rates are not only escalating, but are also increasingly violent and it would seem that relatively young people are getting involved in crime, when one looks at the statistics on age groups of sentenced offenders. The South African society bears the painful consequences of crime, and might not be ready to consider “soft options” to deal with the crime wave that affects them personally, emotionally, financially and even spiritually.

Restorative Justice is often applied with especially first time offenders, young people and less serious crime (Trenczek 2003:273). However, some first offenders become repeat offenders after their release from prison and this study will try to point out the role that Restorative Justice might play in the pattern of criminal behaviour of those who had been exposed to restorative justice interventions or processes. Repeat offending/re-offending is targeted in the White Paper on Corrections in South Africa (2005:16, 19, 54, 75) in an attempt to break the cycle of crime and to reconcile the offender with the community (2005:74, 75).

It is envisaged that this study will make a valuable contribution to understanding the possible benefits of Restorative Justice to the South African community with reference to the preparation of offenders for successful reintegration into their respective communities. It is further hoped that this investigation will promote Restorative Justice as a viable and necessary option for sentenced offenders to deal with the negative consequences of crime and building a crime free society.

### **1.7 Validity and Reliability**

Validity is established amongst others, when the research report is clear, simple, meaningful, correct and logical. Silverman (2000:188) professes that the procedure and methodology that the researcher used must be clearly described so that the same or another researcher who might repeat the research, come up with the same results.

### **1.8 Research design**

Mouton (2001:49,56) postulates that research design is a necessary part of the initial stages of the project to guide the researcher regarding the type of study that is needed to adequately answer the research question, and to deliver the end product. The researcher intends to make use of applied research in order to

address the problems professionals experience in practice (De Vos, Strydom, Fouche, & Delpont, 2002:8). Baker (1994:68) agrees that applied research is applicable where “practical use is an outcome” (Neuman 1997:22). The study will aim to provide solutions for practical problems. The researcher planned the research according to certain steps in terms of time allocation, costs, possible stumbling blocks as well as doing the actual empirical work, as according to Bless & Higson-Smith (1995:63) it is how research design is supposed to be done. This, like a road map, will guide the researcher from beginning to end in collecting, analyzing and interpreting the data, with the research report as the final product.

When a relatively unknown subject, namely Restorative Justice with sentenced offenders in South African prisons is studied, then the research design is usually explorative and descriptive (Rubin & Babbie 1989:86). The researcher used this research design to reach some of the objectives of the research, namely:

- to conduct an investigation or search on existing theory on Restorative Justice specifically with offenders in prison;
- to study the philosophy and background of Restorative Justice;
- to critically analyse the current implementation of Restorative Justice in the South African prisons; and
- to gain more data, the researcher made use of literature review, semi-structured interviews and observation.

The final product or outcome of the research is presented in the form of a Model for Implementation of Restorative Justice in the South African Correctional System. This will be based on the following guidelines as proposed by Halstead (1999:45-46): to include offenders in democratic decision-making, make use of

Family Group Conferencing to solve problems, include prison staff in the process, create an environment conducive for change to take place, avoid threats of punishment, use the least amount of authority possible and reinforce all positive attitude changes. The model will also outline the circumstances under which the application of Restorative Justice will not be suitable or desirable.

The purpose of this model is to provide an inter-disciplinary and holistic intervention and management strategy to address needs for restoration and Restorative Justice in the South African Correctional System.

### **1.9 The sample**

Demarcation affects **sampling**. A commonly used method of sampling is the non-probability sampling technique. "Because some or more elements will be included in the sample deliberately, purposive sampling is a non - probability sampling form" (Champion 2000:192-193, 196; Bless and Higson-Smith 1995:95). This technique consists of three types, namely accidental, purposive and quota sampling. The researcher used purposive sampling in selecting specific respondents, based on their expert knowledge on the subject. Non-probability sampling is defined by Rubin and Babbie (1989) as "a sample selected in some fashion other than those suggested by probability theory. Examples include judgmental (purposive), quota, and snowball samples". The criteria that the researcher used are: Managers in Correctional Services and officials directly involved with Restorative Justice interventions, experts from civil society organizations as well as relevant academics. The respondents in the Department of Correctional Services have been selected in cooperation with the relevant managers where arrangements have been made to meet and interview some staff members (Sarantakos 1998:152). According to Strydom and Delport (De Vos, et al. 2002:334) the researcher needs to think critically about the characteristics of the individuals who are selected to form part of the sampling.



This will be combined with snowball sampling where an initial contact is made and researcher is then referred to other correctional staff, experts and academics dealing with Restorative Justice. “In snowball sampling, you first find a few subjects who are characterized by the qualities you seek, interview them, and then ask them for names of other people whom they know who have the same qualities or other qualities that interest you. In this manner, you accumulate more and more respondents by using each respondent you get as a source of new names for your sample. A snowball sample is built from the subjects suggested by previous subjects” (Baker 1999:141). Sampling in qualitative research is described by Sarantakos (2000:156) as relatively limited, based on saturation and not in all cases representative, which explains the general use of non-probability sampling. Schurink (1998:254) postulates that snowball sampling ensures a holistic understanding of the subject by getting the perspective of relevant individuals on the topic.

According to de Vos & Fouche (1998:100) the sample as well as sampling strategy needs to be described. The following aspects are relevant:

- unit of analysis, i.e. what will be studied (persons);
- how was the sample selected and the reasons for selecting those specifically; and
- the number of persons to be included in the sample.

The unit of analysis in this study is the individual with whom the researcher will be conducting semi-structured interviews. The individuals interviewed include correctional officials, academics and specialists in the field of Restorative Justice and related fields like Criminology, Victimology and Penology. The research population for the study consists of all the correctional officials, academics and specialists who are facilitating Restorative Justice and or are knowledgeable on

the topic. In the case of correctional personnel it is mostly spiritual care - and social workers, and to a lesser degree, custodial officials, in all the regions as demarcated by the Department of Correctional Services. These regions are: Western Cape, Eastern Cape, Gauteng, Free State & Northern Cape (merged), Kwa- Zulu Natal and the merged Limpopo, Mpumalanga, North West region. Neuman (1997:222) suggests a relatively large sample (30%) for a population under a thousand, while Strydom & De Vos (1998:192) suggest 20% of 500.

### **1.10 The pilot study**

De Vos (1998:178) postulates that a pilot study is a pre-requisite for the successful execution of a research project. The pilot study will test the applicability of the research instruments; in this case the semi-structured interview schedules. Seidman (De Vos 2002:300) also emphasizes that with piloting, the researcher will become aware of any problems regarding access to respondents. The researcher arranged a few semi-structured interviews with some of the multi-disciplinary team members in the Pretoria management area of Correctional Services. Feedback regarding the ordering/sequence of the questions, as well as the wording and response that it elicits, had been used in developing the interview schedule. The participants in the pilot test have been excluded from the main study.

According to Bless & Higson-Smith (2000:155) a pilot study is “A small study conducted prior to a larger part of research to determine whether the methodology, sampling, instruments and analysis are adequate and appropriate”. This according to De Vos is now becoming standard practice in research (De Vos et al., 2002: 211).

### **1.11 Hypothesis**

In explorative study the formulation of hypotheses is not always necessary or desirable. A hypothesis could be developed as a result of the explorative study (Mouton & Marais 1992:45). However, the study will be guided by relevant research questions.

### **1.12 Methodology**

The methodological approach that the researcher followed is qualitative, through which the researcher obtained first hand information from the respondents in the field by means of semi-structured interviews. The second primary component of the research is the literature review that guided the formulation of the research questions as well as the goals and objectives of the study.

### **1.13 Qualitative research**

The researcher decided to use the qualitative research method. The qualitative study explores and describes certain phenomena; in this case, the implementation of Restorative Justice with sentenced offenders in prison. The researcher used an inductive approach, starting from a broader perspective of the implementation of Restorative Justice in all stages of the Criminal Justice System, and narrowing it down to the specific implementation in the South African Correctional System (post - sentencing stage).

Babbie (1992:372) postulates that qualitative research focuses on the non-numerical data and quantitative research on numerical data, which is sometimes expected to be more objective. Newman (1997:328) states that qualitative data is empirical. In quantitative research the researcher usually does not become close or familiar with the respondents, while the qualitative research allows for interviews in a less structured setting and the researcher to observe non-verbal

communication like facial expression. It also affords the researcher the freedom to ask follow-up questions. The qualitative research will add rich meaning to the data collected from literature search and direct words of respondents will be recorded where applicable.

Basic research aims to develop theory and to extend the knowledge base on a certain topic, while the aim of applied research is to come up with solutions, in this case for problems experienced by the Department of Correctional Services to implement Restorative Justice. However, having said that, it needs to be mentioned that according to Huysamen (1994:34), basic and applied research are not opposites, they do not underwrite different paradigms.

#### **1.14 Semi-structured interviews**

According to Creswell's (1998:255) definition, qualitative research aims to explore a social or a human problem. Semi-structured interviews have been used to gather data from selected respondents who are in some or other way involved in and or knowledgeable about Restorative Justice with sentenced offenders. Interviews had been recorded with the permission of the interviewees. Semi-structured interviewing brings the researcher and respondent closer to each other (Creswell 1994:6) and focuses on in-depth study of a few respondents. Questions were pre-determined and guided the interviews to ensure that all relevant aspects had been covered. However, the open-ended questions allowed respondents to raise other issues relevant to the topic, and give personal information (De Vos et al., 2002:293) about their experience to which the researcher would not otherwise have had access to. The researcher is of the opinion that this methodology provides more detailed information about the topic while at the same time enhancing understanding of the subject. This will provide a deeper understanding of these specific phenomena (Silverman 2000:89). This is confirmed by Rubin & Babbie (1993:302) and Schurink (1998:240) who assert that the feelings, views and perspectives of respondents

and the meaning that they attach to events will be understood. This will allow for flexibility, which is a key concept in this type of research (Sarantakos 1998:51), in terms of dealing with open-ended questions.

The researcher is acutely aware of possible challenges in using this technique, like bias of the researcher influencing questions and possible distortion of information based on the manner in which questions are asked. Qualitative research provides interpretation or reproduces direct words of respondents as well as feelings. It also gives a first hand perspective, while the researcher explores a human or social problem (Creswell 1998:255). The researcher then categorised and analysed the data according to certain pertinent themes.

### **1.15 Literature review**

The researcher conducted a literature search as a starting point to build theory (Brown & Curtis 1987:9) to determine what information or studies is available on the topic or related topics. The search was also needed to determine if studies similar to what the researcher has in mind had been conducted before, so as to prevent duplication, and to use the most widely acceptable definitions (Mouton 2001:87). The literature study resulted in the formulation of actuating questions and was at the same time based on the research question (Mouton 2001:48). Gaps in existing literature formed the basis of this study. The literature review include extensive Internet search to ensure that the most recent and relevant publications are included in the study. Books, relevant government documents, reports, unpublished dissertations, theses and even Restorative Justice Programmes have been studied, which all in one way or the other contributed to the decision to explore this specific topic.

## Restorative Justice creates opportunities for offenders

- *To better understand the results of crime on victims and communities* (Gelstorpe & Morris 2002: 43; Zehr 1990: 162). What would be helpful in the researcher's view is to use victim impact statements as part of therapy and or group work sessions to discuss the impact of crime on victims.
- *To take responsibility for their actions* (Gelstorpe & Morris 2002:243). The challenge for the Correctional System will be to create conditions or opportunities for offenders to take responsibility.
- *To make a decision about confession, repentance, forgiveness, and reconciliation related to their criminal acts*, which will be discussed in chapter 7. However, having said that, caution should be taken not to portray these elements as requirements for a successful Restorative Justice process. Expectations of victims and offenders should be clear, as role players might not be ready for some of these emotional processes. This would then require a comprehensive assessment of both victim and offender in terms of level of understanding of the crime and its effects, motive for taking part in the process, therapeutic services received, etc.
- *To make amends by taking part in a healing act of restitution*. Innovation is needed to involve offenders in community service which is meaningful to the offender as well as the community.
- *To find deeper connections with the community*. In this regard Elechi (1999:364) postulates that in restoring the harm to victims and communities, the relationship between communities and offenders should no be disturbed.

The abovementioned opportunities for offenders will be explored in detail when the researcher deals with the theme of what offenders need from the victims and communities to enable them to make amends. Offenders will, amongst others, get the opportunity to experience forgiveness. Forgiveness is according to Considine (1999:263-274) a conscious decision by the victim to no longer harbor a grudge against the offender and rather concentrate on his/her own healing. That opens up the possibility of restoring relationships and even reconciliation. The relevance of forgiveness in the Restorative Justice process will be explored in greater detail in chapter 7.

The majority of offenders in prison had not been offered Restorative Justice as an option for dealing with the aftermath of their crimes during the criminal justice process. The White Paper on Corrections in South Africa (2005:80-81) recognizes the fact that some offenders had also been victimized prior to or even during their incarceration (Van Ness & Strong 2006:45). Personal restoration would be needed for such individuals to be ready to fully appreciate the harm suffered by their victims. Correctional Services also undertake to create conditions conducive for healing and correcting of offending behaviour in safe and humane conditions, as one of the desired outcomes of Restorative Justice for the offender is sustainable change in behaviour (Presser & Van Voorhis 2002: 176).

It became evident from the literature search that quite substantive research had been conducted on the Restorative Justice theme in general (Kgosimore 2002; Umbrecht 1999; Luyt 1999) even the application of Restorative Justice with sexual offenders (Yantzi 1998). The researcher will refer briefly to relevant research about sexual offenders, but will be unable to explore the topic in detail. Even though research has been conducted in South Africa, it is not sufficient to fully explain the concept in this specific milieu, which necessitated the search on international sources for a more complete picture on the philosophy and development of Restorative Justice. It would also appear that the bulk of

research was devoted to Restorative Justice with juvenile or young offenders and as a pre-sentence option. A recent study about Restorative Justice practices in South Africa in general, refers to the lack of Restorative Justice interventions in prisons (Skelton & Batley 2006: 115).

### **1.15.1 Restorative Justice in the South African context**

Restorative Justice in South Africa is not new (Neser 2006: 1; Consedine 1999: 170; Zehr 2002 a: 11). It is said that the African people practiced Restorative Justice for many years in some or other form. The African people have a rich history of story telling through which practices have been transferred from generation to generation (Consedine 1999:169). The elders in communities used to be respected for their way of dealing with conflict in their groups or communities according to indigenous laws. In case of theft or harm to one family or tribe, the chiefs would call the families of both the victim and offender together (Consedine 1999: 170). Other people from the community, usually from the same tribe (Elechi 1999:363; Lekgetho, personal interview 13 September 2007), with an interest would also be welcome to attend these meetings and even be allowed to make some inputs. The problem or crime would be discussed, all viewpoints would be respected and the ruling will generally be the will of the community represented. These meetings, as part of indigenous practices, were known as makgotla, linkundla, ibunga or imbizo (Pretorius & Zaire 2001:107). The perpetrator was then expected to apologise. Often the perpetrator's family would take co-responsibility to restore whatever was taken or harmed by the offender (Muntingh & Monaheng 1999:13). Restoration of the family of the victim was more important than punishing the offender (Consedine 1999: 171). The perpetrator might be expected to work in the fields of the offended or look after cattle. The victim's family would then often eventually treat the perpetrator as one of their own family and relationships would be restored. The outcome of the meeting was usually sealed by a meal shared by the victim- and offender's families. This was a symbolic act of reconciliation. This is corroborated in an



interview with a traditional leader who related from his memories in the village where he grew up – he admits that in some cases punishment was indeed harsh, but always had the aim of bringing the offender and victim to reconciliation (Lekgetho, personal interview 13 September 2007).

Restorative Justice had been part of informal justice where the harm to the victim was more important than punishment of the offender (Cilliers 1980; Consedine 1999: 171). The returning or restoration of what was taken from the victim and the recognition of the wrongness were given higher priority than to prove the guilt of the offender. The goal was "...to restore the fabric of the community" (Hahn 1998:133). Of importance was the distinct absence of external people or formal justice systems (Bazemore & Umbrecht 1995: 301-302) that had no direct interest in the case or dispute, unlike the modern judicial system where the conflict according to Christie is *stolen* from the rightful owners, namely victims, offenders and communities (Christie 1977: 7). He even contends that the authorities steal the fines that should rather be paid to poor victims. The parties, who got involved in the African judicial system, were close relatives and community leaders who were concerned with restoring peace in the community. Another aim of the African judicial system was to keep the offender as part of the community and prevent him/her from becoming isolated or part of a group of "criminals" (Consedine 1999: 171).

It seems that with urbanization in South Africa the close relationship and caring attitude that used to exist between members of the same community mostly disappeared. People went to cities to find jobs and formed new communities with people from different backgrounds and cultural orientation. Common values no longer held people together or guided their actions. The workforce in cities was the relatively younger generation, who no longer had the close guardianship of parents, elders and extended families. However, Lekgetho (personal interview 13 September 2007) holds that neighbours took over the responsibility of elders or uncles, and youngsters would seek the wisdom of "malume" (uncle), although

they were strangers before. With the scarcity of jobs people also became more competitive for jobs and started depending on their own abilities to provide for themselves, rather than providing for families and even communities. The individualism led to people increasingly disengaging from each other. Where conflict did arise, it was dealt with differently from the way in which elders used to deal with it. People started relying on the formal Criminal Justice System to deal with disputes. It is the researcher's opinion that people in cities did not know each other, and therefore not necessarily trusted or cared for each other. The commonly shared values were gradually replaced by the interest of individuals. People became more interested in self-enrichment rather than caring for the less fortunate. It is against this background that the study looks at how a prison regime will deal with the aftermath of crime within communities that are in some instances deeply divided.

#### **1.15.2 Government policy in dealing with crime**

The prison population started increasing with an alarming rate (Department of Correctional Services Annual Report 2003/4: 24). The trends over time (1995 - 2004) are confirmed in the following table. It is interesting to note that the increase in incarceration happened post 1994 when the newly elected democratic government took over. It would seem that the formal Criminal Justice System was mainly used to deal with conflict, and the prisons had to carry the burden of the inability of the Criminal Justice System to effectively prevent and deal with crime.

**Table 1: Total daily average correctional facility population for the 1995/6 financial year to the 2003/4 financial year.**

<b>Year</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
1995/96	107 512	2 535	110 047
1996/97	118 476	2 980	121 456
1997/98	134 704	3 592	138 296
1998/99	139 541	3 462	143 003
1999/00	154 716	3 966	158 682
2000/01	162 425	4 162	166 587
2001/02	168 016	4 187	172 203
2002/03	177 300	4 253	181 553
2003/04	180 388	4 188	184 576

**Source: Department of Correctional Services**

The Correctional Services Act (Act 111 of 1998) alludes to the safe custody of offenders as well as the responsibility of rehabilitation. Section c of the Act describes the purpose of the Correctional System to contribute to maintaining and protecting a just, peaceful and safe society by:

- Enforcing sentences of the courts in a manner prescribed by this Act;
- Detaining all prisoners in safe custody whilst ensuring their human dignity;
- Promoting social responsibility and human development of all prisoners and persons subjected to Community Corrections (Correctional Services Act, Act 111 of 1998:16).

Restorative Justice as part of a multi-disciplinary approach in preparation for release and successful reintegration of offenders will be explored in the study.

The White Paper on Corrections in South Africa (2005: 100, 140, 141) emphasizes that rehabilitation is completed only with the successful reintegration of offenders. All efforts are directed at preventing repeat offending, while being mindful of the fact that circumstances beyond the control of Corrections might still lead individuals to re-offend (White Paper on Corrections in South Africa 2005: 24). It describes restoration as follows: *“In the context of the DCS, restoration emphasizes a more important and active role for families and community members in the justice processes. It also holds offenders directly accountable to the communities they violated with the aim of restoring the damaged relationship”*.

Since 1996 with the launch of the National Crime Prevention Strategy (1996), the focus of government shifted from dealing with the offender only, to greater emphasis on crime prevention. The focus also shifted to dealing with victims of crime and their needs and the researcher contends that the Criminal Justice System needs the cooperation of communities to effectively combat the scourge of crime (Glanz 1994: 71).

The Minimum Sentencing Policy, which the Criminal Justice System adopted in 1997, and the increase in more violent crime led to the increasing use of imprisonment as a possible deterrent with the resultant consequences of overcrowding (Steinberg 2004:74). The following table is an indication of the different crime categories (Department of Correctional Services Annual Report 2003/04: 27). It is worth noting that there is a marked increase in the number of offenders incarcerated for crime of an aggressive nature as well as crimes of a sexual nature. These factors have a direct impact on the implementation of the Minimum Sentencing Policy.

**Table 2: Number of sentenced offenders per crime category as at 31 March**

<b>Crime categories</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Economical	38 499	39 795	37 712
Aggressive	58 189	63 377	67 743
Sexual	15 086	16 608	17 556
Narcotics	3 739	3 974	3 347
Other	7 985	7 850	7 406
Total	123 489	131 604	133 764

**Source: Department of Correctional Services**

Courts have to take the following into consideration: the restitution of damages to the victim of crime, protection of society from the offender and the creation of opportunities for the offender to lead a crime free life. The majority of sentenced offenders will eventually be released back to communities. This research will focus on Restorative Justice as one of the possible interventions in dealing with the consequences of crime during imprisonment.

The Child Justice Bill (2002) embraces a restorative approach in dealing with crime committed by children and juveniles and promotes diversion from the formal Criminal Justice System (Skelton 2002 (b): 502; Mbambo & Skelton 2003: 272). The Bill defines Restorative Justice as meaning “...*the promotion of reconciliation, restitution and responsibility through the involvement of a child, a child’s parent, family members, victims and communities*”. Skelton & Potgieter (2002: 494) explain that the Child Justice Bill (2002) also makes provision for Restorative Justice sentences in that a child could be ordered to take part in Family Group Conferencing (FGC) or Victim Offender Mediation (VOM).

The Victim’s Charter (2004) makes provision for victims to attend parole hearings of offenders. It also spells out the responsibility of the Department of

Correctional Services to inform victims on their request of upcoming parole hearings and release dates of offenders. This is in line with international standards, e.g. the Canadian Correctional Services is also concerned about victim notification and training of staff in dealing with victims, to prevent secondary victimization (<http://www.csc-scc.gc.ca/text/prgrm/victim>) visited on 2007/10/10). The role of the community in Restorative Justice and specifically restoring peace in communities will be explored. There is evidence about the benefits of transitional services for offenders who are about to be released. There seems to be a gap in and need for these services in preparing offenders who went through Restorative Justice while in prison (Fehr <http://www.homeoffice.gov.uk/about> us visited on 2008/02/13).

Restorative Justice in Biblical terms (Zehr 1990:126; Yantzi 1998:42) as well as in some other religious or spiritual terms is also covered in literature. Umbrecht (1985:71-86) deliberates on the topic, especially because of the tendency of Christians to want to take revenge in the form of harsh punishment, based on the *eye for an eye* principle. The Old Testament did on occasion respond to crime with the death penalty or other forms of suffering for the offender. Umbrecht (1989: 52) also highlights the requirement of proportional punishment, restitution and reconciliation instead of too severe punishment. Despite this, it also has to be mentioned that offenders in some cases were protected against revenge from the family of the victim, according to Numbers 35: 9-12, Deut 19: 11-20 and Joshua 20: 1-6. People in the Old Testament had to understand that vengeance belonged to God (Deut 32: 35). A very difficult requirement was set for Christians not to hate but to *love their neighbor like you love yourself* (Lev 19:18).

The New Testament is clear about forgiveness and not to take revenge (Matt 5: 38-39) but to live in peace (Matt 5: 23-24). Loving fellow human beings does not exclude offenders. It is almost like a prerequisite to loving God according to 1 John 4: 20 *If someone says he love God, but hates his brother, he is a liar.* Jesus was also against the death penalty, even in circumstances where it was

custom and accepted as the “right” way to deal with certain offences. In the case of the adulteress woman, Jesus challenged those without sin to implement the death penalty.

Nothing of the above exonerates the offender from the wrongness of the criminal act. The offender needs to be accepted as a human being, while still being expected to take responsibility for his/her wrongdoing and for the consequences of the crime.

The role of Restorative Justice specifically in prisons have been researched and the views of different authors (Eggleston 1999: 38; Zehr 1990) will be explored in an attempt to understand what lessons can be learned and applied to the South African situation, albeit in an adapted fashion. The study will explore the attitudes and thinking of some correctional staff members regarding Restorative Justice, as well as that of other external role players. Farkas (1999:496) postulates that if personnel have a punitive and retributive attitude towards offenders, Restorative Justice is less likely to succeed. It could also have a negative effect on correctional management in general.

The researcher is of the opinion that communities have a significant role to play in the process of rehabilitation of offenders and preparing them for reintegration. This is consistent with the view in the White Paper on Corrections in South Africa (2005) regarding societal responsibility. Chapter 6 is devoted to this theme where the researcher will deal at length with what is needed from and for victims and communities. Herman & Wasserman (2001:432) confirm this notion by identifying the role of victims as to participate in the justice process and parole procedures and to form part of the education of offenders regarding the impact of crime. Restorative Justice views crime as more than just law-breaking, but mostly to restore the damage that was/is suffered by victims and communities (Van Ness & Strong 1997:31-36), with full participation of the offender.

Restorative Justice can also be offered to offenders in prisons (Skelton & Batley 2006: 13) and they can do community service even while serving a prison sentence. Flexibility and innovation are needed to create opportunities for offenders to serve the community. This could lead to community restoration as explained in the White Paper on Corrections in South Africa (2005: 82, 83). The Restorative Justice project in Pennsylvania State Correctional Institute seeks healing and restoration for victims of crime (Hahn 1998:139). The applicability of its objectives to the South African situation will be explored which are to:

- *Encourage inmate participants to take personal responsibility for past crimes.* The researcher proposes that this could be done by involving offenders in general information programmes about Restorative Justice in addition to the existing rehabilitation and correctional programmes.
- *Enable inmates to learn the actual consequences of crime for victims.* During therapy offenders could be informed about the content of victim impact statements while other means like audio visual images could also be used to depict the experience of victims.
- *Help all participants understand crime in a context of Restorative Justice.* All role players, victims, offenders and communities as well as the Criminal Justice System should be kept abreast with developments in the Restorative Justice field and understand that crime violates people – it is not only the breaking of laws.
- *Enable victims and offenders to interact in an educational setting*
- *Help inmates and victims move toward mutual understanding and healing*  
Hahn (1998:141) postulates that the hurt and pain of victims have to be acknowledged and addressed. Offenders who had been victims before should receive the necessary therapeutic intervention. Both the victim and



offender as well as the community should be assisted on the journey to healing.

### **1.15.3 Relevance of the study to the South African Correctional Services and South Africa in general**

The study will look at current service delivery with the Victim's Charter (2004) as baseline. The Minimum Standards in the Victim's Charter indicates the services that victims of crime are entitled to. The researcher intends to discuss the requirement for the South African Department of Correctional Services in meeting the needs of victims. Suggestions and recommendations will be made on how to improve on gaps that have been identified. The outcome of the study, as well as the literature study, the gaps and challenges identified, will serve as a guideline for Correctional Services regarding developing of policy. Gaps in service delivery and challenges that officials face could form a basis on which to plan for human- and other resources. The researcher hopes to come up with suggestions regarding improvement of services to victims, those in the system as well as victims from the community who wish to have contact with offenders.

The society will benefit in knowing what role they can and should play in reconciling offenders with families, victims and communities. Often it is said that victims and offenders are products of their communities. Communities need to take responsibility to integrate victims as well as offenders (Zehr 2002a: 17-18) and according to Marshall (2003:29), support rehabilitation. Reintegration of offenders is a sensitive and complex task which needs the cooperation and goodwill of both government and communities (Balfour, Speech Minister of Correctional Services 24 November 2007, Pretoria). The study intends investigating needs of offenders in prison who are involved in Restorative Justice to ensure successful reintegration. It is hoped that successful reintegration will bring down the incidence of re-offending.

The South African Government has committed itself to the Victim Empowerment Programme within a Restorative Justice paradigm. Other government departments might benefit from the theory that is created by this study and learn what is needed from them to make Restorative Justice in the Correctional System, and specifically in prison, succeed.

## **1.16 Definitions**

Concepts are defined to ensure common understanding. The researcher wants to make sure that the reader attaches the same meaning to those concepts to prevent confusion and misunderstanding. These concepts are used frequently in the report and the understanding thereof will hopefully lead to common understanding of what the researcher wants to achieve.

**1.16.1 Restorative Justice** – refers to a process and philosophy of holding offenders directly accountable for crimes committed and repairing the harm suffered by their victims, as well as the possibility of restoration of relationships amongst offenders, victims, families, and communities. Restorative Justice recognizes the offender, victim and community as important role players in dealing with crime and its after effects.

“Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible” (Zehr 1997: 20; Zehr 2002b:37). In support of this approach, Setlatjile (2003:2) asserts that restorative justice addresses the needs of victims as well as offenders.

**1.16.2 Correctional officials** are described by Wallace (1998:54) as persons who maintain security in prisons, while the White Paper on Corrections in South Africa (2005) does not define a correctional official as such, but indicate the capabilities and skills required of them. These requirements include being a rehabilitator, being able to listen, work with people, and disassociate themselves from corruption while also being multi-skilled (2005: 111-112).

**1.16.3 Offender** – refers to a person in a correctional centre for detention, correction and rehabilitation. The researcher will use this term and “prisoner” interchangeably. The Correctional Services Act (Act 111 of 1998) describes a prisoner as “...*any person, whether convicted or not, who is detained in custody in any prison or who is being transferred in custody or is en route from one prison to another prison*”. This definition refers to both sentenced and unsentenced prisoners, while another definition in the same Act also specifically refers to a sentenced prisoner as “*any person who has been sentenced to imprisonment*”. Van Zyl Smith (2005:18) questions the use of offender instead of prisoner, as many people currently awaiting trial in prisons might be found not to be offenders.

The White Paper on Corrections in South Africa (2005: 107) differentiates between the different terms as follows:

- *“inmates for those in residential correctional centres;*
- *parolees for those released under the parole policy; and*
- *probationers for those directly sentenced by the courts to community correctional supervision.*

*The term detainee is reserved for those not yet convicted and unsentenced, such as awaiting-trial detainees”.*

Kennedy & Sacco (1996:6) refer to some offenders who feel victimised by the people who are classified as victims by the Criminal Justice System, and use the example of somebody who had been abused by a spouse, and end up killing this person, might question being labelled as an offender. Another school of thought prefers to talk about *people who offended*, to avoid labelling individuals (Rogers, an employee at Khulisa, who was previously involved in Restorative Justice in Canada, personal interview 20 August 2007).

**1.16.4 Prison** – this term is used in the Correctional Services Act, Act 111 of 1998, and refers to “...*a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody or to detention in placement under protective custody, and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of imprisonment, detention, protection, labour, treatment or otherwise...*” . However, the White Paper on Corrections in South Africa (2005:35, 37) reviewed the use of terminology to ensure that it is user friendly. Correctional Services prefers to use the term correctional centres, instead of prisons and offenders instead of prisoners. Other countries refer mostly to prisons and or jails. The researcher will use the terms *prison* and *correctional centre* interchangeably based on its applicability in a specific context.

**1.16.5 Partnerships** – refers to the working relationship between the South African Department of Correctional Services and relevant stakeholders such as civil society organizations, faith based organizations, other government departments and the business sector.

### **1.17 Limitations of the study**

The researcher found the lack of South African literature on Restorative Justice with sentenced offenders to be a major limitation. It was therefore necessary to consult international resources. However, this limitation was turned into an advantage in that the researcher was able to explore the advancements that had been made in Africa as well as in developed countries. This gave a broader picture of the general application of Restorative Justice. The information from other countries is informative, but the need for a uniquely South African model for the implementation of Restorative Justice with sentenced offenders is once again confirmed.

Conducting semi-structured interviews comes with a level of subjectivity, which the researcher was constantly aware of. Crime and Restorative Justice are both by their very nature, emotion provoking topics and a level of subjectivity would therefore be unavoidable. Where applicable, interviewees are quoted verbatim, where the researcher thought it would add rich meaning to the content.

### **1.18 Structure of the thesis**

**Chapter 1** deals with the general introduction and orientation of the study which sets the scene for the rest of the report. This chapter also deals with the problem statement, the methodology used as well as the literature study which helped the researcher to do demarcation and narrowing down of the topic.

The researcher argues in **chapter 2** that punishment, from the earliest times, had been cruel and that imprisonment in particular does not seem to produce the desired results. The researcher discusses the origin of prisons in general as well as the history of prisons in South Africa from 1910. This is followed by a fairly detailed discussion about the aims of punishment as being retribution, deterrence, rehabilitation and reparation. The functioning of international and

African corrections is briefly discussed, after which the objectives of the South African Correctional System are discussed in detail.

This discussion of imprisonment as a response to crime is followed in **chapter 3** with the discussion of Restorative Justice as a response to crime. The philosophy and background of Restorative Justice are discussed and reference is made to how communities dealt with crime in ancient times. This is followed by a discussion of the principles, values, objectives and benefits of Restorative Justice.

**In chapter 4** the researcher grapples with the assumption that if Restorative Justice is to be a viable option, then the conditions in prison has to be such that offenders are motivated to change their behaviour. A short overview is given about mandates that govern the management of prisons in South Africa. These mandates are portrayed as positive factors that contribute to enabling conditions that are needed to bring about changed behaviour.

**Chapter 5** follows more or less the same structure as the previous chapter, but differs in that it now focuses on the challenges that are experienced which might hamper the implementation of rehabilitation programmes in general and Restorative Justice in particular.

This is followed in **chapter 6** by a discussion about the needs of victims and offenders. The role of the community as an equally important role player is also discussed.

**Chapter 7** forms a natural flow with the researcher's contention that only when all these enabling conditions and processes are in place, can the possibility of forgiveness and reconciliation be explored. Forgiveness is discussed with reference to the choice of victims to forgive and the responsibility of offenders to make right as far as possible. The researcher briefly explores the viewpoints of

two religions with specific reference to the role of forgiveness when a crime was committed.

Finally, in **chapter 8** the researcher gives an overview of the objectives and if it was reached. This as well as the theoretical part of the study led to the recommendations that are made in the form of “*A Model for the Implementation of Restorative Justice in the South African Correctional System*”.

Important notes to the reader

The researcher uses *italic* in most direct quotations firstly to distinguish between the quotation and the researcher’s own interpretation, but also where researcher wanted to emphasise that point.

## CHAPTER 2

### IMPRISONMENT AS A RESPONSE TO CRIME

*“Restorative justice is a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Marshall 1996:37).*

#### 2.1 Introduction

In this chapter the researcher will explain the background and origin of prisons. Reference will be made to developments in different countries and specifically in South Africa. Theory shows that Restorative Justice can be applied in different stages of the criminal justice process, i.e. pre-sentencing stage, during sentencing and post sentencing. The focus of the research is on the implementation of Restorative Justice with sentenced offenders who are serving a term of imprisonment. This will be explored in more detail in the next chapter. It also seeks to develop an understanding of the penal system in general and imprisonment in particular. To get a complete picture the researcher will focus amongst others, on imprisonment as a sentence option, as well as the aims and philosophy of imprisonment as punishment, and what, if any, effect the implementation of restorative justice might have on the management of the prison sentence.

It has to be kept in mind that prisons were not initially meant for the incarceration of sentenced offenders (Gould 1979:422). However, crime had been part of social life since the beginning of civilization, even as far back as 600 BC (Harcourt 1975:159) and according to Ezekiel 7:23: *The land is full of murders and the cities are full of violence.* Throughout the Middle Ages until the 18<sup>th</sup> century, prisons were used as holding places for debtors and those awaiting trial. Conditions were very poor, food and other necessities were provided for by churches or charities and in some cases poor prisoners begged for what they



needed. Wealthier prisoners were able to provide for themselves Rusche & Kirchheimer (Muncie & Sparks 1991:46). Rehabilitation had been introduced as a more humane approach as prison conditions were seen to be inhumane and only for holding those awaiting the death penalty, slavery and outstanding debt (Marshall 2001:100).

The rest of the chapter deals with the purpose of punishment with specific reference to rehabilitation, deterrence and reparation. A short overview is given regarding the trends in Corrections internationally with specific reference to the United States of America, Canada, Belgium and Rwanda. Finally the current functioning and objectives of South African Corrections is discussed.

## **2.2. Prison sentence from a penological point of view**

Penology is a field of study that is established within the framework of Criminology. Whereas Criminology studies crime in general, Penology concentrates on the phenomenon of punishment (Neser 1989:2). The researcher explained in chapter 1 the need to explore the implementation of Restorative Justice as one of the ways in which to deal with sentenced offenders while they are in prison. Dealing with prisoners implies all interventions from the day of admission, which includes, but is not limited to, comprehensive assessment, rehabilitation programmes and preparation for social re-integration. Some of these aspects will be dealt with in greater detail in chapter 4.

*“Penology is a specialist direction in Criminology which concerns itself with the punishment and handling of transgressors...”* (Neser 1989: 2). Neser also refers to other scholars who differentiate between fundamental, penitentiary, rehabilitative and preventive penology. For the sake of this research the rehabilitative penology, which deals with aspects of treatment of offenders in institutions, their release and re-integration into society will be focused on. The adoption of the Restorative Justice approach by the South African Correctional

Services forms part of the strategy to deal with offenders who are serving a sentence as punishment for their crimes. Community based penology focuses amongst others, on community integration and after- care of released offenders.

Neser (1989:8-9) postulates that a distinction can be made between fundamental, judicial, community based and penitentiary penology. The researcher will briefly explain the ideas on penology as referred to by Neser.

Fundamental penology focuses more on the philosophical principles of penology.

Judicial penology looks at some of the processes in court, like plea-bargaining, bail applications the role of different court officials, etc.

Community based penology concentrates on the role and involvement of community structures in penal matters; it also looks at integration of the offender as well as after care of released prisoners.

The direction that is most relevant to this study is in the researcher's opinion the one of penitentiary penology. Neser (1989:9) spells out the following important points to be looked at:

- *Origin and development of imprisonment and prisons.*
- *Policy in respect of institutional handling of prisoners.*
- *Aim, function and organization of prison systems.*
- *Control and management of institutions.*
- *Prison community and subculture: the artificiality thereof and the influence on aspects such as group formation, social codes, development of a prison personality, violence and revolt, relationships between prisoners and prison officials, escapes and stress.*
- *Need assessment and classification of prisoners.*
- *Safe custody.*

- *Rights, privileges and concessions and the role of punishment and discipline in prison life.*
- *Preparation for integration into society, release of prisoners and problems connected therewith.*
- *Experience of imprisonment.*
- *Prison reformation and the future of prisoners.*
- *Deprivative character of imprisonment.*
- *Rehabilitation evaluation.*
- *Handling of juvenile offenders and institutions for youth.*

Most of these aspects have a bearing on the study in the sense that one needs to understand the origin and background of prisons, the policies that guide its operations and what the aims and objectives of imprisonment are. For Restorative Justice to form part of rehabilitation, one would have to understand the assessment of needs which is to inform the programmes and interventions that the offenders are required to undergo, to ensure, to the extent possible, preparation for successful social reintegration (Department of Correctional Services Position Paper on Social Reintegration 2008).

For the sake of this study the focus will be on the following points:

Origin and development of imprisonment and prisons, policy in respect of institutional handling of prisoners; aim, function and organisation of prison systems, needs assessment and classification of prisoners; preparation for integration into society, release of prisoners and problems connected therewith as well as the experience of imprisonment.

Preparation for integration into society will be explained in detail in different chapters, as it entails the process of social reintegration. The process of identifying and addressing reintegration needs actually starts from admission (White Paper on Corrections in South Africa 2005: 132, 141). It will be covered,

amongst others, where the researcher deals with the Correctional Supervision and Parole Boards and as part of the discussion of Restorative Justice and Victim Empowerment.

Needs assessment and classification of prisoners will be dealt with in chapter 4 as part of the role of the multi-disciplinary team and one of the objectives of Unit Management. To achieve the objectives of Correctional Services, a model, the Offender Rehabilitation Path had been developed. Need assessment is the first and very crucial part of the Offender Rehabilitation Path of which the implementation is the responsibility of all employees in the Correctional System, including custodial officials, the offender and the community.

The experience of imprisonment has a bearing on family life and communities and will be covered in chapter 5 as well as chapter 6.

Prisons used to be far away, almost out of reach places that were avoided by the community. Bukurara (2003: 82) agrees with this notion and explains that prisoners used to be outcasts, held in places like Robben Island while others were deported to other countries. In recent years prisons have moved more and more into the public domain as they are no longer build as “outstations”. Prisons were closed off to the general public, but it has become more accessible in recent years. The public became much more aware of the often appalling conditions under which prisoners are kept. The awareness is often raised by some crisis or scandal that is exposed (Coetzee 2003: 63). In South Africa the Human Rights Commission and communities were disturbed by the revealing of shocking practices in prison involving the exploitation of juvenile offenders and other practices of corrupt correctional staff members. Newell (2000: 117-118) recommends that civil society and the media should be involved in the different stages of the Criminal Justice System, including imprisonment. However, Correctional Services is also open for public scrutiny by the appointment of an Inspecting Judge whose main function is to investigate and report on prison

conditions. The Inspecting Judge, in the Annual Report of 2002 reported: *Conditions in prison, more particularly for unsentenced prisoners, are ghastly and cannot wait for long term solutions; for example, 1 toilet is shared by more than 60 prisoners; there is a stench of blocked and overflowing sewage pipes; shortage of beds resulting in prisoners sleeping two on a bed whilst others sleep on the concrete floors, sometimes with a blanket only; inadequate hot water; no facilities for washing clothes; broken windows and lights; insufficient medical treatment for the contagious diseases are rife. The list of infringements of prisoners' basic human rights caused by overcrowding is endless* (Fagan, Judicial Inspectorate Report on Prison Overcrowding, 2002). The number of sentenced prisoners in 2000 was 108 307 and unsentenced prisoners or Awaiting Trial Detainees 63 964 (Fagan 2002:17). It is interesting to note that the number for sentenced prisoners on 28 February 2007 is 112 473 and for unsentenced or awaiting trial detainees is 48 166, a total of 160 639. This despite the massive release of certain categories of offenders during the Special Remission in 2005 which saw approximately 30 000 offenders released and brought down the total offender population from 186 000 to 155 000. The Awaiting Trial Detainees were reduced from 65 000 to 45 000 (Department of Correctional Services Annual Report 2005/06: 14). Internal inspections also assist in dealing with non-compliance with government policies and legislation (Department of Correctional Services Annual Report 2006/07). It would seem that violations of human rights in prisons are as old as the institutions itself, both in South Africa and in other countries.

### **2.3 Origin and development of prisons**

*As a social practice imprisonment has a long and complex history, both in South Africa and abroad* (Van Zyl Smith 1992: v). According to Naser (1993:63) a prison was build in 1704 by Pope Clemens xi, ideally for the holding of juveniles. They had to work during the day and were not allowed to talk to each other while working (Venter 1959). Prisons or penitentiaries as it was known, had the aim of

ridding communities of those individuals who were problematic or dangerous (Gould 1979:425).

The French Penal Code of 1791 (Nexus, March 1993:30) was the first formal mention of prison. In Europe and America prisons were built as from the 18<sup>th</sup> century. The government of the United Kingdom used to send prisoners to North America to work as slaves (Neser 1993:64). Tougher sentences in the United States of America for drug related crimes or illegal drugs resulted in mandatory longer sentences, which led to an increase in the prison population (Riveland 1999:168). Prisoners in the United Kingdom were held in old ships. The conditions on these ships, also known as *hulks* were inhumane and became known as the worst prisons in existence. The British government made the penal system more visible to society by publicly listing the laws that governed prisons (Van Zyl Smith 1992:6). Russia used to send its prisoners to Siberia. Apart from the appalling conditions, the treatment was also regarded as inhumane and the sole purpose was to punish prisoners harshly. There was an outcry of different civil society organizations about appalling and inhumane conditions of imprisonment. The purpose of imprisonment was revenge which included isolation, prison labour and dietary/ration restrictions.

With the emergence of social sciences contributions were made regarding the need for humane treatment of prisoners. Cecario Beccaria (1738-1794) and Maconochie (1787-1860) made a great impact on the way in which authorities treated prisoners. Beccaria made an effort to properly formulate and apply criminal law in order to minimise abuse. He believed that people make rational choices about their behaviour, including criminal behaviour. He further professes that behaviour can change and that people can learn from their behaviour. He prioritized prevention of crime and the moral responsibility of each rational human being (Neser 1989:14-15). Beccaria's work, published in 1764, focused on ineffective administration of justice and cruel punishment. This work of Beccaria was followed up by John Howard, who published "State of Prisons" in

1777 exposing the prison conditions that existed in Europe at the time (Van Zyl Smith 1992:3). Howard (1958:4), who reported on the work of the prison reformer, John Howard, postulates that prisoners, who were incarcerated for debt, were often kept beyond the expiry date of their sentence until they have paid officials what they demanded.

The most important theme in Howard's work had to do with the harsh conditions in which prisoners found themselves. These conditions had more than one aim – apart from the punishment, it also wanted to get rid of the offender as a problematic part of the community. This was achieved through the serving of very long sentences, the execution of the death penalty and starvation of prisoners. Hundreds of prisoners died as a result of starvation and poor health. The state did not make provision for health care of prisoners. According to Howard, a respected prison reformer who visited many prisons (Howard 1958: 9), the prisoners were only expected to work, although in most instances they were not provided with tools and often had to do meaningless work, like carrying huge rocks from one point to the other, and back. They have worked for very long hours with very little food or any other form of recreation. A very interesting point that Howard made on the different prisons that he visited in England, Germany, Austria Flanders and France was that all different categories of prisoners were housed together. Males and females, young and old, those with short sentences as well as those waiting for the death penalty, were housed together. According to Howard there were already in those times prisoners as young as 14 exposed to these harsh conditions. One of the distinct characteristics of the modern day prison in South Africa is the oversight bodies like the Human Rights Commission and the Judicial Inspectorate making sure that offenders are housed in humane conditions. The researcher notices that nowhere in these writings is the role of the victim highlighted or anything written about attempts that have been made to restore the relationship between the offender and the victim and or community.

Restorative Justice should form part of the rehabilitation process. It would seem that rehabilitation was not part of the aim of punishment in the earlier prison system. The researcher gets the impression that assessment had not been done, while assessment forms part of the rehabilitation process in the modern day prison (White Paper on Corrections in South Africa 2005:25, 151, 165). Professionals use the process of assessment to identify the needs of the offender, in terms of therapy, security and reintegration which are supposed to be addressed through various in-house programmes. Restoration of relations with family and the community is a prerequisite for successful reintegration. However, restoration of relations with victims might not in all cases be possible or even desirable.

Howard reported on the negative influence that older criminals have on the impressionable minds of young people in prison. This is consistent with the concern in the modern day prison as described by Gear & Ngubeni (2002) regarding sexual violence and gang activities. Howard alluded to the fact that crime is planned inside prisons and that prisoners are worse off after their release. The minds of young offenders were corrupted when they were eventually released and he is quoted having said: *How contrary this is to the intention of our laws with regard to petty offenders; which certainly is to correct and reform them!* Gear & Ngubeni (2002:2) draw attention to the fact that prisons have a big influence on the socialization of prisoners and that they return to communities with that mind-set. Howard visited French Flanders and France in May 1783 where a magistrate of Hanover declared that the housing together of those sentenced to life imprisonment corrupt the morals of the offenders or slaves who only serve one or two years. This informed the decision to separate the different categories of prisoners. The researcher finds it interesting to note that to this day, there is still an outcry from civil society organizations about the housing together of juveniles with adults in prison, because of the detrimental effect it has on the young people.



The first prison in the United States of America of 1790 was known as the Walnutstreet prison in Pennsylvania, which was characterised by harsh conditions (Cilliers 1993c: 30). Some prisoners were detained in solitary confinement, they were placed according to certain classification and males and females were separated (Barnes & Teeters 1959:336). A lack of space and poor hygiene were some of the complaints as well as very little natural light in the cells. The researcher notices that there was at least one aspect similar to the modern day prisons, namely overcrowding. This is not much different from what we see in the modern day prisons if one has to go by the media reports and independent research (Steinberg 2004). The overcrowding of this one prison led to the building of a second prison, Cherry Hill in 1829, also in Pennsylvania (Neser 1989: 15). The conditions were equally inhumane as solitary confinement and minimum contact were practiced for all prisoners. Prisoners were expected to do hard labour (Van Zyl Smith 1992:6) and were not allowed to ever talk to each other and no reading material, except the Bible was permitted (Van Ness & Strong 2006:11). The discipline in the prison was based on religious and moral instruction and management by control over the prisoners (Neser 1989: 15). The researcher notices that the former Minister of Correctional Services supported this notion during the launch of the Restorative Justice approach in 2001, when he said that people can change and improve and that this reform can be achieved through, amongst others, *religious and moral instruction* (Skosana, Department of Correctional Services Launch of the Restorative Justice Approach, 2001). The regime in the earliest prisons allowed only communication with prison staff. The rationale behind this was for the prisoner to reflect on his offence (Gould 1979:422) and to change his ways. Restorative Justice in modern times also requires the offender to reflect on his behaviour and the effect it had on the victim. Marshall (2001:100) agrees with this and postulates that imprisonment was meant for incarcerating, reforming, work and discipline which was meant to bring the offender to repentance. The relevance of repentance as part of the Restorative Justice process will be discussed in chapter 7. Talking to other prisoners was seen to be possibly corrupting each other. The researcher

does not condone this, but has to wonder about the current practice in many prisons where first time offenders are locked up in overcrowded communal cells with hardened criminals. Obviously their contact is not restricted in any way and that might be the reason why non-violent first time offenders re-offend after their release from prison. The limited contact between prisoners and the use of single cells were ideal conditions for total control over prisoners. This reminds researcher of the problem of gangsters controlling some prisons – reducing the opportunity for contact and thus recruitment into gangs seems to be a very simple solution, although the reality of overcrowding needs to be faced. The impact of overcrowding on the Correctional System will be discussed later in this chapter.

Prisons in America soon became overcrowded because of poverty and people flocking to cities as a result of the Industrial revolution.

The Auburn prison was built in 1816. Since 1820 a number of institutions were build, which were referred to as *penitentiaries for the criminal, asylums for the insane, almshouses for the poor, orphan asylums for homeless children and reformatories for delinquents*. Depending on the seriousness of the crime, criminals were fined, whipped or hanged. These severe forms of punishment were intended as deterrent to potential criminals (Van Ness & Strong 2006:10). The principle that governed or guided the management of the early prisons was to bring them together to work, to be taught how to behave and through silence reflect on their crimes (Reid 1981:152). In 1823 another prison was build, which made provision for workshops for prisoners to be trained. Nesor (1993:65) postulates that the significant difference was the use of bigger cells and not only single cells. The Auburn system was based on the principles of working in groups by day, staying in single cells by night and serious penalties if rules of absolute silence were not observed (Riveland 1999:163; Nesor 1989: 16). Reformation was achieved through hard work, isolation and repentance. Repentance in the Christian faith is important in the process of restoration of

relationships with fellow human beings and with God, before forgiveness becomes a possibility.

Rehabilitation, training and sport did not form part of these prison systems. Naser (1989: 16) postulates that the Auburn system differed from the Pennsylvania system in that it allowed freedom of religion – prisoners were not compelled to take part in religious activities. Since 1872 and 1895 attempts were made to reform the prison system. The law of the time used solitary confinement for the hardened criminals who have been convicted in a court of law (Teeters & Shearer 1957:10). It seems that only after the Second World War did fundamental changes take place (Cilliers 1993c:31). The retributive theory was viewed as outdated and inhumane. Punishment was now not only based on the crime. Punishment had to take the circumstances of the crime and the offender into consideration. While punishment was expected to protect the community it also had to serve the purpose of rehabilitating the offender.

Imprisonment is but one of the sentence options that a court of law can impose when punishing an offender for a crime committed. Other options include community service, paying a fine, suspended sentence, periodical sentence and Correctional Supervision (Ntuli, personal interview 1 April 2008). If these options can be applied more readily, then the problem of overcrowding can be addressed to a certain extent. It would also in the opinion of the researcher give more creative options for sentences to suit the unique circumstances and the needs of victims and offenders. These options could also be more restorative as offenders are not removed from their community and can continue working. They are therefore in a better position to pay the victim back or do community service while the community members act as “guardians”. Where victims have a say in the type and place of community service the work is more likely to be meaningful to the victim and the community. It might even bring a sense of self worth to the offender if he /she experiences some form of recognition from the very people who rejected him/her because of the crime and it’s after effects. This

way the offender is motivated to take responsibility for the harm that was caused by his/her criminal behaviour. Often victims are not necessarily interested in revenge. Some victims just want to understand what led to their victimization; others are even prepared to assist the offender (Herman & Wasserman 2001: 432). Be that as it may, prison sentence is currently the punishment of choice in most courts, and therefore the researcher thought that a discussion about the origin of prisons is needed to understand the bigger picture. There are different theories of punishment, like the absolute theory of retribution and the relative theory of prevention as well as the distinction between the retributive approach to crime versus the restorative approach (Zehr 2002 a: 21). The outcomes of the approaches are different and the level of satisfaction of victims also differs (Umbrecht 2001b:255, 264-265).

Riveland (1999:167) stresses the importance of reintegration after release, which will also save money if offenders do not return to the system. The system of Community Corrections was introduced early in the 1970's in the United States of America, while it was introduced in South Africa during 1991 (Department of Correctional Services Position Paper on Social Reintegration, 2008; Glanz 1994: 65).

## **2.4 Background of prisons in South Africa**

Imprisonment was not always the sentencing of choice when a crime was committed. Mbambo & Skelton (2003: 274-275) postulate that the African customary law allowed people to deal with their problems outside of any formal criminal justice process. Traditionally, the African people dealt with crime by deciding on a punishment for the offender and thereafter attempting to reconcile the families of the offender and victim (Lekgetho, personal interview 13 September 2007). The researcher agrees with Zellerer (1999: 351) regarding the potential of extended families to deal with women abuse on their own, and in some cases allow the power imbalances to continue. However, when

imprisonment did take off as sentencing option, it was characterized by abuse of human rights (Van Zyl Smith 1992: v) especially while the death penalty was still a sentencing option. Cilliers (1998:3) postulates that the management of earlier prisons was not guided by policy. Judge Bertelsmann (personal interview 27 August 2007) is of the opinion that the death penalty was applied selectively and directly contradicting of human rights.

Imprisonment is one form of punishment that is currently over utilized in most countries if one has to go by the state of overcrowding of prisons worldwide. The Correctional System as it is today is the result of many changes that, to a large extent, was guided or influenced by the politics of the day. For the sake of this project the researcher will restrict the discussion to developments in the South African prison system as it emerged after 1910, safe to say that management of prisons then, was under the Justice Department (Neser 1989:19) strongly influenced by British laws.

The researcher is of the opinion that an understanding of the historical background of the South African Correctional System will bring about an even greater appreciation for the reform that did take place, especially since the inception of the new democratic government of South Africa. The public was not always aware of the way in which prisoners were treated. Discussion of the historical background will also bring an understanding of how circumstances changed in order to make the Restorative Justice approach possible, within an enabling environment. A comprehensive discussion relating to the creating of an enabling environment is dealt with in chapter 4.

The Prison and Reformatory Institutions Act (Act 13 of 1911) was put in place to regulate not only prisons but also reformatory schools (White Paper on Corrections in South Africa 2005:43). The Act made provision for the care of sentenced offenders as well as awaiting trial detainees. Van Zyl Smith (1992:6) professes that this Act did not spell out the specific purpose of imprisonment.

Already in 1913 a library was established, and probation officers appointed. A chaplain was appointed in 1917 and the first teacher in 1918. The Act was subsequently amended in 1920 to remove Industrial schools out of the Prison Department (Van Zyl Smith 1992:7), under the auspices of the Department of Education. The role of contemporary schools in crime prevention through restorative principles will be discussed in chapter 6. Even work colonies were eventually removed and placed under the Department of Labour.

As from 1911 the powers of the Department of Justice and Prisons were separated, but again merged in 1930 (Neser 1989: 20). The Depression forced the government to streamline its activities. Since 1934 farmers were allowed to have prisoners work for them (Van Zyl Smith 1992:8). Section 35(3) of Act 13 of 1911, made provision for isolation of awaiting trial prisoners and allowed for the use of medical restraint. The local magistrate had to grant permission for this kind of detention, but when it was prolonged over a month, the Director of Prisons had to give permission (Van Zyl Smith 1992:6). Roos, who designed the Act, regarded it as containing the *most modern principles of modern penology*. The essence of the Act was to reform the criminal through religious and moral instruction, based on the belief that all people are capable of change. The researcher notes that the earliest prisons, e.g. Pennsylvania in the United States of America, which was alluded to earlier, also had moral instruction as one of the strategies to deal with offenders. The prisoner needed to learn to work to earn a living. His/her treatment had to continue during the parole period. In 1937 powers were once again separated. The researcher is of the opinion that these changes between the two departments, Department of Justice and Department of Prisons most probably contributed to instability in the management of the Correctional System to some extent. The Lansdowne Commission on Penal and Prison Reform was appointed in 1945, which announced in 1947 that combining the two departments was not in the best interest of the people served (Neser 1989: 20). Neser further postulates that the recommendation of the Lansdowne commission led to the establishment of a separate Prison Service on 1 August

1952, although in the case of smaller prisons the heads of prisons still reported to the local magistrate, until 1956 when all prisons came under the control of the Head Office of the Prisons Department.

It is interesting to note that Inspectorates were already in place since after unification and was provided for in Act 13 of 1911 (Neser 1989: 21). The Inspectorate initially functioned independent from the Prisons Department, and also conducted inspections in other departments. However, from 1952 the Prison Service established its own inspectorate, which was responsible for regional inspections. The section at the head office had a controlling and monitoring function over the regional inspectors. The current inspectorate aims to conduct regular inspections in all the correctional facilities, including the Head office as well as Community Corrections offices. Inspections are organized with the full cooperation of the different directorates in Correctional Services, as inspection includes the monitoring of compliance with approved policies and procedures. In the case of non-compliance recommendations are made by the Inspectorate on how to improve service delivery.

A new Prisons Act, Act 8 of 1959 was introduced. It made provision for a system of parole. However, it also strictly regulated reporting on prison conditions and restricted inspections by external bodies. The researcher notes this is in contrast with the current Correctional System where provision is made for an independent Inspecting Judge with independent prison visitors. The Judicial Inspectorate was established on 1 June 1989 in terms of section 85 of the Correctional Services Act, Act 111 of 1998 (Department of Correctional Services Annual Report 2006/07). The duty of these independent prison visitors is to investigate prison conditions and complaints by offenders and to provide oversight (Fernandez & Muntingh 2007:6). It bears proof of the fundamental changes that were introduced with the White Paper on Corrections in South Africa (2005).

As a result of rationalisation in the Public Service, the Department of Prisons was once again placed under the jurisdiction of the Justice Department in 1980 where it functioned as a directorate.

During the political uprising in South Africa law and order was compromised. Uprisings and defiance of the government saw many people being imprisoned (Dissel 1997: 2-3; 2002:9; Dissel & Ellis 2002:1-2). The penal system in South Africa strengthened the government policies based on apartheid. Scores of people were put in prison because of the violation of the Group Areas Act (Act 36 of 1966) or the Prohibition of Marriages Act (Act 55 of 1949), pass laws and resisting the government (Dissel 2002:8; Dissel & Ellis 2002:1-2). The laws of the time also made provision for incarcerating individuals for long periods without trial if suspected of political crime. This contributed to overcrowding (White Paper on Corrections in South Africa 2005:46; Coetzee 2003 b: 1-2) and compromised the quality of care of prisoners, as rehabilitation efforts was insignificant. Prison conditions were generally unacceptable (van Zyl Smith 2004:227) and included corporal and capital punishment (Henkeman 2002: 30). Nair (2002:5) postulates that the militarised prison system inherited from the previous government brought along repression of prisoners and a culture of violence against prisoners. Violence increased and the death penalty was applied, but it did not serve as a deterrent. This is in line with what Judge Bertelsmann postulates when he talks about the inefficiency of the death penalty as deterrent. He further states that the number of murders committed in those days far outnumbered the number of executions, and that the death penalty was applied selectively (Bertelsmann, personal interview 27 August 2007). The Judge further contends that calls for the death penalty are a hugely emotional issue. The application of the death penalty in courts has also been inconsistent as judges had totally different views on this form of punishment which was clear from the different rulings for similar crimes.



It seems that punishment for offences is still not stopping potential criminals from committing crimes. Nair (2002:5) is of the opinion that the apartheid government used force to entrench the power and authority of the government institutions, including prisons. The use of the prison system to uphold apartheid laws is one of the unique features of the South African Correctional System. However, researcher is of the opinion that some of the aspects in the system show similarities with the origin of prisons abroad, with regard to inhumane treatment of prisoners and abuse of power. Laws as well as social and moral values of the time (Van Zyl Smith 1992: v) govern prisons worldwide and mirror expectations of communities (Neser 1989: 29).

The South African government previously managed prisons according to the policy of racial segregation, where white and black prisoners were locked up in separate prisons and received different treatment. Prisoners were also not entitled to human rights and were mostly used for cheap labour. The Prison Services provided unskilled labour to mines (Van Zyl Smith 1995: 268). The conditions under which these people were held were not conducive for building of relationships with prison staff or communities. Prisoners were mostly suppressed and contact with families was limited. This is contrary with what is currently envisaged by the White Paper on Corrections in South Africa (2005) in terms of respecting the human rights of offenders. Contact with families is encouraged and communities are challenged to get involved as part of their *societal responsibility* and to restore and strengthen relationships (Department of Correctional Services Annual Report 2003/04: 43).

The country saw unprecedented political changes as from the early 1990's. For instance, a moratorium was placed on corporal punishment (lashings) in 1995 by the Constitutional Court (Pinnock 1995: 1). However, the majority of the South African community was still marginalized and their social circumstances did not improve significantly. Poverty is often stated as the reason for the increase in crime. The way in which the new government was going to manage the

Correctional System was in the researcher's opinion guided to a large extent by the words of the former president Nelson Mandela: *The way that society treat its prisoners is one of the sharpest reflections of its character. In the prisons of apartheid the inhumanity of that system was starkly evident. We have inherited a system ill equipped to serve the needs of a democratic society founded on a culture of human rights. We recall these facts, not to dwell on the past, but to underline the fact that as we transform our society, the South African Department of Correctional Services faces a very great challenge* (Nelson R Mandela 1998; Luyt 1999b: 2-3). Nair (2002:4) echoes the same sentiment when she postulates that the country has a long history of excessive force and authority over prisoners and a general denial of their human rights. These conditions contributed to a lack of confidence in the Criminal Justice System (Simpson undated: 218). During 1993 solitary confinement, the death penalty and punishment on a spare diet were abolished by the South African Correctional System (Dissel 2002: 9). The current trend is to build prisons as new generation correctional facilities with the implementation of Unit Management in mind. The concept of Unit Management is explained in chapter 4.

The Department of Prisons was separated from the Department of Justice during the late 1990's and renamed the Department of Correctional Services (White Paper on Corrections in South Africa 2005:47). This period saw the introduction of Correctional Supervision as a non-custodial sentencing option. At that stage Restorative Justice was not yet added as part of a sentence. Skelton (personal interview on 2 August 2007) states that courts have to have confidence in alternative sentences and the Restorative Justice process to consider it when sentencing. The new democratically elected government came into power in 1994, which had a positive impact on the treatment of prisoners. The government acknowledged the unacceptably high crime rate and attempted to combat it by the introduction of the National Crime Prevention Strategy (1996). Crime prevention became a national priority for government as part of the Integrated Justice System approach (White Paper on Corrections in South Africa

2005:49). The citizens of the country were caught in fear because of the high incidence of crime and the increasing level of violence. The National Crime Prevention Strategy (1996) was based on four pillars, of which crime prevention is the most relevant to this study as it includes Victim Empowerment.

The Department of Correctional Services was demilitarized on 1 April 1996 (White Paper on Corrections in South Africa 2005:15; Dissel 2002:14). A new Release policy was adopted in 1998, the same year in which parts of the Correctional Services Act (Act 111 of 1998) were enacted. Conditions changed for the better since the Prison Service was separated from the Justice Department. Duffee (1980:11) postulates that change in the prison system is often initiated by external factors, more than change from inside.

## **2.5 Purpose of Punishment**

*Punishment in general and imprisonment in particular are used in efforts to deter criminal lawbreakers from reoffending, to discourage others tempted to commit crime, to keep troublesome people out of circulation or subject them to intense supervision, and to express society's disapproval of criminal behaviour (Johnstone 2003:1).*

When passing a sentence of imprisonment, the court has to take the circumstances of the individual offender into account (White Paper on Corrections in South Africa 2005:165), such as age, background, disability and mental development (Harcourt 1975:163). Courts often refer to the position of trust that the offender occupied in the community, which is often regarded as an extenuating factor. The objectives of punishment that will be discussed are retribution, deterrence, rehabilitation and reparation. Researcher views these as the most relevant in the specific context, although according to Cornwell (2003: 82) there is considerable debate about the primary purpose of imprisonment. Muntingh (2002:21) is of the opinion that successful reintegration should be the

main aim of the Criminal Justice System. Within the Restorative Justice paradigm reintegration is more likely to be achieved if relations are restored between victims and offenders.

Snyman (2002: 13) distinguishes between absolute and relative theories of punishment. Retribution resorts under the absolute theory, while deterrence as aim of punishment resorts under the relative theory.

### **2.5.1 Retribution**

The Criminal Justice System use or abuse its power in dealing with the offender who was found guilty of a crime. It is known to be adversarial (Zehr 2002 a: 25; Wallace 1998:53; Hadley 2001:7) and does not allow much participation from the people involved, namely the victims and offenders and their support systems. This is unlike in the case of Restorative Justice where the involvement of those who have been harmed as a result of crime are encouraged to deal with the consequences of crime as best as they can. The retributive theory is based on just deserts – the offender gets the punishment that he/she deserves, and is therefore based on revenge or retaliation (Jenkins 1984:144). Edgar & Newell (2006:11) accede that retribution implies that the punishment fits the crime. This is similar to the *lex talionis* principle, which is the principle of *an eye for an eye and a tooth for a tooth*. Another meaning that is also attached to *lex talionis* is the justification that the punishment the offender suffers, measures up to or equals the pain the victim suffered (Barlow 1993:433; [www.amnestyusa.org/faithinaction/lrReflection/1Sermon/](http://www.amnestyusa.org/faithinaction/lrReflection/1Sermon/) visited on 2008/01/02).

Unfortunately, revenge is taken by the state, on behalf of the victim, but Christie (1977: 7) postulates that the state has *stolen* the conflict from the rightful owners, namely victims and offenders. He explains that the victims and offenders lose the opportunity to decide what might be the best solution for this specific problem

and explains: *This loss is first and foremost a loss in opportunities for norm-clarification. It is a loss of pedagogical possibilities. It is a loss of opportunities for a continuous discussion of what represents the law of the land. How wrong was the thief, how right was the victim? Lawyers are, as we say, trained into agreement on what is relevant in a case. But that means a trained incapacity in letting the parties decide what they think is relevant* (Christie 1977:8; Zehr 2002 a: 25). The researcher concludes from Christie's statement that it is possible that the role players might have dealt with the conflict quite differently had they been given a choice.

Punishment is one of the objectives of imprisonment. However, this might then create the impression that awaiting trial detainees are also punished although they have not been found guilty of committing a crime (White Paper on Corrections in South Africa 2005:89). Van Zyl Smith (1992:101) is of the opinion that offenders are to be sent to prison as punishment and not for punishment. The harshness of prison life and the isolation from the community is already punishment enough. Prisoners are entitled to human rights, humane conditions, safe custody, rehabilitation and privileges (Van Zyl Smith 1992:101). These privileges include visits from family, telephonic contact and training (Neser 1989: 209).

Crimes were punished by putting the offender in custody even in Biblical times according to Leviticus 24:10-12: *There was a man whose father was an Egyptian and whose mother was an Israelite named Shelomith, the daughter of Dibri from the tribe of Dan. There in the camp this man quarreled with an Israelite. During the quarrel he cursed God, so they took him to Moses, put him under guard, and waited for the Lord to tell them what to do with him.* The punitive philosophy has been responsible for harsh sanctions like capital and corporal punishment, long sentences and generally poor treatment of prisoners (Hippchen 1979:405). However, even in Biblical times prisons were not intended for long-term sentences. Offenders were usually held to await trial or while waiting for

execution or exile, enslavement or until debts have been paid (Marshall 2001:13). In 2007 the government spend R40 489, 45 per annum per offender, in 241 prisons with 41 000 staff. The prisoner population stood on 189 748 (Department of Correctional Services website [www.dcs.gov.za](http://www.dcs.gov.za) , visited on 2007/08/29). These figures give an idea of how costly it is to punish offenders. Restorative Justice can assist in making the offender understand the impact of crime on the victim and or alleviate the pain and harm suffered by victims. According to Hippchen (1979:406) about two-thirds of released offenders return to prison after spending some time in the community.

Retribution is also the result of the outcry of communities and individual victims who have suffered because of crime, some having sustained very serious damage or injuries (Skelton & Potgieter 2002: 489; Mapumulo 2008:6). The media often voice the opinion of traumatised victims shortly after the crime when they are vulnerable and in shock, as in the following newspaper article.

## Newspaper article 1: "My boy's killer should have rotten in jail"

6 SOWETAN Monday February 11 2008

# 'My boy's killer should have rotten in jail'

**Zinhle Mapumulo**

If Maria Mbele had anything to do with the sentencing of the 16-year-old pupil who stabbed her son to death, she would have sent him to jail for life and made an example out of him.

Mbele expressed her feelings for the first time since the trial started early last year.

She told *Sowetan* that her son's murderer, who was 14 when he committed the crime, deserved to rot in jail for what he did.

She said this after the Johannesburg magistrate's court sentenced the teenage boy to six years imprisonment, suspended for five years on Friday.

Mbele, 42, is the mother of Nkosana Mbele, the Forest Hill pupil who was brutally killed by the teenage boy in October 2006.

"His family never had the decency to come and apologise to us. During the trial they made a mockery of my son, portraying him as a hooligan.

"All the testimonies read in court talked about my son's killer as an angel who acted in self-defence. What kills me is that my son is dead – yet his killer will be roaming the streets as if nothing happened," she said.



**DISAPPOINTED: Maria Mbele**

at the justice system for handing such a lenient sentence.

"This boy deserved to go to jail so that other children will know that if you commit a crime you will be jailed," said Mbele.

The pupil, who cannot be named because of his age, pleaded guilty to murder last year.

As part of his sentence the court also ordered him to do community service for 576 hours and not to commit a similar crime within five years or he would be arrested.

He will be under correctional supervision for the next three years.

"If I was the magistrate I would have made an example out of this boy and sent him to jail for life. I am very angry and disappointed

Source: Sowetan, 11 February 2008

While sensational news headlines grab the interest of readers, it would also be helpful if the media could do follow-up reporting about organizations offering counseling to victims and where victims and offenders were able to deal with the negative consequences of crime.

Victims might not demand the death penalty or other harsh punishment after having received counseling (Nair 2002:5; Holtmann, Pretoria News 20 February 2007). Retributive theory uses pain to the offender to make things right for the victim (Zehr 2006:59). This is consistent with the notion of Newell (2000:38) that the community has a sense of safety when dangerous offenders are removed from the community and the feeling that the time in prison balances the harm to the victim. There is little evidence that victims necessarily benefit from or is satisfied by the incarceration of the offender.

## 2.5.2 Deterrence

Another objective of punishment is deterrence, which was supposed to be established through harsh sentences. *In the ceremonies of the public execution, the main character was the people, whose real and immediate presence was required for the performance. An execution that was known to be taking place, but which did so in secret, would scarcely have had any meaning. The aim was to make an example, not only by making people aware that the slightest offense was likely to be punished, but by arousing feelings of terror by the spectacle of power letting its anger fall upon the guilty person...* (Foucault 1977: 57-58). Harsh sentences lost its effectiveness during the 18<sup>th</sup> century (hangings, whippings, the pillory) as deterrent, as crimes did not decrease.

The public also became dissatisfied with the types of sentences. Deterrence is based on the belief that potential criminals will not commit crime as they are aware of and fear possible consequences. This is then supposed to serve as crime prevention. A distinction is made between individual and general deterrence (Marshall 2001:104; Snyman 2002: 13). Individual deterrence affects the individual who committed the crime, who then decides to change his/her ways because of the unpleasant consequences (Jenkins 1984:152; Gould 1979:422). Snyman (2002: 18) has a different view regarding imprisonment as deterrent as he postulates that it is not a real deterrent when the 90% recidivism rate in South Africa is taken into account. The researcher agrees with this notion especially in the absence of effective programmes and a systematic approach to relapse prevention by the Criminal Justice System in partnership with communities. In South Africa a Minimum Sentencing Policy was adopted in 1997 which means that in certain cases of serious crimes like murder and rape the court is obliged to impose a prison sentence with a minimum of 15 years or life imprisonment. However, the incarceration rate for violent crimes has increased as indicated by Judge Bertelsmann. Bertelsmann, (personal interview 27 August 2007) is of the opinion that offenders with long sentences are less likely to be



interested in changing their behaviour. They might even join a gang and assault young vulnerable detainees. They have no incentive even to take part in Restorative Justice and are quite often rejected by their family. Considine (1995:31) also challenges the notion that imprisonment is a deterrent for crime and states that imprisonment in fact increases crime. He professes that the American crime rate has increased, especially for violent crimes (16 600 to more than 20 000 per year) since the death penalty was reinstated in 1976.

The long prison sentences bring another aspect or goal of Restorative Justice into question. If we say that restoration is needed as part of successful reintegration, then one could rightly ask if it still make sense to have a Restorative Justice process with offenders serving life- or very long prison sentences. The researcher is of the opinion that if one only focuses on punishing the offender, then it would not make sense. However, the offender still needs a process of Restorative Justice in order to get healing and personal restoration. Victim Empowerment and Restorative Justice exactly shifted the focus of the Criminal Justice System from being offender focused to be victim focused. The researcher therefore argues that even if the offender will not be reintegrated in the near future, a Restorative Justice Process might still provide some answers and in some cases closure to some victims.

General deterrence affects a community and serves as education of why they should not commit crimes (Jenkins 1984:152; von Hirsh & Ashworth 1992:62). General deterrence also claims to have a crime prevention effect (Schmallegger 1995:369). According to Gould (1979: 423, 432) if the offender is send to prison soon after committing a crime and justice is seen to be swift, effective, and consistent, offending might be deterred (White Paper on Corrections in South Africa 2005:74; Edgar & Newell 2006:11). Snyman (2002: 19) is of the view that it is not the severity of punishment that would deter the potential offender, but the certainty that he/she will be caught and punished. The possibility of early parole and escapes in his view might also affect the possibility of deterrence. The

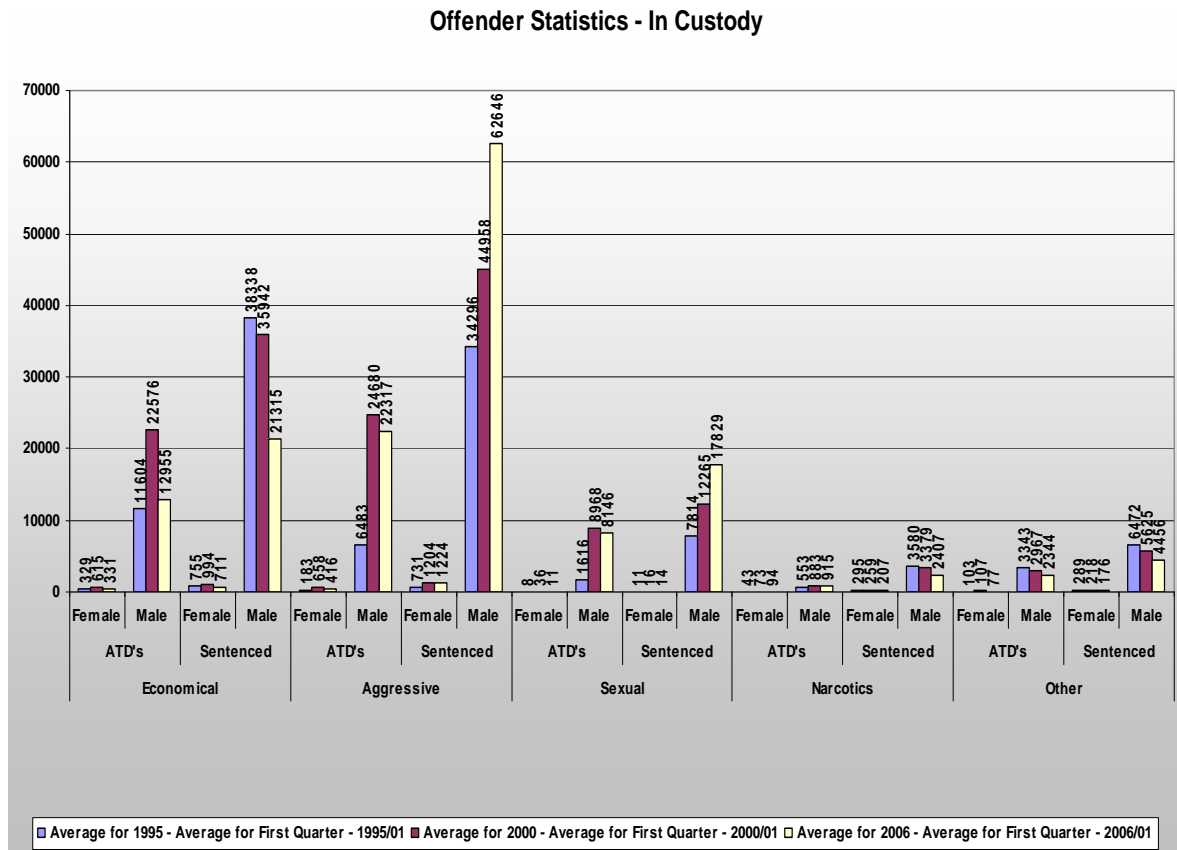
researcher is of the opinion that the public and victims specifically, might view the granting of Special Remission as contradicting the aim of deterrence through punishment.

The South African government spent R9 066 549 on Correctional Services in the 2005/6 financial year. However, Altbeker (2005a: 30,31) postulates that it does not guarantee that imprisonment alone is an effective deterrent to potential criminals, as other factors such as social circumstances, provocation, etc., also contribute to crime. While offenders are in prison, they have to be rehabilitated and reintegrated into society, which will then hopefully be the deterrent for repeat offending (White Paper on Corrections in South Africa 2005:75). It would seem that some people only stop committing crime when it is no longer worthwhile.

The graph on page 66 indicates the number of offenders in prison who are serving sentences for violent crime. These statistics are significant for this study, as it represent at least that number of direct victims who have been affected by a violent crime. The categories, economic, aggressive, sexual, narcotics and "other" are rather vague. Aggressive could include assault, assault with the intent to do grievous bodily harm, rape, mutilation, murder, etc. A more accurate breakdown will assist greatly in Correctional Services' assessment of the offender as well as in terms of the decision of which treatment programme or intervention would be most appropriate. Statistics for 1995, 2000 and 2006 show an average of 34 000, 44 000 and over 60 000 respectively. It far outnumbers economic, sexual narcotics and "other" crimes for the same periods. In support of this approach Snyman (2002: 25) purports that violent crimes specifically increased since 1990. He further mentions that during 1995 South Africa reported 6561 crimes per 100 000 of the population, compared to 2662 per 100 000 in the world. Snyman in fact supports the death penalty for murder and motivates it on the basis that the rate of murders committed in South Africa in the ten years after the abolition of the death penalty (1990-2000) is 10 times higher

than in Canada, 11 times higher than in Germany and 20 times higher than murders committed in the United Kingdom.

**Graph 1: Number of offenders in prison who committed violent crimes**



**Source: Department of Correctional Services**

What is significant for this study is that the immediate families of the offenders and indirect victims are also affected. Those secondary victims are in communities in need of support, information, understanding and counseling. Some victims suffer long - term consequences of crime and never experience

closure. Some live in constant fear for the day the offender is released, as the majority of offenders are indeed eventually released.

The abovementioned explains the researcher's notion that a process like Restorative Justice is needed to restore relationships, to bring healing to individuals and communities who had been affected by crime. Consedine (1995:36) quotes Mike Martin, an ex-offender who spent many years in prison who said: *"We must stop imposing sanctions on criminals simply because we think a particular form of punishment would deter us. We, that is you and those who represent you, are not the offender, so it is time you stopped believing the punishment that would deter you would also deter the average criminal. If anything the opposite is true"*.

It would seem that burglars, car thieves, rapists, molesters, fraudsters do not think about prison or getting caught for that matter, while they are busy committing crime (Consedine 1995:36). Marshall (2001:103) postulates that old age is the only reason why some offenders give up crime. He says that in New Zealand 30% of females and 60% of males in prisons have served a prison term before. The South African situation seems to be even worse according to a newspaper article in which it was speculated that up to 80% of offenders go back to prison (Rapport, 30 September 2007).

### **2.5.3 Rehabilitation**

Snyman (2002: 17) describes rehabilitation as part of the relative theory. In terms of this approach the offender is a victim of his/her circumstances and has to be treated for a "sickness". He further explains that the offender is treated as if he had no choice in his/her own behaviour and can therefore not be blamed for the crime. This in the researcher's view contradicts what is to be achieved with Restorative Justice, namely to bring the offender to accept responsibility for the harm caused by his/her criminal behaviour. Alexander (2000:4-6) describes

rehabilitation as treatment, intervention, correction and development, while Edgar & Newell (2006: 11) add the dimension of reform. Luyt (2001:31) postulates that rehabilitation is to develop prisoners and even bring healing as offenders also need to be prepared for reintegration. The idea of healing in this context resonates well with what Restorative Justice aims to do in the sense that both offender and victim need healing to be able to move on with their lives. Often victims need answers to their questions for them to make sense of the victimization (Muntingh 1993:10).

Rehabilitation is defined in some of the Correctional Services policies as:

- ✧ *The creation of an enabling environment where a human rights culture is upheld, reconciliation, forgiveness and healing are facilitated; and offenders are encouraged and assisted to discard negative values, adopt and develop positive ones which are acceptable to society.* The researcher will discuss an enabling environment in chapter 4, while concepts of forgiveness and healing are addressed in chapter 7.
- ✧ *The creation of opportunities for the acquisition of knowledge and new skills, the development of an attitude of serving with excellence and the achievement of principled relations with others, to prepare the offenders to return to society with an improved chance of leading a crime-free life as productive and law-abiding citizens.* This is in line with the opinion of Luyt (2001:31) on the purpose of rehabilitation.
- ✧ *A process that is aimed at helping the offenders gain insight into his/her offending behaviour and also understands that the crime has caused injury to others (including the primary victim/s and the broader community).* The researcher discusses the role of victims and communities in chapter 6.

The principles of rehabilitation are based on the belief that offenders can change (Schmalleger 1995:369). This change needs to be long-term and sustainable, so that prisoners become law-abiding citizens and lead productive lives (Coetzee 2003: 5-6) and to prevent the offender from getting involved in crime in the future. Umbrecht (1985: 59) is less optimistic about the ability of the Correctional System to rehabilitate prisoners. He postulates that imprisonment only removes offenders temporarily from society, but it does not solve the problem. In fact, according to Umbrecht, many offenses are committed by ex-offenders (Snyman 2002: 18). He also questions the need for direct imprisonment for less serious offences as it is in his opinion, not the most effective way to deal with offending behaviour (Bertelsmann, personal interview 27 August 2007). The South African prison statistics confirm that the majority of prisoners have committed non-violent crimes. In this regard Ntuli (personal interview 1 April 2008) postulates that these offenders with less serious crimes could have been either diverted from imprisonment or taken up in the Community Corrections System instead of direct imprisonment. Victims of non-violent crimes are equally traumatized and the effect of the criminal event can be devastating to their sense of safety and trust. Restorative Justice has proved to be useful for these victims, who often are not necessarily interested in the punishment of the offender, as they would rather want their valuable items back. In support of this approach Umbrecht (1985: 60) recommends the more effective use of a wide range of alternative sentences and getting communities to take responsibility, also in line with the White Paper on Corrections in South Africa (2005:98,99).

Alternative sentences include, but are not limited to paying of a fine, house arrest, residential programmes like halfway houses, community service, periodic imprisonment, etc. Muntingh (2005) and Skelton (personal interview 2 August 2007) postulate that courts are reluctant to use Correctional Supervision as alternative sentence as courts do not always have confidence that proper supervision will indeed take place (Department of Correctional Services Position Paper on Social Reintegration 2008). Researcher is of the opinion that the

problem of social reintegration is reduced significantly where offenders are not physically removed from society. Gar (2005: 10) a magistrate from Pinetown, confirms his preference for alternative sentencing, firstly because he is aware of the conditions in prisons, but also because he believes that the community benefits from community service by offenders. The magistrate is also aware of poverty as motive for many economic crimes, and he states that the individual is worse off after a prison sentence. Courts should be informed of the range of available alternative options (Fallin 1989: 68). Umbrecht (1995: 66) cautions against the over reliance on prisons in America. This caution is in researcher's opinion equally applicable in the South African situation as prisons are already filled to capacity.

The White Paper on Corrections in South Africa (2005:54) identify amongst others, the following to be important strategies to enhance rehabilitation:

- *Development of individualized need-based rehabilitation programmes;*  
The needs-based correctional programmes can only be implemented once offenders have been properly assessed. The purpose of assessment according to Hesselink-Louw (2005: 1) is to identify the factors that led to committing of the crime and even those factors that might have pre-disposed the offender to crime. Assessment will also identify security risks, emotional, developmental, educational and reintegration needs (White Paper on Corrections in South Africa 2005:132).
  
- *marketing of rehabilitation services to increase offender participation;*  
The programmes that each individual offender will have to undergo will be informed by various factors, like the offender's background, social circumstances, possible addictions and the crime itself. The White Paper on Corrections in South Africa (2005:113) sets voluntary participation by offenders as an important aim of rehabilitation.

Researcher is of the view that marketing of the rehabilitation services is necessary so that offenders can become informed about the range of programmes that are available in the correctional facilities, be it inside prison or in the Community Corrections System. It is imperative for Correctional Services that all offenders attend correctional programmes in order to address offending behaviour. The Department of Correctional Services has to be able to ensure victims and communities that offenders are involved in rehabilitation programmes, in order to allay the fears of what offenders might be capable of doing upon release.

- *establishment of formal partnerships with the community to strengthen the rehabilitation programmes and to create a common understanding;* It will also have to address the reintegration needs of the offender, which should be addressed during the completion of the Correctional Sentence Plan. The development of an individual correctional sentence plan will be discussed in detail in subsequent chapters as part of a holistic and multi-disciplinary approach. Partnership with communities is seen to be one of the most important requirements for the Correctional Services to be successful in rehabilitation, but also in successfully reintegrating offenders back into their communities (White Paper on Corrections in South Africa 2005: 130, 178). Muntingh (2001a: 6) postulates that most offenders will be released and communities will have to accommodate them. Communities are better served when government is prepared to consult with them about the programmes needed on tertiary prevention level, but also because of the community's responsibility in terms of primary and secondary crime prevention (White Paper on Corrections in South Africa 2005: 10). Even in the earlier times Bentham (1748-1832) recognized the important role of families in rehabilitation of offenders.



- *promotion of a restorative approach to justice to create a platform for dialogue for the victim, the offender and the community, facilitating the healing process;* The promotion of the restorative approach is needed to enable victims and offenders to somehow resolve the harm and conflict that either precipitated or resulted from the crime. Restorative Justice essentially wants to encourage offenders to take responsibility, but also for both victims and offenders to experience restoration in ways that would make sense to them. The researcher needs to immediately caution that not all cases are suitable for some of the Restorative Justice interventions, like Victim Offender Mediation (VOM) and in some cases it could be more harmful to put victims through another encounter with the offender. This will be explored in detail in the next chapter. What is important for this study though is that Correctional Services acknowledges the potential benefits of Restorative Justice on the rehabilitation of sentenced offenders as well as the possible impact on crime prevention.

The researcher acknowledges/realizes the importance that the Correctional Services attaches to the involvement of offenders as well as communities, but even more important is the acknowledgement of the victim as important role player. Needs-based programmes will ensure that the factors that lead to an individual getting involved in crime are addressed and the social reintegration needs of the individual offender are attended to.

Rehabilitation is related to reintegration, but it cannot be the responsibility of the Correctional System alone. Offenders are returning to communities and the attitude of the communities will to a large extent affect the success of reintegration. Part of the rehabilitation and reintegration process has to be the inclusion of offenders, and for that matter, victims. The inclusion-need of victims will be discussed in chapter 6. Social patterns in communities that can lead to crime have to change, but after-care or social reintegration should be a

structured well-organized process to assist the offender with transition from the prison life to community life. The offender would need assistance in finding a job, going back to school where appropriate, as well as with a relapse prevention plan. The White Paper on Corrections in South Africa (2005: 64) recognizes the role of families and the community in the process. However, conditions of imprisonment must be conducive to produce the desired results, but also for other partners in the Criminal Justice System to have confidence that rehabilitation is indeed possible. Hesselink-Louw (2004:54) professes that the courts are sometimes of the opinion that offenders might be worse off after their release and that communities therefore need to get involved in the Criminal Justice process.

Rehabilitation of the offender is widely acknowledged as one of the ultimate goals of punishment (Harcourt 1975:163). It also has change or transformation of the offender in mind (Marshall 2001:99). Hippchen (1979:406) doubts the effectiveness of rehabilitation in a punitive environment, while Rubenstein (1979: 441) describes it as a “physical impossibility”. He goes further by saying that renaming a prison a correctional facility, referring to prisons in New York, does not make it more effective. He contends that a prison cannot rehabilitate and punish at the same time (Muntingh 2001 a: 9). The researcher noticed the similarities in this approach during a discussion on Morning Live (SABC 2, 20 May 2008) with dr. Mamphela Ramphele on her book *Laying ghosts to rest: dilemma of transformation in South Africa* where she explains her views more or less as follows: Just because we have a democratic government, does not mean we automatically became a democracy. The researcher links this with the notion of: *just because we name prisons correctional centres, does not mean they will automatically correct those inside*. Dr. Mamphela Ramphele further said that the South African government post 1994 disempowered civil society who actually put the government in place, with the result that civil society is not actively involved in government. She further contends that the country needs leadership in government that is transformative – not a path to access resources. Leaders

have to be inspirational; they must make people do better. While acknowledging that there are inspirational leaders in government, she contends that the country needs a critical mass of leadership. She identified a denial of honestly looking at the skills gap in the country – part of the solution for the criminal element in the xenophobic attacks is the lack of education. Her view is that trained or professional people do not have time to attack their neighbours, they are kept busy productively. The entire South African society should therefore focus on developing skills of the masses and ensuring that the masses are educated. The researcher relates this to the masses in correctional centres that are largely uneducated and unskilled. The issue of inspirational leadership should in the researcher's view be critically explored in all government departments in terms of evaluating effective service delivery or the lack thereof. This is why the researcher explained the changes that took place in Correctional Services in terms of the management of its institutions according to the old prison system compared to the current philosophy of correcting offending behaviour.

Wright (2003:6) postulates that the use of retribution and rehabilitation has not brought down the crime rate or re-offending. In fact, statistics in this chapter shows that more offenders are apprehended and locked up despite the already high incarceration rate (table 3) and the availability of rehabilitation programmes in prisons. Wright (2003: 6) questions the effectiveness of rehabilitation as it is sometimes the case that "...some prisons offer rehabilitative programmes to some of their prisoners" (Department of Correctional Services Annual Reports 2002/03: 45 & 2005/06: 15). Muntingh (2001 a: 10-11) concedes that the punitive policies have not been working and Hippchen (1979:406) postulates that corrective policies with a corrective philosophy might be more successful. Gould (1979:424) is equally cynical about rehabilitation and says: *While prison authorities are theoretically instilling social virtues into an inmate, his cell-mates are busy teaching him what he would regard as the more valuable skill - how to avoid the penalty. Penalties can be avoided by more careful execution of the crime, by deceiving the police and other authorities, and by discovering all the*

*esoterica of the criminal's rights under the law. Classes in such fields are being run by the convicts simultaneously with the formalized rehabilitation program.*

**Table 3: The composition of the prison population on 31 March 2003**

Category	Adult		Juvenile (under 21 years old)		Total
	Male	Female	Male	Female	
Sentenced	107 269	2877	15 216	293	125 655
APOPS (sentenced)	5949	0	0	0	5949
Unsentenced	42 455	1053	14 306	330	58 144
<b>Total</b>	155 673	3930	29 522	623	189 748

**Source: Department of Correctional Services**

#### **2.5.4 Reparation**

Reparation can be ordered by a court as part of a sentence or it could be an agreement reached between the victim and offender (Bertelsmann, personal interview 27 August 2007). This means that the offender admits guilt, takes responsibility and pays some sort of compensation to the victim. Offenders are often more willing to spend time in prison and “pay back the community”, than to face victims and take responsibility for the crime committed (Muntingh 2001a: 13; Zehr 2002 a: 46). They can complete numerous rehabilitation programmes and or stop using drugs, without internalizing the effects of the crime on victims. Restoration is the objective with a reparation order to restore the victim (Schmallegger 1995:371) and to *heal the wounds of crime* (Consedine 1995). The White Paper on Corrections in South Africa (2005: 79-83) explains restoration as an important part of rehabilitation. The assumption is made that restoration is seen to be quite important in the White Paper on Corrections in South Africa (2005) as it is mentioned 25 times, while the terms “restorative justice” and

“reconciliation” are used at least 4 times respectively. Reparation requires positive relationships between the offenders and correctional officials. Unit Management within a secure, safe and humane environment is needed to effectively manage the correctional centers (prisons). Although the offender has the primary responsibility to restore whatever needs to be restored, it would not be possible without the involvement of communities who have to take responsibility for those criminogenic factors in society.

*“In the context of the DCS, restoration emphasises a more important and active role for families and community members in the justice processes. It also holds offenders directly accountable to the communities they violated with the aim of restoring the relationships (White Paper on Corrections in South Africa 2005: 24).*

*The principles of restoration are that:*

- (i) All human beings, including offenders, have dignity and worth,*
- (ii) The focus is on problem solving, and the healing of relationships with the community.*

In support of this, Crawford & Newburn (2003: 23) assert that reparation could be symbolic as well as material. This is in researcher’s opinion an important distinction to make as the majority of offenders would not be able to pay back the real cost of the damages suffered by their victims. Correctional Services strives to reconcile the offender with the community to promote reintegration and states as follows:

*Restoration tries to bring together the offender and the community. The aim of this is to reconcile the offender with the community, repairing the harm caused by the criminal act with the objective of promoting the reintegration of the offenders into the community” (White Paper on Corrections in South Africa 2005: 24).*

The types of prisons or correctional centres that are constructed could also give an indication of the purpose of punishment and the seriousness of crimes. Some prisons are maximum-security buildings with extensive security measures both inside and outside of the prisons. The lock up period could be up to 23 hours, with one hour for exercise. In maximum prisons the offenders are usually housed in single cells, which is not much different to solitary confinement. This confuses the purpose of imprisonment, whether we want retribution, rehabilitation, deterrence or keeping the public safe. The researcher is of the opinion that we need to be sure that these measures indeed lead to reparation. Whatever the purpose or intended outcome of punishment, the courts need to deal with certain factors, like the circumstances of the crime and of the offender, mental and social factors of the offender as well as safety of the community (Harcourt 1975:163).

The objectives of the Correctional System have changed from punishment to correcting offending behaviour. Gould (1979:433) makes what could be a very contentious statement by saying that someone who is capable of being rehabilitated, should not go to prison in the first place, if the goals of punishment and revenge are no longer relevant. The researcher then deduce from that that prisons should only hold those who pose a threat to society and not those capable of change. That means that we then accept that deterrence, as a goal of punishment is not realistic. It also requires that an effective system of management of alternative sentences is in place.

## **2.6 Current functioning of Corrections internationally**

The Correctional System worldwide is burdened by increasing levels of crime and a general dissatisfaction with how the Criminal Justice System deals with crime prevention and the perceived marginalization of victims.

### **2.6.1 United States of America**

The prisoner population is currently over 2 million. It is estimated that in 2000 the American government spend \$40 billion on prisons, which amounts to \$35 000 per individual per annum. This is more than the annual costs for an individual on Harvard university ([www.heartsandminds.org/articles/prisons.htm](http://www.heartsandminds.org/articles/prisons.htm) visited on 2008/01/03).

The United States of America consists of 52 states which function independently of each other. Each state has its own Criminal Justice System and makes its own laws. The death penalty is still practiced in some states, namely Texas, Tennessee, Ohio and Alabama. There were 5 pending executions between January and February 2008 in these states. The death penalty was abolished in New Jersey on 17 December 2007. The United States of America was one of 50 countries who voted against a worldwide moratorium on the death penalty on 15 November 2007, in the Third Committee of the United Nations General Assembly, while 99 countries voted in favor ([www.heartsandminds.org/articles/prisons.htm](http://www.heartsandminds.org/articles/prisons.htm) visited on 2008/01/03). Restorative Justice is practiced in the Correctional System, also with offenders of severe crimes (Umbrecht 2001b: 256).

### **2.6.2 Canada**

The community members of Canada became disillusioned with the Criminal Justice System, which created an illusion of safety. Faith communities in particular, like the Mennonite community embarked on Restorative Justice to address the needs of both victim and offender (Wilson, Huculak, McWhinnie 2002: 363-364). They also postulate that the government and Correctional Services partnered with the Aboriginal communities to settle disputes in the pre-sentencing stage (Bottligiero 2004:33). This was done in the form of Sentencing Circles in which both offender and victim took part out of their own free will

(Wilson et. al 368-369). This was done to deal with the over representation of aboriginal people in prison. Through the Sentencing circles many offenders were diverted from jail and thus prevent severe overcrowding of prisons.

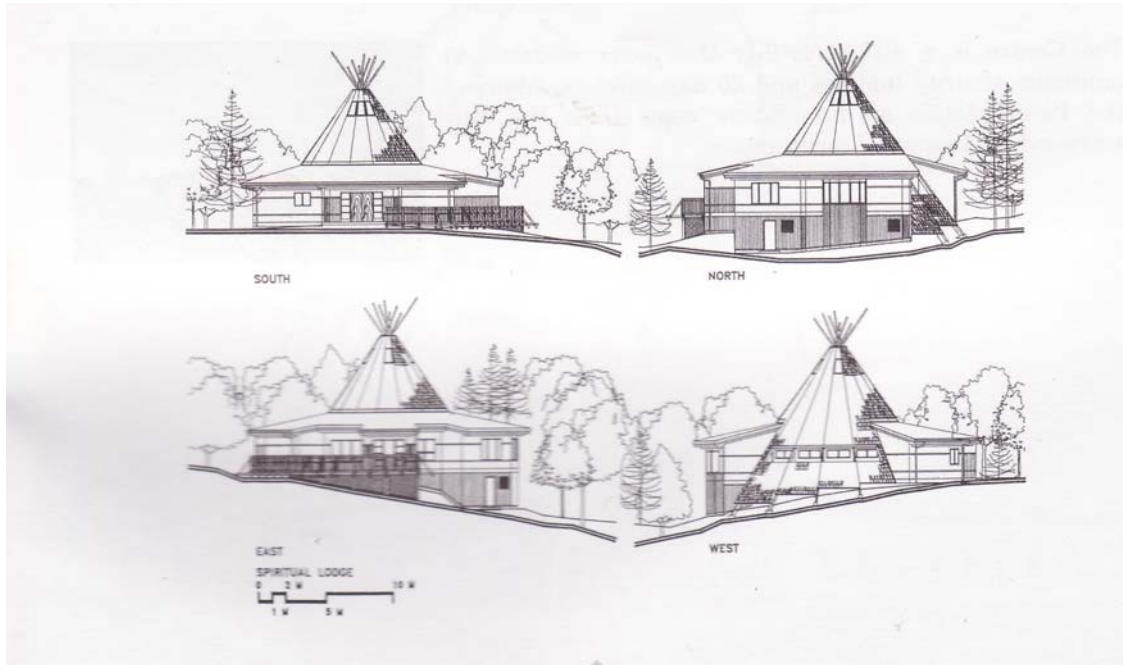
The government also established prisons, which can be likened to the open-prison system where Restorative Justice is practiced (Bottligiero 2004:33). The government practices Restorative Justice which is described as a non-adversarial, non-retributive approach to justice that brings healing to victims and ensures meaningful accountability from offenders. The community members are involved in creating a healthy and safe community life for all

(<http://www.csc-scc.gc.ca/text/portals/families/featureStory/milhavenfs> visited on 2008/01/02; Griffiths 1996: 206). The Canadian government has a Restorative Justice policy, which filters down to the Corrections Department.

Figures 1 and 2 are pictures of the prisons that are referred to as Healing Lodges. Separate facilities have been developed for males and females, and the female facilities also make provision for children to stay with their mothers. The programmes that are presented include classes to learn a skill with which to earn an income after release, substance abuse classes, family counseling, career planning, and relapse prevention. What is important is the inclusion of elders from the community to use some of the sessions for spiritual guidance to offenders. The programmes are holistic and combine the traditional and western therapeutic approaches.



**Figure 1: Healing Lodge for Women**



**Source: Correctional Services Canada**

The design and outlay of the buildings reflect the norms and cultural values of the community, including restorative justice practices. Research shows a lesser likelihood of re-offending for the Aboriginal people in these centres. The reason for the development of the Healing Lodges is amongst others, the experience that the formal Criminal Justice System does not accommodate the specific beliefs and values of the Aboriginal people. The focus of this system is the healing of the offenders and successful reintegration, within a Restorative Justice approach. The Healing Lodges are right in the communities and are accessible for community members especially elders who give guidance to offenders. It does not have the normal security fences of other prisons and the design of the buildings has a specific significance in the traditional community.

**Figure 2: Okinaw Ohci Healing Lodge for Women**



**Source: Correctional Services Canada**

A similar approach might also be successfully implemented in the South African Correctional System, in an open – prison setting, maybe starting in some rural areas. An assessment needs to be made of the cultural or race groups and types of crimes which are over represented in prisons to determine trends and alternative ways of dealing with some of these cases. The types of cases in rural versus urban areas should be studied in order also to determine if behaviour and belief systems in rural areas might contribute to crime. The researcher is of the opinion that some of the conflict could be dealt with outside the Criminal Justice System with the assistance of community leaders and elders. The elders or traditional leaders of that specific community can be involved in the teaching and performing of certain rituals, which are meaningful for the offenders and victims from that specific community. This approach of the Canadian Correctional System to combine the traditional and western judicial system is consistent with

the view of Tshego Maswabi, a social worker at the Restorative Justice Centre in Pretoria. She is responsible for the training of traditional leaders in the modern Restorative Justice approach and firmly believes that the traditional and modern Criminal Justice System can compliment each other. She foresees a situation where the two systems could refer cases to each other to ensure more effective dealing with specific types of crimes. She postulates that the Criminal Justice System should recognize the traditional system and that the former should only be used if efforts to deal with a dispute the traditional way failed (Maswabi, personal interview 13 September 2007).

The Canadian Correctional Services has a system of orientation of offenders upon admission. It aims to educate offenders about the effects of imprisonment on families, the harm it does to families and how to reduce the harm. The session also includes an introduction on Restorative Justice and corrections. The Correctional Services sends reading material to families on request of offenders on how to deal with the situation. An important innovation is the audio visual virtual tour through the correctional facilities, for the families to understand the circumstances of incarceration

(<http://www.csc-scc.gc.ca/text/portals/families/featureStory/milhavenfs> visited on 2008/01/02). In Victim Offender Mediation sessions, which are face-to-face sessions, both victim and offender participate voluntarily. Of importance is that it is mostly victim initiated, but offenders can also be recommended by corrections staff who have worked with them. The sessions ensure victim safety as well as confidentiality for both parties. These sessions aim to achieve accountability from the offender, healing and closure for both. It is emphasized that the process of assessment and preparation is lengthy and therapeutic in nature. It is based on current theory and clinical practice regarding offender treatment and victim trauma recovery.

The Correctional System also offers an on line self study course for correctional officials and volunteers on how to deal with victims and to prepare offenders for

release (<http://www.csc-scc.gc.ca/text/portals/families/featureStory/milhavenfs> visited on 2008/01/02).

### **2.6.3 Belgium**

Restorative prisons were established in Belgium in an effort to deal with the rising numbers in the prison population. There was also, like in many other countries dissatisfaction from the community on how the Criminal Justice System dealt with crime. Action research was done, where researchers were employed to explore and observe restorative practices in prison, and report on it. Managers as well as ordinary officers and the therapeutic staff were involved. The result of that was that Restorative Justice practices were actively implemented in 30 prisons and a Restorative Justice counselor was employed in each prison. The prison culture now allows and encourages Restorative Justice practices.

An important aspect of this approach is that all correctional staff was trained in Restorative Justice to be able to have a better understanding. Staff encourages offenders to take up their responsibilities and to be more sensitive to the needs of victims. An information brochure is made available to victims about the prison situation. An innovative move was the development of a game on how to deal with conflict. Discussion groups are held with victims and offenders to explore the possibilities and challenges of Victim Offender Mediation in prison. The victims are not always the direct victims of those specific offenders, but the session does bring healing for victims and awareness with offenders. It could also lead them to take responsibility to work on personal problems, to apologize to the victim or to make a financial compensation or contribution to the victim.

## **2.7 Corrections in Africa**

It is reported that the people of Lesotho are also frustrated with the slow movement in the Criminal Justice System and this country is also faced with lack of resources. The people welcomed the re-introduction of Restorative Justice as it is a “revival of their old approach to justice, which was effective and unifying” (Qhubu undated, Speech on *The Development of Restorative Justice in Lesotho*). This once again confirms the appeal of restorative justice to the African people as a collective.

### **2.7.1 Rwanda**

This country is currently dealing with the results of the genocide that took place in 1994. Luyt (2003b: 103) postulates that the prisons in Rwanda, like in the rest of Africa, are overcrowded as a result of delayed justice for awaiting trial detainees. Hundreds of thousands of members of one tribe had been wiped out by another tribe in a war. Survivors of the genocide still have to deal with the consequences of the atrocities that happened to them. Thousands of their family members had been killed. The way the dead bodies had been disposed of also contributed to the deep emotional scars. Forgiveness in the face of these atrocities is almost incomprehensible. The researcher deals with forgiveness at length in chapter 7. Each survivor has a story to tell about experiences and trauma which was a crisis for the whole nation.

## **2.8 Current functioning of the South African Correctional System**

The researcher will now discuss the responsibilities and functions of the South African Department of Correctional Services and how it relates to Restorative Justice. It has been mentioned before that rehabilitation and indeed Restorative Justice would not be possible in the Correctional System without partnership and cooperation with communities, other government departments and role players

from civil society (White Paper on Corrections in South Africa 2005: 21, 24). The Department of Correctional Services strives to change the behaviour and attitudes of sentenced offenders through different kinds of interventions. Some of these interventions include subjecting offenders to compulsory correctional programmes, developing of skills to use in the open labour market, counselling, educational training, etc. These efforts are based on a human rights culture as provided for in the South African Constitution (Act 108 of 1996) which states that “everyone who is detained, including every sentenced prisoner, has the right to be detained consistent with human dignity” (van Zyl Smith 2004:227). The death penalty had been abolished in South Africa and the death sentence of the remaining 62 offenders had been replaced with alternative sentences by July 2007 ([www.amnestyusa.annualreport.php](http://www.amnestyusa.annualreport.php) visited on 2008/01/02).

Correctional Services, as a government department is bound by legislation like the Sexual Offences Act, 2007 (Act 32 of 2007). The Act makes it compulsory for the state to provide post-exposure prophylaxis to victims who have been exposed to HIV ([www.amnestyusa.annualreport.php?id=ar&yr=2007&c=ZAF](http://www.amnestyusa.annualreport.php?id=ar&yr=2007&c=ZAF) visited on 2008/01/02). This begs the question about the responsibility of the Correctional System towards offenders who have been raped in prison. Their offender status does not exclude them from the definition of a victim of crime and therefore entitles them to the rights and benefits in terms of the Victim’s Charter (2004), as well as the protection under the Sexual Offences Act, 2007 (Act 32 of 2007).

The mission of the Department of Correctional Services is: *Placing rehabilitation at the centre of all Departmental activities in partnerships with external stakeholders, through:*

- *The integrated application and direction of all Departmental resources to focus on the correction of offending behaviour, the promotion of social responsibility and the overall development of the person under correction;*

- *The cost-effective provision of correctional facilities that will promote efficient security, correction, care and development services within an enabling human rights environment;*
- *Progressive and ethical management and staff practices within which every correctional official performs an effective correcting and supportive role.*

In chapter 4 the researcher will explore what correctional officials will have to do to fulfil a supportive role. These efforts should contribute to protection of the community and rehabilitation of offenders (White Paper on Corrections in South Africa 2005: 111-114). The Offender Rehabilitation Path is a model that describes the process to be followed from when the offender is admitted in a correctional centre/prison, until he/she is successfully reintegrated into the community. This includes in many cases completing the rest of the sentence under Correctional Supervision or parole in the community. This rehabilitation path is also applicable to the offender who is sentenced to Correctional Supervision, which means he/she serves the entire sentence in the community under the supervision of Correctional Services. The most important is the assessment to determine what interventions is needed in therapy and general care for the prisoner (Bonta 2002:356). It also indicates possible risk (Hesselink – Louw & Schoeman 2003: 162).

None of these objectives, in the view of the researcher will be achieved unless and until the offenders accept responsibility for the crimes they committed as well as for the harm done to victims. Also, if they had been victims of crime themselves or suffered abuse, then they first need to heal and come to terms with their own victimization to appreciate the harm that victims suffered. Only then will they be able to internalize or accept any programmes that are aimed at correcting their offending behaviour and ultimately rehabilitation (White Paper on Corrections in South Africa 2005: 80-81). Although the abuse of offenders is

acknowledged, it can never be an excuse for their criminal behaviour (Muth 1999: 66).

## **2.9 Objectives of the South African Correctional System**

The White Paper on Corrections in South Africa (2005: 73-76) identified the following as key objectives in realizing its vision *"to be one of the best in the world in delivering correctional services with integrity and commitment to excellence"*. The objectives are quoted as it appears in the White Paper and then discussed from the researcher's point of view guided as well by other research in the field.

1. *Implementation of sentences of the courts*
2. *Breaking the cycle of crime*
3. *Security risk management*
4. *Providing an environment for controlled and phased rehabilitation interventions*
5. *Providing guidance and support to probationers and parolees within the community*
6. *Provision of corrective and development measures to the offender*
7. *Reconciliation of the offender with the community*
8. *Enhancement of the productive capacity of offenders*
9. *Promotion of healthy family relations*
10. *Assertion of discipline within the correctional environment (Coetzee 2003b: 6)*



### **2.9.1 Implementation of sentence of the courts**

Based on its mandate of safe custody and rehabilitation, the Department of Correctional Services is at the receiving end of the Criminal Justice System (Luyt 1999b: 185). After a person has been sentenced to either direct imprisonment or to Correctional Supervision, Correctional Services has to take the offender up in the system as a result of a court order. Correctional Services currently incarcerates 158 859 offenders in prison, while more than 60 000 are in the Community Corrections System (Department of Correctional Services Annual Report 2006/07). Courts attach certain conditions to a sentence, like community service orders, compensation orders or restorative justice intervention. In a personal interview with Judge Bertelsmann on 27 August 2007, he explained about a case in which he negotiated with the family of the accused to have a meeting with the elders of the victim. The mother of the victim wanted an explanation for the murder of her child, and was willing to forgive the accused. Asking for forgiveness in this specific case did affect the judgment.

Judge Bertelsmann further holds that restoration could be ordered as part of a sentence within the rules of customary law. At a conference (The politics of restorative justice in post-conflict South Africa and beyond, Cape Town, 21-22 September 2006), Judge Bertelsmann said that traditional African courts must be recognized. Customary law must be integrated in the Criminal Law System as oversight is needed. Customary courts and magistrate courts should be able to refer or transfer cases. Practitioners should respect customary law. In the statutes certain provisions should be provided for, for example, that corporal punishment is not allowed in traditional courts. Standards are needed as systemic abuses are currently taking place because of a lack of resources in the courts. The Judge further contends that Restorative Justice should be formalized. Remorse becomes visible by the offender's apology, attempt to make restoration, and in the case of murder, to pay for the education of the

children of the deceased. The court would expect the offender to have at least attempted to restore by the time the case is to be heard.

The Department of Correctional Services is responsible for the assessment and rehabilitation of offenders (Muntingh 2001a: 6) in prisons as well as those who are serving a sentence under Community Supervision. The White Paper on Corrections in South Africa (2005: 98) asserts that rehabilitation should be the key reason for sentencing, and that offenders can be forced to take part in rehabilitation programmes. There are different views about the effectiveness of forced rehabilitation. Indeed, one of the Pre-Release programmes currently applied is compulsory, and was compulsory for those who benefited from the Special Remission of 2005. Skelton (personal interview 2 August 2007) is of the opinion that forcing someone into a programme might not have the desired results, but also acknowledges that it does happen that those initially unwilling to attend a programme end up changing their views and attitudes.

Assessment has to be integrated and holistic and should include aspects of Restorative Justice if the offender indicated his/her need to restore relationships with those affected by the crime. Some offenders serve part of their sentence in prison and the rest in the community. An offender can be sentenced to 5 years imprisonment in terms of section 276 (1)i of the Criminal Procedure Act (Act 51 of 97) which means he/she will serve 10 months in prison and the rest of the sentence in the community. This sentence has some conditions, like house arrest and close monitoring by correctional officials. This in the researcher's opinion could be experienced by the victims as a threat as rehabilitation within 10 months is not possible. On the other hand, it is also possible that the offender already regretted the crime and showed remorse even before being sent to prison. Some cases can take years to be finalised. The researcher is of the view that it would be possible to start the Restorative Justice process during the court procedures and finalise it while the offender serves the 10 months in prison. Changed behaviour can then be monitored during the time that the offender is on

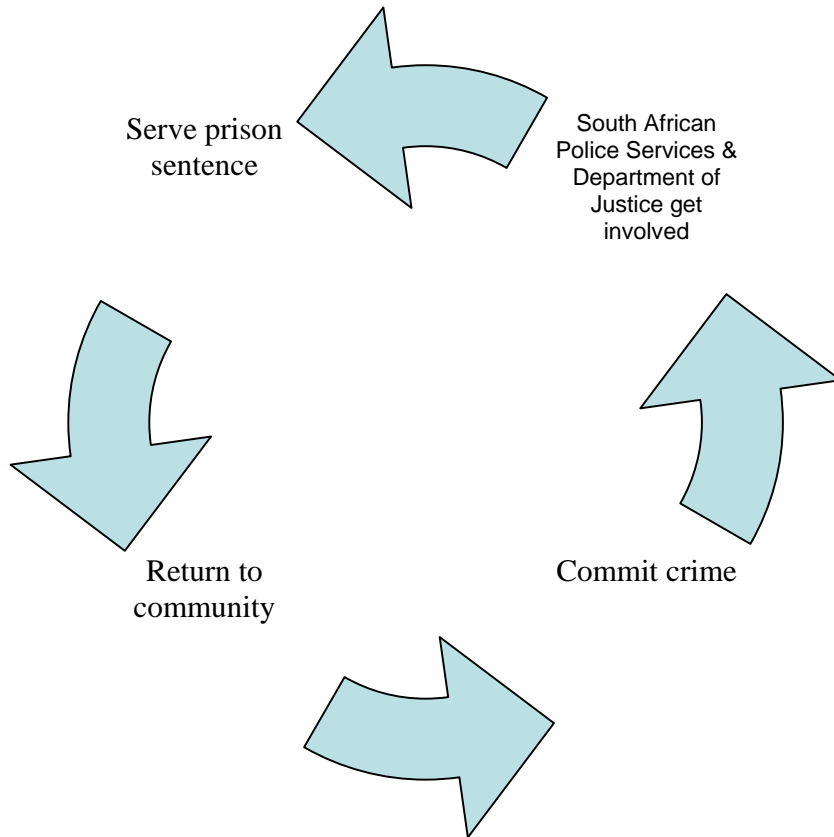
Correctional Supervision. This can only be successful with a willing victim and offender. Other offenders are sentenced to serve the full sentence in the community. The success of these non-custodial measures will have an influence on the court's willingness to consider the use of direct imprisonment as the last resort (Skelton, personal interview 2 August 2007; Department of Correctional Services Position Paper on Social Reintegration 2008). The effect on the rate of overcrowding would be enormous. This brings us back to the effect that overcrowding might have on the success or failure of the implementation of Restorative Justice in correctional centres/prisons. In researcher's opinion it will also reduce the problems of social reintegration of both offenders and victims. If offenders who committed less serious offences can continue working then they are more likely to pay restitution to victims. A challenge for Correctional Services is to ensure, in line with the White Paper on Corrections in South Africa (2005: 130), that "the offenders have a positive commitment" to take part in rehabilitation programmes. This in the researcher's opinion implies a commitment to team work between the different occupational groups of employees in the Correctional System, to ensure that offenders get the same message throughout the time they serve their sentence. This message should convince them that they are still human beings worthy of the attention and support of their communities. The message should be understood that while their acts are not acceptable and rejected in the strongest possible terms, they as human beings are not rejected. A traditional leader, Joel Lekgetho, echoed these sentiments in a personal interview where he explained that in the traditional justice system the punishment was sometimes extreme, but that the offender was never rejected. "Immediately when the punishment was over, this person was treated as a community member and shared in the meal that was prepared" (Lekgetho, personal interview 13 September 2007).

### **2.9.2 Breaking the cycle of crime**

The programmes that are offered in the correctional facilities have to address the needs of the offenders, and have to be marketed to ensure optimal participation by offenders as treatment of offenders is one of the most important functions of imprisonment (Mubangize 2001: 120). Making rehabilitation or correctional programmes available implies that the Department of Correctional Services has the necessary and appropriately trained and skilled personnel available to implement its rehabilitation programmes. In this regard the Inspecting Judge, Judge Fagan recommended already in 2005 that the Minimum sentence legislation should not be extended, as it caused amongst others, an increase in crime, as rehabilitation in severely overcrowded prisons render rehabilitation virtually impossible. Offenders have to be assessed before they are involved in programmes (Du Preez 2003: 186) to ensure that they receive therapy based on their real needs. Assessment as part of the Correctional Sentence Plan will indicate the offender's attitude about the crime and if he/she takes responsibility to repair the harm. In some cases the assessment will also indicate if the offender wants to meet with the victim and what support structures are available or have to be put in place. Making peace with victims might lead to peace with communities and the community in turn reaching out to the offender.

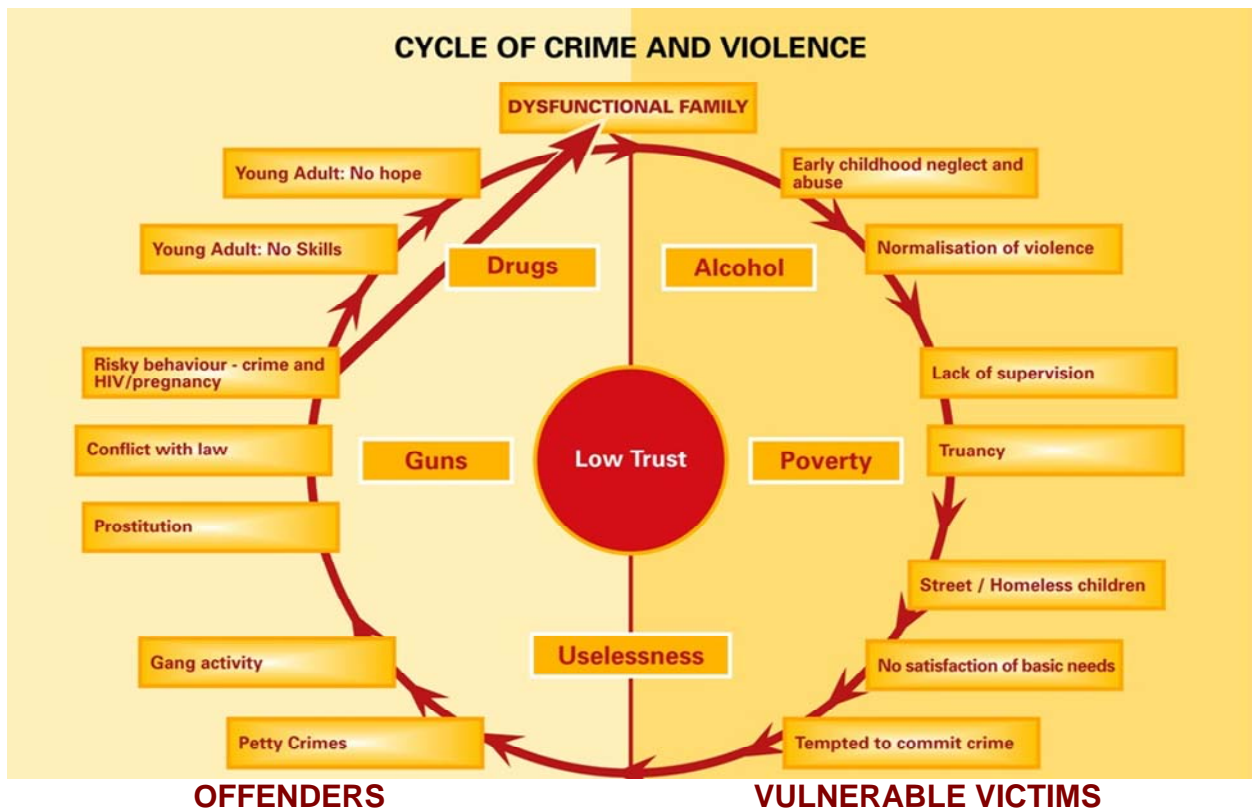
The figure that follows indicates the path followed by individuals who commit crime. It shows the flow of services in the Criminal Justice System if the person is sentenced to prison. However, the person should ideally exit the system and not return as the assumption is that the individuals who are released have changed their attitudes and will not display offending behaviour.

**Figure 3: Cycle of crime**



The following figure is a visual illustration by Holtmann (2007) about the possible factors that lead to the cycle of crime and violence.

Figure 4: Cycle of crime and violence



Source: Holtmann, CSIR

The programmes ideally target offending behaviour and are aimed at successful reintegration and prevention of re-offending. It is therefore imperative that government addresses those factors in the community and social environment that lead to crime. Figure 4 indicates that the circumstances in the community both before the individual commits crime or upon returning to the community. Factors that could influence the choices that the individual makes are supportive communities and negative or positive role models. This then, in researcher's opinion, implies that Correctional Services together with the community, other government departments and Local government, deal with the social conditions in society to enable communities to assist the offender with social reintegration after his/her release. SA Corrections Today (August/September 2006: 12) reports on the Tzaneen Correctional centre which promotes rehabilitation

projects in an effort to break the cycle of violence. This was done in cooperation with a local school and the local municipality. This specific community will be assisted in terms of the Poverty alleviation projects of Correctional Services with the community taking co-responsibility for crime prevention. Khulisa, a crime prevention initiative in South Africa, reaches out to young children in communities even before they get involved in crime to shape their minds but also to help them deal with the difficult living conditions that some of them are facing ([www.khulisaservices.co.za](http://www.khulisaservices.co.za) visited on 2008/03/15; van Selm, personal interview 8 August 2007). Khulisa also works in correctional centres with offenders in preparing them for reintegration into society. The organisation employs ex-offenders as far as possible. Khulisa builds partnerships with prospective employers to make jobs available to ex-offenders. Involving offenders in communities is in line with the keynote address of the Minister of Correctional Services in the Eastern Cape on 14 March 2008, where his department handed over donations to the Alice community. The Minister emphasised the important role of communities to help the government to break the cycle of crime ([www.dcs.gov.za](http://www.dcs.gov.za) visited 2008/03/26). NICRO is another non-governmental organization that deals with crime prevention, rehabilitation and reintegration of offenders as part of the process of social reintegration. These organisations partner with the Department of Correctional Services in their attempts to break the cycle of crime and violence. Relapse prevention best practice from other countries could be explored and if necessary be adjusted to fit the South African situation. One such programme is the Canadian Circles of Support and Accountability which focuses on supporting sexual offenders prior to and upon release. Wilson et al., (2002: 375-377) postulate that this support group recognizes the dignity of the offender as well as of the victim. It calls on society to take up its responsibility to care for offenders and protect vulnerable community members, while working towards healing and restoration. Community members volunteer their services and are not required to provide therapy, although they have to be trained to deal with different situations and individuals.

### **2.9.3 Security risk management**

The South African Correctional System is responsible to protect the public against the danger of further victimization. This implies safe and secure custody, thereby ensuring that offenders in prison as well as the employees have a sense of safety. In terms of the government's Victim Empowerment Programme, the Correctional System has to have measures in place to protect vulnerable offenders from victimization by fellow inmates. It implies that offenders have to be safe even in their cells – that vulnerable offenders will not be victimized or assaulted (Van Zyl Smith 2005:21). Unfortunately some researchers have found that vulnerable offenders are not always protected from harm (Gear & Ngubeni 2002: 16, 18, 21; Steinberg 2004). Steinberg further postulates that gangs pressurize vulnerable offenders to do certain things and that it is the responsibility of government to protect these vulnerable offenders. Ex-offenders also came out openly to talk of their own victimization while serving a sentence or awaiting trial. It would seem that the ideal of separating vulnerable first offenders from hardened criminals does not always materialise. However, the Department of Correctional Services has developed different tools to apply when measuring security risk (Monacks, director Risk Profile Management and Minister of religion, personal interview 13 August 2007). These tools form part of the comprehensive assessment that takes place when offenders are admitted either in the prison or to the Community Corrections System. Security risks and needs have to be assessed as well as the need for immediate health care and suicide risk. Certain categories of offenders are incarcerated in facilities based on the risk they pose to themselves and others. This is then also the reason why specific offenders are housed in minimum, medium and maximum-security facilities. The assumption can then be made that the employees who work in these facilities need to have specific skills to deal with the types of offenders and their own feelings about the violent nature of some of the offenses.



#### **2.9.4 Providing an environment for controlled and phased rehabilitation interventions**

If there is agreement that Correctional Services is responsible for the rehabilitation of offenders, both in prison and in Community Corrections, then there has to be an agreement about which efforts or services are needed to create an enabling environment. An environment has to be created in which the offenders can be confronted with their offending behaviour as well as with the circumstances that led to the crime. Offenders have to be assisted to deal with the consequences of their behaviour and they need to feel safe enough to explore those factors that he/she never dealt with before.

However, it is a challenge for any Correctional System to deal with the large numbers of offenders in its care. The South African Correctional System has adopted a Unit Management approach in which it divides the prisons/correctional centres in smaller units where services are made available to offenders (Department of Correctional Services Annual Report 2003/04: 43; White Paper on Corrections in South Africa 2005: 84-86). Each unit has dedicated personnel who deal with the day-to-day activities or programmes for offenders. It also implies that a structured day programme is developed for offenders so that over time they attend all the programmes as outlined in their Correctional Sentence Plan. This individualised plan is developed based on the Offender Rehabilitation Path, which is the whole process that the offender goes through from admission to release. If the offender is released on parole, then this plan is carried forward and completed when the offender reaches sentence expiry date. Right through this Offender Rehabilitation Path the Social Reintegration needs of the offender are identified, agreed upon and taken into account when decisions are made regarding the release of the offender. Successful social reintegration cannot be achieved without the cooperation of communities and the support people surrounding the offender. A more comprehensive discussion on Unit Management follows in chapter 4.

### **2.9.5 Providing guidance and support to probationers and parolees within the community**

The researcher has already mentioned that some offenders are directly absorbed into the system of Community Corrections. This creative form of punishment is referred to as Correctional Supervision, which is an alternative to imprisonment. The offender is required to do unpaid community service and house arrest usually also forms part of the sentence (van Zyl Smith 2004:235; Dissel <http://www.csvr.org.za/articles> visited on 2007/04/21). Even in Community Corrections a Correctional Sentence Plan is developed for offenders, and those from the prisons are admitted with their Sentence Plans. Supervision services are made available to guide, support and supervise those offenders from prison to adjust in their environment, for some it's a known environment, but for others it could mean a new start. People with a criminal record have to be assisted in finding employment, deal with relationships within their own family, and also deal with the attitude of the community. Supervision services have to be available also to prevent the offender from re-offending when they experience the adjustment too hard to deal with.

Community Corrections offices are established in different areas to bring services within reach of offenders, ensuring accessibility (Ntuli, personal interview, 1 April 2008). Reintegration for offenders within a Restorative Justice paradigm is much more than controlling and supervising offenders. It has to be more than surveillance and making sure the offender signs his name at the right time at a specific location (Bazemore & Erbe 2004:27). It is the researcher's view that reintegration and supervision of offenders in the community cannot happen without the direct involvement of the whole community. Correctional Services should put systems in place to profile the communities in which offenders are released. The section that deals with Supervision services in the community has to be aware of the challenges the offender will be faced with, like unemployment, difficulty with public transport, which might cause this person not to be able to

find and keep his/her job. The probation officer or supervisor also needs to understand the dynamics in the life of the individual such as family conflict, availability of drugs, gang activity and the lack of positive stimulation for offenders who have decided to make a fresh start.

When thinking of the offender's responsibility to heal the wounds of crime, it obviously means that the victims and communities should have a say in what needs to be healed (Bazemore & Erbe 2004:29).

### **2.9.6 Provision of corrective and development measures to the offender**

This is done by amongst others, developing a sense of responsibility and a rekindling of moral values acceptable to the broader community. In this, the cooperation of civil society and other government departments are solicited in strengthening the efforts of the Correctional Services, as part of creating an enabling environment.

Efforts are underway to reduce prison overcrowding and to attend to the unacceptably high crime rate. Using prisons as a last resort, especially for first time offenders (Harcourt 1975:163), will also, to some extent lead to a decline in the prison population. Newell (2000:16) shares the opinion that prisons should be used as the last resort for those who are a danger to the community and sometimes to themselves, but also states that prisons should not be projected as places of correction. The ideal is to deal with those who can change, within their communities with community support.

Through Programmes in the Correctional environment the offenders are developed holistically. Development also takes place in the form of formal education, skills development and exposure to workshops to prepare offenders for the open market after their release. This is in line with Hippchen's notion (1979: 418) that prisons should not be used to punish but to correct behaviour

and to reintegrate the offender into society. This will maximize its effectiveness and the impact of corrective measures. If the offenders can then make a living with the skills they have acquired and earn money after their release, then they might be able to repay victims and take responsibility for themselves.

### **2.9.7 Reconciliation of the offender with the community**

Reconciliation of the offender with the victim and or community is one of the desirable outcomes of Restorative Justice. In support of this the Department of Correctional Services adopted the Restorative Justice approach in 2001. Restorative Justice interventions are available in some of the correctional facilities, where offenders could attend programmes to gain more information about Restorative Justice. Approved policy is in place for the involvement of victims in the Correctional Supervision and Parole Boards. Families have to be involved throughout the process of rehabilitation to support the offender while serving a sentence but also upon release to prevent re-offending. This is to be strengthened by other support systems like faith- and community based organisations. Conflict situations in prison can also be dealt with within a restorative approach. This topic will be discussed at length in the next chapter, which deals with Restorative Justice as a response to crime.

Contrary to the statement in the White Paper on Corrections in South Africa (2005: 24) that the Correctional Services is responsible for the healing of the relationship with the victim, the researcher does not believe that it is always possible nor is it desirable in some cases. It should also not only be the responsibility of the Department of Correctional Services, as other government departments and civil society should also take up their societal responsibility to reach out to victims and offenders. If the primary victim has died as a result of the crime, the secondary victims might never be ready or able to heal the relationship with the offender. In fact, some victims might be re-victimised just by the thought of facing the offender. This is corroborated by the Managing Director

of Khulisa (van Selm, personal interview on 8 August 2007). She states that victims might sometimes need to go into therapy after being confronted with the idea of an offender wanting to talk to them or to apologise. This was also confirmed by a chief social worker in Correctional Services, who has experience in working with secondary victims who have not found healing and can therefore not accept the release of the offender (Potgieter, personal interview 15 November 2007).

### **2.9.8 Enhancement of the productive capacity of offenders**

It is important for offenders to be trained so that they can contribute to society (White Paper on Corrections in South Africa 2005: 131, 133, 136) as they face a serious disadvantage when competing for jobs, because of their criminal record. The high unemployment rate makes it even more difficult for offenders to find employment. Law abiding citizens with no criminal record equally need to be skilled in entrepreneurial skills in order to set up their own business. It is no longer possible to accommodate the South African work force through formal labour only. Caution has to be taken not to disadvantage law-abiding citizens by giving jobs to offenders and so create the impression that people should commit crime to find a job. This sentiment was echoed by the National Commissioner of Correctional Services, Mr. Petersen, in a discussion where paying compensation to victims was explored as one of the ways in which sentenced offenders can take responsibility or be held accountable. In some overseas countries like Belgium, offenders are paid market related salaries for work done while in prison, so that they can use the money to pay restitution to victims. However, one needs to take the reality of the high unemployment rate of South Africa into consideration and the government's responsibility to create jobs for law-abiding citizens. This is in line with the intention of the National Crime Prevention Strategy (1996), to prevent crime and thereby reduce victimization and the negative after effects thereof.

Courts also have to take these factors into account when sentencing – if an offender is sentenced to a very short period of imprisonment, then some aspects need to be considered. Firstly, offenders who stay in prison for relatively short periods are not likely to benefit from rehabilitation programmes. This short period is sometimes just enough for them to lose their jobs and to be affected by the negative influences in the prison. Day parole, periodic sentence and community service are some of the alternative sentences that might be more appropriate.

### **2.9.9 Promotion of healthy family relations**

Successful reintegration requires that the offender as an individual is restored, but also that his relationships with his family and the community in general are restored. Reconciliation with communities is the ideal, but might not be possible between a specific offender and a specific victim. Communities cannot be expected to support offenders if offenders do not make an effort to restore what has been broken through crime. Offenders have to show consistent changed behaviour over time, spend more time with the family, decline invitations from criminal associates, resist peer pressure and be responsible. The staff component and the availability and impact of programmes will be discussed in more detail in chapter 4 as part of the discussion on creating an enabling environment through a multi-disciplinary approach.

One way of restoring relations is to promote family contact. The White Paper on Corrections in South Africa (2005: 76) is clear that not even disciplinary measures should prevent an offender to have contact with the family. Offenders are entitled to 45 visits per annum, which is less than one per week over a year. It would be interesting to understand what informed the number of visits, as ideally one would want to encourage families to visit at least once a week, in the interest of strengthening relationships. This excludes legal visits and visits arranged by social workers, psychologists or spiritual care workers, for the purpose of doing family therapy. In preparation for parole the support and

assistance of family is solicited. The offender is entitled to weekend visits at home, at an approved address, within certain intervals, in preparation for reintegration. In this regard partnerships are formed with civil society organizations like faith based organizations, non-governmental organizations, which also render professional services to offenders.

### **2.9.10 Assertion of discipline within the correctional environment**

Restorative discipline can be applied as is done in Belgium Corrections (Coetzee 2003 b: 6). Restorative Justice can be used to deal with disciplinary hearings in prison. Offenders can support each other and also take part in decision making about what sanctions to use. The community in this case is the prisoners and staff in that specific prison or unit. Community does not only refer to a geographic location, but could also be a community of care according to Zehr (2002a:27). However in a prison situation the potential of revenge attacks must be considered. Again, not all cases are suitable to be dealt with through a Restorative Justice process (Zehr 2002 a: 11).

### **2.10 Summary**

In this chapter the background of prisons had been discussed. An overview of the early prison conditions suggests that solitary confinement and hard labour were the two main characteristics of the prison systems in earlier times. It is interesting to note that prisons were not initially meant for sentenced offenders. However, a punitive philosophy developed with time, which allowed for capital and corporal punishment, harsh prison conditions and prison staff acting as if they take revenge (Hippchen 1979: 405). Overcrowding had already been a problem even during those earlier times. For some prison managers the purpose of imprisonment was rehabilitation (Hippchen 1979: 405), while others believed in deterrence through hard labour and very strict rules. Prisoners had no freedom,

not even to talk to each other and it was believed that the silence would bring them to a point of repentance.

More prisons were built in different parts of the world; some based on the earlier American systems known as the Auburn and Pennsylvania systems. The South African prison management was greatly influenced by amongst others, the British regime. The earlier South African prisons resorted under the Department of Justice and were only finally removed and became an independent Department of Correctional Services in 1996. Prisons were initially used for awaiting trial prisoners or those with outstanding debts, but in South Africa it was also used for the incarceration of political prisoners.

Some researchers are doubtful if rehabilitation, treatment or punishment have indeed a positive effect on offenders, but whatever sanction is imposed, we need to ask what it does for victims. Imprisonment focuses on the offender, who might decide to lead a law-abiding life because of the negative prison experience, but the Restorative Justice approach requires that the needs of victims be prioritized and addressed. Restorative Justice, unlike retributive justice does not only look at what laws have been broken, what punishment is due, but rather who has been harmed and what the victim needs to be healed (Zehr 1995).

Restorative Justice can be applied in different stages of the criminal justice process, namely pre-trial, pre-sentence, as part of sentencing conditions and or while the offender serves a prison sentence (Naude, Prinsloo & Ladikos 2003a: 10-22).

Some of the reasons why rehabilitation fails are because of the extremely punitive environment and insufficient resources available for reintegration (Marshall 2002:103). Marshall also postulates that some staff members have a negative attitude towards rehabilitation. This is also in line with the sentiments of the former President, Nelson Mandela as quoted in the 2005 Budget Vote



Speech of the Minister of Correctional Services, Ngconde Balfour: *“It is good to see that we have moved away from the culture of apartheid where prisoners were inhumanely treated. By denying the humanity that is in all of us, it robbed prisoners of their dignity. We have to create a culture that will motivate offenders to become law-abiding and productive citizens. They need to be reintegrated back into the community because we want them to contribute to the good of all. Of course, imprisonment is a punishment, and rightly so. Those who break the law must pay the price. But we should also use it as a starting point for development and a process of healing. Offenders are human beings too, they are our brothers and sisters, our sons and daughters who have disappointed us. They have a right to a chance to unlock their potential to better themselves”.*

This sets the tune for improving conditions in prison, but also to create conditions that are conducive for the healing of offenders. Training programmes are sometimes compromised because of the dangerous prison environment as experienced by some civil society organizations presenting programmes in prisons (Henkeman 2002: 65). The researcher will argue in this report that Restorative Justice is one of the vehicles to get to the ultimate goal of healing not only offenders and victims, but also entire communities.

Deterrence as a goal of punishment fails because of its emphasis on pain and not rehabilitation or treatment (Marshall 2001:104). The death penalty in Biblical times was meant as deterrent according to Deut 17:12-13 and Rom 13:3-5. According to Marshall (2001:105) others were supposed to be afraid when they hear about the punishment, but he questions long-term abstinence if governed by fear. Marshall further postulates that deterrence will be more effective if punishment was decided upon by the community and family rather than a distant authority. A traditional leader Joel Lekgetho agreed with this in a personal interview on 13 September 2007. It also needs to be kept in mind that serious crimes like assault and murder are often committed in the spur of the moment and that the offender does not necessarily think about punishment at the time.

What might deter one might not deter the other person and authorities have to determine how severe the punishment has to be to be an effective deterrent (Marshall 2001:105).

Restorative Justice as one of the responses to deal with crime will be discussed in the next chapter.

## CHAPTER 3

### RESTORATIVE JUSTICE AS A RESPONSE TO CRIME

*Restorative Justice focuses on the harmful effects of offenders' actions and actively involves victims and offenders in the process of reparation and rehabilitation (Van Ness & Strong 2002:27).*

#### 3.1 Introduction

*"Despite a high-level launch of restorative justice in 2002 and a clear commitment to it at the strategic policy level, there seems to be very little implementation and integration by the DCS. Where implementation and integration are taking place, this is largely owing to passionately convinced individuals in a particular prison, or to efforts by NPO's. There was also some concern that restorative justice was too often associated solely with Christian chaplains, so it was therefore perceived as irrelevant by those who do not identify with this religious group"(Skelton & Batley 2006:115).*

Hargoven (2007: 89) shares this view and cautions that talk about Restorative Justice and actual implementation is far apart, and that the Criminal Justice System does not seem to have assumed a significant role as yet. It is against this background that the researcher wants to explore in this and the next chapter Restorative Justice as an option offered to sentenced offenders (Hagemann 2003:221) as part of rehabilitation and correcting of offending behaviour within an enabling environment. Rehabilitation was initiated as a more humane approach as prison conditions were seen to be inhumane and only for slaves and those awaiting execution (Marshall 2001:100). The previous chapter dealt with imprisonment as a response to crime, within a retributive paradigm, although it was meant to be less punitive. Wright (2003:3-4) states that the punishment now became "doubly invisible" - the emotional scars were not as visible as the scars from physical punishment and secondly, the offenders were behind high walls and iron bars, out of sight from the community.

In this chapter the philosophy of Restorative Justice is explored which emphasizes that crime harm victims, and the effect of crime on offenders and communities is explored. A discussion on the background gives some insight on where and how Restorative Justice had been implemented from the earlier times, confirming that it is not a new programme or approach (Naude, et al. 2003b:1; Hahn 1998: 155).

The researcher will argue that the principles, values and objectives of Restorative Justice do not change, although it can be applied in different situations with a variety of crimes, with different role players. In this case it is implemented with sentenced offenders.

All role players, namely the victim, offender, support systems and government should be actively involved in the entire Criminal Justice process. The government should ensure that the law of the day is upheld but the community should take responsibility for peace keeping (Naude, et al.2003). Van Ness & Strong (2006:46) agree with this notion in their explanation of the principles of Restorative Justice, which amongst others, heal victims, offenders and communities that had been hurt by crime. It also wants to actively involve these role players as crime often leaves the offender even more alienated, the victim disempowered and everybody more damaged (Luyt 1999:68). Often the actual victim is not interested or available, but the community in general is victimized by crime, and therefore needs to form part of Restorative Justice interventions. The study will also focus on the role that families and communities play and should be playing in the healing process of offenders and victims. It intends to look at the challenges faced by the personnel of the Department of Correctional Services who are currently involved in the presentation of any one of the Restorative Justice interventions to sentenced offenders in prison.

### **3.2 The philosophy and background of restorative justice**

The philosophy is generally built around three ideas namely crime affects victims, offenders and communities. Not only government, but also victims and communities have to be actively involved in the Criminal Justice process. With the promotion of justice, government should take responsibility for law and order while the community takes responsibility for peace. Philosophy according to Crawford and Newburn (2002:19) refers to Restorative Justice as a way of dealing with conflict (1998:324). This approach is internationally acknowledged.

The Arab, Greek and Roman civilizations acknowledged harm to victims where crime was committed (Van Ness & Strong 2006:7). This is evident from the requirement of compensation to victims (Cilliers 1984). Even in the Asian world Confucius (551-479 BC) then already had some strong thoughts regarding compensation for victims. Tribal communities also used compensation as a way of dealing with disputes, so that victims do not take revenge (Bottligiero 2004:14).

In overseas countries like New Zealand the Aboriginal people practiced Restorative Justice as a way of life (Zehr 2002a:30) – it seems to have been part of the normal way in which they conducted themselves (Roach 2000:256). Zehr (2002a: 4) further postulates that Restorative Justice officially became an integral part of the Juvenile Justice System in New Zealand since 1989. In the modern Criminal Justice System the application of Family Group Conferencing (FGC) with young offenders allows decision making about consequences of crime by a group of people including the offender's family and the victim and victim's family. The crucial element of this meeting is for the offender to hear about the harm to the victim and to take responsibility for his/her actions. The Victim Offender Mediation model (Crawford & Newburn 2003:25; Zehr, Pranis & Gorzyk 1997) was initially, unintentionally, practiced in Ontario, Canada in 1974, when offenders were taken to their victims to apologize and to do some form of community and repair work to the victims' properties (Marshall 2001:3; Griffiths

1999:279). Under the influence of alcohol these two young men vandalized the property of fellow community members (Van Ness & Strong 2006:27). Yantzi a volunteer and Worth a probation officer in an unprecedented move recommended in their pre-sentence report that the offenders should face their victims and apologize to them. The magistrate agreed and postponed the case for three weeks to allow Yantzi and Worth to go with the offenders to all the victims. They got an account of the damage and costs and submitted it to the court. As part of the court order the offenders had to pay a fine and do 18 months probation (Muntingh 1993:2). A dialogue with each one of the victims and an order to repair the damage and pay the costs, formed part of their sentence (Van Ness, Morris & Maxwell 2001:4, 7; McCold 2001:43). According to Johnstone (2003:2) this incident relates to the heart of Restorative Justice. Victims got a chance to tell the offenders about their negative experiences resulting from the crime, referring to harm physically, emotionally and financially. The offenders got a chance to understand the extent of the damage that the crime caused which might motivate them to offer some sort of reparation and even an apology. Restorative Justice invites full participation of victims, offenders and communities in an effort to heal what was broken through crime. Offenders are expected to take direct responsibility. The community should prevent further crime. In the case of Victim Offender Mediation with sentenced offenders, it is equally necessary to get the voluntary cooperation of both victims and offenders and for them to agree about the harm and what would be needed to heal the victim. The offender has to take responsibility (Hagemann 2003:228). The White Paper on Corrections in South Africa (2005: 80-81) acknowledges the need for offenders to also be restored, as they might have been victimized before.

The background of Restorative Justice can also be found in the background of how a victim was compensated when a crime was committed. The victim and his/her family used to be the central and most important role players to reckon with when decisions were taken on how to deal with the crime. Initially,

communities and families usually dealt with crime, mainly in taking revenge and to seek compensation from the offender. The tribe or the family of the victim not only took revenge on the offender as an individual, but often also targeted the family of the offender. The responsibility was therefore upon the offender and his/her family to deal with the crime to prevent a cycle of revenge and violence (Van Ness & Strong 2006:7). Barnes & Teeters (1959:288) make the following statements about how traditional communities used to deal with crime:

- The family of the victim experienced the crime as an attack on the entire family
- The objectives of revenge were not based on punishment but on retaliation
- All members of the victim's family had to take revenge when one of the family members suffered because of crime
- The group/family of the offender was held responsible for the crime – all of them had to make a contribution to compensate the victim
- The family/group could be punished if the actual offender could not be traced
- The motive for the crime and or pre-meditation was not taken into consideration
- The group did not have any interest in crime against members of another group

Breaking the cycle of crime in today's Correctional System seems to be the responsibility of government, as indicated in the White Paper on Corrections in South Africa (2005: 74) and was also discussed in the previous chapter. The researcher argues that it should be a shared responsibility between government and civil society.

Revenge was based on the *lex talionis* principle where the offender had to suffer the same way the victim suffered. In this regard Zehr (1995) professes that this

principle was often misinterpreted and should rather be seen as a control measure to punish proportionate to the offence. In the primitive time it often happened that after the victim's family retaliated, another attack might come from the offender's side because of a perception of unfinished business. Barnes & Teeters (1959:288) profess that the extent of revenge decreased as communities developed and became modernized. Compensation started to replace revenge.

The **Code of Hammurabi** (1775 BC) was one of the earliest punishment models (Cilliers & Cole 1996:155; Zehr 2003b: 74). Its objective was to protect the weak from oppression and ensure that restitution is paid to the victim (Van Ness & Strong 2006:7). Wallace (1998:4, 309) postulates that the Code of Hammurabi established or prescribed rules for theft, sexual relationships and interpersonal violence. He links this to healing of the victim based on this Code, which is also central in Restorative Justice. In this era power was given to the state to decide on how to punish the offender which intended to replace blood feuds (Wallace 1998:4). In those days it was expected of the offender to pay compensation to the victim (Bottligiero 2004:15). It was not commonly expected that the state should pay compensation to the victim. The Code focused mainly on severely punishing the offender in the form of retaliation (Bottligiero 2004:15) and not necessarily on benefiting the victim. This is contrary to the intention of the current paradigm of Victim Empowerment in South Africa, which seeks to prioritise the needs of victims. Zehr (2002a:21) professes that retributive justice asks what law has been broken, while Restorative Justice is more concerned about who was hurt and what needs to be restored/healed. The severity of the punishment was meant to be a deterrent to potential criminals, as is the objective with deterrence in the modern Criminal Justice System, which is discussed later on in this chapter. In this era the religious power was subject to secular power.

During the **Mosaic time** crime was viewed as an attack on the religious order of the time according to Korn & McMorcle (1959:380). The response to crime was based on revenge (Hippchen 1979:405), according to the principle of "an eye for



an eye". What was wrong then, like murder, perjury and theft (Wallace 1998:5) is also punishable by the laws of today. Gould (1979: 427) is of the opinion that revenge on the offender makes him experience his punishment as unfair and could lead to more revenge. The response to crime was explained and portions of Scripture are quoted:

*Exodus 21:18-19 If there is a fight and one person hits another with a stone or with their fist, but does not kill him, he is not to be punished. If the man who was hit has to stay in bed, but later is able to get up and walk outside with the help of a stick, the man who hit him is to pay for his lost time and take care of them until he gets well.*

*Exodus 21:22-25 If some men are fighting and hurt a pregnant woman so that she loses her child, but she is not injured in any other way, the one who hurt her is to be fined whatever amount the woman's husband demands, subject to the approval of judges. But if the woman herself is injured, the punishment shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.*

Both these portions of Scripture allow for compensation to the victim. Retribution and revenge were substituted in the New Testament with the command to love even those that caused you harm (Bottligiero 2004:17). This is discussed as part of forgiveness in chapter 7, both from a Muslim and Christian perspective.

Deut 22:13-19 describes what should happen in a case where a wife is falsely accused by her husband. If the father proves the accusations to be false, then compensation is to be paid to the father of the bride. The fact that the family receives compensation is contrary to the modern legal system where fines are paid to the state and not to the victim. However, the Asset Forfeiture Unit in the South African National Prosecuting Authority does have a fund where monies recovered from criminals are channeled to services for victims.

The **Roman Law** (Schafer 1977:9) made provision for specific fines for specific crimes especially in cases of assault. Where someone did not pay outstanding debt, the debtors had the choice of chopping up the body of the offender and share it amongst themselves, or to sell the offender and his family as slaves. Schafer (1977:10) further describes the repayment that the offender was forced to make. If he was caught stealing he had to pay double the value of the stolen article to the victim. If the stolen goods were later found after searching, the offender had to pay three times the value (Van Ness & Strong 2006:7). If he refused that his house be searched, he had to pay four times the value. If the offender used force when stealing, he had to pay five times the value of the stolen goods. Roman Law was strict in terms of ensuring reparation and compensation to the victim (Bottligiero 2004:18).

The **Dutch** law differed from the Roman law in that the compensation was limited to the victim and his next of kin. The amount payable depended on the seriousness and nature of the offence as well as the race, social stand, background and age of the offender. The law also implied that compensation to slaves was less important than compensation to a free man. If the offender does not pay the compensation he could lose the protection and membership of his group. Conditions in prison during this time were appalling (Marshall 2001:13). Marshall also describes it as "...dark, disease-ridden, overcrowded places".

The **Dutch law** was also applied in the United Kingdom. There were specific rules on the amounts payable to the victim in cases of bodily harm. It seems in this era the system was developed where compensation was paid to the state and no longer to the victim and this tendency occurred more and more frequently. However during this era crime was on the increase and the right of the victim to compensation diminished progressively. The state became more and more powerful. The focus on the victim was now shifted to the offender. The way the state and courts dealt with crime took away the care that used to be shown to the victim with regard to compensation that the victim received. The

victim also previously had a say in the way the family dealt with the offender. When the state took over, the victim was left powerless and marginalised in the criminal justice process. This explains why since about 50-60 years ago movements started to restore power to victims of crime, and specifically women as victims (Wallace 1998: 13) of crime perpetrated by men. It was understood that the victim needs to be empowered to take his/her rightful place in dealing with the offence. The victim is now encouraged to take back his/her power that was taken away by the offence. This powerlessness was exacerbated by the adversarial way in which the Criminal Justice System dealt with crime.

The trend of minimizing the role of the victim continued during the Renaissance where focus was placed on the way in which the trial was conducted rather than on punishment itself. The position of the victim improved gradually during the Classical era with the influence of Beccaria. Coldwell (1965:172) states that Beccaria had in mind *“the object of law should be the greatest happiness of the greater number”*. The Classical school emphasized the crime and not the criminal, which had a positive effect on the position of the victim.

During the 19<sup>th</sup> century the plight of the victim was highlighted or brought to the fore through the efforts of Bentham (1748-1832). He emphasizes the responsibility of communities to take care of victims of crime and to protect them.

Schafer (1977:24) explains resolutions that were taken during this era regarding the care for victims of crime as that modern law did not adequately make provision for compensation of victims; the income of offenders in less serious cases should be used as compensation to the victim. A special fund from fines was proposed to pay victims. This system is currently in use in American states. In South Africa attempts have been made over the years and research conducted (Cilliers 1984) to compensate victims, but have not yet fully materialized. The South African Law Commission through Project 82 developed guidelines for the compensation of victims of crime. Even the Truth and

Reconciliation Committee in South Africa attempted to pay some compensation to victims of apartheid crimes. However, there are still claims outstanding and many victims still have no answers to some of their questions.

Compensation to victims in the 20<sup>th</sup> century was discussed, amongst others in Brussels in the Sixth International Penitentiary Congress. Although no definite decisions were taken (Edelhertz & Geis 1974:9), the Congress was positive about the rights of victims of crime. A book in 1948 by von Hentig “The Criminal and his victim” again highlighted the need for attention to the needs of crime victims. Fry (1957:124-126) went back to the way in which primitive communities dealt with crime, in that the offender directly paid the victim. The British and New Zealand government were inspired by Fry’s perception of government responsibilities and were the first to implement compensation systems for victims of crime.

### **3.3 Restorative Justice Principles**

Marshall (Johnstone 2003:21) describes Restorative Justice as a set of principles rather than a particular practice. The principles are:

- *Making room for the personal involvement of those mainly concerned (particularly the offender and the victim, but also their families and communities)*
- *Seeing crime problems in their social context*
- *A forward-looking (or preventative) problem-solving orientation*
- *Flexibility of practice (creativity)*

In order for any Correctional System to make these principles a reality, there needs to be a paradigm shift in the way in which it deals with the offenders in its care. The system, and therefore the employees have to start seeing offenders

as individuals, and not only as a group of criminals. These individuals should also be assessed taking into consideration their family background and all the relevant factors that influence their behaviour. The problems associated with crime have to be seen in the context of the resources or lack thereof in the community of origin. The problem of crime also has to be viewed within the context of the availability of jobs or unemployment, in the way people are socialized and the message that is put forward by the role models in communities. Children have to be taught to respect other people and their property – more through modeling of behaviour than by telling them to behave differently from what they see. Also, if children are not treated with respect, then they cannot learn to respect themselves or others. This is in line with what Grobler (personal interview 17 December 2007) says regarding the role of the Prison Fellowship ministry that they, amongst others, deal with the offender's self respect or lack thereof. He argues that it is possible that some offenders had not been respected throughout their lives and even the way in which the Criminal Justice System dealt with them, was disrespectful to them as human beings. McAlindin (2007:63) postulates that programmes in prison should focus on issues such as power, attitudes towards women and children and respect in general.

The third principle, namely that it is forward looking or preventative and problem solving is particularly relevant if one looks at the vast number of vulnerable young people in communities. The way in which communities deal with conflict directly affects the way in which young people will respond to personal conflict. Opening the recent newspapers gives an understanding of the extent of conflict and challenges the school going youth is exposed to.

- “Stray bullet kills top pupil (12). Girl dies after being caught up in shootout between guards, robbers”. This happened on the way to school, with other learners also in the car (Pretoria News, 13 February 2008:2).

- “City school on knife edge. 300 pupils stage sit-in after stabbing incident during fight” (Pretoria News, 19 February 2008: 1).

It is the researcher’s opinion that claims that Restorative Justice can reduce repeat offending (Neser 2001:47; Naude, Beeld 9 April 2008: 17) can only be substantiated when follow-up studies are done with offenders and the movements of offenders can be traced (Braithwaite 1998:28; Umbrecht, et. al 2000:215-229). Longitudinal studies might be useful, although costly. An effective identification system is needed to make sure that offenders who use aliases are identified and that “double booking” does not take place. The Department of Correctional Services is currently developing a system where unique features like the retina can be scanned, together with fingerprints and Identity documents. Hahn (1998: 135) refers to the following as principles of Restorative Justice: to hold the offender directly accountable to the victim and community, the offender to take responsibility to make things right, provide access to the Criminal Justice System to victims of crime and to encourage communities to become involved in supporting victims, holding offenders accountable and to assist offenders with the reintegration process.

### **3.4 The Values of Restorative Justice**

Van Ness & Strong (2002:55-131; 2006:48-50; Dignan 2007: 310-311) describe the values of Restorative Justice. The researcher will now discuss these values as part of possible interventions in a prison situation. Where possible these values will be linked to the standards for restorative justice as outlined by Frank & Skelton (2007).

- Encounter: meeting, narrative, emotion, understanding and agreement
- Inclusion
- Amends
- Reintegration

Internationally the following interventions are most commonly practiced in the corrections environment (Zehr 2002 a: 53).

- Restorative Justice Information Programme
- Victim Offender Mediation/ Victim-offender reconciliation
- Victim impact panel
- Circles of Support (Zehr 2002 a: 54)

### **3.4.1 Information Programme**

Victims and offenders should not be coerced into taking part in a Restorative Justice process. However, some offenders might refuse to attend any programme and might never know of the possible benefits. The relevance of the programme, no matter how good, would mean nothing to somebody who is generally defiant and whose only intention is to challenge authority. The level of free choice could be limited for offenders when courts make a ruling that offenders should attend certain programmes as part of a sentence or a plea bargain. The Department of Correctional Services also refers to compulsory programmes in its strategic plans. The programmes could be intended to address an addiction, or for rehabilitation purposes, of which Restorative Justice could form part. Ideally, an offender should go into programmes out of their free will, but it is possible that an initially resistant offender could benefit from therapy (Skelton, personal interview 2 August 2007). Initially offenders in prison might resist attending Restorative Justice programmes, but if they do not know what it entails, then they can essentially not make an informed decision. So while they might be forced to attend initial information sessions, they might end up choosing to meet with victims to answer questions, explain their own circumstances and even offer an apology. During semi-structured interviews with correctional officials and Restorative justice service providers it was confirmed that the process of Restorative Justice can be so powerful that some offenders end up choosing to go through the full process to take responsibility for the crimes they

have committed. It could also be so powerful that it eliminates those with wrong motives. The researcher views the Information programme as a necessary part of the preparation for the offender. Of equal importance is the preparation of the victim if an encounter is envisaged. The following practice standards as described by Frank & Skelton (2007) are relevant and are quoted:

Standard no. 7: *The parties and their support persons must be thoroughly prepared for the restorative justice process, which includes the provision of information about their rights and responsibilities within the process.* The victim is entitled to information as indicated in the Victim's Charter (2004), but standard no. 7 makes provision for information to be given to the support systems of both offender and victim. This in the researcher's opinion is necessary to help them to make informed decisions about their participation in the process.

Standard no. 8: *The parties should be informed that they are permitted to withdraw from the process at any stage and opt instead for the case to proceed through the criminal justice process.* Any process or Restorative Justice encounter is by its very nature emotionally loaded, and the facilitator should be prepared that some people might at a later stage during the process feel that they can no longer deal with that. They are then protected by standard no. 8.

This obviously refers to the pre-sentencing stage, but is equally relevant to the sentenced offender and his/her victim who are also entitled to withdraw if they no longer want to meet in a face- to-face encounter.

Standard no. 9: *The restorative justice encounter should be arranged at a time and place acceptable to all parties.* In the case of a sentenced offender the encounter will probably be held in a correctional facility and processes should deal with the preparation of the victim. However, in cases where an offender is allowed to go on week-end leave, the possibility of an encounter in a community facility can be explored. Mrs. Van Zyl, the Eastern Cape regional coordinator of



Development & Care in Correctional Services, confirmed that some of their sessions where offenders apologized to the community and victims were held outside of the correctional centre (Van Zyl, personal interview, 5 March 2008).

#### **3.4.2 Victim Offender Mediation/ Victim-offender reconciliation/Encounter**

Crawford & Newburn (2003:25) profess that the revival of Restorative Justice was actually brought about by Victim Offender Mediation programmes. Restorative Justice is also not new but a revival of traditional practice of indigenous communities in Africa, Canada, New Zealand and others. Elechi (1999:359-375) explains how the people of Nigeria deals with crime in the Afikpo indigenous systems, outside of the formal Criminal Justice System. Community members and relatives get involved in dealing with crime. Their intervention includes convincing the offender to apologise to the victim and pay restitution. Elechi argues that the formal Criminal Justice System violates the United Nations Declaration of Basic Principles of Justice for Victims and Abuse of Power, by not treating them well and violating their rights. Van Ness & Strong (2002:57-59; 2006:49-50; Zehr 2002b:44-45) give an account of the values of Restorative Justice of which encounter is included and explained as the meeting between the affected parties in a safe environment. The element of empowerment is one of the values of Restorative Justice as the parties are given an opportunity to contribute to the outcome of the encounter. According to Morris (1989:119), the *Victim-offender reconciliation programs bring victim and offender together in an effort to heal wounds, and bring something constructive for both out of a mutually negative start*. This is a face-to-face meeting between victim and offender (Mc Cold 2001:41; Naude et al., 2003:11; Liebman 1999:4; Umbrecht 1985: 98) although in some cases it could also include secondary victims facing the offender. Where victims prefer not to meet the offender, the mediator can still carry the sentiments between the parties and still reach a negotiated agreement (Crawford & Newburn 2003: 25; van Selm, personal interview 8 August 2007). Van Selm explains that Khulisa quite often deals with cases where the victim is

still very angry and hurt and feels that the offender deserves to spend the rest of his/her life in prison – that justice was served. It is for this reason that mediators should be careful not to make any promises to either the victim or offender about a possible outcome. Braithwaite (2002 a: 74) adds that the family and supporters of both victim and offender are invited to the meeting, and the mere presence of families could even confront offenders with their denial (Braithwaite 2002:86). It is usually the people who care most about the victim and offender and are respected by them that attend these meetings. According to Zehr (2002 a: 27) this could also include extended family and “communities of care”. The researcher’s understanding for the involvement of the families is because, like most other “normal” people, offenders are also part of families and communities. The majority of sentenced offenders will eventually be released and will have to fit into some community. Some might not necessarily go back to their community of origin, because of a number of factors, but the majority goes back to their families and communities known to them. These families and communities are expected to support the ex-offender upon release. Even offenders in urban areas who are not part of their original family become part of a network of relationships with neighbours (Zehr 2002 a: 27), co-workers, fellow hostel dwellers, etc.

Quite often relationships are seriously damaged even before incarceration as a result of the criminal life style (Zehr 2002 a: 20) and other factors. Some offenders are rejected while serving their sentence and have no real support system during their time in prison. It would then be very difficult for any offender to engage in Victim Offender Mediation (VOM), without a support system in place. For the offender to understand the harm experienced by the victim, he/she needs to experience or understand that his/her own suffering or victimization is also acknowledged (Zehr 2002 a: 30-31). Family members or other support people are invited to Victim Offender Mediation sessions in prison and in the pre-sentencing stage (Naude et al., 2003:11). Family Group Conferences (FGC’s) are conducted in some instances. The number of

attendees will differ as it depends on the circumstances, availability, and desirability and most importantly, on what the victim and offender feel comfortable with. This type of meeting is also referred to as post sentencing mediation (Van Ness, Morris & Maxwell 2001:9). The researcher has alluded earlier to the fact that there can be no blue print on how the process will unfold (Zehr 2002 a: 38), as it will depend on the cultural and religious practices of those involved (Zeller 1999:356). Zehr (2002 a: 62-63) contends that restorative practices are “context-orientated”. Some elders might want to perform a certain ritual; others might want to open the session with prayer or some form of dedication (Braithwaite 2002:143). Mediators must be culturally aware and prepared to deal with that. Giffard (2002: 36-37) advocates for a level of flexibility within the confines of the security environment.

During the encounter the offender is confronted with the human impact of his/her actions. He/she is in a position to answer questions that the victim might still have concerning the crime (Zehr 2002 a: 26; Naser 2003:50; Umbrecht 1985: 99, 101-102). The Victim Offender Mediation session/s is preceded by a relatively long period (it could be months) of preparation of the victim and offender as well as their support systems where appropriate. The session is to be managed by a properly trained mediator (Naude et al., 2003: 11; Van Ness & Strong 2002:57) who will be unbiased and impartial (Edgar & Newell 2006: 3) and allow all parties the opportunity to explain their side of the story (Bazemore & Erbe 2004:34; McCold 2001:41). The needs of the victim are prioritized (Muntingh 1993:1), while the offender is at the same time encouraged to take responsibility for the harm that was caused by the crime and as far as possible to make amends (Morris & Young 2000:17-18; Tshiwula 2001:140; White Paper on Corrections in South Africa 2005: 80-83), or at least offer an apology (Naser 2003:50).

Victim Offender Mediation (VOM) confronts the offenders with the human impact of their behaviour, which is not the case if prosecuted in the retributive system.

Muntingh (1993:1-2) states that Victim Offender Mediation is a generic term and in some cases is referred to as victim offender reconciliation usually in a religious set-up. Researcher wants to caution that reconciliation is not always possible and the parties or role players should not have unrealistic expectations. Some cases are just not suitable for Victim Offender Mediation (Umbrecht 1985: 98). In the same vein, victims should not expect or be promised that the offender will apologise and ask for forgiveness, because if that does not happen, it could constitute secondary victimization. However, it is also possible that an offender might still deny full responsibility, but the presence and shame of his mother or another significant person in his life, might bring him/her to apologise (Braithwaite a 2002:86). Braithwaite further explains that offenders, who might use intoxication as an excuse for committing the crime, might be confronted by his/her very own family about previous similar incidents. White-collar criminals, for instance would not like their fellow church members to know about the crime. Restorative Justice, and specifically these types of meetings or conferences, brings together the very people offenders would prefer never to meet. Proper preparation is again emphasized.

In South Africa it is allowed that Victim Offender Mediation could be initiated by offenders in prison (Lai Thom, personal interview 4 September 2007). In the United States of America it is initiated by victims themselves and or the surviving family of deceased victims (Hagemann 2003:224; Umbrecht 2001a: 256-258). The danger of offender- or prison initiated Victim Offender Mediation is that victims might have moved on and they prefer not to be reminded of the crime and its painful consequences (Neser 2003:50). Case studies from the Correctional System in the United States of America indicate that Restorative Justice is possible with serious cases (Zehr 2002 a: 4), even with offenders on death row, and that Restorative Justice can be combined with retributive justice (Morris & Young 2000:24-25). Umbrecht, Bradshaw & Coates (1999:321-343) explain that victim-offender-mediation is not meant only for non-violent crimes. In the United States of America and Canada the authorities deal with requests by victims of

severe violence to have an encounter with the offenders, and it was found to be a rewarding experience for most participants. Generally, victims have the need to tell offenders about the impact the crime had on them, and also to ask questions that in some cases only the offenders could answer.

Caution that comes up time and time again is that Victim Offender Mediation should never be attempted if offenders are not fully cooperative. Bad administration of programmes could also make things worse rather than better for victims (Braithwaite 2002a:47). The importance of cooperation between the different sections and disciplines in the Correctional System cannot be over-emphasised.

Reports from different countries emphasise that the success of Victim Offender Mediation depends largely on the preparation and skills of a suitably trained mediator (Zehr 2002 a: 47). Luyt (1999 a: 73) postulates that formal training is needed for the mediators. It would then be appropriate at this stage to discuss the preparation as well as the tasks and responsibilities of the mediator, based on practice and research in other countries. Training and skills development of Restorative Justice practitioners both in the Criminal Justice System and in civil society is in researcher's opinion crucial. There needs to be standardized general training on the concepts, principles and values of Restorative Justice. The different sectors should then also develop sector- specific training. Personnel in Correctional Services should be trained in conflict resolution, develop a non-judgmental attitude and be able to assess a situation correctly. Correctional officials are required to read a situation and be able to diffuse potential conflict. In terms of their involvement in Restorative Justice processes, like victim-offender-mediation, there should be standards regarding the screening of offenders, the preparation needed from offenders and referral to external organizations to do assessment and preparation of victims. Working with offenders who have committed serious crimes, requires more intense training and supervision, as well as experience. Advanced training for mediators is

needed to deal with acceptance of offenders who have committed serious crimes. They also suggest important pointers for mediation practice such as preparation of both offender and victim; clarifying of expectations, giving a choice to victim and offender to participate, and even to withdraw at any stage during the process. Preparation consists of many steps as the victim and offender have to be prepared on possible rejection from the other party, possible negative reactions, which could be experienced as victimization. An apology from the offender might be expected by the victim, and if it is not forthcoming, the victim might be re-victimised.

Most victims have never been inside a prison and have to be properly briefed about procedures and protocol, but also about the atmosphere inside the prison. The extent of preparation needed will be determined by the emotional make-up of the role players, and requires the establishing of a trusting relationship between the mediator, counselors and with the victim and offender.

Hagemann (2003:225-227) gives an account of the training programme that is presented to offenders in a prison in Hamburg, Germany. The name of the programme, Focus on Victims, is self-explanatory. The researcher realizes from the literature study that offenders tend to become self-centered and some have a victim-mentality. In the different modules the Hamburg programme covers victims in general, victimization of friends and relatives, the victimization experiences of offenders, Carlisle Fantasy Analysis System, assessing the seriousness of victimization, what happened during the offensive act, the victim's coping techniques and mediation and reconciliation. While the programme focuses on the harmful effect of crime on victims, it also acknowledges victimization of offenders personally, in line with Zehr's discussion about offenders' traumatic experiences (Zehr 2002 a: 30). This then brings their own victimization into the open and also in researcher's opinion, in a sense takes away the power that it gave the offender to use his own victimisation as an excuse for victimizing others. Two trainers present the training programme to

prisoners with crimes like homicide, drug trafficking, robbery, fraud or severe forms of assault (Zehr 2002 a: 53). The programme aims to let offenders understand what victims go through because of crime. It also introduces Victim Offender Mediation but the decision to engage in the process is left to the offender. Caution is taken that the offender does not do anything that could cause secondary victimization to the victim. This process is similar to the process in the Prison Transformation project of the Centre for Conflict Resolution in Pollsmoor prison in Cape Town. Therapeutic sessions are organized with offenders and prison staff in the same group, to help them to deal with childhood trauma (Van Houten 2002:55). Offenders and staff members become equals in sharing in each other's painful experiences. This no doubt established a different kind of relationship and humanity among the group members. The common experience of crime and trauma will make them discover their sense of humanness.

Preparation includes making sure about the offender's motives to get involved in Victim Offender Mediation. Often full reparation would not be possible, but research has shown that victims are satisfied with symbolic reparation, and is often satisfied with an apology (Braithwaite 1998:14). It should never be about what the offender could get out of it, for instance scoring some credits at the Correctional Supervision and Parole Boards. Victims should never be used directly or indirectly, to rehabilitate offenders (Braithwaite 2002b:139). It should first and foremost be about a healing experience for the victim, only when the victim is emotionally ready (Braithwaite 2002b: 140). This can be established after the offender has gone through a general information programme, to ensure he/she can make an informed decision. This is then followed by thorough assessment in terms of the Correctional Sentence Plan, but also in the revision on a regular basis. A multi-disciplinary team needs to make inputs on the readiness of the offender to engage in the process. Obviously the family and support system will be motivated to get involved (White Paper on Corrections in South Africa 2005:82) if and when appropriate. The therapists should be aware

of the different types of offenders as described by Hagemann (2003:229). There are those who take responsibility, are aware of the harm to the victim and suffer because of that. Others could be suppressing everything and just concentrate on surviving in prison, and the third group who feel they are paying their debt to society. Obviously victims should not be exposed to contact with the offender unless there is absolute certainty of the offender's commitment to the process (Hagemann 2003:230). The Victim Offender Mediation session is usually concluded with a written agreement about the outcome and future action (Zehr 2002 a: 25). Johnstone (2003:21) warns that the tendency to over - identify restorative justice with victim offender mediation can be problematic as there are other interventions which are more applicable in certain circumstances.

Debriefing of all role players who took part in the encounter is necessary, also to allow for closure.

Standards applicable to an encounter have been developed and should be taken into consideration (Frank & Skelton 2007, annexure 1).

### **3.4.3 Victim impact panel or –programmes (Encounter and Amends)**

This form of intervention allows unrelated victims to tell a group of unrelated offenders about the harm that victims suffer because of crime and to encourage offenders to understand the human consequences (Van Ness & Strong 2002:66). This form of intervention like others in Restorative Justice encourages offenders to take responsibility for their criminal behaviour (Zehr 2002 a: 56; Muth 1999: 2-63). This could also lead offenders to do symbolic or real acts of restitution for victims and communities. It has to be accepted that some crimes or harm can never be undone, like rape and murder. But if victims are willing to share what they would need to heal, then offenders could at least try to bring restoration. The researcher has already alluded to the fact that the definition of Restorative Justice is problematic, as there are so many different conceptions. Proponents



of Restorative Justice also define it differently. Johnstone (2003:2) professes that Restorative Justice could be referred to as a process, while others see it as a paradigm shift from the retributive system (Fattah 2006: 17-18), and still others see it as a programme. In fact, Fattah postulates that the retributive and restorative paradigm cannot co-exist. Zehr (2000) is of the opinion that not all programmes that are called restorative are indeed restorative as it does not always include all the relevant role players. A Restorative Justice programme in a prison, which does not involve victims and communities, cannot be fully restorative (Skelton, personal interview 2 August 2007). The Victim Impact Programme also encourages offenders to learn skills regarding relapse prevention and to associate with people who are not involved in criminal activities. In the United States of America, Victim Impact Programmes are presented as part of life skills in a correctional programme (Muth 1999: 63). Victim Awareness programmes give practical ways in breaking the cycle of violence and also teach anger management. The ideal is to prevent the victimization of vulnerable offenders by other offenders, but also for offenders to stop victimizing members of the community (Muth 1999: 63).

Other options include inviting primary or secondary victims to the prisons. This is one of the programmes of the Prison Fellowship Ministry in South Africa and success is reported in the way unrelated victims and offenders gain a better understanding of each other. These groups often form friendships and serve as support system for the offender when he/she is released (Grobler, personal interview 17 December 2007). A programme is initially presented to members of staff. The correctional centre should also have counseling available to refer offenders for therapy when necessary. Recorded interviews with victims are used, films on television and any other means to make offenders aware of the monetary costs of crime, as well as the impact on human beings. This programme forms part of the pre-release preparation and target large groups of offenders, both inside prison and in communities, while simultaneously training staff. The idea is that staff should also understand what offenders had gone

through, without excusing criminal behaviour. The victims are usually not the exact victims of the specific offenders. This is similar to a programme in the Shakopee female correctional facility in Minnesota, on which Burns (2000) reports. The programme, *Citizens, Victims and Offenders Restoring Justice Project* aims at bringing together these role players in exploring the harm victims suffered because of the crime. It is reported that initially victims and offenders were relatively skeptical about the possible outcome of the programme, but eventually a positive relationship developed between victims, offenders and community members. They started associating freely with each other as the programme progressed and some formed strong friendships by the time the programme was terminated. Victims and offenders felt safe enough to share their experiences and the session created an opportunity for offenders to commit to what they were prepared to do to address the harm that victims suffered.

Another way of explaining Restorative Justice is to compare it with conventional criminal justice, which is more adversarial (Johnstone 2003:2; Skelton 2003). With restorative justice both victim and offender are encouraged to be actively involved in decisions of how to deal with the aftermath of crime, while in retributive justice these decisions are mainly taken by the professionals in court.

#### **3.4.4. Circles of Support and Accountability (Reintegration)**

The use of Circles of Support and Accountability is a well-known practice in Canada and aims to provide support to sex offenders on preparation for release and after release (Zehr 2002 a: 54). Sexual offenders usually serve their full sentence before release and is therefore not under supervision of the Corrections System when they are released (Wilson & Prinzo 2001:59). However, they often need even more support in terms of relapse prevention. The attitude and rejection from communities may make re-adjustment in community life even more difficult. In some countries communities are informed about a sex-offender's release if he intends to stay in a particular neighbourhood. The Circles of

Support and Accountability usually consists of about six volunteers from all walks of life who are available to the offender as and when needed (Wilson & Prinzo 2001: 70). They mainly focus on pedophiles and rapists and expect accountability from the ex-offenders. The ex-offenders need to report their movement, but can also contact the circle members when they feel stressed and are confronted with situations which could be potentially risky in terms of relapse. It is acknowledged that sex-offenders are under a lot of pressure upon release and might be tempted to re-offend in dealing with the stressful situation. The ex-offender is encouraged to talk to the circle members about feelings, fears and temptations. Wilson & Prinzo (2001: 69-70) further postulate that Circles also help communities deal with their feelings against the sex offender and on how to protect community members who might be vulnerable, while at the same time protect the offender from victimisation.

The South African Correctional Services highlights the need for communities to get involved and the importance to form partnerships with community organizations. The White Paper on Corrections in South Africa (2005: 177-182) specifically deals with the responsibility of society to get involved in the rehabilitation of offenders, while national and international mandates deal with the way in which offenders have to be treated, referring to secure, safe and humane conditions. The Department of Correctional Services wants the South African society to take responsibility for offenders who are in prison/correctional centres, as they are often products of the very same society where victims come from. To reduce victimization as outlined in the National Crime Prevention Strategy (1996) and the Victim's Charter (2004), society needs to be involved in the process of preparing offenders for successful social reintegration. Successful reintegration requires that while the offender changes his/her behaviour, society also makes job opportunities available to ex-offenders and that a strong support system is in place for all prisoners upon release.

The Special Remission of 2005 (table 14) saw at least 31 865 prisoners released from prisons countrywide, after twenty months had been deducted from their sentence. About 33 972 offenders have been released from the Community Corrections System (Department of Correctional Services Annual Report 2005/06: 14). Some categories of offenders were excluded from the Special Remission, notably offenders serving a sentence for serious crimes like rape and murder. However, shortly after the release the media reported about offenders returning to prison because they violated the Remission conditions. Van Zyl Smith (2005: 18) is rather skeptical about the effect of amnesty and similar methods to reduce the prison population as it might undermine public confidence in the Criminal Justice System.

Circles of support like the other forms of interventions in Restorative Justice cannot be effective in isolation. It has to form part of a holistic approach of rehabilitation of the offender, participation of and addressing the needs of all role players. The offender has to show remorse and take responsibility for the crime, to ensure effective social reintegration (Maxwell & Morris 2001: 55).

The South African Correctional Services embarked on a project of Social Reintegration (Department of Correctional Services Position Paper on Social Reintegration 2008). The purpose is to prepare the offender for the time when he/she will be reunited with family and the community. Reintegration actually starts upon admission right through the incarceration period until the actual release of the offender. The Director Supervision in Correctional Services (Ntuli, personal interview 1 April 2008) reckons that Restorative Justices should ideally take place while the offender is incarcerated, but if not; it could still be pursued during the time of parole.

### 3.5 Objectives of Restorative Justice

Sharpe professes that the goals of Restorative Justice are to involve victims as the affected people in decision making, justice to be more about healing and transformation for both victim and offender and to "...reduce the likelihood of future offending" ([www.edmontonmediation.com](http://www.edmontonmediation.com) visited on 2007/09/27). These goals are not easily obtained, especially when it implies prevention of recidivism.

Christie (1977: 7) professes that the formal Criminal Justice System *stole* the conflict from the rightful owners, namely the victims, offenders and the community. Johnstone (2002:137) agrees by explaining the conventional criminal justice process that is followed when conflict arises: a charge is made usually with the police. A group of professional people each representing the victim and offender, then argues the case in court (Zehr 1995:33). The professionals might even reach an agreement; the accused is often found not guilty or enters into a plea bargain with the state. The victim and offender are mostly passive in this process with their representatives talking and negotiating on their behalf. It often happens that neither the victim nor the offender is satisfied with the agreement, and even if the victim still feels that the problem was not addressed, the system does not allow for any redress, unless the victim institute a private action to be compensated. Proponents of Restorative Justice argue that the formal Criminal Justice System does not address victims' needs nor does it prevent re-offending. Restorative Justice involves families and communities who provide support and encouragement to both victim and offender, but also supports the offender in honoring any agreements that have been reached in a Restorative Justice process like Victim Offender Mediation. Muntingh (1993: x) professes that the Restorative Justice paradigm is the philosophy behind Victim Offender Mediation. The researcher agrees with that and regards Restorative Justice as an empowering, capacity building approach that can lead to restoration of moral values.

The myths about Restorative Justice, as well as misunderstandings or misconceptions sometimes cause people to be biased and even negative towards the possible positive impact of a Restorative Justice encounter. The researcher therefore deems it necessary to explain what Restorative Justice is not and quotes Zehr (2002 a: 8-13) who explains as follows:

- *Restorative justice is not primarily about forgiveness or reconciliation.* The researcher agrees with this in principle. Restorative Justice does not put forgiveness or reconciliation as pre-requisites for a process to be successful (Skelton, personal interview 2 August 2007). Remorse, reconciliation and forgiveness are possible outcomes but should not be expected by any of the role players.
- *Restorative justice is not mediation,* although mediation is one of the options in a Restorative Justice process
- *Restorative justice is not primarily designed to reduce recidivism or repeating offenses.* The researcher agrees with this statement, as it would create unrealistic expectations in terms of reducing recidivism. If it did in fact reduce recidivism, then we would have a situation where offenders could be forced to go into a Restorative Justice process with the hope that they will never again commit crime. Research has shown that offenders who understand the human consequences of crime are less likely to commit crime again.
- *Restorative justice is not a particular program or a blueprint.* The researcher argues in this report that it is an approach which should form part of the normal day to day operations of a Correctional System.
- *Restorative justice is not primarily intended for comparatively minor offenses or first-time offenders.* Umbrecht (2001 b) reports on the use of

Restorative Justice in cases of serious crime in America, and so does George Lai Thom (personal interview, 4 September 2007) regarding the South African situation where he works in the Correctional centres.

- *Restorative justice is not a new or North American development.* This has been pointed out by Joel Lekgetho, a traditional leader in a personal interview on 13 September 2007, as well as Reverend Dlula, (personal interview 2 April 2008).
- *Restorative justice is neither a panacea nor necessarily a replacement for the legal system.*
- *Restorative justice is not necessarily an alternative to prison.*
- *Restorative justice is not necessarily the opposite of retribution.* The researcher illustrates the above three points in this research report – that Restorative Justice can be successfully implemented with offenders who have already gone through the entire criminal justice process and who serve a prison sentence, but still have to take responsibility for the harm that the victim suffered.

The researcher further argues that the Correctional System should create conditions for offenders to restore the harm, within their means, and build or strengthen relationships with victims, families and communities. Restorative Justice requires full participation of victims, offenders and the community in making sure that the harm that victims have suffered is addressed (SA Law Commission, 1997: 5). There can be no talk of Restorative Justice unless and until the offender is prepared to cooperate and acknowledge responsibility. This alone, in the researcher's opinion is already halfway to the vindication needed by the victim as well as a form of Victim Empowerment. Researcher hopes to make clear what Restorative Justice is throughout the rest of this chapter. Through

Restorative Justice interventions like Victim Offender Mediation the victim becomes an active partner in resolving a specific crime. Victims might receive restitution from the offender or compensation from the state, they have a chance to ask questions and give information on how they have been affected by the crime (Muntingh 1993:10). More importantly, the victims could also say what they would need to be restored or healed. The information sharing is part of empowering victims in terms of the government's Victim Empowerment Programme and is reflected in the rights of victims as referred to in the Victim's Charter (2004) and other international documents dealing with victims of crime. Where victims and offenders are in the same community, Victim Offender Mediation and relationship building is even more important to ensure successful reintegration of both. Communities need to monitor that offenders comply with the agreement that was reached during Victim Offender Mediation.

### **3.6 Benefits of Restorative Justice**

One could rightly ask why would any victim want to face his/her offender – why would anyone be prepared to open wounds, as some victims would want to carry on with their lives and not be reminded of the terrible incident. Bazemore, Nissen & Dooley (2000:10-21) purport that victims do that because they don't want to go through the same trauma again. They are hoping that by informing the offender about the consequences of the crime that it might serve as a deterrent to that specific offender. Also, they are hoping that their confronting the offender might save other innocent people from becoming victims of crime. Zehr (1995:25) accedes that the Criminal Justice System cannot and does not attend to the needs of those involved – the majority of victims need more than just to have the offender convicted. There are victims who want to make sense of what had happened to them and to understand the motives of the offender. A victim, Madeleine Herrington, relates the meeting she had 10 years after the murder of her 93 year old mother, with the offender. The victim found some answers, but was only ready ten years after the traumatic event



[http://www.carrollcountytimes.com/articles/newstory3\\_visited\\_on\\_2007/05/03](http://www.carrollcountytimes.com/articles/newstory3_visited_on_2007/05/03)).

Rogers (personal interview 20 August 2007) feels that restorative justice should be available at all stages of the criminal justice process and at all times in the journey, for whenever the parties are ready. Victims benefit by asking questions, get an explanation, possibly an apology and being vindicated. There is a perception that all victims want revenge and to see the offender either getting the death penalty or spend a very long time in prison. While almost all victims might feel that way shortly after the crime, many would want to see offenders changing their behaviour. It is unfair to stereotype victims as all being vengeful and unable to control their emotions (Bazemore & Erbe 2004:31). A classic example of this is the well-known Amy Biehl case in South Africa where the parents of the murdered exchange student reached out to the young people who killed their daughter and started a development project in the Western Cape community where the offenders originated from. They certainly did not feel that way immediately after hearing of the murder of their child.

The community benefits by hearing what circumstances might lead to crime, dark spots, where street lights will reduce the problem, thick plantation, lack of supportive structures, etc. The community gets involved as custodian of both victim and offender. The community is recognized as an important role player not only in crime prevention, but also in decision – making regarding sanctions for offending behaviour. The community needs to take up its responsibility to ensure that Restorative Justice agreements are honoured and that conditions are conducive for the offender to repair the harm. The community should also try to identify the needs of both victim and offender, discover their strong points and build on that. With community support offenders can change and make a contribution to peaceful community life. The involvement of these important role players are further expanded on in chapter 6.

Offenders benefit by being recognized as important role players, get a chance to explain, offer an apology and possible restitution/compensation. Offenders feel

respected through the Restorative Justice process, as all participants in the Victim Offender Mediation are given an equal chance to convey their point of view. The community might be prepared to listen to the needs and disadvantages of the offender and assist him/her in achieving his/her goals. Offenders who are willing to make use of the support offered are encouraged to change their lifestyle and behaviour. These offenders can actually take responsibility not only for the crime, but also as responsible members of society, to take care of their own family.

### **3.7 Summary**

In this chapter the researcher highlighted the philosophy, background, principles and values of Restorative Justice. The researcher also attempted to explain how Restorative Justice is currently implemented internationally, with specific reference also to the implementation in the South African Correctional System. This was necessary to create an understanding of how those developments led to the current system followed by Correctional Services. Communities are understandably not always happy to welcome ex-offenders back after their release. The implementation of Restorative Justice differs between countries, but also within countries in the different areas, like rural versus urban. Different circumstances affect the implementation of Restorative Justice such as culture, background and the needs and circumstances of individual victims and offenders.

It seems that some of the problems that existed since the inception of prisons, like overcrowding, inhumane conditions, abuse of power are still prevalent in the modern day prisons. Current prisons and even constructing more prisons have not produced the desired outcome of reducing and preventing crime. Victims have also not necessarily been satisfied with the imprisonment of the offender, as the needs of victims have still not been addressed. Restorative Justice as an

inclusive process attempts to do just that – address the needs of those directly affected by crime as a priority over punishing the offender.

The Restorative Justice process is dynamic and can be adjusted depending on the circumstances and needs of those involved. Although the basic principles stay the same, the process for individual cases might differ (McCold 2001:45). The term Restorative Justice might be new in South Africa, but the practice is not as African families traditionally dealt with conflict or crime in a similar manner (Skelton & Frank 2001:103). Tshiwula (2001:137) describes the resentment that communities have towards offenders and crime. The negative effects like fear, hurt and bitterness are the reasons why people seek retribution – serious punishment for offenders. The implementation of different Restorative Justice interventions in the Department of Correctional Services can only be successful if mediators are properly trained, and when victims, offenders and communities are acknowledged as important role players and cooperate voluntarily. Proper screening of offenders is as important as evaluation of emotional readiness of victims and the community's understanding of the philosophy of Restorative Justice (Naude et al., 2003:20).

Some proponents of Restorative Justice say that crime disturbs the balance and Restorative Justice wants to restore the balance (Zehr 2002 a: 32). Umbrecht (1985: 83) is of the opinion that dealing with crime should involve victims and not only focus on offenders. The criminal justice process should be personalized so that the offender realizes that a human being has been harmed or violated as offenders usually stereotype victims in order to shift the blame. The Criminal Justice System is usually associated with the picture of balance and one can rightly ask if the two sides are representative of the victim and offender, what is needed to restore the balance? Nesar (2001:47) postulates that Restorative Justice aims to enable offenders to take responsibility for the crimes they have committed, to promote community involvement in any process to restore the harm to the victims, to prevent offenders from committing more crime, reduce the

case load of the Criminal Justice System and give meaningful attention to victim's needs. It needs to be kept in mind that reparation is not always in terms of material benefit to the victim – it could also be symbolic (Crawford & Newburn 2003:23). The researcher is of the opinion that interventions in prison will have to be aligned to these objectives in order to make an impact. Fattah (2006: 3) is convinced that Restorative Justice is a constructive way of dealing with conflict which is more effective than the deliberate infliction of pain as a response to crime.

The next chapter will explore the conditions that are needed in prisons to make it possible for the offender to take responsibility for his behaviour, but also to restore the victim as far as possible.

## CHAPTER 4

### CREATING AN ENABLING ENVIRONMENT FOR RESTORATIVE JUSTICE IN PRISONS

Edgar & Newell (2006: 38) postulate that the benefits of Restorative Justice in prisons are:

- *“meeting the needs of victims;*
- *Helping offenders take responsibility for their actions and reduce their rate of offending;*  
*and*
- *Helping communities of care to become part of the process of reconciliation and support”.*

#### 4.1 Introduction

The White Paper on Corrections in South Africa (2005: 63-68) emphasizes the role that families have to play in rehabilitation of offenders to ensure successful social reintegration. The Minister of the South African Correctional Services also repeatedly requests communities not to stay on the sideline, but to get involved and to take co-responsibility for dealing with people in the care of Correctional Services, as part of societal responsibility (Balfour, Minister’s speech during a Stakeholder Conference in Centurion, February 2008). This is in line with international practice, for example in Canada, the Circles of Support and Accountability dealing with sexual offenders after their release from prison, is a case in point. It is expected that communities be informed about possible risk to put measures in place to prevent victimization.

The researcher deems it necessary, at the outset, to clarify some misconceptions about the term “community”. In general terms community refers to a homogenous group of people who share the same geographical space, usually sharing the same norms and values. However, in the context of Restorative Justice in a prison setting, the community could very well be all the offenders in

that specific institution, if one needs to arrange a Family Group Conference (FGC) or Victim Offender Mediation (VOM) session after a crime has been committed inside the prison. The White Paper on Corrections in South Africa (2005: 76) also refers to dealing with disciplinary issues as "...self-discipline through a restorative justice approach to all offenders". The definition of Marshall (1988:30-31) is useful to explain this further: *"...community does not have to respond to any particular physical or geographical entity. For the purpose of conferencing and so on, the circle of relatives, supporters and significant others that each party has is sufficient as a basis for involvement and intervention. Each person, in other words, has their own community centered on themselves"*.

The researcher will refer to the mandates and policies that are relevant to the study, namely those that deal with the management or handling of offenders while they are serving a sentence, prison programmes, preparation for reintegration and dealing with special categories of offenders. This section deals with sentenced offenders in the Correctional System, their admission and assessment upon starting their sentence, development of a Correctional Sentence Plan, implementation thereof, as well as release preparation. All these are important elements in creating an environment that is conducive for the changes that offenders need to make in terms of their behaviour and attitude.

The Mission statement of Correctional Services (Department of Correctional Services Annual Report 2005/06: 10, 11) focuses on an integrated approach to correcting of offending behaviour, promotion of societal responsibility, development of offenders and staff, but most importantly, within an enabling human rights environment. The understanding of this environment forms the focus of this chapter.

## 4.2 Relevant concepts

**4.2.1 Complainant** - is described in the Correctional Services' Policy on Complainant involvement in the Parole Board as victims of violent crimes and or crimes with a sexual nature. The complainant could also be the relatives of a deceased victim. This description is taken from section 299A of the Criminal Procedure Act, 1977 (Act 51 of 1977). According to Mr de Bruin, Deputy Director Parole Board facilitation, the Department of Correctional Services broaden this scope by also making provision in policy for victims of all other crimes (de Bruin, personal interview 25 January 2008).

**4.2.2 Correctional Supervision and Parole Board (CSPB)** - is a body mandated in terms of section 74 of the Correctional Services Act 1998 (Act 111 of 1998) to carefully consider the placement of offenders on parole, Correctional Supervision, day parole, and parole on medical grounds. The Board has to take the offender's behaviour, attitude, aptitude and views about the crime into consideration when approving or disapproving the application of the offender. The Board could also make recommendations that the offender be subjected to more rehabilitation programmes if needed. If the offender is placed on parole or Correctional Supervision, then certain conditions are attached, which if violated, could lead to revocation of the parole or Correctional Supervision. The term "parole board" will be used where applicable.

**4.2.3 Parole** refers to the release of a sentenced offender before the expiry of his/her sentence, after completing a minimum part of the sentence in a correctional centre as dictated by the Correctional Services Act, 1998 (Act 111 of 1998) sections 73-80 (Department of Correctional Services Policy document; <http://www.dcs.gov.za/Menu.aspx> visited on 2008/04/03). Wallace (1998:47) describes parole as the conditional release of a prisoner, which implies that the Correctional Supervision and Parole Board attaches conditions like community service, house arrest and involvement in rehabilitation programmes.

### **4.3 The Corrections environment**

The researcher will be dealing with conditions that contribute to the constant and ongoing process of creating an enabling environment by focusing on the strengths in the South African Correctional System. Creating an environment that is conducive for rehabilitation, changing of offending behaviour and restoration of relationships is not like a project with a cycle that starts and ends at a certain time. The dynamics change all the time depending on the type of person incarcerated and the skills of the employees of Correctional Services. The environment changes depending on the length of sentences for certain categories of offenders, and also because of young people and other vulnerable groups in the correctional centres. The improvement of prison conditions was necessitated by the realization that harsh prison conditions work against all efforts to change the behaviour and attitude of those incarcerated. Sishuba, former Chief Deputy Commissioner of the Department of Correctional Services commented as follows: *"History has taught us that harsh conditions and punishment failed to achieve the desired ends, producing individuals who were angry, bitter and unfit to go back to society"*(Sishuba, The Star, 3 October 2001: 14).

#### **4.3.1 Strengths**

Strengths in the researcher's view are those factors that would make the implementation of the mandate of the South African Correctional Services more achievable. Here the researcher refers to those structures that have been put in place based on policies to address certain needs or fill gaps in service delivery. It was mentioned before that Correctional Services, as a government department cannot work in isolation. It has to form partnerships with other countries, other government departments as well as with civil society in order to make the implementation of Restorative Justice possible and in so doing, address offending behaviour, which might have a positive effect on crime prevention.



Crime prevention is important in the sense that ideally, offenders do not become repeat offenders because they realize and understand the human consequence of crime.

The South African Correctional Services forms part of an international body of corrections and as such enter into agreements with other African countries and have also ratified a number of United Nations declarations (White Paper on Corrections in South Africa 2005: 183-186). These agreements form almost like a shield surrounding the Correctional Services with the right and the mandate to implement measures that contribute to an enabling environment. It allows these countries to visit each other and to learn from each other about best practice, especially as there are a number of African countries which actively implement Restorative Justice, such as Nigeria and Rwanda. The International and national mandates which have a specific bearing on the work with sentenced offenders will now be discussed.

#### **4.3.1.1 International Mandates and Relationships**

Membership of international bodies that deal with correctional matters benefits the Department of Correctional Services by creating opportunities to learn and benchmark with other countries, share experience and agree on minimum standards for prison conditions. The Minister of Correctional Services, Ngconde Balfour, visited the United Kingdom during 2006 and shared ideas on capacity building of personnel, reduction of overcrowding and programmes for children who are incarcerated with their mothers. The issue of awaiting trial detainees, especially the youth, also received attention (SA Corrections Today, June/July 2006: 2).

The United Nations Standard Minimum Rules on the rehabilitation of people under correction and the treatment of offenders were adopted in Geneva in 1955. The Rules are directly applicable to the operations of the Correctional Services of

all the countries that ratified it. The application thereof in the South African situation will be discussed and reference will be made where it is incorporated in policy documents.

#### **4.4 The Correctional Sentence Plan**

The Correctional Services Act (Act 111 of 1998), makes provision for an individual sentence plan and in sections 38 (1) and 38(2) determines: *“In the case of a sentence of imprisonment of 12 months or more, the manner in which the sentence should be served must be planned in the light of this assessment and by any comments by the sentencing court”*. It determines that all sentenced offenders should be assessed as soon as possible after admission into the prison/correctional centre (White Paper on Corrections in South Africa 2005: 132; United Nations Standard Minimum Rule 69). The Correctional Services Amendment Bill of 2007 changed the requirement of “12 months” to “24 months”. Other researchers (Matshego & Joubert 2002:43) refer to an “individual management plan” which will be developed to determine risk classification, programmes needed, etc. of youth in prisons/correctional centres. In support of this approach, Du Preez (2003: 257, 258) refers to case management by a multi-skilled correctional official who has to take individual responsibility for individual offenders. The case management plan also indicates the most suitable facility in which to house the offender, based on security risk, but also with reference to the specific unit within the institution (Du Preez 2003: 269). She further states that Unit Management is not a requirement for successful case management, but the researcher submits that it will serve as an enabling condition. One of the most prominent concerns in assessing the offender is to determine his or her security classification for purposes of safe custody. This is important as the more vulnerable and or young offenders have to be separated from the hardened repeat offenders. If not, their safety could be at risk. This is in line with international human rights requirements, such as the United Nations Standard

Minimum Rules 63(1) and 68 which require the separate incarceration of different offenders based on classification and assessment.

The section in Correctional Services dealing with the development and care of the offender should make an assessment of the offender's needs in terms of health, educational, development, social, psychological and religious aspects or concerns. The United Nations Standard Minimum Rules 65 and 66 make provision for the preparation of the offender to lead a law-abiding life after his/her release and in line with Restorative Justice principles, develop a sense of responsibility. The assessment will determine what type of rehabilitation- and correctional programmes the offender has to enroll for. Some programmes can be compulsory (White Paper on Corrections in South Africa 2005: 130), especially when ordered by the court (2005: 129). It is the ideal that offenders should be engaged constructively; therefore the possibilities of work allocation should also be explored. Providing work of a useful nature to sentenced offenders is in line with the United Nations Standard Minimum Rule 71. The length of the prison term and the type of offense as well as the level of violence that was used, are taken into consideration when a decision is made about allocation to a specific prison. In terms of treatment of juveniles, the Correctional System is guided by the United Nations Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules regarding the treatment of juveniles in conflict with the law.

The issue of Gender stereotypes should in the researcher's opinion be addressed in the Correctional Sentence Plans, as some male offenders whose victims were women and children might not have an understanding of the extent of the harm they have caused. Some offenders might have no understanding of a woman's right to say "no" for sex, and that it applies even to married women. In a Restorative Justice information programme the offender could be guided to acknowledge his/her own previous violation by others and deal with those feelings. This might go a long way in preventing the victim becoming the

perpetrator (Gear & Ngubeni 2002: 77), as offenders often victimize the vulnerable as a form of revenge or assertion of power.

Social reintegration has to be part of the Correctional Sentence Plan and thus rehabilitation (Department of Correctional Services Position Paper on Social Reintegration 2008: 2) right from the start so that relationships with relatives and victims where possible and the broader community be nurtured where it exists, or build where there is a breakdown (White Paper on Corrections in South Africa 2005: 141). It is therefore important that the assessment team determines early on what support the offender will need to ensure successful reintegration into the community. This is in line with rule 60 (2) of the United Nations Standard Minimum Rules regarding the offender's gradual return to society. Researcher agrees with this as it would be unrealistic to expect someone who had been removed from society for years, to be released and able to adjust without the necessary preparation. This would include, amongst others, week-end visits and day parole where applicable.

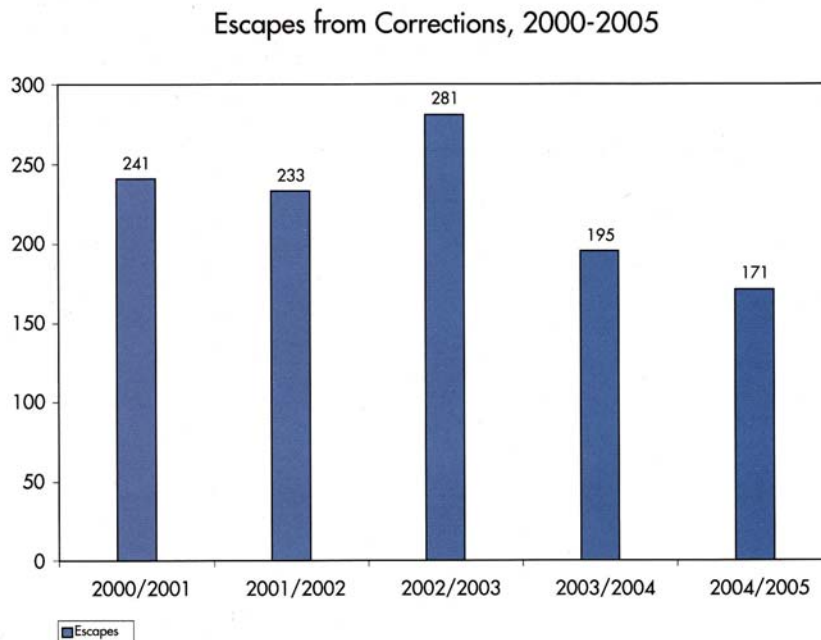
It is important to understand the need for regular evaluation when offenders are involved in programmes. The needs of an offender soon after admission in a prison will differ from his/her needs 6-12 months into the sentence. This in turn will differ from the needs of an offender who is in the pre-release phase. This necessitates revision of the Correctional Sentence Plan after a pre-determined period. Researchers found that criminologists could play an important role in these assessments (Hesselink-Louw 2004; Maree, Joubert & Hesselink-Louw 2003: 73-81; Cornwell 2003: 89). It is important that the offender's attendance and commitment to therapy and rehabilitation programmes in general is monitored. It is also important to be able to track any changes in the behaviour of the offender while he/she is serving a sentence. Correctional Services and even external service providers will have to know if the programmes they offer have any impact on the offender. In a revision plan behaviour changes, either positive or negative should be noted and evaluated. A team working with the

offender has to determine what cause of action would be appropriate if negative behaviour is identified. The offender has to be involved in plans on how his/her problems will be addressed. In the case of positive change, the offender needs to be encouraged and commended. A change in the sentence plan should be discussed with the offender, who should ideally agree with the changes. However, there will be offenders who are defiant and measures should be in place to deal with that. Another reason for changing of the sentence plan could be that the offender did not initially divulge all relevant information, for various reasons. Offenders first need to build a trusting relationship with the team that works with them, before they are willing to admit the areas where they need help.

#### **4.4.1 Escapes**

It is the researcher's opinion that a Correctional Sentence Plan could be a useful tool in identifying possible escape risk. It is intended to target all aspects of the offender's life, especially his/her connectedness to family. As was argued before, the plan should address reintegration needs. The Department of Correctional Services Annual Report (2004/05:37) uses the graph on the following page to indicate the incidence of escapes from custody. The Minister of Correctional Services reports a decline in escapes as follows: "Over the past twelve years, we recorded a reduction of 93% in escapes - from 1244 in 1995 to 93 in 2006. The significant decline in escapes since the 2003/04 financial year is quite encouraging" (Balfour, Speech at Middledrift Correctional centre, 16 October 2007). The Minister verbalized the concern, certainly shared by the community, about the increase in violence used during escapes, with resultant traumatic effects on all involved. The 2002/03 circumstances were different and unique as escapes resulted from a fire in Bizana correctional centre – this could be linked with the violent prison conditions as described in chapter 5.

**Graph 2: Escapes 2000-2005**



**Source: Department of Correctional Services Annual Report 2004/05: 37**

Escapes are of particular interest to victims of crime. The community and victims want to have a sense of safety knowing that dangerous offenders have been removed from society. However, during the 1990/91 financial year the following was reported regarding escapes: 746 escapes, including 173 from prisons, 520 from work teams outside and 53 while being escorted to and from courts and public hospitals (Department of Correctional Services Annual Report 1 July 1990-30 June 1991: 9). A dramatic increase in escapes occurred in the years that followed – it was reported that in 1995/1996 458 offenders escaped from prison, 665 from work teams outside of prison, 121 escaped while being escorted from courts and public hospitals, while 101 failed to return from week-end leave or day

parole (Department of Correctional Services Annual Report 1996: 7). Almost four years later only 250 offenders escaped (Department of Correctional Services Annual Report 2000/01: 6). The escapes in 1996 were reduced from 1244 to 120 in 2005, which is indeed remarkable (Balfour, Department of Correctional Services Annual Report 2005/06: 7) and in the researcher's opinion could have a positive effect on the public's perception of effectiveness of the Correctional System.

While the sentiments of Correctional Services are shared in terms of the decline as well as being appreciative of the observation in the Annual Report of 2005/06 that escapes and attempted escapes increase in violence, including the use of weapons, another concern comes to mind. It would be interesting to see the content and evaluation of the Correctional Sentence Plan of those who escape or attempt to. One would ideally want to see if reintegration needs are indicated and to what extent it had been addressed. Obviously also is the length of sentence of these offenders as those who escape earlier on during the sentence have not even come to terms with the sentence, length of separation from the community and might feel an urge to be outside to deal with unfinished business.

Of concern as well for this specific study is the ripple effect following attempted and violent escapes. New victims of crime are added in cases where correctional officials and or offenders are injured or died as a result of an escape or attempted escape. The secondary victims now created are the families of those officials, but also their colleagues who still have to go back and continue with their work as rehabilitators. The need for ongoing therapy and support for the officials and those touched by the tragic consequences cannot be overstated. The researcher already alluded to the unforeseen consequences of escapes also on the community in terms of their sense of safety or lack thereof. The overhaul of the Criminal Justice System is an attempt to amongst others; provide better protection to victims under the law (du Plessis & Louw 2005: 430) which is then undermined by the consequences of an escape. Du Preez (2003: 257) regards

case management as the systematic management and coordination of the sentence of the offender which implies that all risk factors and risk behaviour should be recorded in the Sentence Plan. The Victim's Charter (2004) requires the Department of Correctional Services to inform the victim, on request, of any changes in terms of the imprisonment of the offender. Reverend Irion, a Parole Board Chairperson in the Eastern Cape, also agrees that the victim has to be informed of the escape of an offender, if the victim did register his/her details with the specific request to be informed (Irion, interview 7 March 2008). Some victims can be severely traumatized when an offender of a serious crime has escaped. It violates the victim's right to safety, if the victim is not duly informed, then the right to information is also violated. The researcher tried to explain that it is not only the escaped offender and the security issues that need to be considered in case of an escape. It impacts on the entire community's sense of safety. It impacts on the possibility of Restorative Justice, as the offender has then not even dealt with the harm caused by the first offense. The escape or attempted escape causes even more harm, victimize more innocent people and increase the calls for stricter measures in prisons and even the death penalty (Snyman 2002: 19, 25) . Under such circumstances reconciliation would not be possible. Obviously, after an escaped prisoner is re-arrested, he/she will be brought before a court and charged with offenses related to the escape, and a new sentence plan will be needed.

A sentence plan in researcher's view is also a tool with which standards of services to the offender can be measured. Ideally the sentence plan should make provision for the offender to do an evaluation of the services he/she had been exposed to. The offender should also be able to track his/her own progress when the sentence plan is revised. The researcher will now discuss the relevance of standards for Restorative Justice in relation to prison practice.



#### **4.4.2 Practice Standards for Restorative Justice**

In South Africa the first ever practice standards (Annexure 1) for Restorative Justice had been developed towards the end of 2007, which aims to ensure that the rights of all role players are respected in the process. Secondly, also to ensure that programmes or interventions are indeed restorative, and therefore adhere to requirements in terms of involvement of all relevant role players (Frank & Skelton 2007). The practice standards will help service providers and certainly the Department of Correctional Services to ensure that services of quality are available to offenders and victims, within the Restorative Justice values and principles. The enabling factor here is that Correctional Services was involved in the development and consultation of these standards, which are meant to be a restorative justice practitioner's toolkit. The standards are meant to be used in processes in the Criminal Justice System, which would then include amongst others, work with sentenced offenders, in parole issues as well as part of reintegration of offenders (Frank & Skelton 2007: 3).

#### **4.5 Unit Management**

Unit Management is provided for in the White Paper on Corrections in South Africa (2005: 84), which also states that the correctional centre has to be divided into smaller units, which are more manageable in terms of individual attention to offenders, proper planning and supervision. Luyt (1999: 35, 36) postulates that Unit Management allows for flexibility as officials work with smaller groups, it increases contact between the multi-disciplinary team members, which is an advantage for cooperation and better relationships. With Unit Management it is envisaged that dedicated personnel be trained and placed within a unit, where they take responsibility for the development of different aspects of the offender as outlined in the Correctional Sentence Plan. The unit is managed by a unit manager who has to see to the implementation of a structured day-programme for offenders to ensure that they are exposed to all available and relevant

rehabilitation programmes, including Restorative Justice. This is linked to the approach followed by a multi-disciplinary team where the different staff components are accountable to each other in terms of executing the Correctional Sentence Plan as well as reporting on progress in terms of correcting offending behaviour.

The South African Department of Correctional Services describes the objectives of Unit Management as follows:

- *To divide large groups of inmates into smaller, well-defined clusters of sections constituting units.* The correctional centres that have been built in the past ten years have been constructed with Unit Management in mind. The Goodwood and Malmesbury correctional centres as well as the majority of Youth centres are examples of facilities that provide for smaller units. The offenders in these units are separated from each other. The section for professional services is right inside the unit which makes it easier for custodial officials to ensure that offenders access the services relevant to their needs.
- *To increase the frequency of contact and the quality of relationships between staff and inmates by, amongst others, creating co-responsibility in decisions pertaining to development programmes.* Firstly, contact can be more frequent in smaller units, as the personnel working in that unit are only responsible for a smaller number of offenders, eg. 240 offenders per unit. The smaller number of offenders can be exposed to more programmes that had been identified in their sentence plans. More frequent contact with the personnel will eventually (ideally) lead to the building of a trusting relationship. Offenders who are consulted about their sentence plan and who agree with it will in researcher's opinion be more likely to cooperate. If they successfully complete the programmes then it

may lead to them deciding to change their behaviour. Sustainable change in behaviour is one of the criteria to look at when an evaluation is made about the “genuineness” of remorse in a Restorative Justice process.

- *To provide more effective observation of inmate activities and to foster early detection of problems for timeous intervention*
  
- *To improve inmate accountability*
  
- *To enhance an integrated and team approach.* The personnel responsible for services to offenders have offices inside the section. It makes it easier for them to consult offenders according to the structured day programme. Facilities for group therapy are also available, especially in the new generation centres, which are used for meetings of the multi-disciplinary teams as well. Correctional Services employs 567 educationists in 171 correctional centres according to the Correctional Services’ newsletter, the SA Corrections (September/ October 2007). The importance of the role that educationists play as part of a team to bring about rehabilitation and social reintegration was recognized.
  
- *To incorporate all aspects of the inmate’s life for effective rehabilitation.* This and the following point imply that the services as outlined in the Correctional Sentence Plan are made available to the offenders at specific time frames. It also has to be kept in mind that Correctional Services experiences a shortage of professional people; therefore not all the services will be available in all correctional facilities.
  
- *To provide different programmes, strategies and interventions for each inmate depending on his/her ability, needs and ambitions.* In this regard (Luyt 1999: 35, 36) postulates that the correctional official is expected to adjust to different roles, namely to make decisions regarding the

management of the unit, to be able to listen to the problems of individual offenders, to make an assessment if referral for counseling is needed. The researcher is of the opinion that the officials in the unit should also be able to pick up on security issues and subtle behaviour, to prevent a conflict situation from escalating.

- *To place special emphasis on institutional adjustment, acquisition of vocational skills and societal coping mechanisms.*

#### **4.6 National Mandates**

The South African government adopted strategies which have a direct impact on the services of the Correctional System. The researcher will now discuss the National Crime Prevention Strategy 1996 (NCPS) as well as the National Victim Empowerment Programme (VEP) as strategies to prevent crime and to increase the involvement of victims in the Criminal Justice System.

##### **4.6.1 The National Crime Prevention Strategy (1996)**

The South African Department of Correctional Services had been part of the government's National Crime Prevention Strategy that was adopted in 1996. The government intended the Criminal Justice System to be less offender-focused in order to also accommodate the needs and rights of victims, with a focus on crime prevention (Prozesky & Kotze 1998: 4). The reform in the Criminal Justice System was based on the following aims:

- *Addressing the negative effects of criminal activity on victims, through programmes, which mediate these effects and provide support and skills to address them.*
- *Providing a meaningful role for the victim in the criminal justice process.*

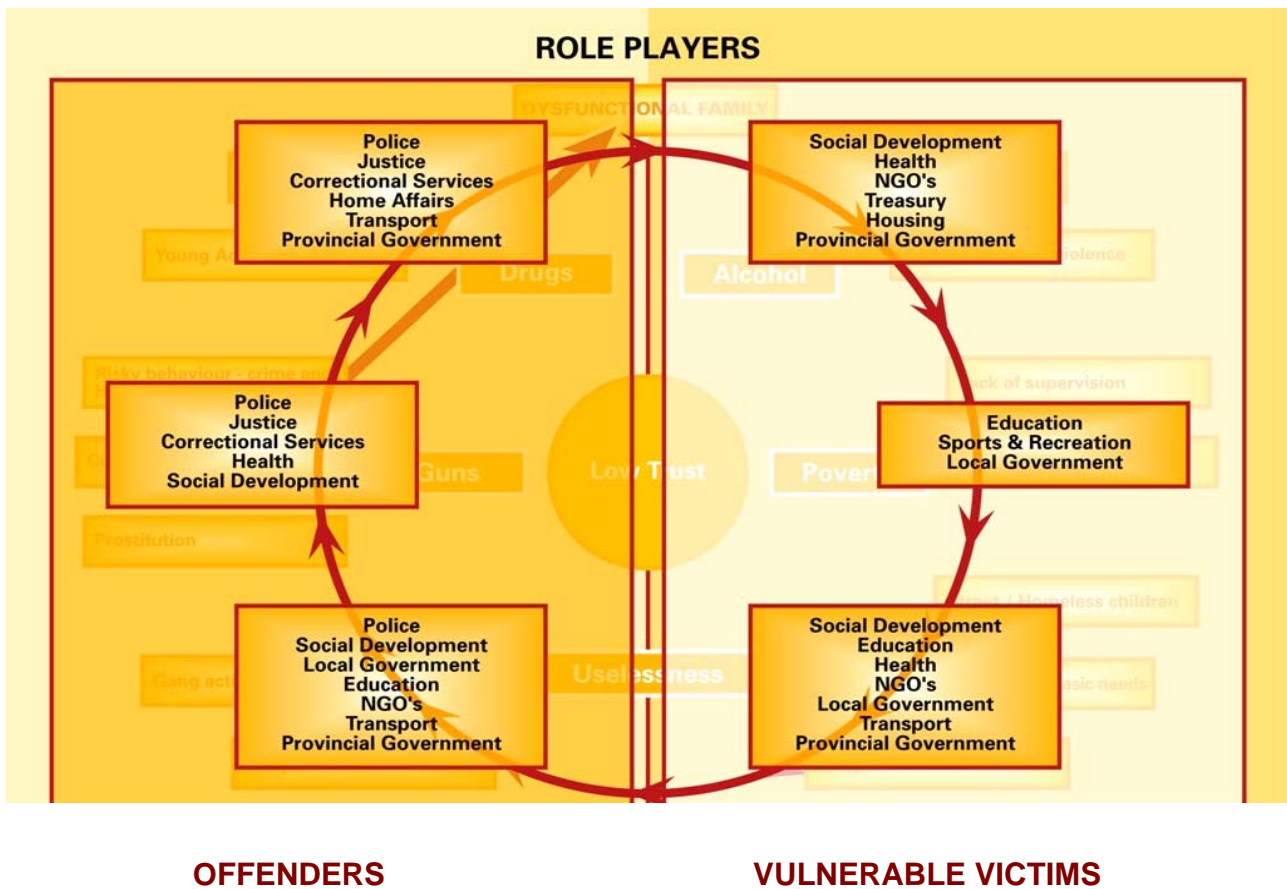
- *Making the criminal justice system more sensitive and service oriented towards victims.*
- *Enhancing the accessibility of the criminal justice system to victims.*

The following quotation from du Plessis & Louw (2005) is relevant in the context: *“The emphasis on prevention also requires a shift in relation to criminal justice. In particular, an emphasis on a state centered system should give way to a greater emphasis on a victim centered, Restorative Justice system. A victim centered criminal justice system is one that is concerned to address the direct effect of crime and place emphasis on those victims least able to protect themselves. A restorative justice system is one which seeks to encourage full rehabilitation, particularly for juvenile offenders and where treatment is aimed at enabling the minor offender to avoid a life of crime”*. The idea of full rehabilitation might be a contentious one, as this is proofed only by the offender’s lifelong desistance from crime. In the absence of a systematic tracking of ex-offenders, this will in the researcher’s opinion be highly unlikely to monitor. The researcher views the success of the National Crime Prevention Strategy (1996) in light of the integration and cooperation between government departments and civil society organizations. The reference to Restorative Justice in the strategy is specifically relevant to work with sentenced offenders, as many of them are vulnerable and some have been victims of crime themselves. Although the National Crime Prevention Strategy (1996) seized to exist in its original form, it succeeded in setting the scene for fundamental changes in the Criminal Justice System which were to follow.

#### **4. 6.2 The Integrated Victim Empowerment Programme**

An Inter-sectoral and Inter - departmental Victim Empowerment Management Programme was launched in 1998, with the Department of Social Development as the lead department (Victim Empowerment Directorate). Government departments represented on this forum include amongst others, Departments of Health (Forensic Medicine Directorate), Justice and Constitutional Development (Gender Directorate, National Prosecuting Authority and Sexual Offences and Community Affairs Unit), the South African Police Services (Social Crime Prevention Directorate), Housing, Education (School Safety Directorate), Correctional Services (Directorate Pre-Release Resettlement), Provincial Victim Empowerment forums where applicable as well as national Civil Society Organisations, Academic and Research institutions. The following figure is a visual demonstration of the role players in the South African Victim Empowerment Programme (used with permission of Barbara Holtmann from CSIR).

Figure 5: Role players in dealing with crime and its consequences



Source: Holtmann, CSIR

The Victim Empowerment Programme aims to ensure that policies and procedures across the Criminal Justice System are integrated. An integrated approach is more likely to holistically address the needs of victims. It would ideally also prevent a situation where victims are referred back and forth between different government departments that function in isolation. The Restorative Justice approach requires that all the important role players and service providers work together to minimize harm to the victim and prevent further or secondary victimization. Judge Bertelsmann also warns against raping a victim for a second time through procedures in the Criminal Justice System (Bertelsmann, personal interview 27 August 2007).

The researcher is of the opinion that the Victim Empowerment Programme is successful to a large extent in that the aims and objectives of the different role players are based on these organisations' core function in terms of Victim Empowerment, to assist victims of crime. When a crime is committed the focus should be on the harm suffered by the victim, and not only on punishment of the offender. The meetings and cooperation of the different role players in this structure will hopefully bring about a better understanding of the responsibilities and role clarification of the different stake holders, also in terms of Restorative Justice with sentenced offenders, as Victim Empowerment would not have been necessary if there were no offenders. Van Ness, et al. (2001: 12) profess that Restorative Justice is here to stay and seems to be gaining momentum in the researcher's view, as government departments (Department of Correctional Services, Social Development and Justice and Constitutional Development) include Restorative Justice principles in policies.

#### **4.6.3 Victim's Charter (2004) and Minimum Standards for services to victims of crime**

The Inter - sectoral and inter-departmental Task Team, consisting of civil society organizations, Research institutions and relevant government departments developed the Victim's Charter, which was eventually approved by Cabinet in December 2004. The United States of America accepted a Bill of rights for victims in 1980 (Griffiths & Bazemore 1999: 261-405). No department in South Africa could claim to have developed the Victim's Charter on its own, as the expectations and obligations for other departments had to have been consulted and approved by the respective ministers before approval by Cabinet (Department of Correctional Services Annual Report 2005/06: 39). For the Correctional System this implies that victims of crime now have the right to attend parole hearings of sentenced offenders and to be involved in Victim Offender Mediation (VOM). The minimum standards imply that efforts need to be made to



address victimization of vulnerable offenders. Some offenders in prison/ correctional centres are categorized as *Special Categories* and include women and infants, children, youth, the disabled, the aged, first time offenders as well as foreign nationals. These offenders are in some cases exposed or subjected to some form of violence inside prison (White Paper on Corrections in South Africa 2005: 81). Correctional Services acknowledges this as a possibility and is represented at the government's National Anti-Rape Strategy, led by the National Prosecuting Authority.

#### **4.6.4 The South African Constitution (Act 108 of 1994)**

The Bill of rights specifically refers to the rights of offenders. South African government departments, specifically departments of Justice, the Police Service and Correctional Services have to ensure that the rights and human dignity of those accused of crimes and those who are serving a prison sentence are respected.

Section 28(g) deals with the rights of children, which is also applicable to children in prison. Policy that specifically deals with children as part of special categories of offenders had been developed by the Department of Correctional Services. The needs of children have to be taken into consideration in planning of facilities and interventions.

The rights of all people, including those who are accused of or sentenced for committing a crime, are protected by Section 35 of the Constitution. The government departments dealing with offenders, from the South African Police Service, the courts and Correctional Services should ensure that the accused and offenders are treated with respect for their human dignity, despite their criminal actions.

Prisons are total institutions, which means that the inhabitants get all the services in one place – in this case the government is responsible to ensure that offenders are accommodated according to certain international standards regarding exercise, medical care, nutrition and reading material ( South African Constitution 35(2) & 35 (2)(e); United Nations Standard Minimum Rules). It is recognized that offenders need a support structure and the right to contact with their loved ones is protected by Section 35 (2) (f). Prison conditions have to be of a certain standard and torture of offenders is explicitly prohibited in line with sections 11(2) and 84(2) respectively. In terms of the latter, the State president appointed a Commission of Inquiry into prison conditions at certain management areas. The Commission is commonly known as the Jali commission. The recommendations included improvement in areas like recruitment and training of correctional officials, disciplinary measures, treatment of offenders, anti-gang strategies, improvement of labour relations and to effectively deal with corruption. The inquiry subsequently also included the corruption exposed at the Grootvlei correctional centre in the Free State. All these factors highlight the researcher's plight: that some conflict and disciplinary issues could be dealt with the restorative way, preventing the escalation thereof to the proportions found by the Jali Commission. This does not imply that Restorative Justice will ensure that these negative incidents don't happen at all, only that there will be an open channel to deal with some of the human rights abuses taking place in the prison environment.

#### **4.7 South African Legislation, Policies & Strategic documents**

As a government department Correctional Services is accountable to the public, especially because of the public funds that are used for its operations. To regulate its activities the government departments are guided by Acts, Laws and Bills of the country, to which it has to align its own policies and procedures. As indicated in chapter 2, significant gains had been made in terms of ensuring respect for human dignity of offenders. The researcher views this as imperative

and in support of the aim to correct offending behaviour, within an enabling environment.

#### **4.7.1 The Criminal Procedure Act (Act 51 of 1997)**

Certain provisions of the Criminal Procedure Act (Act 51 of 1997) are in the researcher's opinion contributing to creating an enabling environment in correctional centres, as the provision for non-custodial sentences ensures that those offenders, who serve their sentence in the community, do not contribute to overcrowding. The negative effects of overcrowding are dealt with in the next chapter.

In terms this section 62(f) the head of a prison/correctional centre may apply for the release of awaiting trial detainees on warning or for the amendment of imposed bail conditions if the prison/correctional centre is seriously overcrowded. This is only applicable in the case of non-violent offences. This would, in the researcher's opinion require orientation and training of heads of correctional centres as well as education of the public. There might be an outcry from the public if they get the wrong impression that Correctional Services can change an order made by the court.

Alternative sentencing is equally important in reducing overcrowding as the court is allowed, in terms of section 276(1) (h) to sentence a person to Correctional Supervision not exceeding three years after receiving a report from a correctional official or probation officer and in terms of section 248 B (4)(b)(ii) the court may place a person under Correctional Supervision as a condition for suspension or postponement of a sentence. This requires cooperation between the different cluster departments, as a report from a probation officer, employed by Department of Social Development is required. Correctional officials from the Community Corrections office have to make recommendations regarding

supervision and services available to offenders who are considered for alternative sentencing.

In terms of section 290(3) any court in which a person over the age of eighteen years but under the age of twenty-one years is convicted of any offence may, instead of imposing punishment upon him for that offence, order that he be placed under the supervision of a probation officer or a correctional official or that he be sent to a reform school as defined in section 1 of the Child Care Act, 1993 (Department of Correctional Services Position Paper on Social Reintegration 2008: 14).

In terms of section 276 1 (i) an offender serves one sixth of the sentence in prison, after which the sentence could be converted to Correctional Supervision, which means the offender serves the rest of the sentence in the community (Position Paper on Social Reintegration 2008: 15).

Section 299 A of the Criminal Procedure Act (No. 51 of 1977) spells out the right of complainants/victims to attend parole hearings and raise their opinion with regard to the placement of offenders under day parole, Correctional Supervision and parole. The Correctional Services Act (Act 111 of 1998), the White Paper on Corrections in South Africa (2005) as well as Corrections policies are aligned with this provision in the sense that victims are informed about parole dates and release of offenders on their request. During the parole hearing victims are allowed to make verbal or written presentations about the effect of the crime.

#### **4.7.2 The Correctional Services Act (Act 111 of 1998)**

The Criminal Justice System previously focused mainly on the offender. However, the Correctional Services Act, Act 111 of 1998 (as amended), makes provision for the involvement of victims in the parole boards. This gives an opportunity for the victim to be heard, often for the first time. Some victims prefer

not to be involved during the court hearing and only attend the proceedings if they are summoned to testify. The Amended Act (111 of 1998) changed the composition of the Parole boards, to allow independent community members to serve on the Board (Jacobus, Deputy Minister of Correctional Services Budget Vote Speech 5 June 2008; Department of Correctional Services Annual Report 2003/04: 43; Sloth-Nielsen 2004: <http://www.easimail.co.za/BackIssues/cspri> visited on 2007/02/07). In a personal interview with Mr. de Bruin, deputy director Parole Facilitation, he confirmed that the community members on the Board need to be involved in the community and have an understanding of community circumstances (de Bruin, personal interview 25 January 2008). The experience of some victims with the Criminal Justice System was such that they were excluded from the very crime that affected them emotionally, physically and otherwise. Restorative Justice creates the opportunity for offenders to take responsibility for the crime and to explore ways in which to assist the healing process for the victim.

The purpose of the South African Correctional System is to contribute to maintaining and protecting a just, peaceful and safe society by—

- (a) enforcing sentences of the courts in the manner prescribed by this Act;*
- (b) detaining all prisoners in safe custody whilst ensuring their human dignity; and*
- (c) promoting the social responsibility and human development of all prisoners and persons subject to Community Corrections (Dissel & Ellis 2002:4; Tshiwula 2001:36).*

This Act was amended by the Correctional Services Amendment Act (Act 32 of 2001) to include the improvement of treatment of offenders, accommodate special categories of offenders, namely disabled offenders and child offenders and to review disciplinary procedures for offenders, as well as the new parole system. It was once again amended in 2007. Minister Ngconde Balfour's

address to the National Council of Provinces (NCOP), tabling the Correctional Services Amendment Bill in Cape Town on 05 March 2008, explains the amendments made to the Act (Balfour, Minister of Correctional Services, speech at the National Council of Provinces [www.dcs.gov.za](http://www.dcs.gov.za) visited on 2008/03/26). The issue of Restorative Justice together with other rehabilitation programmes is mentioned twice in this speech. This in the researcher's opinion is certainly creating the platform for Correctional officials to implement Restorative Justice as far as resources and current training allow. The National Council, but also the rest of Parliament and the South African public therefore has the right to ask about the implementation of aspects in this Amendment Bill as presented by the Minister. The Minister is quoted having said the following in this regard: *"In essence we seek to advance humane treatment of inmates, restorative justice, humane development and human rights approach to treatment of offenders"*. He further said *"We are steadily but surely advancing in mainstreaming corrections with campaigns like Operation Masibambisane, restorative justice and offenders plough back into society,..."*

Section 38 (2) on the Correctional Services Act, Act 111 of 1998 describes a case plan as: *" In the case of a sentence of imprisonment of 12 months or more, the manner in which the sentence should be served must be planned in the light of this assessment [section 38 (1)] and any comments by the sentencing court"*. A Correctional Sentence Plan that will be offender-specific is to be developed for offenders, both in prison and those serving a community-based sentence, based on individual needs, including the need to make contact with the victim, if so desired. The needs of offenders should be assessed as soon as possible after admission, to ensure, amongst others, correct placement.

Once again the plight of victims is acknowledged when it is expected that offenders have to understand that housebreaking is not as harmless as they might have thought. Some offenders tell themselves that people have insurance and can replace the stolen goods (Grobler, personal interview 17 December

2007). Some feel they have done the victims a favour, as victims were now able to claim for bigger and better electrical equipment after the burglary. However, when understanding the trauma and long-term emotional effects on victims they have violated, they might come to an understanding of why society is angry and finds their actions totally unacceptable. This might bring them to the realization of what they did wrong and why society wants them to be punished severely. It also happens that offenders intend stealing only, but are sometimes surprised by the homeowners and become violent. They then have to face the unintended consequences of a petty crime.

A study conducted in the Eastern Cape by the Institute for Security Studies (ISS) regarding the attitudes of communities about sentenced offenders, indicate that the majority (70%) of the respondents believe that offenders learn new criminal behaviour in prison (Scontech 2000:24). This perception seems to be wide spread if one looks at the rate at which some released offenders get involved in crime after their release from prison (Snyman 2002: 18; Muntingh 2001: 6). The goals or objectives of imprisonment, which deals with rehabilitation, do not seem to impress members of the community.

#### **4.8 White Paper on Corrections in South Africa (2005)**

The South African Correctional Services adopted a Restorative Justice approach, (White Paper on Corrections in South Africa 2005: 54) of which Victim Empowerment forms an integral part. The rationale behind this was that the Restorative Justice approach would include all the relevant role players, namely communities, victims as well as offenders, in dealing with the effects of crime (Minister's speech at the Launch of Restorative Justice in Correctional Services in 2001). This approach allows offenders to first deal with their own victimization, to reach personal restoration in line with the White Paper, before restoration and healing of victims and communities. Restoration has to take place in terms of personal, family and community restoration (White Paper on Corrections in South

Africa 2005: 80-83). With personal restoration the offender has to see him/herself as more than a criminal – the offender needs to also see himself as a normal human being who still has a role to play in society. This is closely linked to the offender's connection with society and the acceptance that the offender needs to experience in order to be successfully reintegrated after serving the sentence. The offender also has a relationship with the victim that has to be restored (Hagemann 2003:228; White Paper on Corrections in South Africa 2005:80). In some cases victims and offenders knew each other before the crime and that relationship was seriously harmed because of the crime. Even where victims and offenders were strangers, they now have a relationship, albeit a negative one, which was created by the common denominator, crime. Offenders have to understand the effect of their actions (Newell 2000:13), how crime changes people's perception of the offender as a human being and this realization for some offenders only come when they are held in prison and confronted with the effects of the crime.

The Correctional System is on the receiving end of the Criminal Justice Process. The Correctional System has no choice about the offenders who are send to the facilities. The question is about the choices of the type of interventions offered, when these individuals are prepared to return to society as “law-abiding citizens”.

In–depth discussion of the White Paper on Corrections in South Africa (2005) falls outside the scope of this study. However, this is an important guiding document in terms of the partnership between the Correctional System, families and communities, both while the offender is serving a sentence and also to ensure successful reintegration. The needs of the offender will be discussed in chapter 6, with cross reference to the needs of victims using the White Paper on Corrections in South Africa (2005) as point of departure, while focusing on other relevant documents and government policies. Following is a short summary of the entire White Paper on Corrections in South Africa (2005) which is relevant for this study.



Chapter 1 explains why a new White Paper on Corrections was needed. The document had to accommodate the practical implications of the Constitution (Act 108 of 1994) and the Correctional Services Act (Act 111 of 1998) which was drafted after the 1994 draft White Paper. The previous White Paper was also not aligned with the new policy environment of government, which emphasizes human rights practices also for offenders. It finally also allows for involvement in the Integrated Justice system, and the move away from safe custody only, to include interventions aimed at a holistic approach of addressing offending behaviour.

In chapter 2 of the thesis the researcher focused rather extensively on the background and transformation of the South African Correctional Services. The White Paper on Corrections in South Africa (2005) in chapter 2 highlights the rationale behind the Restorative Justice approach as the *“promotion of a restorative approach to justice to create a platform for dialogue for the victim, the offender and the community, facilitating the healing process”*. This implies in the opinion of the researcher, amongst others, the Victim Offender Mediation process. The Department of Correctional Services has developed policy on Restorative Justice and in the policy procedures have to spell out how exactly the Victim Offender Mediation will take place. It highlights the need for proper preparation of the victim and offender, as well as the involvement of the respective support systems. Van Ness & Strong (2002:57) profess that: *Mediation offers victims and offenders the opportunity to meet one another with the assistance of a trained mediator to talk about the crime and come to an agreement on steps towards justice.*

Chapter 3 of the White Paper on Corrections in South Africa (2005) underscores the importance of the community in any or all efforts to rehabilitate offenders. The researcher’s report deals with this responsibility as part of chapter 6 where the most important role players are discussed.

Chapter 4 confirms that the South African Correctional Services no longer only deals with safe custody – it now also deals with rehabilitation and correcting of offending behaviour. These objectives are discussed in chapter 2 of the thesis.

Chapter 5 emphasises the importance of restoration and Restorative Justice for offenders, which forms the core of the researcher's argument. Again the involvement of external role players is identified. The White Paper on Corrections in South Africa (2005) focuses on parole for offenders and the involvement of victims in the parole hearing of offenders (de Bruin, personal interview, 25 January 2008). Managing corrections through Unit Management principles is described. The chapter deals with the rights of offenders as outlined in the Constitution (Act 108 of 1996), including the rights of accused persons awaiting trial in correctional centres.

Chapter 6 deals with the Integrated Justice and Social Sector responsibility regarding the rehabilitation of offenders. The Department of Correctional Services does not function on an island, but needs the inputs and cooperation of national, African and International bodies to deliver on its core function. When a sentenced offender is admitted into the Corrections System, he/she was then already dealt with by the Police Service and the Justice Department.

Chapter 7 refers to the socio economic background of offenders. It also describes the different and difficult crime categories represented in the correctional facilities. These factors contribute to the challenges faced by the Department of Correctional Services to effectively impact the lives and choices of offenders. The influx of different types of offenders, some with very long sentences, contributes to the problem of overcrowding.

Chapter 8 is in the researcher's opinion the biggest challenge, namely the requirement of an "ideal correctional official within an appropriate organizational culture".

Chapter 9 is discussed in this chapter as part of an enabling environment. The needs of offenders have to be correctly identified to make the implementation of a needs based Correctional Sentence Plan a reality. The plan would be worth nothing if the causal factors, which led to criminal behaviour are not addressed. The plan should also address the reintegration needs of the offender as well as attending to offenders who serve their sentence in the community. This should be read with the Correctional Services Amendment Bill (2007) which makes the development of a sentence plan for offenders with more than 24 months imprisonment compulsory ([www.dcs.gov.za](http://www.dcs.gov.za) visited on 2008/03/26).

Chapter 10 gives effect to the expectations of victims and communities - namely that offenders must be removed from society, as they are a threat to society. However, vulnerable offenders inside the correctional centres as well as personnel working with offenders should also feel safe and secure.

Chapter 11 prioritises the services that are rendered to vulnerable offenders, also known as Special Categories of Offenders, which includes amongst others, women and children in correctional centres.

Chapter 12 recognises the fact that the prisons that were built before were built only with safe custody in mind. The principles of Unit Management and separation of the various categories of offenders require a different structure. The current 237 facilities are totally overcrowded. However, building more prisons/correctional centres only partly deals with the problem. The researcher discusses reasons for overcrowding in chapter 5.

Chapter 13 repeats and emphasises what has been said all along - the Department of Correctional Services should not address the crime problem in isolation. Offenders are as much products of the society as victims of crime are. Other government departments and civil society should form partnerships with

the Correctional System to ensure that the problem of crime in the country is addressed holistically.

Chapter 14 links the Department of Correctional Services to other organs of the state in terms of the oversight function such as the Cabinet and Parliament. Management of assets, including finances is governed by certain rules, as is the treatment of offenders. The Judicial Inspectorate has the mandate to report on the treatment conditions of offenders. Finally the Minister of Correctional Services is advised on policy issues by the National Council on Correctional Services.

The Department of Correctional Services' approach to encouraging restoration of relationships (White Paper on Corrections in South Africa 2005:81) is guided by the following principles of Restorative Justice:

- *Recognition of human rights of all people (South African Constitution, Act 108 of 1996)*
- *Recognition that crime is often a violation of one person by another with only the state assuming an intermediary role; (Zehr 2002 :19)*
- *Recognition of reintegration of rehabilitated offenders into society entails restoration of rights of citizenship*

#### **4.9 Departmental Policies and Restorative Justice in the Correctional System**

At least 220 000 people are affected by the incarceration of offenders in the Correctional System at any given time. Here researcher refers to each one of the 110 000 sentenced offenders who currently serve a prison term, having at least one direct victim. This figure excludes the immediate family of the offender

as well as the victims' support systems that became secondary victims as a result of crime. The correctional officials who deal with offenders and often with victims on a daily basis, are affected. It is just not possible for a normal human being to hear of the suffering of another innocent human being and not be affected in one way or the other. Correctional officials will respond in different ways to the very offenders they have to look after and treat in a "humane" way. The families of correctional officials are directly or indirectly affected. *"The nation is continuing to invest significant public resources on corrections with trust and confidence that we will make corresponding and even better contributions towards building a safer and a more secure South Africa"*. (Balfour, Minister of Correctional Services, Budget Vote Speech 5 June 2008). The Minister indicated that R11, 4 billion was allocated in the 2006/07 financial year to the Correctional System. It is therefore in the researcher's opinion necessary to evaluate the policies that guide the services to offenders in assisting them to take responsibility for their crimes, as it affects the entire South African society.

#### **4.9.1 Policy on Victim Involvement in the Parole Boards (Correctional Supervision and Parole Boards)**

This policy was developed in response to the requirements of the Criminal Procedure Act (Act 51 of 1977), section 299A, the Correctional Services Act (Act 111 of 1998), the White Paper on Corrections in South Africa (2005), as well as the Victim's Charter (2004) which allow victims of violent crime to attend parole hearings of offenders. Restorative Justice and Victim Empowerment are two sides of the same coin. No process in prison can be fully restorative if victims are not involved. Presenting information programmes to offenders is good and necessary, but cannot be fully restorative unless all the important role players, namely offenders, victims and communities are involved (Zehr 1990; Skelton, personal interview 2 August 2007), but without coercion. The researcher already alluded to the fact that the idea with Restorative Justice is for the offender to take or accept responsibility for the crime he/she committed. The offender could also

attempt to restore relationships and or heal the damage to the victim. This implies that the victim will benefit and be vindicated as the one who suffered physically and emotionally. Victim Empowerment is meant to restore power to the victim who was left powerless by the crime and the experience of victims that the formal justice system does not accommodate their needs (Zehr 2002 a: 3).

The researcher is mindful of the need of victims to be involved in some or all the stages of the Criminal Justice System. The Victim's Charter (2004) makes provision for victims to attend the parole board hearing of an offender. This process also happens in other countries like the United States of America (Herman & Wasserman 2001:433), but Wallace (1998: 47) postulates that the victim is again traumatized as he/she relives the crime when attending the parole hearing of the offender. A challenge in the researcher's opinion that Correctional Services might have to deal with, are those cases where courts made Restorative Justice intervention part of the sentence, and the victim is not interested in Victim Offender Mediation (VOM). The researcher is of the opinion that it would be unfair to deny parole to the offender based on the decision of the victim not to be involved or to withdraw from the process. The Correctional Services Act (Act 111 of 1998), explains in section 75(4) the role of the Department of Correctional Services in the case where a victim wants to attend or make a submission to the Correctional Supervision and Parole Board as follows: *"...where a complainant or relative is entitled in terms of the Criminal Procedure Act, to make representations or wishes to attend a meeting of a Board, the Commissioner must inform the Board in question accordingly and that Board must inform the complainant or relative in writing when and to whom he or she may make representations and when and where a meeting will take place"*.

This is in line with international practice affording victims of crime these rights (Herman & Wasserman 2001:433). Information is offered to the Chairpersons and vice-chairpersons of the Boards on their duties, and the training include how to deal with a victim during the parole hearing (de Bruin, personal interview, 25

January 2008). According to de Bruin, the information sessions deal with issues like sensitivity for the feelings of the victims, to allow victims to use their own language and to make interpreters available where necessary. Reverend Irion, a parole board chairperson, confirms this and adds that the parole board also has an interview with the offender; the offender needs to understand that he/she violated the trust of the community and has to adhere to certain parole conditions, amongst others, to do community work to try and restore the harm.

Restorative Justice is a voluntary process where ideally, the victim and offender will find an amicable solution to the problem that was caused by crime. Ideally also is that the respective support systems will be part of the process and the ultimate solution. Contrary to that is a prison sentence imposed by a court of law, is by its very nature coercive. Restorative Justice processes are not suitable in all cases and victims might never be ready for the process because of the extent of the hurt, fear and anger (Morris & Maxwell 2001:268) and should not be coerced. A real danger in researcher's opinion is where victims can be directly or indirectly coerced into taking part in a parole hearing before he/she is emotionally ready. The Correctional Supervision and Parole Boards should not set Victim Offender Mediation as a requirement before offenders are considered for parole (Braithwaite 2002a: 140). This can pose a serious risk to all parties involved. The abovementioned is important, and if not dealt with properly, can have serious implications.

#### **4.9.2 Policy on Restorative Justice**

A policy on Restorative Justice had been approved in the latter part of 2007. It acknowledges the right of victims and emphasizes the responsibility of offenders. The role of the community is also spelled out and ensures that all role players are informed of expectations and participates voluntarily in the process. The policy endeavours to promote healing and restoration of all parties, in partnership with the community and other government departments. The policy recognizes the

significance of culture, which in the researcher's opinion is important, because the prison population is but a replication of the South African population. The concerns of different cultural groups, religious and faith communities should be taken into consideration, even with the practice of Restorative Justice in a correctional centre. The policy allows for flexibility in practice, which is imperative if one looks at the disparity in educational levels, age groups, different categories of offenders and offences. The policy finally recognizes the important role of Restorative Justice in preparing the offender for release and successful social reintegration.

#### **4. 10 Partnerships and Teamwork**

Currently (March 2008) a total of just over 40 000 professionals and security personnel comprise the staff component of the Department of Correctional Services, including the employees in regional and national offices. The employees at national and regional offices do not deal with offenders directly. The Department of Correctional Services is responsible for the care and rehabilitation of around 160 000 offenders, including awaiting trial detainees, in 237 correctional centres. Ideally the staff members should work together as a multi-disciplinary team, with a combination of approaches, by the following professionals: Social workers, Psychologists, Psychiatrists, Spiritual care workers, Educationists, Health care workers, Medical doctors, Criminologists and Custodial staff (case workers, case managers, unit managers, Heads of correctional centres). Research had been conducted motivating for the use of criminologists in Correctional Services to amongst others, assist with assessment of offenders (Hesselink-Louw 2004; Maree, et.al, 2003: 73-81). Other role players in rehabilitation and Social Reintegration would include external service providers, like community and faith based organizations, as well as departments such as Social Development, Justice and Constitutional Development and the South African Police Services, in rehabilitation efforts (Department of Correctional Services Position Paper on Social Reintegration 2008: 22).



Correctional Services personnel strengthen the relationship with external partners/ service providers as reported by the Allandale management area (Western Cape) in SA Corrections (August/September 2006: 13).

The Department of Correctional Services is expected to develop programmes targeting offending behaviour, present rehabilitation programmes and guide offenders to change their behaviour and attitude. Policy makes provision for the implementation of the Correctional Sentence Plan, which guides the treatment interventions that an individual offender has to undergo in order to correct his/her offending behaviour. The completion of the Correctional Sentence Plan is where the assessment process starts, which had been dealt with in detail earlier in this chapter.

#### **4. 11 Crime Prevention**

Crime prevention should be addressed on primary, secondary and tertiary level to be effective. On primary level government in partnership with civil society and business have to make programmes available that will impact the lives of young people even before they are exposed to crime. On secondary level those youngsters who might have had a single encounter with crime, or who might have been approached by drug dealers need to be targeted. Even those who just experimented with drugs have to be prevented from continuing. What is important for this study is intervention and prevention on tertiary level (White Paper 2005: 10). Correctional Services recognizes its responsibility in effectively addressing the offending behaviour of those who have already committed crime for which they are serving a sentence. Muntingh (2001a:6) and Prinsloo (1995:4) speculate that the rate of re-offending is as high as 55-95%. The Department of Correctional Services also concedes that the majority of offenders in prisons are not first time offenders. The majority of offenders will eventually return to the community. Successful reintegration can possibly prevent ex-offenders from committing crime again with the effective cooperation of the Integrated Justice

System (Department of Correctional Services Position Paper on Social Reintegration 2008: 20). The researcher will also discuss if and how Restorative Justice interventions can have a positive effect on the choices that offenders and ex-offenders make. Crime prevention and specifically the prevention of escapes are particularly relevant for Correctional Services. The community can experience this in a positive light as a commitment of government to protect victims from dangerous offenders. When escapes do happen, victims might feel violated again, as their right to safety is not guaranteed as stated in the Victim's Charter, 2004 and the Department of Correctional Services' Annual Report 2006/07. Once again the cooperation of the community is needed not to assist or tolerate the offenders who pose a threat to law-abiding citizens.

#### **4.12 Summary**

Creating an enabling environment forms a necessary and important part of the operations of Correctional Services. It might seem like something foreign or difficult, but the researcher contends that the application of the White Paper on Corrections in South Africa (2005) in its totality would create an enabling environment (White Paper on Corrections in South Africa 2005: 66). That is the reason why the researcher referred to all the chapters of this document in this chapter, to indicate the relevance to restoration and restorative justice. The White Paper on Corrections in South Africa (2005: 66) even talks about creation of this environment as "core business". It is indeed also contained in official documents as an ideal to work towards.

Creating of an enabling environment in which to implement Restorative Justice is not something new that needs a specific budget or dedicated funds. An environment conducive for the implementation of rehabilitation is being created by the drive to recruit more personnel and to train and retrain the existing personnel. Recruitment processes are already in place. The researcher is of the opinion that creating an enabling environment in which to facilitate victim

empathy and an environment conducive to do so is a mindset. The budget of the Department of Correctional Services increases on an annual basis to detain offenders in humane conditions. However, what is even more important is to assist offenders in regaining or developing often for the first time respect for themselves and others. The application of Unit Management already goes a long way to create an enabling environment. The attitude of correctional officials regarding their responsibility towards victims and the community will create in themselves space to be open for change. Their attitude towards their job or calling will affect the way in which they relate to offenders. These factors in the researcher's opinion are already halfway to what is needed to create an enabling environment.

The country ratified the international mandates regarding the treatment of offenders as discussed in this chapter. Guidance from developed countries had been taken regarding the development of an individual Correctional Sentence Plan. The release preparation of offenders is guided by amongst others, the renewed focus on victims of crime and involvement of communities in the Criminal Justice System. This is specifically needed in terms of successful reintegration of offenders which will not be possible without involvement of the community.

The researcher touched on the policy development environment which feeds into creating the right atmosphere in which to address offending behaviour. These developments, including crime prevention and respect for human rights, are required by the Constitution (Act 108 of 1996) and prescribed by the Correctional Services Act (Act 111 of 1998).

## CHAPTER 5

### DEALING WITH CHALLENGES IN THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN PRISON

*Restorative Justice focuses on repairing the harm caused by crime and reducing the likelihood of future harm. It does this by encouraging offenders to take responsibility for their actions and for the harm they have caused, by providing redress for victims and by promoting reintegration of both within the community (Van Ness & Strong 2002:49).*

#### 5.1 Introduction

The composition of the prison population is a challenge on its own as in recent years the profile of the average offenders and Awaiting Trial Detainees became increasingly aggressive and violent. The number of longer sentences (10-15 years) increased by 12 % over the previous 6 years, while the number of life sentences is also on the rise (Balfour, Minister of Correctional Services Budget Vote Speech 2007). The Inspecting Judge notes that “...systemic problems such as a lack of staff, poor infrastructure, prison overcrowding, and lack of rehabilitation programmes are common to most prisons” (Erasmus, Annual Report Inspecting Judge 2006/07: 13). Cornwell (2003: 83) postulates that prisons are complex organizations and all the different aspects like human rights issues, victim’s rights, health and safety issues make the management of prisons all the more challenging.

Muntingh and Monaheng (1983:13) profess that African families practiced Restorative Justice in the sense that they took collective responsibility for each other. This usually happened in homogenous communities (Skelton 2001:116) with a common language, common values and respect. Skelton holds that the modern family group conferencing (FGC) is not new to South Africa; it was the

most common practice and the core of dealing with conflict in the African society for hundreds of years (Skelton 2001:103-104). She goes on by saying: “...it is important to establish that while the term restorative justice may be relatively new to South Africans, the spirit of the concept is strongly embedded in the history of African society through the notion of ubuntu”. Ubuntu essentially means to care for one another. The heads of families or tribes would call a meeting where the victim and offender and their respective families are present. In these meetings those present usually agreed on what the family of the offender has to do to make right to the family of the victim (Nsereko 1992:21; Lekgetho, personal interview 13 September 2007). The challenge for this model that the researcher proposes links to the above discussion.

## **5.2 Cultural and religious diversity**

Correctional Services has to incorporate the practices of the different cultural and religious groups that are represented in prisons, and will be challenged to embrace diversity, within the parameters of security requirements. The Spiritual Care policy makes provision for the practicing of different religions in the prison set-up. Kgosimore (2002:72) expands on this idea by explaining that a meal is usually prepared after an agreement was reached which allows the two families to eat together as a token of reconciliation.

The Prison Fellowship South Africa does have a celebration function after completing the Sycamore tree course (this course is discussed in chapter 7). Security arrangements need to be in place to prevent contraband entering the prison through people who might not have been involved in the course. Some church groups or faith based organizations (FBO's) might prefer to start and end the session with prayer or some other religious ritual. Traditional leaders or traditional healers might also want to perform a healing ritual.

All of these have significance for the role players. However, there might be people with different convictions in one session and the mediator will have to negotiate with the different parties what would be acceptable for all role players. It is possible that the role players might not reach an agreement about one specific ceremony or ritual. The researcher would then suggest that the groups meet separately before the session to perform those rituals as it would really defeat the purpose if role players are offended by a ceremony that they do not agree with. The mediator should also be aware of his/her own convictions and not be biased towards others.

### **5.3 Broken families and Moral degeneration**

The researcher is of the opinion that a new or fresh understanding of ubuntu has to and in some cases has developed, as the original family system is under siege because of the search for employment in cities. Nuclear families have now developed and no longer have the strong link with the leadership from elders in the community of origin (Mbambo & Skelton 2003: 276; Skelton & Frank 2001:117). The Department of Correctional Services will have to find a way in communities to get the relevant individuals and structures involved, and what would work in a prison/correctional centre in a rural area might be totally impractical in an urban environment.

According to Allot (1977:21) the idea when dealing with conflict or a dispute was to bring about reconciliation, restoration and harmony. When someone had been wronged then amends needed to be made (Dlamini 1988). The assumption that Restorative Justice is a foreign concept taken from other countries like Canada and New Zealand is therefore incorrect. It is indeed a traditional African concept similar to the traditional aboriginal concept of peacemaking in these two countries. While “Makgotla” or “Ikundla” was aimed at reparation, there is also some critique that it was traditionally managed mostly by men in a patriarchal society, with the resultant risk of women being marginalized and the abuse of

women and children perpetuated. This has to be taken into consideration when Victim Offender Mediation (VOM) is contemplated between a female offender who killed an abusive husband, and the in-laws. When the latter attend the parole hearing, they might object to possible release, because they do not accept that the wife was actually a victim of domestic violence for a long time prior to the incident. The researcher will attempt to deal with this and similar issues when the role of family and other support systems is discussed. Female offenders have often been found to have been victims themselves. It is the researcher's opinion that they need therapy from social workers, psychologists, as well as spiritual intervention to deal with that victimization, before they can be expected to understand the victimization of their victims.

Communities have an expectation that the norms and values in communities should be respected by members of that community. However, where people feel marginalized or rejected by their communities for various reasons, they do not internalize those norms and values. Deviant behaviour of young people often leads to offending behaviour. Adults in communities and community organizations should guide the youth, help each other to instill in the entire society the notion of solving problems before the intervention of the formal Criminal Justice System is needed. The negative effect of incarceration of hundreds of citizens on family life is summarized by Braman (2004: 27) as follows: *"As family members are pressed hard to withdraw their care and concern from one another, the effect is more than the impoverishment of individuals: it becomes a moral one and, in time, we impoverish our culture as well"*. The practice of Restorative Justice requires communities to address moral regeneration and to make offenders understand the detrimental effects of their behaviour on the norms and values of the community (Bazemore & Erbe 2004: 31-32). Communities have to also affirm the acceptable norms in society, thereby indirectly vindicating victims.

The government's Moral Regeneration Movement (MRM) has the objective to:

Build and strengthen relationships with community organizations in order to fight crime and poverty in communities. The South African Correctional Services is also involved in this movement through the directorate Spiritual Care. Correctional Services has different projects in the regions involving personnel and offenders in community service and poverty alleviation.

Moral regeneration is in line with Hippchen's (1979:418) ideas that prison should correct offending behaviour and successfully reintegrate offenders. But most importantly, primary prevention is needed to address those factors in society that lead the youth to become involved in crime, but also to in the words of Hahn (1998: 133) "restore the fabric of the community". Re-offending is estimated at 65 – 94% (Dissel & Ellis 2002:5; Adams 2004:2). Partnership with the Moral Regeneration Structures is essential for the Correctional System (Budget Vote Speech, Minister of Correctional Services 2007).

At the Inaugural meeting of the core team: "Conversation for a safe South Africa" on 11 March 2008, Barbara Holtmann from the CSIR presented views on how to break the cycle of crime in South Africa. The following illustration is used with her permission which clearly indicates the risk factors in communities and the dire consequences if civil society and government fail to effectively and collectively address those risks. The figure illustrates the factors that make people vulnerable and it shows what is needed from support systems in communities, with the cooperation of a "...accessible, transparent and responsive" Criminal Justice System to deal with the unfortunate incidents of crime.



Figure 6: Breaking the cycle of crime and violence



Source: Holtmann, CSIR

#### 5.4 Challenges in the system

That the Department of Correctional Services is indeed challenged by a number of factors is confirmed by the Inspecting Judge (Erasmus, Annual Report of the Inspecting Judge 2006/7) indicating the following as contributing to the difficulties the Correctional System faces:

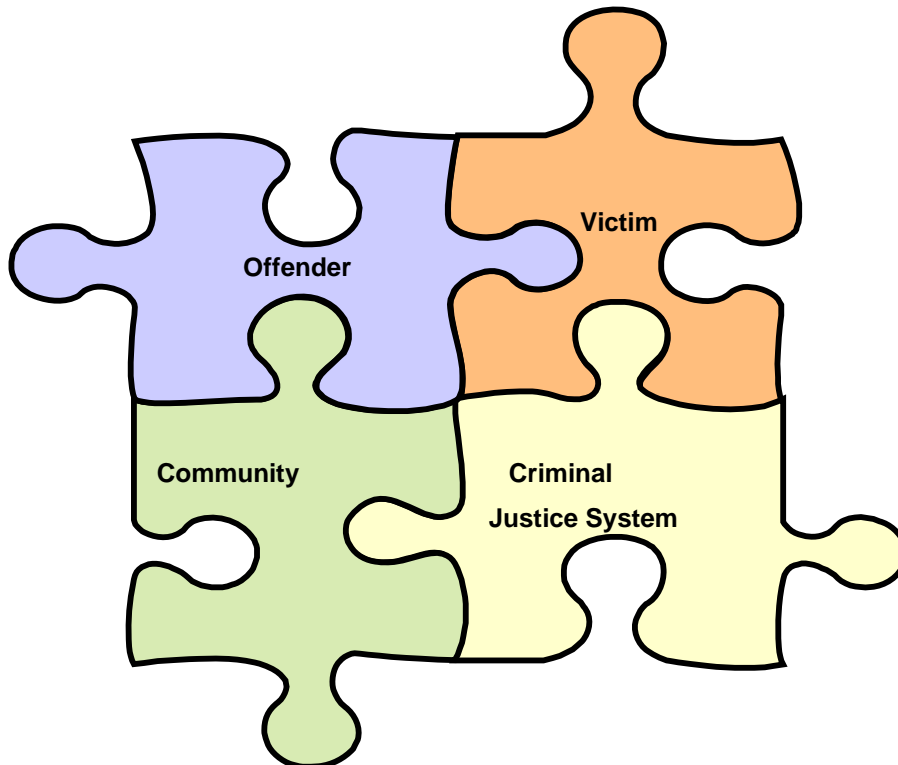
- Shortage of staff
- Lack of medical staff and facilities

- Prison overcrowding
- Staff development
- HIV/AIDS
- Infrastructure and maintenance
- Gangsterism
- Requests for Prisoner transfers
- Focus on security
- Lack of rehabilitation and vocational training programmes
- Assaults

The majority of these factors are discussed by the researcher in different chapters where it was deemed relevant. The researcher also indicated where the Correctional Services already made some progress in addressing some of these challenges.

### 5.4.1 The Restorative Justice Puzzle as a challenge

Figure 7: Restorative Justice Puzzle



Restorative Justice often puzzles people. Indeed, in the researcher's opinion the Restorative Justice paradigm requires the different role players to fit into their roles like pieces of one big puzzle to effectively deal with the needs of victims and offenders. With building of a puzzle one needs to become familiar with the different parts, sort them out and decide where to start. The role players, namely victim, offender, mediator, counselors, community and government need to build a relationship, become familiar with the role that they will be playing as well as

the inter dependencies between the roles. A process that excludes certain role players cannot be fully restorative.

The figure on page 186 shows only the four major groups of role players. Each one of the groups forms part of another puzzle to complete the picture. For example, the victim is or should be linked to support structures like churches or religious groups, siblings, other relatives, colleagues, sports club, neighborhood, etc. to complete yet another puzzle. Some of these elements also form part of the community as role player, which overlaps with the important elements as mentioned for the victim. In terms of the Criminal Justice System, one could identify the Police Services, Court System and Correctional Services. These role players should have elements like training, research, monitoring, evaluation, reporting, resources, civil society organizations, traditions, language, culture, etc. as part of the puzzle, for the successful implementation of Restorative Justice. A more complete discussion of the puzzles for each one of the major role players is explained as part of the recommendations. Interestingly enough, the puzzle pieces for the offender are mostly the same as for the victim, as they might be products of the same community.

The victim's needs have to be prioritized above the need to punish the offender. Offenders have to understand the impact and consequences of the offence (Morris & Young 2000: 17-18; Thsiwala 2000: 140; White Paper on Corrections in South Africa 2005: 19). For the offender to understand what happened, and the impact of the crime on those affected, information needs to be exchanged. The puzzle piece of the offender can only fit in properly once the offender takes responsibility, admit wrongdoing and find out what the victim needs to be restored. Both victim and offender need the support system made up of professionals and community members for the offender to carry out his/her responsibilities and for the victim to do what is needed on the way to full recovery. Again, like a puzzle, the specific pieces only fit into a specific puzzle, although the principles in building a puzzle do not change. With Restorative

Justice there are different types of interventions, but only the specific role players in the specific crime situation will be able to determine which process is the most appropriate. A process which works in the case of a specific crime cannot be copied and used for the same type of crime, as the circumstances of the crimes differ. Also, the needs of different victims of the same type of crime will never be exactly the same. This is consistent with Ashworth's (2002:578) assertion that there is *no single notion of restorative justice, no single type of process, no single theory*. Restorative Justice has to be flexible to accommodate the needs of victims, offenders and communities. Policy makers often look for a *blue print* or specific programme to endorse. It is usually difficult for big bureaucratic organisations to approve of a process that cannot be replicated in all its facilities. What in the researcher's opinion could be standardised is a general information programme, so that role players can make an informed decision on what process will be most appropriate. The puzzle will only be completed when all role players have the understanding and experience that the process was fair, they have been heard and their needs have been addressed. The model will indicate that the Correctional System has to make provision for the fact that victims and offenders have quite often the same needs to get and receive information, to be treated with dignity and respect and to be reintegrated into society. Both might be hurt and need to be restored. The process or intervention will usually include an agreement about future behaviour, and only when the agreement is honoured will the puzzle be completed.

#### **5.4.2 Restorative Justice and Overcrowding**

The National Commissioner of Correctional Services, Mr. Petersen, summarises its position on overcrowding as follows:

*"While overcrowding continues to be a problem, the Department has been relentless in seeking solutions with partner departments. The Management of Remand Detention is a milestone project that will ensure a multi-pronged*

*approach and is taking into account the sharing of resources. At the same time, the Department is paying attention to reducing the number of sentenced offenders. The Department has always and still holds a strong view that for meaningful rehabilitation to take place, a safe and secure environment must prevail. Reducing overcrowding will go a long way in realizing this goal”* (Department of Correctional Services Annual Report 2006/07: 9). Research done by Pelsler (2000: 6) confirms that the high percentage of awaiting trial detainees contributes to overcrowding.

The Population growth in the prisons in the United States of America during 1980-1996 increased with over 200% (Blumstan & Beck 1999:17). In 1997 America imprisoned 645 adults per 100 000 residents in jails and prisons compared to 400 out of every 100 000 in South African prisons (Skelton 2000).

The following table indicates the total number of prisoners, including those not yet sentenced. The cost of housing all these people and supply their needs in accordance with human rights requirements is predictably enormous.

**Table 4: The composition of the correctional facility population as at 31 March 2004 (Department of Correctional Services Annual Report 2003/4)**

Category	Adult		Juvenile (under 21 years old)		Total
	Male	Female	Male	Female	
Sentenced	109 769	2833	14 935	275	127 812
APOPS(sentenced)	5952	0	0	0	5 952
Unsentenced	39 299	960	13 365	252	53 876
Total	155 020	3793	28 300	527	187 640

**Source: Department of Correctional Services**

Overcrowding compromises effective rehabilitation and leads to a sense of dissatisfaction. The Department of Correctional Services acknowledges overcrowding as a serious challenge in effectively addressing offending behaviour and delivering on its mandate (White Paper on Corrections in South Africa 2005:31, 57), as under staffing is endemic in an overcrowded prison especially in terms of skills shortage of educationists, psychologists and social workers (Muntingh 2005; [www.easimail.co.za](http://www.easimail.co.za) visited on 2007/05/03). Altbeker (2005a:28) agrees and argues that “Prisoner numbers have grown faster than has either accommodation or staff levels”.

A National Task Team on Overcrowding, that the National Commissioner refers to, was established to work on the problem of overcrowding through different approaches, amongst others, reducing the number of awaiting trial detainees (White Paper on Corrections in South Africa 2005:89, 90-94) and referring children to secure care facilities within an Integrated Justice System (Fagan 2002:17), although Mubangizi (2002: 30) purports that it has failed because of a lack of safe secure care facilities.

The Inspecting Judge, Judge Nathan Erasmus remarked on overcrowding as follows: “The total number of prisoners in custody is 161 674 of which 158 115 are male and 3 559 female. Prisoners serving a term of direct imprisonment or as an alternative to an unpaid fine totals 113 213. The other 48 461 are unsentenced prisoners. These are people who have been arrested and who are kept in prison awaiting the finalisation of their cases. A total of 2 077 children (younger than 18 years) are in custody of which 61 are girls and 2 016 boys. Another 16 714 prisoners are between the ages 18 to 21” (Erasmus, Annual Report of the Inspecting Judge 2006/07: 12). After a visit of attorneys of the Law Society of South Africa in 2003 to a number of prisons, they reported on the poor conditions in prison, caused by amongst others, overcrowding, with the resultant lack of rehabilitation (Morris 2004).

The following table is the illustration used by the Inspecting Judge to indicate the 26 most overcrowded prisons (Erasmus, Annual Report of the Inspecting Judge 2006/07: 17). The researcher finds it interesting that 12 of the most overcrowded correctional centres are in the Eastern Cape (EC), followed by 6 in Gauteng, 2 in Kwa Zulu Natal (KZN) and Western Cape (WC) and Limpopo respectively, with Free State & Northern Cape (FS & NC) and Mpumalanga 1 each. (The column on the far right was added to indicate the region where these facilities are). Region specific solutions have to be found to deal with this problem. Heads of correctional centres can in terms of the Criminal Procedure Act, Act 51 of 1997 reduce overcrowding by approaching courts to release certain categories of non-violent awaiting trial prisoners (remand detainees). Indeed, Correctional Services' Strategic Plan (2007/8-2011:9) indicates that the challenge of overcrowding resulting from the Minimum Sentencing policy and other long sentences could be dealt with in the following ways:

- Transfer of offenders between centres in the same region
- Sentence conversion
- Building of more correctional facilities
- Once off Special Remission

The researcher has dealt with these four possibilities to some extent in different parts of the report.



**Table 5: Twenty six most overcrowded prisons**

<b>Correctional Centre</b>	<b>Approved accommodation</b>	<b>Unsentenced</b>	<b>Sentenced</b>	<b>Total</b>	<b>% Occupation</b>	<b>Region</b>
Pietermaritzburg	1330	1291	1243	2534	190.53	KZN
Grahamstown	309	326	268	594	192.23	EC
<b>Barberton Farm Max.</b>	845	3	1640	1643	194.44	Mpumalanga
George	514	343	692	1035	201.36	EC
Baviaanspoort Max.	355	0	718	718	202.25	Gauteng
East London Med. B	543	1107	10	1117	205.71	EC
Zonderwater Med. A	877	0	1825	1825	208.10	Gauteng
Grootvlei Max.	890	1373	525	1898	213.26	FS
Durban Med. B	2053	0	4381	4381	213.40	KZN
Pretoria Local	2171	4368	367	4735	218.10	Gauteng
Leeuwkop Max.	763	0	1671	1671	219.00	Gauteng
Mount Frere	42	0	92	92	219.05	EC
Pollsmoor Max.	1872	3255	925	4180	223.29	WC
Caledon	215	366	115	481	223.72	WC
St. Albans Max.	717	0	1611	1611	224.69	EC
Lusikisiki	148	178	161	339	229.05	EC
Thohoyandou Female	134	19	289	308	229.85	Limpopo
Umtata Max.	720	0	1662	1662	230.83	EC
Johannesburg Med. A	2630	5957	154	6111	232.36	Gauteng
Fort Beaufort	162	170	215	385	237.65	EC
Bizana	57	73	68	141	247.37	EC
Middeldrift	411	0	1060	1060	257.91	EC
King Williams Town	301	532	264	796	264.45	EC
Johannesburg Med. B	1300	0	3579	3579	275.31	Gauteng
Thohoyandou Med. B	219	696	24	720	328.77	Limpopo
Umtata Med.	580	1092	953	2045	352.59	EC

**Source: Report of the Inspecting Judge (2006/07: 17)**

### **5.4.3 Awaiting Trial Detainees contributing to overcrowding**

In a discussion with Mr. Damons, the Deputy Commissioner for the Branch Remand Detention, it was confirmed that at a cabinet *lekgotla* it was decided that a specific department must take responsibility for awaiting trial detainees (Damons, personal interview 6 March 2007). The management of Remand Detention is problematic. *“One of the most vexing challenges faced by the department is overcrowding which is mainly caused by the high number of awaiting trial detainees at DCS centres. The Department of Correctional Services is pleased to report that in 2006 Cabinet took a decision that the DCS, together with its partners in the criminal justice system should investigate the possibility of the establishment of dedicated remand centres. It is expected that the envisaged commencement of the remand detention system that will improve the administration of the criminal justice system and protection of the rights of the accused persons”* (Department of Correctional Services Annual Report 2006/07; Department of Correctional Services Strategic Plan 2007/8-2011/12:9). This responsibility is shared between the Police Services, Correctional Services and the Department of Social Development, although limited integrated planning is sighted (Balfour, Minister of Correctional Services, Budget Vote Speech 5 June 2008). There used to be uncertainty which department is ultimately responsible for the management of awaiting trial detainees. Correctional Services was tasked to put structures in place, including dedicated personnel (also in regions) and accommodation to manage awaiting trial detainees in prisons. The plan is to eventually make programmes available to these detainees. Policy had subsequently been developed and posts created. Planning includes the reduction of case backlog by video postponements of court cases. Pilot sites will be identified in regions and transport of detainees to courts might be outsourced. Research will be conducted about best practice and the community will be consulted (Damons, personal interview 6 March 2007).

The National Prosecuting Agency has a project to reduce the Case backlog, also by considering Restorative Justice as an option for awaiting trial detainees. It

seems that the government realized that *they will not be able to build their way out of the crisis* (Fallen 1989:72). The Inspecting Judge reports on the negative effects of overcrowding with specific reference to the horrendous conditions for awaiting trial detainees (Fagan 2002:17). Muntingh (2005) agrees by stating that human rights of prisoners are at risk because of overcrowding and staff shortages ([www.easimail.co.za/Back\\_Issues/cspri/2403Issue769.html](http://www.easimail.co.za/Back_Issues/cspri/2403Issue769.html) visited on 2007/05/03). Erasmus (Report of the Inspecting Judge 2006/07: 8) asserts that human rights are not negotiable and should not be dependent on resources.

The table on the next page indicates the number and gender of awaiting trial detainees. It also indicates crime categories for the four most common crimes, namely economical, aggressive, sexual and narcotics.

**Table 6: Awaiting trial detainees in Correctional centres, Average period February 2008**

<b>Awaiting Trial Detainees in Correctional Centres :</b>						
<b>Average for Periods: February 2008, Correctional Area: Implemented Sites</b>						
<b>Genders by Crime Category</b>		<b>Children</b>	<b>Youths</b>	<b>Adults</b>	<b>Unknown</b>	<b>All Age</b>
Male	Economical	347	7511	7352	0	<b>15210</b>
	Aggressive	548	13110	10886	0	<b>24544</b>
	Sexual	162	3451	4176	0	<b>7789</b>
	Narcotics	13	391	825	0	<b>1229</b>
	Other	35	1327	1725	0	<b>3087</b>
	All Crime Categories	1105	25790	24964	0	<b>51859</b>
Female	Economical	22	175	224	0	<b>421</b>
	Aggressive	10	168	229	0	<b>407</b>
	Sexual	1	6	9	0	<b>16</b>
	Narcotics	1	31	69	0	<b>101</b>
	Other	3	41	48	0	<b>92</b>
	All Crime Categories	37	421	579	0	<b>1037</b>
All Genders	Economical	369	7686	7576	0	<b>15631</b>
	Aggressive	558	13278	11115	0	<b>24951</b>
	Sexual	163	3457	4185	0	<b>7805</b>
	Narcotics	14	422	894	0	<b>1330</b>
	Other	38	1368	1773	0	<b>3179</b>
	All Crime Categories	<b>1142</b>	<b>26211</b>	<b>25543</b>	<b>0</b>	<b>52896</b>

**Source: Department of Correctional Services**

The current available accommodation is clearly not enough to accommodate the ever-increasing demand for prisons. The Correctional System manages 241 correctional centres, accommodating around 158 859 offenders with different categories of offences in different age groups. The percentage of overcrowding is estimated at 38% (Minister's Budget vote Speech 2007). The awaiting trial detainees in 2007 were 48 166 and the sentenced offenders 112 473. The Department of Correctional Services makes a distinction between awaiting trial detainees and awaiting sentence detainees and indicates that the totals for this category of offenders stood at 52 326 in 2005 (Department of Correctional

Services Annual Report 2004/05: 74). The government is responsible to take care of the awaiting trial detainees, who in the end, often after long periods of being detained, might be found not guilty or charges dismissed. One way of managing awaiting trial detainees is to get them out of the system as soon as possible. One innovative way of doing that is with the use of “Inmate tracking” where a person who has to go to court can be easily identified in the prison. If not, the court case is delayed and that person stays even longer inside the remand detention centre (SA Corrections January/ February 2005: 9). The researcher is of the opinion that Restorative Justice can also be applied with awaiting trial detainees. It is possible that they could pay restitution, or apologise to the victim or repair the harm as part of a court order. Different options exist for those not yet found guilty of a crime, and partnership with civil society organizations and other government departments dealing with Restorative Justice and Victim Empowerment is again emphasized.

#### **5.4.4 Female offenders contributing to overcrowding**

The following table indicates the different prisons/correctional centres that are managed by the South African Correctional System. Female prisons and prisoners are minimal in relation to male offenders and male only centres. Women offenders, represent only about 2 % of the total prison population (Minister’s Budget Vote Speech 2007; White Paper on Corrections in South Africa 2005:163). One might think that this necessarily means that they do not face severe overcrowding, but statistics prove the contrary.

The male awaiting trial detainees in March 2007 were 52 372, compared to 1063 females. The sentenced males were 110 065, while the sentenced females were 2487, bringing the total male prisoner population to 162 437, compared to 3550 for females. Only male offenders are housed in the two maximum security private prisons; a total of 5953 in Mangaung Bloemfontein and Kutama Sinthumule, Louis Trichardt ([www.dcs.gov.za](http://www.dcs.gov.za) visited 2008/05/01). In February

2008 the Department of Correctional Services managed 237 active prisons, of which 8 are for female offenders only, 13 Youth Development centres, 130 men only, 86 accommodate female offenders in a separate unit. Two prisons were closed for renovations. The Inspecting Judge (Erasmus, Annual Report of the Inspecting Judge 2006/07: 29) confirms the statistics and reports that female prisoners constitute 2, 2% of the total prison population, which is 3559. He further postulates that 1087 female prisoners are unsentenced while 2472 are sentenced. Of these women 165 serve a sentence of longer than 25 years. These long sentences should be read in conjunction with the discussion on the Mandatory Minimum sentencing policy.

#### **5.4.5 Children in prison contributing to overcrowding**

Section 28(g) of the Constitution states that *“Every child has the right - not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be-*

- (i) kept separately from detained persons over the age of 18 years; and*
- (ii) treated in a manner, and kept in conditions, that take account of the child’s age”*

Researchers agree (Nevill & Dissel 2006: 11; Jacobs-du Preez 2002) with the notion of using imprisonment as last resort. Nevill & Dissel (2006: 11) explain that the Correctional Services Amendment Act, 1994 (Act 17 of 1994) prohibits the detention of children under the age of 18 in a police cell or prison beyond 48 hours. However, because of logistical problems, the Act was amended again to allow detention of children older than 14 years who have been charged with certain categories of serious offences.

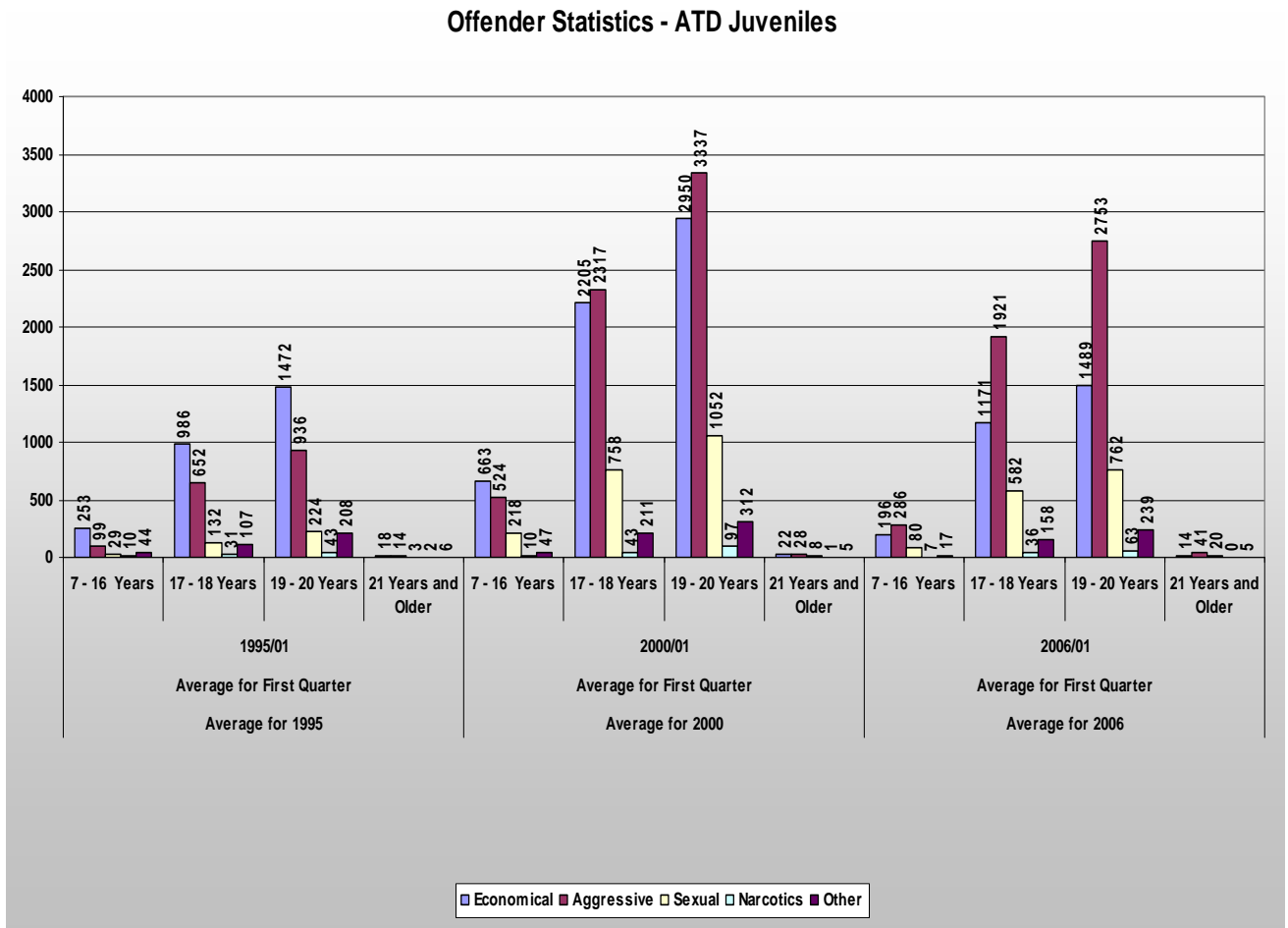
During the 2006/07 financial year the Inspecting Judge reports that there were 2 077 children in prison of which 912 are sentenced and 1 165 are unsentenced. This begs the question if all these awaiting trial or unsentenced children committed serious crimes which forced the government to protect society against them. The Minister of Correctional Services reports that the number of juveniles in correctional centres have been reduced by 65% in 2005/06 (Department of Correctional Services Annual Report 2005/06). This is a result of amongst others, working agreements within the Justice and Social sector clusters – one of the ways in which this is dealt with is through alternative accommodation which is age appropriate for young people.

Indeed the Inspecting Judge (Erasmus, Report of the Inspecting Judge 2006/07: 27) indicates that 959 of the children in correctional centres were sentenced or arrested for aggressive crimes, 714 for economic crimes, 291 for sexual crimes and 21 due to narcotics. The remaining 92 children are kept in prison for crimes classified as 'other'. It then seems that not all children are in prison for aggressive crimes. The researcher agrees that in the interest of protecting these children from being exposed to criminal influences inside the correctional centres, they should have been dealt with differently (Neville & Dissel 2006: 12-13; Skelton 2000). One obvious challenge is the lack of or insufficient provision of Secure Care facilities where young offenders could be held. This again refers to the need for cooperation between the different government departments. The provision of Secure Care facilities is the responsibility of the Department of Social Development. The fact that insufficient facilities are provided, should not automatically become the problem of Correctional Services.

The White Paper on Corrections in South Africa (2005:162) is clear that children should not be in prison – they should be diverted from the Criminal Justice System, or where custodial care is needed, be placed in secure care facilities meant for children. It further states that “Children *under the age of 14 have no place in correctional centres*”.

The following graph reflects the statistics and the reality of children awaiting trial in prison.

**Graph 3: children awaiting trial in prison, according to age categories in January 2007**

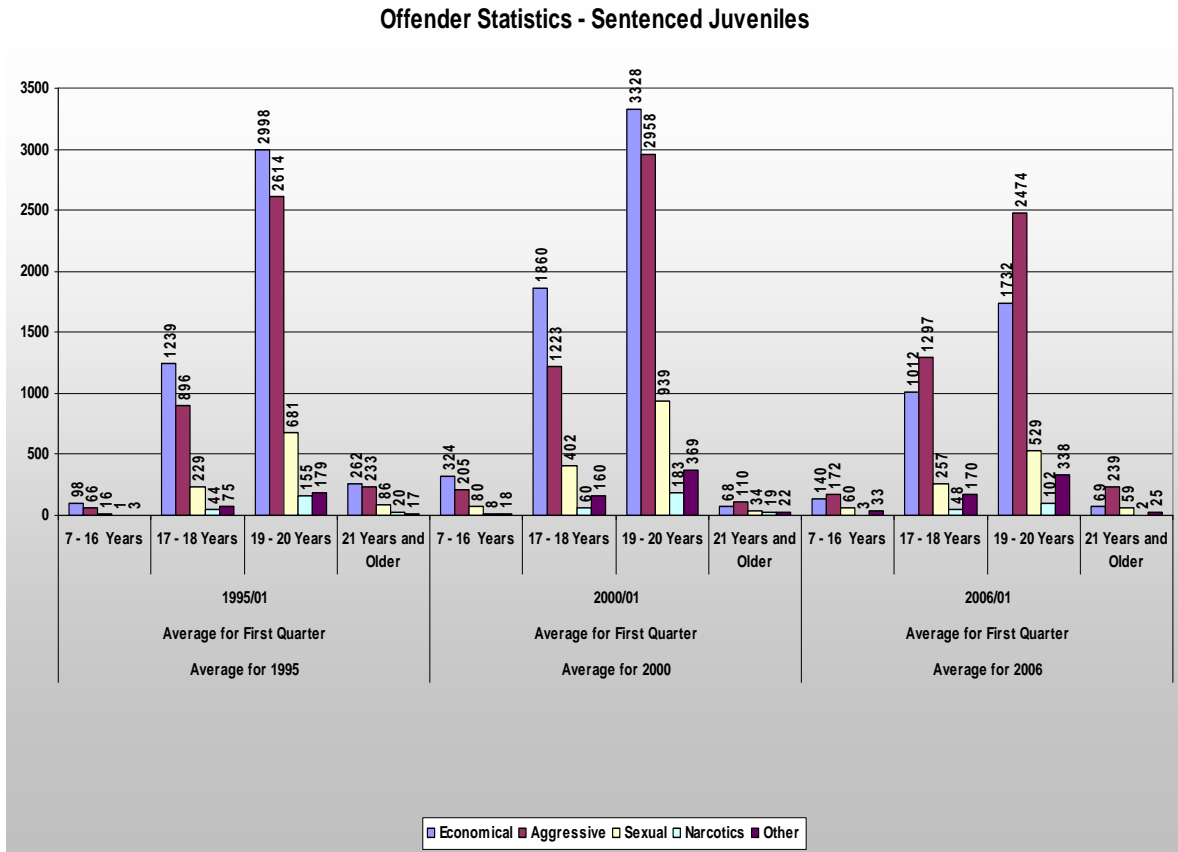


**Source: Department of Correctional Services**

Cavill & Dissel (2006: 12) report that in 1999 there were 2934 children awaiting trial in prisons, but from 2002 the number decreased to 1138 by March 2006.



**Graph 4: Sentenced children in correctional centres according to age categories and gender**



**Source: Department of Correctional Services**

The researcher contends that children are in a process of developing, which is true for those in correctional centres as well. One can therefore make the assumption that part of their socialization process takes place inside the correctional centre. Role models are important and the prison environment should give these children a sense of safety in which to develop and grow, even grow a sense of responsibility and caring for others. Restorative Justice is one of the instruments to develop a less selfish attitude in people, by focusing on the effects of crime on others, and the feelings, needs and concerns of victims. The researcher agrees that a concerted effort should be made to deal with the problem of children in prison, but also to find sustainable solutions between all

role players through what Nevill & Dissel (2006: 15) describes as “coordinated interdepartmental collaboration”, including civil society to keep children out of prison as far as possible. The following table indicates the number of children in correctional centres at the end of January 2008. The unsentenced children are clearly more than sentenced children. The number of children awaiting trial for economic, aggressive and sexual crimes is significantly higher than those for sentenced children in the same categories.

**Table 7: number of children in correctional centres at the end of January 2008**

<b>Crime category</b>	<b>Unsentenced</b>	<b>sentenced</b>	<b>Total</b>
Economic	391	307	698
Aggressive	564	376	940
Sexual	169	111	280
Narcotics	16	18	34
Other	39	58	97
<b>Total</b>	<b>1179</b>	<b>870</b>	<b>2049</b>

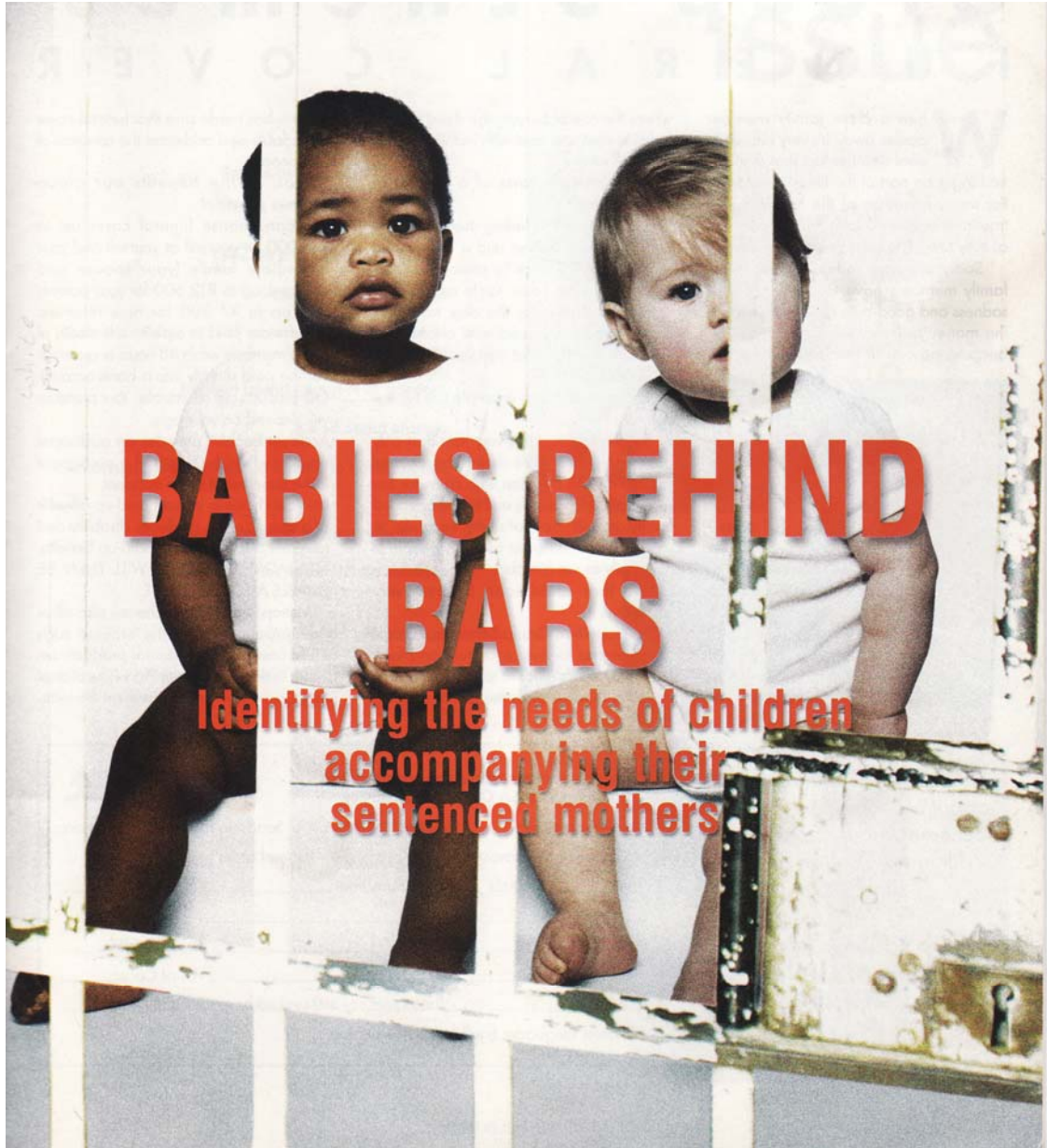
**Source: Department of Correctional Services**

#### **5.4.6 “Babies behind bars”**

Another interesting but sad factor that takes up space in the prison is the young children and babies who are incarcerated with their mothers. Correctional Services made *mother and child units* available for this purpose (White Paper on Corrections in South Africa 2005:164). The presence of these children is officially recognized through policy that is developed for *females and infants*. The “Babies behind bars” theme was launched during 2002 (see photo’s on page 203 from the Correctional Services’ Nexus) in the Johannesburg female prison where 45 babies were locked up with their mothers (SA Corrections 2002: 6-7).

Partnership with civil society was once again demonstrated when groups of people (national and international delegations) visited the facilities to assist Correctional Services to deal with the problem. The Inspecting Judge reports that 168 children younger than 5 years were with their mothers in prison. In this regard the researcher supports the view stated by the Inspecting Judge (Erasmus, Annual Report of the Inspecting Judge 2006/07: 29) where he recommends that the needs of the children should not come second to the rights of the mother and that for each one of these children a Children's court enquiry be opened. The researcher further believes this will provide an objective decision by the Children's Court in the best interest of the baby or young child.

Photo 1: “Babies behind bars”



Source: Department of Correctional Services Nexus

The White Paper on Corrections in South Africa (2005) devotes the whole of chapter 11 to the so-called special categories of offenders. Services to Females and infants are being streamlined through policy making and a specific budget to

take better care of them. The policy allows children to stay with their mothers up to the age of five (5), then they need to be placed in foster care or any other suitable alternative. One can't even begin to think of the possible emotional scars for these children and their mothers while the children are with the mothers, but also when the children have to be separated from the only environment that is known to them.

The following table indicates the current state of affairs in this regard:

**Table 8: Babies and children inside prison with their mothers**

	31 March 2002	31 March 2007
Children/babies admitted with their mothers	190	168
Babies born in prison	4	
Total	194	168

**Source: Department of Correctional Services**

It is pleasing to see a reduction in the number of children with their mothers in prison from the 194 in 2002, compared to 168 in 2007. The figures for 2007 indicate the figure found by the Inspecting Judge, but no specific reference is made to those born in custody (Annual Report of the Inspecting Judge 2006/07: 29).

The Minister of Correctional Services tabled the Correctional Services Amendment Bill (2007) at the National Council of Provinces (NCOP), in Cape Town on 05 March 2008 where he announced that *“We have also reduced the age limit for children allowed to grow up with their incarcerated mothers from 5*

*years to two years, because extensive research on human development raises questions of endemic damages that can be made by incarceration of children for the greater part of their critical formative years of 0 to 7 years. This ideal can only be realised if all players in the criminal justice system, social sector and civil society particularly families could put all their hands on deck to save this generation through appropriate placement".* One of the implications of this amendment is obviously the review of the existing policy in the Department of Correctional Services regarding Mothers and Infants and dealing with the fears and uncertainties of those mothers in the correctional centres whose children are already 2 years old.

### **5.5 The Mandatory Minimum sentencing policy**

The implementation of this policy had the ripple effect that many more offenders are sentenced to very long periods of imprisonment and life sentences, which worsens the already overcrowded situation as indicated in the following table (Department of Correctional Services Annual Report 2004/05). There are also offenders in the system that under the previous government received the death penalty, which was repealed in 1995. The sentences of these offenders have subsequently been reviewed and were converted into life sentences.

**Table 9: Sentence length breakdown as on the last day of 2008/01**

Total sentenced	112 552
< 6 months	5053
> 6-12 months	3880
> 12-24	4013
2-3	12 767
3-5	11163
5-7	7590
7-10	14 707
10-15	22 816
15-20	11 926
>20	9871
Life	7879
Death	4
Other	883

**Source: Department of Correctional Services**

Mandatory sentencing in South Africa is in response to, amongst others, a call by communities for harsher punishment (Skelton 2004:4). It also follows the trend in other countries like America, which according to Hippchen (1979:412) is merely a return to a more punitive attitude. Researcher noticed from statistics that longer sentences are not a deterrent to potential offenders. Skelton (2004:4) postulates that life sentences do not seem to deter offenders, while Morris (2004) agrees that the South African incarceration rate is more than double that of European countries. Hippchen (1979:413) proposes that solutions, other than punitive ones should be found to deal with crime.

These longer sentences for more serious crime imply that Correctional Services needed to make available more maximum-security accommodation (White Paper on Corrections in South Africa 2005:106). It also implies that offenders are much longer in the system; it is so much more costly to accommodate these offenders and to implement their individual correctional sentence plans. The effect of this on the family system and community life in general will be dealt with when the effects of imprisonment are discussed. The longer term- and life sentences imply that offenders grow old in prison. Older people resort under special categories of offenders. Older persons need more medical care, which has a definite effect on the budget of the Correctional System. They also need to be accommodated in facilities which take their physical needs into consideration, so that they don't have to negotiate stairs, for example, to move around inside the prison (White Paper on Corrections in South Africa 2005:166). Even if magistrates don't necessarily agree about a minimum sentence for a specific crime and circumstances, the court is still obliged to pass that sentence in terms of the law (Harcourt 1975:162).

The abovementioned conditions contributing to overcrowding is consistent with the factors indicated for overcrowding in Namibia and Tanzania. Bakurara (2003: 82) postulates that mandatory sentencing policy, too few prisons, economic conditions in communities, stricter bail conditions all contribute to overcrowding of prisons. He further indicates the over reliance of the Criminal Justice System on imprisonment as another reason for overcrowding.

## **5.6 The cost of imprisonment**

The cost to house an individual is very high (Wright 2003:4) and one day in a prison amounts to an average cost of R123.37 per day per prisoner (see also table 10). The Justice System has embarked on a process to grant free bail, especially to offenders who have committed petty crimes. Quite often people who have committed less serious crimes are being detained awaiting their court



date just because they could not afford bail (Dissel 2002:9; Fagan 2002:18). This in researcher's opinion is a clear disadvantage to the majority of offenders who are poor, but is also not a cost-effective way of keeping the public safe. The South African prison population ratio is amongst the world's highest (White Paper on Corrections in South Africa 2005:103).

**Table 10: The cost of imprisonment**

<b>Year</b>	<b>Budget- Rmillion</b>	<b>% Growth</b>
1996/1997	R 3,178,984	
1997/1998	R 3,580,054	13
1998/1999	R 4,515,581	26
1999/2000	R 4,679,993	4
2000/2001	R 5,392,819	15
2001/2002	R 6,658,102	23
2002/2003	R 7,156,897	7
2003/2004	R 7,601,778	6
2004/2005	R 8,559,706	13
2005/2006	R 9,234,085	8
2006/2007	R 10,742,331	15
2007/2008	R 11,365,798	11
2008/2009	R 12,267,765	6

**Source: Annual Report of the Inspecting Judge 2006/07**

Altbeker (2005a: 1) makes the following statement regarding national budgeting priorities: "What government chooses to fund can tell us a great deal about where its priorities lie".

Overcrowding could also be the result of tougher policies in reaction to crime, like hiring more police officers, more effective apprehension of offenders and tougher sentences (McEleney & McEleney 2005:2). This is confirmed by the increased allocation of funds to increase posts in the Criminal Justice System, police stations, electronic equipment and prisons (Budget Speech of the Minister of Finance, 2008). The increased capacity in the Police Service and Justice

Department will lead to an increase in convictions, which will please the public. However, this will inevitably lead to a further increase in prison sentences, despite the 18 000 additional prison spaces that the Finance Minister budgets for, as the current overcrowding will fill those spaces. As argued before, the problem of crime cannot be dealt with by imprisonment only as repeat offending is not addressed. The researcher therefore again emphasise the use of Restorative Justice with sentenced offenders, so that those who do have to be removed from the community can have a better understanding of the harm crime causes to victims.

## 5.7 The violent prison environment

Violence in prison could be the result of overcrowding, higher stress levels, lack of individual attention, disciplinary problems, frustration and aggression (Luyt 1999:25; Dissel & Kollapen 2002:95; Dissel & Ellis 2002:9). Frustration and aggression probably led to the violence in 1994 about the right to vote. A total of 22 offenders in two respective provinces died during those violent protests and altercation with prisoners, personnel and the police force (Department of Correctional Service Annual Report 1 January - 31 December 1994: 11). The total deaths in prison for unsentenced and sentenced prisoners in 1994 are indicated in tables 11 and 12 respectively.

**Table 11: Deaths: Unsentenced prisoners 1 January 1994 to 31 December 1994**

Natuurlike oorsake/ natural causes	29
Selfmoord/ Suicide	3
Aanranding deur mede-gevangene/ Assault by fellow prisoner	1
Skietvoerval/ Shooting incident	1
Totaal/ Total	34

**Department of Correctional Services Annual Report 1 January 1994 to 31 December 1994**

**Table 12: Deaths: Sentenced prisoners: 1 January 1994 to 31 December 1994**

Natuurlike oorsake/ natural causes	139
Selfmoord/ Suicide	14
Aanranding deur mede-gevangene/ Assault by fellow prisoner	21
Aanranding lid op gevangene/ Assault member on prisoner	3
Skietvoorval/ shooting incident	6
Brandwonde (Brandstigting) / Burns (Arson)	26
Elektriese skok/ Electric shock	1
Verdrink (mangat)/ Drowned (manhole)	1
Totaal/ Total	211

**Source: Department of Correctional Services Annual Report 1 January 1994 to 31 December 1994**

A mere glance at the statistics from 1994 in tables 11 and 12 respectively, compared with the statistics in table 13 of 2001/02 and 2002/03 clearly indicate an alarming increase in the number of violent events in prison. Of note is that the increase took place in a period less than 10 years, but it should be read with the increase in the total prison population in mind. The so-called culture of violence and brutality (Consedine 1995: 32) in prison will breed more violence and might pre-dispose the offender to violence when he/she has to re-adjust in the community (Nair 2002:5). Muntingh (2002:22) professes that offenders suffer inhumane treatment in prison that sometimes result in death as indicated in the tables above. The researcher is of the opinion that the statistics is a reflection of the increase in violence in the community in general. The intolerance and moral degeneration in communities also manifest in prison.

**Table 13: Statistics on alleged assaults in prison: 2001/02 and 2002/03**

<b>Assault category</b>	<b>1 April 2001 to 31 March 2002</b>	<b>1 April 2002 to 31 March 2003</b>	<b>Decrease/ increase</b>	<b>% Decrease/ increase</b>
Assault: Offender on offender	2301	2410	+109	+4,7 %
Assault: Offender gangs	48	47	-1	-2%
Assault: Official on offender	624	575	-49	-7,8%
<b>Total</b>	<b>2973</b>	<b>3032</b>	<b>+59</b>	<b>+1,98%</b>

**Source: Department of Correctional Services Annual Report 2002/03**

Newell (2000:15) is of the opinion that offenders have to be assisted to contextualize their victimization in prison and to see the correlation with victimization of others. He refers to violence, gangs, riots, rape and the availability of drugs as contributing factors (Henkeman 2002:65; White Paper on Corrections in South Africa 2005:104, 155; Human Rights Watch [www.hrw.org](http://www.hrw.org) visited on 2008/01/10). Rape in prison is a contentious issue, as some prefer not to see it as a form of violence, but rather as an act between consenting people. However, the fact that the Correctional Services approached the organization Rape Crisis for assistance in dealing with rape is indicative of rape being experienced as a problem (Harvey 2002:44-50). Some officials started an organization “Friends Against Abuse” in Pollsmoor correctional centre to support offenders who have been raped by other offenders. Harvey further postulates that therapy for male rape survivors could break the cycle of sexual violence with reference to victim-perpetrator violence. Support for this idea is reported on by Gear (2007) based on a study that was done in a Juvenile Correctional Centre in Gauteng. Consedine (1995: 31) agrees with this notion when he explains that ex-offenders often commit horrific crimes of rape and violence.

Drugs and gangs pose a serious challenge to the safety of correctional officials and offenders (White Paper on Corrections in South Africa 2005:155) and for authorities to manage and control the prison environment (Riveland 1999:163). Table 7 indicates that offenders are incarcerated for, amongst others, drug related offences. The former Minister of the South African Correctional Services informed the public of the use of sniffer dogs, x-ray scanners and body searches to deal with the problem of drug trafficking in prison (Skosana, 2001: 9; The Citizen 03 October 2001). The involvement of officials in drug related offences remains a serious challenge and according to the former Minister the known syndicate leaders are separated from others so not to contaminate them. Once again the assistance of the public is needed not to supply drugs to offenders in correctional centres. *“The most obvious concern is that the effects of imprisonment damage the human and social capital of those who are incarcerated, their families, and the communities, including the detrimental impact of imprisoning parents on their children”* (Hagan & Dinwitzer 1999:122). Steinberg (2004: 73, 74) professes that certain conditions in prison contribute to fertile ground for gang activity, like overcrowding as a result of amongst others, the minimum sentencing policy. Very long sentences result in people spending most of their adult life in prison. Youngsters are often recruited into gangs with the promise of being protected (Considine 1995: 35) or are coerced into becoming a *wife* to an older stronger prisoner (Gear & Ngubeni 2002: 18).

Dissel (2002:10) and Umbrecht (1985: 64) postulate that gangs have a detrimental effect on the management of prisons and that it contributes to the lack of safety inside prisons. The United States of America imposed much stricter laws for drug related crimes that was also supposed to be a deterrent. However, it brought about an increase in the prison population. The more people from different backgrounds are cramped in the available space, the more risks it poses for safety and security of officials and prisoners (Bottoms 1999:205-281).

## 5.8 Personnel issues

The possibility of rape in prison for employees is also a reality as is reported by the media on two professional nurses by an allegedly “psychotic” offender (Venter 2008: 2). This *bad news* hardens the public’s attitude towards offenders and partly explains the outcry for harsher penalties and even the death penalty. Research evidence confirms victim-perpetrator violence, especially following rape in prison (Harvey 2002: 45), which leaves government no other choice but to deal with it decisively and prevent further tragedy to innocent victims. What is encouraging is the acknowledgement of the South African Minister of Finance of the danger and high case loads that the Criminal Justice System personnel are faced with (Manual, Minister of Finance Budget Speech, 20 February 2008). Victimization of employees in the workplace and insufficient care for the caregiver (Employee Assistance Programme (EAP), Peer support and peer supervision) need to be attended to, to ensure an emotionally healthy team in the workplace. The existence of EAP support in the Correctional Services is acknowledged. The Deputy Minister of Correctional Services confirmed during the Launch of the Integrated Human Resource Strategy on 23 August 2007 that the focus will be on “improving HR capability, employee relations, employee wellness, organizational culture, organizational design, HR systems and employment equity” (Jacobus, Speech, Deputy Minister of Correctional Services 2007:3).

Considering correctional officials as victims of crime seems almost strange or unthinkable. There is the perception that they must be strong and able to deal with very difficult situations, which most of them do. However, these ordinary community members also become victims of crime, directly or indirectly. A number of incidents have been reported where personnel had been held hostage, assaulted, raped or killed while on duty. Correctional Services reported in 1994 on the assault and hostage taking of some of its members during a protest about the right to vote (Department of Correctional Services Annual

Report 1 January - 31 December 1994: 11). The suffering of their families should also be considered as the families might be worried about difficult and even dangerous working conditions. Families will be aware of assaults on correctional officials, as it is often reported in the media. The Department of Correctional Services should put measures in place to reduce the vulnerability of officials. Officials should be assisted to deal with trauma, as unresolved trauma will manifest in different ways much later, without colleagues understanding why an employee might act in a certain way. Taking sick leave is common; suicide is sometimes reported as well as absenteeism. One of the ways to deal with the above is to address the subculture of not allowing any show of “weakness”.

For staff members to deliver service of excellence, they would need to feel that they are treated with excellence. Individual staff members in big organizations with a seemingly insignificant job might feel sidelined or marginalized. The perception is that the only time that management takes note of such an employee is when he/she is not at the regular place and time. Personnel need to experience that the employer cares about them, before they will be able to care for “criminals”. Employees in a highly stressful environment such as a prison have to have constant support in the form of peer support, counseling and therapeutic services. One needs to keep in mind that the problems of the individual staff members impact on his/her family and vice versa, therefore provision has also to be made at least for initial intervention with the family and then referral.

Working conditions in prisons, recruitment and training of officials are all factors that can contribute to the challenges that correctional officials face when implementing an approach like Restorative Justice. In the Correctional Services Annual Report (2006/07) mention is made of the Social Reintegration planning to audit the existing staff component, recruiting and placing of staff. The researcher is of the opinion that placement of staff is indeed crucial as certain skills, training and experience is needed for staff to function in a section that deals with the

reintegration of offenders. In the same annual report the need to build and strengthen partnerships with communities is acknowledged, as people will be needed who will integrate the realities of community life with the requirements for successful reintegration. This includes, according to the report, consultation with local government and community structures, as well as with traditional leaders. Strengthening partnerships with civil society and the Business sector was indeed part of the aim of the Stakeholders Conference which was held by Correctional Services in Centurion during February 2008. The researcher already alluded to working conditions when discussing overcrowding and gang related activities in the prison environment. A sense of safety is essential for any employee to be effective in executing his/her duties (Tolstrup 2002:39). Lack of safety will contribute to abnormally high stress levels amongst personnel, which predispose them to violence. The officials will be more likely to respond with unnecessary force when provoked, because of their own frustrations, insecurities and fears. It often happens, and the researcher became aware, while working inside correctional centres before, that employees are sometimes victimized by offenders, and even by co-workers. It is possible that an employee starts doing small, seemingly innocent favours for offenders, which later escalate into demands and threats from the offenders. The prison culture and coercive environment also make it difficult for staff to admit if they are not coping, or if they are entangled in an unwanted relationship with an offender or even a gang inside prison. The challenge is to maintain a professional distance while treating the offender in a humane way and building trust.

### **5.8.1 Recruitment as a challenge**

Researchers Chaskalson & de Jong (2007: 42-43) postulate that too few specialists in the Correctional System, like psychologists and social workers, compromise the quality of implementation of the White Paper on Corrections in South Africa (2005). They further posit that the implementation of this Strategic document had not been costed which could be the reason why insufficient



resources are available. Mindful recruitment and training of staff members is essential. The Corrections environment requires special skills and should therefore use stricter criteria for recruitment of officials. The White Paper on Corrections in South Africa (2005) requires all correctional officials to be “rehabilitators”, therefore more than just security officials. This is in line with international trends that training should equip correctional officials to understand treatment as well as security aspects (Tolstrup 2002:39). Luyt (1999:147-149) agrees and describes the different expectations in terms of the behaviour of the correctional staff towards the offenders, which are courtesy, treating offenders with respect, to show leadership, to identify potential in offenders, to communicate well and to contribute to the common goals of the team. It is the researcher’s opinion that the alleviation of unemployment of people with matric should be balanced with the needs of the Correctional System when recruiting correctional officials on all levels. The requirement for academic qualifications should be more stringent. It should not confirm the perception that people join the Correctional System only because they could not find any other employment. The idea is not to blindly apply first world standards, but to gradually increase the requirements for recruits. Training of officials should also include re-training of existing officials to ensure that all employees stay abreast of new developments in the Corrections field. Correctional officials should have an inclination to work with people - with compassion and an appreciation for their human dignity. They should also be emotionally mature and be able to deal with their own issues, which only come with life experience. If officials cannot resolve conflict in their own life, then they will be unable to deal with conflict in the workplace, which is a given in any prison. Existing staff members should be rewarded for improving skills and qualifications.

The abovementioned factors and others, if not managed well, can have a seriously negative effect on service delivery by the Department of Correctional Services in terms of rehabilitation of the offender and reconciliation with the community (Hesselink-Louw 2005:8). Another important point that has been

made several times is that support is needed from communities in order to bring about sustainable change in the behaviour and attitude of offenders.

## 5.9 Summary

A sober analysis of prison conditions generally, brings you to the conclusion that “ ... the aims of imprisonment are not achievable because of the irrationality of the system” (Newell 2000:37).

This might sound negative at first glance, but it is really not – it is an objective view of reality. It appreciates the difficulties associated with the management of corrections with the view of finding the best route through which an enabling environment can be created, which is quite a challenge. Creating an enabling environment does not only depend on building more facilities or dealing more effectively with overcrowding. It also does not only refer to holding offenders in more humane conditions. It is not even about improvement of the physical infrastructure. It does however; beg an overhaul of the infra-structure of the mind. The corrections personnel as well as the community at large need a total change of their mindset in terms of what is needed to create an enabling environment. Newell (2000:16) so rightly refers to the critical relationship between offenders and Corrections personnel and confirms the need for “enabling relationships”. Offenders also have to be guided into what they have to do to make things as right as possible and how to sustain changed behaviour.

The difficulties of the Correctional System to lock people up and still treat them in a humane way, within the guidelines of the Constitution, Acts, policies and international agreements are indeed complex (Erasmus, Annual Report of the Inspecting Judge 31 March 2007: 7). It is aptly summarized in the following quotation from Zehr (2001): *“Nothing will change in criminal justice until we change the basic assumptions underlying the system. We’ve tried changing the facilities by designing new prisons; we’ve tried change the roles of prison guards*

*to correction officers, we've tried changing the norms of how people relate. But the system has not changed. We have not yet changed the underlying assumptions of the system. That requires a change of values".* Correctional Services as a public service cannot work on its own as it forms part of a bigger picture, where it fits in as but one of the puzzle pieces. The Correctional System has to always keep that bigger picture in mind in its strategic direction and the day to day activities. So for instance as part of the Justice Cluster it has to work closely with departments like the South African Police Services and Department of Justice. As part of the National Victim Empowerment Programme, Correctional Services has to be mindful of the needs and rights of victims of crime and balance it with the needs and rights of offenders and ordinary citizens. The working agreements with other government departments and civil society inform laws and policies and have been described as positive in assisting the Department of Correctional Services in achieving its objectives. However, the field of Corrections is dynamic and there will always be a need to revisit policies, strategic plans and the way it is implemented. The launch of Restorative Justice, as good a concept as it is, did in fact cause a great deal of confusion, uncertainty and unrealistic expectations at all levels and in different spheres (Grobler, personal interview 17 December 2007; Potgieter, personal interview 15 November 2007; Skelton & Batley 2006), even disillusion to some extent. The focus on and prioritizing of security might discourage those who believe in the possibilities of Restorative Justice to actively propose it to management (Halstead 1999: 43). In researcher's opinion the objection of some correctional officials against yet another programme is a valid one. However, the idea is that Restorative Justice should not be a programme to be implemented, but rather an approach to be practiced, not only in Corrections, but throughout the Criminal Justice System. The preventative function of Restorative Justice is alluded to in the discussion about the responsibility of schools in chapter 6.

Of importance is the international acceptance of Restorative Justice as an approach which brought much positive results. It has to be clearly

conceptualized and carefully implemented to create this environment that is needed to assist offenders to acknowledge and understand the harm done to victims. Correctional Services has to guide offenders to take responsibility for their behaviour and to choose to change that behaviour. Even more important is the support to maintain changed behaviour and to restore the harm to victims to the extent possible. This is a process which cannot take place in isolation, as it should form part of the process to reintegrate both victims and offenders. Offenders should also be taught that all choices have consequences whether positive or negative. The offender population, by its very composition requires that the community is involved in rehabilitation and changing the behaviour of children, youth, women and men. Offenders belong to communities and the majority will return to communities.

Viewed in that way makes one realize the enormity of the societal responsibility; the enormous correctional responsibility to create the environment for community members to deal effectively with the destructive effects of crime, while offenders serve a prison sentence, but especially after their release.

## CHAPTER 6

### THE MOST IMPORTANT ROLE PLAYERS IN RESTORATIVE JUSTICE

*Restorative Justice argues, in theory, that victims must be central to justice. Indeed, restorative justice models appear to have significant potential for addressing victim concerns and needs. Closer scrutiny of restorative justice practice, however, reveals significant shortcomings. Often, the design and implementation of restorative programs lacks the vital input and direct participation of victims, their advocates, and victim services (Zehr 1999).*

#### 6.1 Introduction

This chapter will focus on the three most important role players in Restorative Justice, namely victims, offenders and the community. It can be generally accepted that crime implies at least some degree of conflict and Christie (1977: 7) argues that the conflict belongs to the victim and offender. He further postulates that the state has stolen the conflict, and that through a process of Restorative Justice the conflict is returned to its rightful owners. Banks (1999: 377) agrees that traditional societies dealt with their own disputes in order to restore harmony between them. The quotation above mostly emphasizes the potential to involve victims as important role players. The researcher also intends to use the following quotation as a point of reference in discussing the importance of the other two role players, namely the offender and the community:

***Restorative Justice is a new approach to crime that draws on the strength of the community and that focuses on the needs of the victim. By holding offenders accountable for repairing the harm they have done, restorative justice emphasizes personal responsibility. By enlisting the community to assist both victims and offenders in reintegration, it recognizes communal responsibility to respond to build a peaceful and just society. The government's responsibility includes ensuring that restorative processes are available to all (Van Ness 2001).***

Zehr (2002:13) professes that Restorative Justice originated from the idea to attend to the needs of victims and offenders that are identified as a result of crime. Newell (2000:115) explains that Restorative Justice challenges the Criminal Justice System to make sure that victims are brought into the mainstream of services and that offenders are held accountable. Going through a Restorative Justice information programme or any correctional or rehabilitation programme for that matter, is no guarantee for changed behaviour. Sustainable change has to be supported by action and support from significant others in the life of the offender (Potgieter, personal interview 16 November 2007). Friends and family have to be informed of the person's intentions and decision to change his/her behaviour, and be involved in making the changes that are needed in the offender's immediate environment to prevent a relapse. Restorative Justice aims to reintegrate the offender as well as the victim, as both sometimes experience stigmatization (Van Ness & Strong 2003:6).

## **6.2 Relevant concepts**

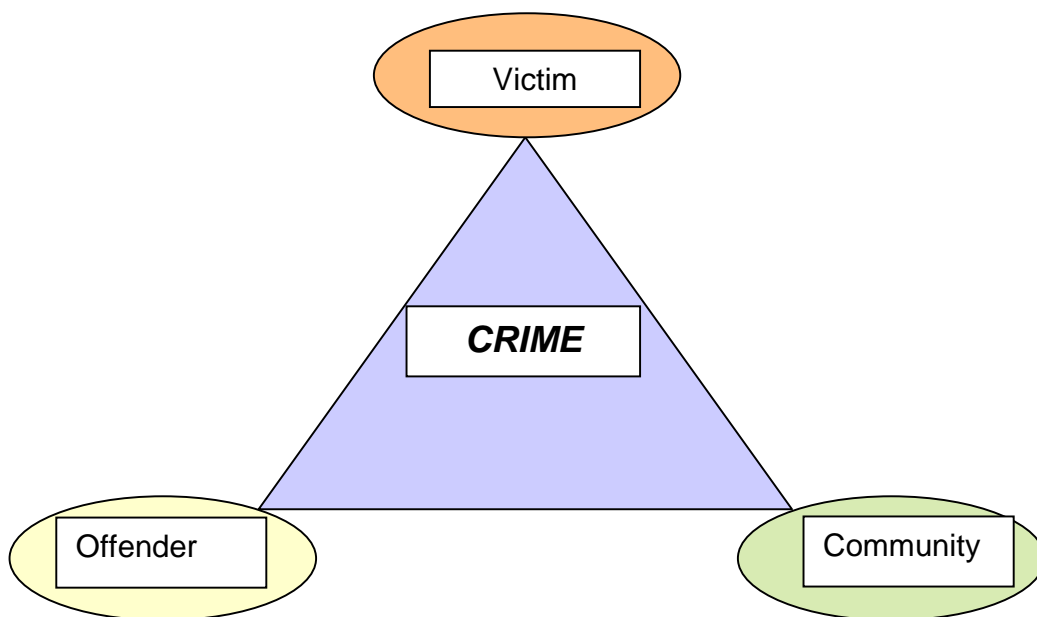
**6.2.1 Victim** is described as in the Minimum Standards attached to the Victim's Charter (2004) on services for victims of crime as any person who suffered physical, mental or emotional injury, material loss or impairment as a result of crime. Even if the offender is not apprehended, it does not change the status of the victim. The immediate family of the victim is secondary victims. The United Nations gives recognition to the mental, physical, psychological, emotional and economic loss and suffering of individual victims or groups of victims (Naude 1997: 57).

**6.2.2 Victim Empowerment** - is a process that facilitates access to a range of services for all victims of crime with the aim of restoring the dignity of victims and to prevent secondary victimization (Victim Empowerment Programme policy document).

**6.2.3 Victim Offender Mediation (VOM)** – refers to a session where the victims, offenders and their respective support systems meet face to face in a safe environment. This follows after thorough preparation of all parties, facilitated by a non - partial suitably trained mediator.

With the following figure the researcher wants to indicate the inter-relatedness of the victim, offender and community, connected by crime as common denominator. All three are equally important in dealing with the aftermath of crime, but also with planning for the future.

**Figure 8: The most important role players**



### **6.3 The Victim as important role player**

The victim of crime is studied in the science known as Victimology, which according to Wallace (1998:3) is the study of the victim, the offender and society. The South African government and specifically the Criminal Justice System are attempting to restore victims to their rightful place as part of dealing with crime. Coates, Umbrecht & Vos (2002:19) postulate that victims are increasingly being recognized in the Criminal Justice System after they have been largely ignored before the 1980's. Bazemore (1999: 295) supports this by stating that victims' rights had been promoted since the 1980's and 1990's in terms of policy and legislation drafted for this purpose. They further reckon that the involvement of victims as important role players requires systemic changes in the entire Criminal Justice System, but more specifically in Corrections. The needs of victims are acknowledged (Wallace 1998: iv) which necessitates the empowerment of victims. Victims and offenders are equally important in the criminal justice process. "The victims of serious crimes are let down when prisons are not used as places of restoration for offenders, victims and their communities" (Edgar & Newell 2006: 14). The rights, needs and expectations of the victim will be discussed, with reference to relevant government policy documents where applicable. The effect of crime on the victim will also be discussed briefly as well as the different types of victims. It is worth mentioning that in two cases where professional nurses in Correctional Services were assaulted and raped by offenders, the Minister of Correctional Services took responsibility and instructed his department to speed up resolving the claims of the victims, which certainly serves as vindication for the victims and reduction of secondary victimization (Pretoria News, 13 February 2008:2).



#### **6.4 Objectives of the Victim's Charter (2004)**

**The Victim's Charter and The Minimum Standards on Services for Victims of Crime (Minimum Standards)** - are documents, approved by Cabinet in 2004, that have been developed by a National Inter-departmental and inter-sectoral task team from relevant government departments, research institutions and civil society. The Minimum Standards explains the rights contained in the Victims' Charter (2004), processes, procedures and responsibilities of the role players within the Criminal Justice System, which also provide victims with information regarding a complaints system and redress. The rights that victims can expect from Correctional Services are: to be treated with fairness and with respect for their dignity and privacy, to offer and receive information, to be protected and receive assistance.

The Victim's Charter (2004), as referred to in chapter 3, aims at recognizing the victim as an important role player in the criminal justice process and as such developed Minimum standards for government departments in terms of the quality of services to be delivered to victims. Garkawe (1994:595) postulates that victims have been excluded from the formal criminal justice procedures since the middle of the nineteenth century. It seems that most countries which ratified the United Nations declaration regarding the treatment of victims, have developed processes to allow the voice of the victim in criminal justice proceedings, as is evident with the South African Victim's Charter (2004). It is expected that the service providers that deal with victims of crime have to ensure that their interventions reduce the negative impact of crime on victims and that it addresses the needs of victims. It implies that the crisis the victim deals with needs to be attended to, in order for the victim to experience some relief and gain hope. The service providers are expected to reduce crime, which tasks the Police Services as well as Correctional Services to make concerted efforts to fight the ever rising crime levels in partnership with communities and business to

reduce crime levels. The Minister of Correctional Services mentioned partnerships with some civil society organisations in his 2007 Budget Vote Speech, like Khulisa, NICRO, Business Against Crime, the CSIR, SANCA and the OSF. One of the ways in which communities, government and the private sector can attempt to reduce crime, is to deal with unemployment. It is believed that crime is often committed by poor people who see crime as a means to survive.

The Victim's Charter (2004) furthermore envisages that it would reduce secondary victimisation of victims by service providers. That in the researcher's view implies that specifically trained and skilled police officers will deal with crimes of a sensitive nature, like rape and cases of child abuse. The way in which the victim is treated at the police station can lead to the building of a trusting relationship between the police and the public, or it could traumatize the victim even more. The Police Service is usually the first point of entry into the Criminal Justice System. Already significant success is reported as a result of the availability of victim friendly facilities at some police stations. If the police treat victims with respect and empathy, then it might lead to improving co-operation by victims and the public with the Criminal Justice System. This in turn could lead to the apprehension of the offender, as the police are often dependent on information from the public.

Interventions by the police and other role players should also be directed at offenders or potential offenders. Young children could be deterred from a criminal life style if warned by police or as a result of the involvement of police in schools and neighbourhoods. Talks at schools as part of crime prevention could reinforce socially desired behaviour and acknowledges members of the public who assisted police in crime prevention or in the identification of criminals. A more detailed discussion follows later in this chapter. The Community Corrections or Social Reintegration offices of Correctional Services and the

Social Crime Prevention units of the police should also become involved in Community forums. Cooperation and trust between communities and agents of the Criminal Justice System might very well deter offenders or potential offenders, as communities would no longer tolerate crime in their area. Communities should be prepared to get involved and should stop supporting offenders through the buying of stolen property and or drugs. Crime prevention efforts have often been the result of a crime, like the abduction of a child or the committing of a crime in thick bushes in a specific area. It then results in the community taking hands with the police in cleaning up the area to prevent the same type of offence from happening. Wallace (1998: 346-347) alludes to the starting of a national organization in the United States of America, *Mothers Against Drunk Driving*, as a result of the death of a child by a repeat drunk driver. Legislation was also passed to protect children after the disappearance of yet another child in America. Similar examples can be found in South Africa and all over the world. A similar initiative is the *Community Holistic Circle Healing Program* in Manitoba, Canada. This was started to deal with the unacceptably high rates of sexual and family abuse. Communities did not wait for or blame government, they initiated this programme where offenders are identified and brought into a meeting with victims. They use their traditional healing practices after which the offender apologises publicly to the victim as well as the community. One can only imagine the emotional content of such meetings, but also the affirmation of common morals and values. Usually these sessions are opened with a ceremony which is significant for all from that community which adds legitimacy to the process (Griffiths 1999: 285).

## 6.5 Victim's rights

Rights provided in the Victims' Charter (2004) as well as in the United Nations Declarations make provision for the victim's **right to be treated with fairness and with respect for their dignity and privacy**. Once again the police officers who deal with crime victims should ensure privacy when statements are taken

about the traumatic experience. The Health Department also has a responsibility to ensure that victims who suffered physical injuries should be treated with the utmost respect and sensitivity, and an understanding of the physical and emotional trauma that they are enduring (Wallace 1998: 43). The type of crime will also be taken into consideration when a decision is made on which official (in terms of skills and experience and even gender) would be the most appropriate to deal with the victim. Some female victims or children might be further traumatized if a male officer is to take a statement about a rape case. Not all victims respond the same but care should still be taken to prevent secondary victimization as far as possible, by also, specifically in hospitals and at police stations to ensure the right to privacy (Garkawe 1994:602). The challenge in terms of resources is a reality that needs to be dealt with. The extent to which resources are made available to victims in relation to resources already available to offenders, also indicate the commitment of government to attend to the needs of victims of crime.

The **right to offer information** allows victims to talk about the crime, their feelings, even their fears from their own point of view. Service providers who deal with victims of crime should know that victims sometimes have the need to talk about the crime several times - to repeat those things that are important to them. Some victims keep on repeating what happened because they still cannot believe what happened to them. The other possibility is that victims refuse to talk about the crime, and should also be respected for that. Victims often do not get a chance in court to tell the story in their own way, as the formal court proceedings don't always make provision for that. One way in which victims are allowed to give information is by way of a written or verbal victim impact statement (Wallace 1998: 349). Zehr (2002: 14-15) refers to truth telling as a need of victims. This is an important step to empowerment of victims. Unfortunately not all magistrates or legal people allow that in court, as it might influence the outcome of the court case, and in so doing disadvantage the offender. The important point is that there should be a balance between the

rights and needs of victims and offenders throughout the criminal justice process. Victims should also give information about how they have been harmed and what they would need from the offender and service providers to be restored (Naude et al., 2003:3).

Victims should not only get information because it's their right to, but also because they have a genuine interest to know what is happening with their case, as they might need to prepare themselves for instance to appear in court or at a parole hearing (Garkawe 1994:601). The **right to receive information** implies that professionals and even volunteers who are rendering services to victims of crime should make sure that victims are informed of the procedures that are followed in the criminal justice process (Wallace 1998: 43). The majority of victims have never before been inside a court room or for that matter, a prison. When they need to make use of these services, they need to fully understand what they can expect and what is expected of them. The rights of the offender should in the researcher's opinion be explained to the victim as well, for the victim to understand if the case is dismissed because the offender's rights have been violated. Garkawe (1994:604) postulates that the rights of the victim should not impact negatively on the rights of the offender or accused person. The victim needs to be prepared for long delays in finalizing the court case and Wallace (1998: 43) postulates further that victims should be allowed to ask questions, and as far as possible be addressed in a language of their choice. This is another way of showing respect for the human dignity of the victim. This is indeed the case when victims attend parole board hearings of offenders (De Bruin, personal interview 25 January 2008).

Victims could receive more information about the crime by meeting and confronting the offender. According to Dignan (2007:319) one out of two victims are willing to meet the offender. The following are possible positive outcomes:

- They have a better understanding of the circumstances surrounding the crime.
- They get answers to some or all of their questions, like why they have been chosen for the crime and if they could have done anything to prevent it (Fattah 2006: 15).
- They might get an apology or an undertaking of community work.
- Victims might be satisfied with the agreement that is reached during the process, and they could get rid of anger, fear and other emotions.
- Victims might have certain concerns that are sometimes affirmed and dealt with during the session.
- Victims can even get a sense of closure, which enables them to move on with their lives.

Another interesting development is the granting of remission to offenders. The South African government granted Special Remission to offenders in 2005, excluding offenders with crimes of an aggressive nature and sexual offenders. The relevance to this report has to do with information to and consultation with victims regarding the release of offenders. It is indeed the prerogative of the relevant Minister to grant Special Remission, but it still remains the right of victims to be protected and dually informed. It is quite possible that victims might be re-victimised when they are confronted with their offenders in the community before they have dealt with the crime and its consequences. The Correctional System certainly has to balance the interest of victims with the crisis experienced by too high levels of overcrowding. The table on page 230 indicates the number of offenders who benefited from the Special Remission of 2005. This brought a significant drop in the total prison population as more than 30 000 sentenced and unsentenced prisoners had been released as a result of the Special Remission -

unfortunately not because they were all successfully rehabilitated and ready for reintegration into society.

**Table 14: Special Remission Releases, 2005**

Capture System – All Offenders - All Releases										
Remission Date: 2005, Correctional Area: Correctional Centres										
Sentence Category	Only Qualified for a Maximum of 6 Months					Qualified for a Maximum of 20 Months				
	Children <18 Years	Youth 18 - 25 Years	26 - 65 Years	Elderly >65 Years	Disabled	Children <18 Years	Youth 18 - 25 Years	26 - 65 Years	Elderly >65 Years	Disabled
0 - 12 Months	172	2,170	2,225	30	10	344	2,253	2,401	39	4
>12 - 24 Months	63	728	1,037	9	3	200	1,647	1,967	33	9
>2 – 3 Years	78	809	1,346	16	1	150	1,682	2,886	13	7
>3 – 5 Years	47	445	946	16	2	65	1,015	2,406	15	5
>5 – 7 Years	11	188	674	16	2	14	258	1,143	11	1
Longer than 7 Years	9	129	1,076	32	2	3	87	901	12	2
<b>All Sentence Category</b>	<b>380</b>	<b>4,469</b>	<b>7,304</b>	<b>119</b>	<b>20</b>	<b>776</b>	<b>6,942</b>	<b>11,704</b>	<b>123</b>	<b>28</b>

Source: Department of Correctional Services

The **right to protection** is particularly important for victims of violent crime. It is often the most important task for service providers to get the victim to safety, before attending to any of the other needs (Garkawe 1994:602). Fattah (2006: 15) postulates that victims need a sense of safety more than punishment for the

offender. They want to be free from the fear that the offender might come back, and Fattah reckons that is the real reason for the call for imprisonment. Where perpetrators have not been apprehended, the victims naturally fear that they might return. They have to deal with the loss of safety, material things, and often the loss of a loved one. The following is just one of the hundreds of severely traumatic events that society has to be protected from:

*“Father killed in triple shooting. Wife and teenage son critical after attack on home”* (The Star 3 March 2008: 1).

The feelings of some of the victims of crime could be voiced in the following headline: *Zuma backs “shoot to kill” call* (Pretoria News 14 April 2008) in response to a speech by a politician about the powers of police officers.

There are classic examples of victims who were eventually killed by abusive partners, even after laying a charge at the police station. The difficulty is that human behaviour is unpredictable, and police sometimes use their own discretion in dealing with cases.

The Victim’s Charter (2004) makes provision for the assistance to victims, which amongst others could include transport where necessary and assistance in completing documentation and laying of a charge if the victim so decides. Assistance from the Department of Correctional Services also includes but is not limited to the opportunity to attend the parole hearing, to have a translator available so that the victim can communicate in a language that he/she is comfortable with. The victim has the **right to be assisted** in visiting the prison before the victim offender mediation and or parole hearing.



Victims are entitled to compensation and restitution (Hahn 1998: 145). The **right to compensation** (Garkawe 1994:601) and the **right to restitution** should be explained to the victim by the different service providers. It is less relevant in the prison environment, as the South African system does not make provision for offenders to work and pay back the debt to the victim in monetary terms. Some states in America make restitution part of the court order and require that part of whatever amount the offenders earn in prison should be paid as restitution to the victim. However, Correctional Services does become involved in making offenders available for the building of houses, shelters or schools, repairing of play areas for children, in an attempt to give something back to the community. When offenders take responsibility for the crimes they have committed, it already gives a sense of vindication to victims, even though they might not receive restitution. A parole board chairperson of the Eastern Cape, Reverend Irion, cautions that paying of compensation should not be seen as primary to restorative justice, as it would exclude the majority of offenders who are poor. The danger also exists that someone who repaid the victim might equate that to restorative justice (Irion, interview 7 March 08).

It needs to be remembered that the people who are affected by the crime on the primary victim, are also victimized to a certain extent (Wallace 1998: 43). They are the secondary victims and are also entitled to these rights. Grobler (personal interview 17 December 2007) postulates that we are all victims and offenders. Victims in communities are affected by crime on their neighbours and have to live in prison-like houses to protect themselves from possible victimization. Most law-abiding citizens do sometimes take pens or other stationary home, which actually belong to the employer, or exceed the speed limit. In that regard, we are all offenders as well. These are the types of concepts that are dealt with in sessions of the Biblical course, the Sycamore tree, presented by the Prison Fellowship Ministry to offenders, officials and community members.

Great care needs to be taken to prevent secondary victimization with good intentions, which could be unintended consequences. According to Morris and Maxwell (2001:268) certain questions have to be answered to determine the effectiveness of the process and if the intended objectives have been achieved. The general definition of victims in terms of the South African Victim's Charter (2004) excludes certain victims, like victims of car accidents, natural disasters, etc. There is another category of victims who are often forgotten, namely the family members of the offenders. Wilson et al. (2002: 373) postulate that they are also affected by the crime. They are expected to take the offender back after his/her release, while they might not have dealt with their own emotions, such as fear, humiliation and anger, and might also have unanswered questions and unresolved trauma. They are also sometimes subjected to rejection by the community. The rest of the community might not want to accept the offender, while the families almost have no choice.

## **6.6 Effect of crime on victims**

Victims' reactions to crime differ, depending on the circumstances which refer to the age and gender of the victim, the severity of the crime, the presence or absence of violence, if the offender is a stranger or acquaintance, etc. (Wallace 1998: 83). Victims should therefore not be expected to react in a specific way and should be respected as individuals.

Victims quite often report a feeling of being numb (Zehr 1995: 19) during and immediately after the crime. They could also experience extreme fear during and after (Glanz 1994: 36, 73) the crime. Some are hurt and disappointed. Victims are sometimes angry at themselves, at their circumstances, at the offender and some even against God. Some experience a sense of guilt because they question God and ask how He could allow this to happen to them (Zehr 1990:21). Zehr (1990:22) further purports that this experience certainly affects or changes their worldview. All these emotions that are experienced are seen to be negative

and most victims also experience a sense of shock and disbelief (Zehr 1995: 19, 29; Wallace 1998:79). Those who assist victims need to normalize these emotions and reactions for the victim as there is really no right or predictable way to respond to a crisis. It would also be unfair and hurtful to the victim to be judged for the way in which he/she responded in a crisis. Some victims blame themselves and dwell for a long time over what they could have done to prevent the crime from happening. All victims experience a sense of disempowerment, which is something that service providers have to attend to when assisting the victim after the crime. Victims need to regain the power or control that was taken away by the offense. Some victims suffer long term emotional and physical consequences, which could also be included in a victim impact statement to be submitted in court. Some have bruises and cuts which heal within a short period of time, while others suffer permanent damage like paralysis, exposure to HIV and other sexually transmitted diseases (Wallace 1998:75). Christie (1977: 8) postulates that the fear of the victim is compounded by his/her appearing in court, being cross-examined, without having any personal contact with the offender, who should provide answers and explain his behaviour.

The service providers should ensure that services really benefit victims and ask the following questions to determine the results of the intervention:

- Do victims experience a sense of empowerment?
- Do they experience inclusion and satisfaction?
- Whether or not victims feel better after participating in any of the processes

It is important to include victims in the planning of the intervention, as excluding them will do what the offence did –dis-empower victims. Victims feel respected as human beings when professionals take their personal considerations seriously. Service providers should be especially aware of the needs of disabled victims (Wallace 1998:229). Victims are usually more satisfied with the outcome

of a court process or other intervention in which they were included. It does happen sometimes that relatives or people close to the victim avoid them or indirectly blame them for not preventing the crime. The victim could then experience a sense of exclusion, which needs to be addressed. This is in line with what Dignan (2007:309) postulates namely that Restorative Justice initially excluded victims, partly because Restorative Justice was not always seen to be applicable to all types of crimes, therefore a range of victims were excluded. The government's Victim Empowerment Programme and Victim's Charter (2004) attempt to reform the Criminal Justice System, but it does not always filter through to restorative practices.

## 6.7 The Offender as important role player

For the purpose of this report the focus is on a sentenced offender, meaning a person who has broken the law, had been found guilty and sentenced to a period of imprisonment. Different categories of offenders are distinguished, based on the assessment and type of crime. The researcher will highlight some of the important aspects regarding sexual offenders and the possibility of Restorative Justice.

**Table 15: Number of sentenced offenders per crime category as on 31 March 2003**

<b>Crime categories</b>	2001	2002	2003
Economical	37 105	38 499	39 795
Aggressive	53 060	58 189	63 377
Sexual	13 724	15 086	16 608
Narcotics	3532	3 739	3 974
Other	7116	7 985	7 850
<b>Total</b>	<b>114 537</b>	<b>123 498</b>	<b>131 604</b>

**Source: Department of Correctional Services Annual Report 1 April 2002 to 31 March 2003:49**

Offenders have essentially the same needs as victims and those in the same community have been formed by the same forces. Victims as well as offenders should be allowed to decide who could attend an encounter (Umbrecht 2000: 4). *"We are now beginning to understand that the predicaments of offenders and victims are often driven by the same social and economic realities. Cultures riddled by violence, poverty, the lack of choice and the absence of hope, create only two kinds of human animal: predator and prey"*. (Speech by Antonio Costa, Executive Director United Nations Office on Drugs and Crime, at the UN Congress on Crime Prevention and Criminal Justice, Bangkok, 2005) [www.unodc.org/unodc/en/speech](http://www.unodc.org/unodc/en/speech) visited on 2007/11/02). Offenders need information, as they are also often sidelined in the Criminal Justice System. First offenders need to know about court procedures, their rights and what is expected from them. Some offenders often only meet their lawyers just before appearing in court. Legal people follow formal court procedures, including deciding on behalf of the offender whether he/she will testify, what will be the content thereof (Christie 1977: 9), and if the offender should plead guilty or not. Offenders, especially those who are less educated do not always understand the court procedures. The majority of offenders have to be satisfied with a court appointed lawyer, as they cannot afford to pay the legal fees themselves. One has to wonder if the court-appointed lawyers always have the time to work through the case properly. Offenders end up in prison without having had the chance of taking or admitting responsibility; they never talk to the victim and have no understanding of the pain and suffering that victims endure because of crime. Offenders in prison might even hold a grudge towards the victim who "has sent him to prison". In some cases victims will be more traumatized if they did have to face the offender, depending on the circumstances of the crime (Zehr 2002 a: 26).

The fact that the offender is punished, does not necessarily mean that the offender accept responsibility for the crime. The offender might also still have

some unresolved issues around the crime. "...it cannot be assumed just because an offender goes to prison he will emerge rehabilitated" (Marshall 1991). Zehr (1995:43) postulates that offenders need accountability. The authorities, in this case Correctional Services, need to create conditions that would make it possible for the offender to experience personal transformation. The researcher explained these conditions in the previous chapter. This is similar to du Toit's (personal interview 25 January 2008) notion that offenders could be manipulative and ways to deal with manipulation is to avail skilled and experienced therapists with the necessary training, to implement specific procedures.

Offenders are part of a community – for them to come to the decision to change their behaviour, they would first need to accept themselves as worthy human beings. In terms of accepting themselves as normal human beings, Hageman (2003:228) postulates that the offender has to reconcile this concept with his "criminal side" as well. Also the relationship between the offender and society and the relationship between offender and victim has to be restored. They need to experience encouragement and support from family members and the community. Offenders are often isolated from the community even before they went to prison. They would now need to be integrated into society and assisted in making amends. The Department of Correctional Services' Annual Report (2005/06: 12) rightly acknowledges in the purpose of Social Reintegration the responsibility to provide services focused on preparation of offenders for release to ensure that offenders once again become part of a community where they are supported and accepted. This is in line with international practice where in the United Kingdom the Corrections Department doubled the hours that offenders do voluntary community work from 5 million hours per year in 2005 to 10 million hours. This is one way in which the government enables offenders to pay back the community. It is also believed that this type of involvement of offenders is a strategy to reduce re-offending ([www.homeoffice.gov.uk/about-us/news/five-year-strategy-stop-reoffend](http://www.homeoffice.gov.uk/about-us/news/five-year-strategy-stop-reoffend) visited 2007/02/13). Christie (1977: 9) postulates that the offender has to be involved in the discussion about the victim's harms

and losses and what he/she needs to do to restore the harm. According to Christie the offender lost the opportunity to explain his actions, and therefore lost out on the possibility for forgiveness. Forgiveness is explained in more detail in the next chapter. At the end of a Restorative Justice process the question whether the offender experience inclusion needs to be answered. This could form part of reintegrative shaming as postulated by Braithwaite (1989: 84-85). Shaming is also part of the African culture, but reintegration takes place almost immediately by sharing a meal with the families of both victim and offender (Lekgetho, personal interview 13 September 2007). Lekgetho further explains that traditional communities often meted out severe punishment, but immediately after that integrated the offender. This according to Hudson (1998:255) should not be the humiliating experience of naming and shaming.

Some offenders are indeed dangerous and pose a threat not only to their direct victims, but also to society and therefore some offenders do need to be restrained, even if only temporary (Newell 2000:38). It is necessary that those offenders first be helped to deal with their own anger, rage and or feelings of revenge, before they can be ready to deal with the harm to victims. Only when offenders have a better understanding of the harm they have caused to victims and communities can they be expected to make amends which will be meaningful for victims and communities. Offenders have to be taken through a process of understanding the impact of the crime on victims and communities. They might then be ready to apologise and may even ask for forgiveness. All of these are part of a holistic process in which the support system of the offender also has to be involved. It will also bring healing for the offender from the brokenness that he/she might have experienced because of a variety of reasons. The holistic approach is based on the premise that comprehensive efforts which include social work and psychological services, education, spiritual care, criminologists, community members and offenders are likely to be more effective than a purely security based approach.

If an agreement could be reached between the victim and offender, both could be more satisfied. The offender might be more motivated to complete tasks as agreed upon. The offender may feel remorse and may ask for forgiveness. The offender must be prepared that he may or may not receive forgiveness. Even if he is not forgiven, at least he/she got a feeling of being involved in decisions which concerns his future. Reverend Irion (interview 7 March 2008) contends that the process has not failed if the victim is not ready to forgive; it only says that more work needs to be done. He further says that even churches that operates from the premise of forgiveness, often oppose restorative justice, because the communities are tired of crime. Work needs to be done to restore the trust of the community in general in the Criminal Justice System.

#### **6.7.1 Sexual offenders**

A plethora of policies and legislative documents have been developed to manage dangerous offenders, and specifically sexual offenders (Mc Alinden 2007:3). In South Africa the Sexual Offences Act 2007, Act 32 of 2007, elicited much public debate and in some cases emotional response from victims and organizations assisting victims of crime. There seems to be a general feeling that sexual offenders should be locked up never to return to society. The interest of the media in especially violent crimes has intensified over the past 2-3 years and the media often reports when someone who was on bail or parole commits a crime of a sexual nature. If a convicted offender, or even someone who had been accused of sexual crimes, but not convicted, commits the same type of crime, then it means that the retributive system did not succeed in changing the behaviour of the offender and certainly did not guarantee the safety of the victim. In fact, victims might be even more traumatized through the Criminal Justice Processes (Bertelsmann, personal interview 27 August 2007). The idea with Restorative Justice and sexual offences is for offenders to fully understand, or at least have an idea of the harm their behaviour has caused the victim.



Restorative Justice, unlike retributive justice wants to hold the offender accountable (Mc Alinden 2007:6).

Restorative Justice in the case of sexual offenders could ensure that victims are safe, that victims and offenders get therapy and that both are reintegrated into their communities (Mc Alinden 2007:6). Even communities could feel safer having identified the offender and contributing in some way to hold the offender accountable. The involvement of the community might also ensure that appropriate forms of reparation by offenders are decided upon. Offenders who cooperate and verbalise the need to change their behaviour, might find more support from their communities than those offenders who spend extended periods in prison with no guarantee that they have benefited from services in prison. Extended or continued support for offenders after release can be found in initiatives like the Circles of Support and Accountability in Canada.

Caution needs to be taken that sexual offenders do not continue to victimize their victims, especially child- and more vulnerable victims during an encounter. Where families are involved, it sometimes happens that the family of the offender apologise to the family of the victim (Mc Alinden 2007:8). The involvement of the Residents associations in the community will also alert authorities of areas where children are more vulnerable to sexual abuse. It may alert parents and could lead to preventative measures that unite a community. Mc Alinden (2007: 75) further purports that such communities are more likely to make a collective decision regarding the placement of the offender after release to prevent any further risk to vulnerable community members.

Corrections authorities need to understand that sexual offenders are not a homogenous group and should not necessarily be dealt with in one group for therapeutic purposes (Mc Alinden 2007:10). She further postulates that sexual offenders are eventually released; some on parole, some for good behaviour and

others after the expiry of their sentence. This is a reality which communities have to deal with.

## **6.8 Services and opportunities already in place for offenders**

The commitment of government to deal with crime and its negative consequences was confirmed in the following statements made by Trevor Manuel, the Minister of Finance when he said: “Intensifying the fight against crime” and “Reinforcing the fight against crime is both about effective institutions and appropriate mobilisation of resources” (Minister of Finance Budget Vote Speech, 20 February 2008).

In this section the researcher focuses briefly on what is already done in the different regions of Correctional Services in terms of involvement of civil society in the lives of sentenced offenders. The information was mostly sourced from the Correctional Services newsletters and other departmental reports that are in the public domain.

The merged region also known as **LMN (Limpopo, Mpumalanga and North West)** used the Corrections Week in 2007 to reach out to communities. It was reported that the region used a yellow ribbon as the central symbol for Corrections Week in the LMN region. This project aimed to symbolize that rehabilitated offenders should be given a second chance in life. Another important aim was for communities to remember victims of crime. The recognition of the harm that victims suffer because of crime is one of the most important starting points in a Restorative Justice process. It is equally important for communities to take responsibility for victims as well as offenders. This is in line with the intention of the White Paper on Corrections in South Africa (2005) to mobilize communities to take up corrections as a societal responsibility (SA Corrections September/October 2007: 7).

Another initiative during the Corrections week in this (LMN) Region was an interfaith service at the Nelspruit Correctional Centre on 18 October 2007. One of the focus points of this interfaith service was the issue of moral regeneration. It is the researcher's view that disciplinary problems and violence in prisons are but a reflection of what happens in communities. Therefore to address these challenges Correctional Services rightly involved communities and faith based organisations in promoting moral values. It is reported that representatives of various religions and spiritual groups like African religion, Roman Catholic, Bahai, Hindu, Muslim, Zionists and Rastafarians contributed to the success of the session. Acceptable moral values need to be instilled and encouraged both in offenders as well as for personnel of the Department of Correctional Services. This will in the researcher's opinion also address challenges in terms of corruption and misbehavior which all departments, but specifically the Department of Correctional Services have to deal with (Report of the Jali Commission).

The SA Corrections (September/October 2007: 7) also reports on the **Kwa Zulu Natal region** where the Corrections Week focused amongst others on relationships between offenders and their families. Relatives were invited to spend some time with offenders and by so doing demonstrate their support for the offenders. It certainly also confirmed the willingness of families to share the responsibility of addressing crime and its consequences with the Department of Correctional Services. This project had the additional aim of involving other role players, as the Premier of Kwa Zulu Natal, the Defence Force, the South African Police Service, Departments of Health, Education and Home Affairs also attended the function. These departments are indeed important role players both in Restorative Justice and Victim Empowerment. It furthermore symbolizes the commitment of Correctional Services not to work in isolation, but to involve the broader South African society in rehabilitation of offenders (Position Paper on Social Reintegration 2008). An important part of the responsibility of Correctional Services is to promote the restoration of relationships between offenders and

families, offenders and victims where possible as well as with communities. The researcher does not agree with the assumption that these efforts will "...bring about healing and forgiveness between offenders and their families". This assumption might create an expectation that forgiveness is possible in all cases, while indications are that it is not the case.

In the Western Cape, at Pollsmoor correctional centre, the Hope Ministries provides Restorative Justice Interventions to offenders (Clayton, personal interview 12 October 2007). The programme is based on Christian principles, but the offenders and community members of the Muslim faith have no objection to taking part in this programme (Van Wyk 2007). The aim is to help offenders understand that crime break down and damages relationships, and that they should stop focusing on themselves, but rather focus on the harm caused to the victim. The course is based on the biblical story of Zacchaeus according to Luke 19:1-10. A Muslim leader, Mr. Zain commented that this course helped him to deal with his own emotions like anger and assisted with the process of healing.

A partnership was formed between the Spiritual Care Directorate and the Prison Fellowship South Africa (PFSA) to amongst others, involve offenders in the Sycamore Tree project. This is also discussed in chapter 7. The Prison Fellowship South Africa (PFSA) aims to facilitate the mediation process between victims of crime and offenders in an attempt to bring about restoration, healing, and reconciliation. These sessions could take place either in correctional centres or in the communities (Grobler 2007: 15). Several regions are involved in this project, like the **Western Cape, Free State and Gauteng**, where personnel of Correctional Services had been trained in facilitating the mediation process. This project also reaches out to victims to give them the opportunity to confront offenders with the consequences of crime, within a safe setting (SA Corrections September/ October 2007: 15).

In the **Eastern Cape** region efforts are made to rehabilitate juveniles in East London Correctional Centre who committed “shocking offences”. This is a joint effort between Correctional Services and an external service provider called “The Promised Land”, which aims to use “Christian and psychological” methods to deal with the crimes the youths have committed (SA Corrections Today September/October 2007: 17; Van Zyl, personal interview 5 March 2008). During an interview with dr. Nxumalo, director of Khulisa in Kwa Zulu Natal, (personal interview on 31 July 2007), he explains that Khulisa prepares both victims and offenders for a possible encounter. The offender comes at a stage where he feels that rehabilitation alone is not enough; the offender then feels he needs to make peace with the victim. When the offender wants to talk to the victim, Khulisa might even record a video, and play it to the victim, or even to the offender’s family, if he needs to make peace with his own family. Dr. Nxumalo emphasised therapy to both the victim and offender, and that no pressure is placed on the victim to participate in the process. It was found that the fear of victims and offenders is addressed in a process like this. Dr. Nxumalo further emphasised the importance of good working relationships between community organizations like Khulisa and the Department of Correctional Services to ensure that no harm is done to the victim and or offender.

## **6.9 Effects of Imprisonment**

Harcourt (1975:164) professes that courts are often unaware of the effects of imprisonment on the individual offender and that offenders are affected differently depending on their circumstances and personal make-up. Naser (1993:190) postulates that imprisonment is much more than social isolation. It is also the loss of freedom (McEleney & McEleney 2005:1; Naser 1989: 130) and the offenders experience some degree of pain because of that. The loss of freedom also limits choices because of the repressive environment (Consedine 1999:38). Constitutions and Human Rights Bills make provision for freedom of movement and association, which is severely restricted in a prison setting.

The prisoner is exposed to negative influences and contamination (Cilliers 1988: 5) and experiences a lack of support. He loses his sense of responsibility, as he/she can no longer care for family and children as they used to do. Considine (1995) further postulates that offenders tend to become self centered and only concentrate on how to survive the current situation and feel sorry for themselves. The prisoner experiences loneliness and tends to focus more on the past instead of the future. Often prisoners are vulnerable and live in fear of being abused in prison and experience anxiety and a sense of insecurity. Safe custody also implies that the prisoner's safety inside the prison cells should be protected.

Other painful experiences include the loss of emotional and physical connection with loved ones (Considine 1995: 33). Marriages more often than not end in divorce. Families can usually not afford to visit often, emotional distance gradually develops and the family is forced to cope without the offender as part of the family. Imprisonment affects the families of offenders, as offenders are often the breadwinners (Hagem & Dinovitzer 1999:123). The prisoners also lose the trust of the community (Neser 1989: 130) and their status. Neser further contends that prisoners are deprived of the possibility of a heterosexual relationship during the time of incarceration. The prisoner often loses his/her position in the family with resultant role confusion.

It is the opinion of researcher that these negative conditions would make it difficult for the offender to not see himself as a victim. Offenders might even forget about the harm that victims suffer because of crime (Newell 2000:15). The offender needs personal restoration; to come to terms with the crime he/she committed and the sentence. The offender also needs to receive counseling for his/her own victimisation either prior to imprisonment (Van Houten 2002:55) or while serving a sentence (White Paper on Corrections in South Africa). It then stands to reason that before an offender could engage in any of the Restorative Justice and or rehabilitation interventions, he/she needs to be healed and then

thoroughly prepared if for instance Victim Offender Mediation (VOM) is contemplated. The offender would also not be emotionally ready for Restorative Justice without the support from significant others in the community. The relationships between the offender and his/her spouse, children and other support people need to be restored.

Prisoners experience guilt (Neser 1993:192; Zehr 1990: 49-50) and his/her self-image is negatively affected. Liebling (Tonry & Petersilia 1999:283, 288) postulates that some resort to suicide, especially those with very long sentences. The response of offenders on these hardships differs according to their individual coping mechanisms, or lack thereof. Offenders might resort to self-harm, or become aggressive or even develop some form of mental illness (Wright 2003:4). Researcher understands that prison suicide is a complex issue, which needs to be researched especially in the South African context (Liebling 1999:326-333). It also requires a system of risk identification and risk management which takes all the possible causal factors into consideration.

These “emotional” and long-term costs are excluded from the actual money taken from taxpayers to sustain prisons on a daily basis. When the Correctional System and the community fail to assist an offender to successfully reintegrate into society, that offender becomes a risk for re-offending/repeat offending (Van Ness & Strong 2006:102-112). Re-offending is not only a problem in South Africa, but is recognized to be an international phenomenon (Largan & Levin 2002:1; Prinsloo 1995:10; Venter 1987:186; Gould 1979:427). Higher re-offending rates could be due to higher prison numbers, higher parole releases and thus so many more parole violators. The high unemployment rate makes it difficult for ordinary law-abiding citizens to find employment and it is even worse for someone with a criminal record (Gould 1979:430-431). Support systems have to be in place in the form of family members, prospective employers and society in general, who are willing to give ex-offenders a chance to make a contribution to society (Van Ness & Strong 2006:113). If however, the offender is

an outcast with no income, he/she will eventually turn to fellow ex-offenders and make illegitimate plans to secure an income. They are likely to once again be convicted of crime and go back to prison, where they will contaminate the minds of young first offenders. Families often become tired of waiting and supporting and eventually isolate the prisoner who now has to find a *new family*, unfortunately amongst those who “*understand and accept*” him/her.

The abovementioned are all negative outcomes of imprisonment, but Gould (1979:428) postulates that in some instances some prisoners do use the time in prison to reflect on past mistakes and to repent. They realise they have choices to make about future behaviour and some deliberately decide to resist crime. Others become older and more mature and decide to become responsible. It is also the researcher’s view that some offenders do realise the harm their behaviour causes their loved ones, and even that realisation cause them to change their ways.

There is no uniform tool at the moment that measures re-offending. Offenders, who exit the system and come back at a later stage, are admitted with a new prison number. The system needs to be able to link the information of the same offender, even if he/she is admitted in different prisons and or different provinces. The researcher is aware of current efforts to upgrade the data system to make use of unique features like retina scanning together with finger prints and Identity numbers to identify the individual, despite many aliases that some offenders use. Only when such a system is operational will the Correctional Services and the entire Criminal Justice System be able to trace the previous crime involvement of those currently incarcerated. The system will obviously have to be connected throughout the Criminal Justice System to be effective. A system known as e-filing is currently implemented. Muntingh (2002:20) is of the opinion that successful reintegration efforts are far and few between. The Department of Correctional Services has a recently established programme of Social



Reintegration that will be discussed as part of the efforts of a Multi-disciplinary team.

After the process of Restorative Justice the following questions should be answered:

- Have offenders been held accountable in meaningful ways
- To what extent do offenders make amends
- Whether or not the Restorative Justice process impact on re-offending and reintegration of the offender

## **6. 10 The Community as Role Player**

Community in this context is dependent on the crime, the circumstances, the harm done and the range of people affected by the crime. The many different levels of community are also influenced by the relationship between the victim and offender, whether they were strangers, co-workers, acquaintances or closely related. Each one of the role players, (victim and offender) belongs to a certain community or group, and it could even be the same group of neighbours, schools, business and church/religious affiliation (Giffard 2002:35). This in the researcher's opinion emphasizes the role that the community has in terms of reintegration and healing of both the victim and the offender.

### **6. 10.1 Public safety and early release**

The mandate of the Correctional Services Act (Act 111 of 1998) is to keep offenders in safe custody (Department of Correctional Services Annual Report 2006/7). Communities feel safe when they know those who have harmed them are kept behind bars. However, the majority of these people will be released,

some with Special Remission, some on parole or Correctional Supervision and others when their sentence expires. Either way, they will be back on the streets again. If they have not benefited from correctional programmes and or Restorative Justice, then they will be worse upon release. Newell (2000:37) agrees when he argues that people are damaged by the experience of prison, also because of the risks that they are exposed to while being incarcerated. He further postulates that it is necessary that communities be educated about the limited resources in prisons and the limits of Correctional Services in keeping the community safe. Not all offenders currently in prison committed aggressive crimes. The community's safety is not threatened by the perpetrators of economic crime. The resources used for these offenders could have been used much more effectively for rehabilitation of dangerous and sexual offenders.

Victims and communities might be angry to learn about the release of offenders, especially if they have attended parole hearings and did not agree that the offender is ready to be released. Researcher alluded to this form of victim empowerment in the previous chapter, where victims and or families could request to attend parole hearings and make submissions for the parole board to consider. When Restorative Justice processes did not “work” for victims, they will be angry about the release of the offender, others might be unable to cope with what happened during the process, maybe they did not experience the offender to be remorseful. The offender might not have asked for forgiveness or offered a genuine apology. Morris and Maxwell (2001:268) explain that they might leave the meeting feeling re - victimised (Herman & Wasserman 2001: 428) and unsupported. These outcomes can be prevented to a large extent by proper preparation of all parties and not to create unrealistic expectations with victims or offenders. No promises should be made about the possible outcome of the process. They also warn against labeling a process “restorative” while the Restorative Justice values are not reflected in the process (Morris & Maxwell 2001:269).

Communities should in the researcher's opinion take responsibility for attending to concerns of victims, explore opportunities to build a sense of community and mutual accountability. Communities should be encouraged to take on their obligations for the welfare of their members, including victims and offenders, and to foster the conditions that promote healthy communities. Offenders are challenged in maintaining close and healthy family relations and should be assisted by community organizations in this regard. However, communities do not always know the theory of Restorative Justice and needs training and skills to facilitate the process (Mbambo & Skelton 2003: 280). These researchers also recommend the development of minimum standards for Restorative Justice practice, with due consideration for existing conflict resolution skills, which had indeed been developed (Frank & Skelton 2007).

Families with loved ones in prison need restoration and the entire community as well. This should also form part of Pre-release preparation where offenders and their support systems are involved. Acknowledging the effects of imprisonment on offenders and families – families often experience rejection in their communities because of the deeds of the offenders. In some communities the family of an offender is stigmatized and isolated. In other communities the offender is seen as a hero and the families do not experience any problems because of the imprisonment. Absent role models and breadwinners lead to deprivation of families, breakdown of relationships which need to be addressed to prevent the children in those families getting involved in crime to survive.

The role and involvement of communities cannot be over emphasized, especially to make Social Reintegration succeed. Reintegration of offenders could only be successful if they are assisted to find jobs and become self sufficient. Researchers have noted the association between the high rate of unemployment and the increase in the prison population (Cilliers 1993: 22).

Civil society organisations working with victims of crime in communities, and those who reach out to offenders in prison are equally important in dealing with the effects of crime. Where a prison sentence is not imposed, the victims need even more assistance, especially if they experienced severe trauma and hoped that the offender will be severely punished. The feelings of the mother of a deceased victim in the newspaper article on page 62, illustrates the researcher's point. More information to the public on the success of Restorative Justice such as the article on the next page by the Restorative Justice Centre has to be made available. It is the researcher's view that the media also has a distinct responsibility in terms of Victim Empowerment in the way it reports on crime. While the public has the right to know about crime in their area, the rights to dignity and respect of victims should not be undermined.

## Heal through talking

*Nichelle Lemmer*

For victims who get a chance to talk to their offenders, the experience can be both a traumatic and healing experience.

Mike Batley, initiator of the restorative justice centre in Pretoria, does just that. He believes in the healing power of open communication between such parties.

According to the latest research on this subject, the international field of the restorative justice process has grown enormously over the past ten years.

The initiative is both a new and old concept.

"I consider myself as being part of an emerging movement," says Mike.

Although the government is responsible for promoting justice, the restorative justice process helps the community to establishing peace.

"Victims and offenders, as well as communities, should be actively involved in the criminal justice process."

This is why victims get the chance to consolidate with offenders in a victim-offender-conference.

All the affected parties in a crime, as well as a social worker, participate in this meeting to come to terms with what happened and the offender is encouraged to take responsibility for his actions.

"The conference also helps victims to cope with their emotions."

"Victims get a chance to ask those dreaded questions as well as the possibility of the offender repaying them for the harm done."

According to Mike, the process works and is by no means a soft punishment to criminals but rather a support to the exiting justice system.

"Satisfaction of the victims and offenders is higher than that with a court process."

"Victims that participate in the process feel more secure."

Source: Rekord Centurion 4 April 2008

The ideal is for all these service providers, government and civil society to work together to achieve one common goal. If not, duplication of services will take place, resulting in confusion of the public and reaching only a few victims and offenders out of thousands who could benefit from a systematic and coordinated approach. Civil Society organisations actually also represent the community at large in the Restorative Justice process, as Bazemore & Erbe (2004:35) profess that involving all other stakeholders is important in making rehabilitation of offenders successful, but also to ensure the cooperation of communities when offenders need support upon release. This is in line with Christie's (1977: 7, 8) notion that the conflict of crime actually belongs to communities. When communities are involved in the Criminal Justice System, they are empowered when given the opportunity as well as the responsibility to identify and execute their role in resolving conflicts (Bazemore & Erbe 2004:37; Giffard 2002:35). Christie sees conflict as a unifying force that can bring members of a community together to participate in that which is important to them, and also to clarify norms of the community. Dignan (2007: 313) postulates that the community is responsible to settle informal disputes and exercise social control. If that is done successfully then the community will have contributed to crime prevention.

#### **6.11 The role of the Department of Education in crime prevention through restorative principles**

Schools are structures in communities which should in the researcher's opinion be used for more than just educational instruction, for part of the day. It should also be used as facilities accessible to communities, even during school holidays. The Department of Education is one of the role players in the National Victim Empowerment Programme. Schools have a significant role to play in dealing with victimization of learners. De Wet (2002: 89-106) asserts that school violence is not only a problem for schools but also for the community, and in the researcher's opinion for the Criminal Justice System as well. Learners are equally affected by conditions in their communities, like poverty, unemployment

disintegration of family life and violence. Government is expected to deal with violent criminals more effectively. More importantly though, in the researcher's opinion, is the prevention of victimization and crime in general.

Research has shown that bullying at school can have a devastating effect on the self-concept of children. Those who cannot deal with negative experiences at school can no longer perform well and even drop out from school. Youngsters who are idle all the time, quite often become vulnerable to gang influences and are easily lured into illegal activities, like dealing in drugs and even abusing drugs. This correlates with what is found in prison. Individuals committing crime are getting younger and the crimes they commit are increasingly more violent (White Paper on Corrections in South Africa 2005). Ideally when learners do offend and schools have dealt with that behaviour, then there should be a system in place to reintegrate that learner (Mbambo & Skelton 2003: 280) for that learner to be accepted again by the school community. This would in the researcher's opinion prevent the two equally undesirable possibilities of stigmatisation and teasing on the one hand and being hailed as hero on the other.

Schools should be safe places for children. However, the media informs us of the contrary. The following newspaper headline is just an example of the undesirable circumstances that learners and teachers are exposed to:

"Pupil attacked in toilets. Teenager fears girl who hit her will get a slap on the wrist." (Pretoria News, 29 February 2008: 1).

In terms of crime prevention, schools should start involving children in Restorative Justice from a very early age. This is consistent with Zehr's (2002 a: 42) view that schools should develop Restorative Justice programmes that are suitable for those circumstances. In subjects like Life Orientation learners should get information on alternative ways of dealing with conflict. In many dysfunctional families conflict is dealt with through aggression, assault and even

murder. From early on learners should understand the consequences of their behaviour on themselves and others around them. For instance, in a case where one learner takes a pencil from another without permission, a type of Family Group Conference (FGC) or Victim Offender Mediation (VOM) within the classroom context can be arranged. The school board and parents should decide beforehand how and when parents will be involved. The involvement of police officials, social workers, and religious workers will be decided on depending on the seriousness of the offence. The affected learners could get a chance to voice their opinion, and the rest of the class could decide what the wrong doer should do to make right or restore. Even if only the return of the stolen item and an apology is the decision, that should be respected. The owner of the pencil, or another affected person might discuss trust issues, if a fellow learner cannot be trusted. This principle has to be understood as it will make it easier for offenders to understand why victims of economic crime, where no violence was involved, are also traumatized (Wallace 1998:30-31). Even fellow community members often unintentionally stigmatise or exclude victims of economic crime who cannot deal with the trauma, after a burglary, when they have not suffered physical harm. This exercise in school will also bring home the message to the whole class that taking a pencil was a wrong choice with unpleasant consequences, like being exposed. On a more complex level, when someone commits crime, he/she will also be exposed by community members who do not protect offenders, and even more exposure when appearing in court followed by either community work or a prison sentence.

An ideal situation in schools would be the availability of social workers or other types of counselors on a permanent basis. Learners with personal and family problems should be able to access these services whenever they need to. This will prevent problems from escalating and become community problems. Learners who are aggressive at school should be identified, as aggression could also be portrayed from a very young age. Investigation into the family circumstances might reveal aggression in the family. Intervention might address



the problems associated with the cycle of violence that the child is part of (Wallace 1998:176). If not addressed, then assessment of a prisoner years later might reveal that acting aggressively and using drugs was the child's way of dealing with family problems.

The researcher is of the opinion that the reason why adults do not seek help before they have a crisis is because the majority of South Africans are not used to consulting professionals when problems are experienced. This might be the reason why correctional officials do not fully utilize the Employee Assistance Programmes (EAP). Only when people land up in prison are they exposed to these services. Counselors can confirm that many offenders would have acted differently had they known better and understood the consequences of their behaviour on others. Getting help in dealing with problems should not be a foreign concept – schools should normalise that for learners. In support of this approach, NICRO has embarked on a programme of “Safety Ambassadors” at schools where peers motivate or positively influence each other against anti-social behavior (Dawson & Solomon 2006: 12).

The media often reports on debriefing at schools when there was a crisis like a shooting incident, or even conflict because of a racist remark, but what is needed is the prevention of those incidents to create better understanding between community members. Teachers and counselors should be culturally aware and be informed about the dynamics of hate crime as it impacts entire communities (Wallace 1998:219). If children grow up with the application of restorative principles as part of their normal day to day living, then it will not be as difficult for Correctional Services to practice these principles. Correctional Services in its policy on Restorative Justice aims to allow for cultural and religious preferences – the ideal situation should have had this as part of the school programme in dealing with conflict and allowed cultural and religious influences as guide when dealing with conflict or problems in the school context.

These types of innovation require resources like money and skilled people, which might be a reason why government does not apply these principles across the board. However, one needs to look at the cost of not doing it. The drop-out rate of learners and the victimization of learners and teachers come at a much higher price not only for the Department of Education, but for the entire country. Secondly, if communities are not involved in helping schools deal with delinquency on a primary level, then communities will have to get involved in helping Correctional Services deal with the consequences of violent crime on a tertiary level with prisoners. The costs involved in dealing with the consequences of drug abuse, children bringing firearms to schools have an enormous impact, not only financially, on the entire South African society in terms of moral degeneration. The burden on the Criminal Justice System is well reported. Another possible solution is to require tertiary students in the counseling fields to do the practical part of their studies at schools, which will firstly get them involved as community members, serve as motivation for learners about future studies while at the same time assist schools in crime prevention, by dealing with issues before it becomes crime.

The implementation of Restorative Justice principles should then continue into tertiary education institutions – even on that level racially motivated incidents take place, as well as serious crimes like assault and date rape. Restorative Justice could also be implemented in this context. This is consistent with the suggestion of Newell (2000:115) that training in restorative principles should form part of Law School training and continued training for people in the work place. Restorative Justice will then be more acceptable in all spheres of life if that is what people grew up with. It does not seem to be the best approach to expose individuals to Restorative Justice for the first time while they are serving a prison sentence. By that time, they are usually hardened and have not experienced mutual respect or being treated fairly. It will then take so many more resources to convince them to take responsibility for their behaviour. One way in which schools and Correctional Services are already engaging young people is by

allowing learners to visit correctional centres and see the consequences of criminal behaviour, which might have started with seemingly innocent truancy and delinquent behaviour (SA Corrections September/October 2007: 6).

## **6.12 Summary**

“For restorative justice processes to work well there must be a clear articulation, understanding and endorsement of the values of restorative justice by all the people involved and a commitment to them.”

In this chapter the researcher focused on the needs of the victim (Wemmers 2002: 44-53) which are also dealt with in the Victim’s Charter (2004) as the rights of victims. Victim involvement in Restorative Justice with sentenced offenders could be in the form of Victim Offender Mediation (VOM), victim impact panels (Zehr 2002 a: 56), victim impact statements and parole board hearings. The reason for victim involvement should first and foremost be about healing for the victim and not as rehabilitation for the offender. Umbrecht (2000: 5) postulates that mediators should determine the emotional “readiness of both parties” before the actual encounter takes place.

Restorative Justice in a prison setting is a complex issue as it requires the building of new relationships (Giffard 2002: 34-35) and it has been argued that offenders are essentially alienated from their communities. Offenders are forced to be in a relationship with the correctional staff. Quite often it is not possible to restore relationships with former acquaintances and they need to form new relationships. Working on relationships require conflict resolution, which is a skill needed by offenders as well as prison staff (Giffard 2002: 35). In this regard Coetzee (2003: 64) concedes that the prison environment is by nature negative and efforts should be made to assist employees to deal with their negative feelings which they might harbor towards the work situation and offenders.

*Restorative Justice emphasizes the importance of elevating the role of victims and community members through more active involvement in the justice process, holding offenders directly accountable to the people they have violated and providing a range of opportunities for dialogue, negotiation and problem solving, which can lead to a greater sense of community safety, social harmony and peace for all involved (Umbrecht 1996).*

## CHAPTER 7

### FORGIVENESS

Forgiveness is according to Consedine: “...*what happens when the victim of some hurtful action freely chooses to release the perpetrator of that action from the bondage of guilt, gives up his or her own feelings of ill will, and surrenders any attempt to hurt or damage the perpetrator in return, thus clearing the way for reconciliation and restoration of relationship*”. However, Consedine (1999:263-274) cautions that we need to understand that forgiveness is not: “weakness, not excusing of wrong, not denial, not forgetfulness and it is not automatic”.

#### 7.1 Introduction

Forgiveness is a concept that is central in different religions, cultures and traditions. There is a perception that Restorative Justice is limited to a Christian worldview, and that might be the reason why the Department of Correctional Services removed Restorative Justice from the Spiritual Care section to Corrections (Skelton & Batley 2006). However, Reverend Dlula, a deputy director at the National office of Correctional Services holds the view that Restorative Justice is inclusive and is practiced by people from different cultures and faith communities. With this discussion the researcher attempts to address the belief of some skeptics that Restorative Justice is based on Christian beliefs only and therefore not applicable in all situations. Dlula (personal interview 2 April 2008) contends that the Muslim Prison Board embraces Restorative Justice as part of their Spiritual care programme, while the Hindu's also have a “vibrant” programme that speaks to restoration and forgiveness. The researcher will discuss some of the perspectives on forgiveness from a Muslim and Biblical-Christian perspective, and also refer to some other religions and belief systems. The researcher hopes to illustrate that forgiveness is not only based on Christian

beliefs. Internationally, Restorative Justice allows space for those victims and offenders who do not necessarily ascribe to any specific religion, as noted by Umbrecht (2001b:258): “Recognizing and honoring the journey of those for whom spirituality and religion have virtually no meaning is also very important”.

Forgiveness is in line with the notion by Allot (1977:21) that reconciliation, restoration and harmony lay at the heart of the African adjudication. It is an important aspect of reparation, although the researcher believes that symbolic and material reparation is possible from the offender's side, without the victim necessarily forgiving the offender. Forgiveness from the Islam perspective is described as follows: “Forgiveness is the process of ceasing to feel resentment, indignation or anger against another person for a perceived offense, difference or mistake, or ceasing to demand punishment or restitution” (<http://en.wikipedia.org/wiki/Forgiveness#Islam> visited on 2008/06/05). Islam teaches that God (Allah in Arabic) is “the most forgiving” and that all kinds of mistakes can be forgiven, except when someone elevates another person to be equal to Allah.

It would seem that a victim reaches readiness to forgive more readily if surrounded by a support system in which forgiveness is practiced (Newell 2000:72). In the African culture it is almost expected that the victim forgives the offender when the offender apologises and especially if the offender restores the damage or offers to take over the responsibilities of a deceased victim. Offenders even offer to carry the funeral costs of the deceased and it is accepted by the victim's family (Grobler, personal interview 17 December 2007). This is similar to the traditional Aboriginal communities where an offender would beg for forgiveness from the victim, “... not for them to forget, but, within the traditions and customs of the Nation, to forgive” (Griffiths 1999:291).

Zehr (1995:47) describes forgiveness as “...letting go of the power the offense and the offender have over a person. It means no longer letting that offense and

offender dominate". Rogers (personal interview 20 August 2007) asserts that forgiveness is not a pre-requisite for restorative justice to be successful, although it is one of the desirable outcomes. She values accountability and the offender taking responsibility for words and actions more than forgiveness and showing remorse. Dr. Nxumalo (personal interview 31 July 2007) views forgiveness as something totally voluntary by the victim, if the victim is not prepared to forgive, then the offender's need to say sorry was accommodated, but the offender has to accept the response of the victim. He also contends that in the African Christian perspective the victim normally forgives when the offender sincerely asks for forgiveness.

## 7.2 Relevant concepts

The concept of **healing** fits into the following description of the goals of Restorative Justice. *The goal of the restorative process is to heal the wounds of every person affected by the offence, including the victim and offender* (Consedine 1999: 184) and in some cases forgiveness can be a vehicle to achieve healing. Consedine (1999) further purports that offenders also need an experience of forgiveness to be able to face the future, which is supported by Zehr (1990:49).

Wallace (1998:79) postulates that the process of healing is hampered until victims verbalise their fear and other intense emotions resulting from the crime. It is only then that the process of healing can start. Umbrecht et al. (1999: 338-339) explain that Victim Offender Mediation is a face-to-face encounter during which victims might find answers and it helps them to find closure, without forgetting what had happened to them.

*For genuine healing to take place, the individual must openly acknowledge the abuse. Others interacting with the person must make it clear that such acknowledgement is essential to their healing journey* (Yantzi 1998:101).

Elechi (1999:361) is of the opinion that, amongst others, the process of healing for the offender starts when he is held accountable for the crime he committed.

**Restoration** as part of a process is according to Braithwaite (1998:6) “ restoring property loss, restoring injury, restoring a sense of security, restoring dignity, restoring a sense of empowerment, restoring deliberative democracy, restoring harmony based on a feeling that justice has been done, and restoring social support”. Restoration as understood by Correctional Services has already been cited earlier in the text. The challenge for Correctional Services, in the researcher’s view is to determine what the offender will realistically be able to restore while serving a prison sentence. One could immediately ask the question if it makes sense to do Restorative Justice in prison if offenders cannot do some of the obligations needed to restore victims. Most offenders will be unable to restore material losses. Indeed, it still makes sense in the researcher’s opinion, as offenders apologizing to victims can be restorative for some victims. Other victims will be satisfied when hearing the offender’s side of the story and taking note of changes the offender has made to his/her behaviour and lifestyle. The offender can also restore relationships with his own family while in prison and where possible with the victim. Finally, we need to understand that the community and government also have a responsibility to work towards restoration of the victim, and therefore some of the abovementioned restoration work lies at the door of these structures.

**Remorse** is a deep feeling of guilt for something wrong or bad that you have done, which is more or less the same as anguish (Van Stokkom 2002: 350). Remorse in the context of restorative justice is also described as “...an emotional expression of personal regret - that is the emotion felt by the injurer after he or she has injured. Remorse is closely allied to guilt and self directed resentment” (<http://en.wikipedia.org/wiki/Remorse> visited on 2008/06/05).



The researcher explored remorse and there seems to be consensus that showing remorse is not a determining factor. Reverend Dlula (personal interview 2 April 2008) values the journey with the offender where assessment will assist in exploring the motive for getting involved in restorative justice. Reverend Irion (interview 7 March 2008) chairperson of a parole board, postulates that remorse is also measured over time, based on reports from the correctional staff about changes in the behaviour of the offender who had spend a long time in prison, and the impact of these changes. The offender's commitment to parole conditions could also be an indication. The offender's response on feedback from the victim will also give an idea of the real "genuineness" of the offender. Rogers, (personal interview 20 August 2007) cautions that the process must be "victim centered and offender sensitive". This is opposed to how the retributive system is described as "state-centered, offender-focused, and punishment-oriented" (Karmen 2003:320).

### **7.3 The role of Forgiveness**

In chapter 3 the researcher quoted Zehr (2002 a: 8-13) where he states that Restorative Justice is not about forgiveness. However, forgiveness could form part of the process, based on the choice of the victim.

#### **7.3.1 A Muslim perspective**

Forgiveness will now be discussed first from a Muslim perspective, and then with reference to the Christian perspective. Islam views the individual as part of a unit with responsibilities towards God and his fellow man and that the interest of society comes before individual interest (Ammar 2001: 166). When a wrong is done to another human being, which in this context could be seen as crime, then the offended has certain responsibilities before he/she could hope for forgiveness. The wrongdoer has to take responsibility for the offense before the victim and before God. There must also be a commitment not to repeat the

offense, but even more importantly, correct the harm that the victim has suffered. The offended has to actually apologise or ask for pardon from the victim and from God (<http://en.wikipedia.org/wiki/Forgiveness> visited on 2008/06/05). This religion therefore requires the offender to actively participate in the process following the offense. The tendency of human beings to do wrong against others and sin against Allah is recognized, but repentance is needed to restore the person in the sight of those wronged by his/her behaviour (<http://www.palistanlink.com/religion/2004/04-14.html> visited on 2008/06/05).

The following quotation from the Qur'an is further confirmation of this perspective:

Qur'an 42:40: "Although the just requital for an injustice is an equivalent retribution, those who pardon and maintain righteousness are rewarded by God. He does not love the unjust".

### **7.3.2 A Christian perspective**

In Luke 19:1-10 the story of the dishonest tax collector, Zacchaeus, is told. He acknowledged his wrongdoing and is prepared to "...give half my belongings to the poor, and if I have cheated anyone, I will pay back four times as much". This resulted in him getting "Salvation".

The Christian perspective that we need to forgive each other because God has forgiven us (Matt 6:12), does not exclude any kind of offence, even for those who have suffered serious irreparable harm like rape and survivors of murdered victims also need to forgive. The researcher is mindful of the fact that people who have not been victims of serious crime are in no position to pressurize or expect victims to forgive offenders. Even the pressure of the expectation from fellow Christians could constitute secondary victimization. Forgiveness should not be forced or faked because the victim feels guilty. Forgiveness is more likely

to happen where the victim feels justice was served and his or her needs have been met (Zehr 1990:46-47). What is even more helpful is where the offender admits responsibility and attempts to do something to make right.

The Prison Fellowship International is involved in Faith based prisons in Brazil where volunteers assist offenders to develop and experience loving relationships. Offenders volunteer to be involved. In New Zealand the Prison Fellowship Ministry and Department of Corrections have a joint venture to implement programmes that promotes peace and reconciliation based on biblical principles (<http://www.pf.cjr.org/prgrams/apac> visited on 2008/01/16). The Branch in South Africa aims to create a just and peaceful South Africa through needs based rehabilitation programmes, promoting of Restorative Justice principles and providing after care services to offenders to ensure reintegration into communities. The Prison Fellowship is a faith based non-profit and inter-denominational organization, consisting mostly of volunteers reaching out to offenders (Grobler, personal interview 17 December 2007; <http://www.prisonfellowship.co.za/> visited on 2008/01/02).

The teachings on Restorative Justice of the Prison Fellowship Ministry are based on the Sycamore tree story in the Bible and entail the following standards:

Firstly, both victim and offender volunteer to participate, just like Zacchaeus volunteered to approach Jesus. This is consistent with the Restorative Justice approach which emphasizes voluntary participation by the victim and offender. However it has to be noted that courts sometimes make attending a Restorative Justice process part of a court order.

The project is a way of showing prisoners the love and mercy of Jesus, in the same way Jesus once reached out to Zacchaeus. The executive director of Prison Fellowship South Africa (Grobler, personal interview 17 December 2007) explained that offenders quite often have not experienced respect before

(Muntingh 2001 a: 15), and that it impacts them significantly when they are approached with respect.

Crime victims are given the opportunity to tell prisoners how they have been affected and the hurt that they feel. In the Bible story of Zacchaeus, the victims also had the opportunity to tell their story, they were actually complaining. The course creates a safe place for victims to tell their stories in a safe environment. The groups of victims are not connected to that specific group of offenders, which is in line with what Giffard (2002:35) also suggests.

The prisoners then get a turn to consider how they can try to make things right with victims. In the case of Zacchaeus he promised to pay back more than what he stole. Offenders do not have a wide range of options, but are certainly empowered by being able to make some decisions about their future behaviour, but it starts with them taking responsibility for their actions (Giffard 2002:35). For some offenders it will be possible to repay the victim, but the majority of offenders in prison are poor and will therefore have to find alternative ways in which to make things right. This obviously calls for some level of innovative thinking by Corrections staff and support is needed from the relevant authorities. Some of the obligations could also be done when the offender is released from prison.

These types of programmes are seen to be safe for offenders and victims, firstly because they are not direct victims and offenders, and also the group situation with common goals and feelings might create a sense of commonality, acceptance and freedom. This is consistent with international practice of victim impact panels (Zehr 2002 a: 56). Volunteers report on relationships formed between the offenders and community members which continue after the release of offenders. This is exactly what is needed in the programmes aimed at successful reintegration of offenders.

In the last instance the prisoners and victims are given a chance to explain in a public celebration what they have learned, what the sessions have meant to them, also share about the meaning and importance of healing the hurt and making things right. The prison management is invited to listen to the testimonies of offenders. In researcher's view this is also a form of accountability, as prison management can now hold offenders to their promises and commitments of how they say the programme changed their lives. The correlation to the Bible is where Jesus explained the significance of what Zacchaeus did as well as the power of reconciliation. Zacchaeus's restoration was then celebrated. It seems that internationally the traditional communities usually celebrate the end of a Restorative Justice process with the symbolic 'breaking of bread" (Griffiths 1999:287). People are usually more relaxed when eating and this creates conducive conditions for rival families or groups to interact. Griffiths (1999: 287) postulates that it provides a form of closure, and if the mediator still has to finalise the written agreement, it can be done before people disperse.

The Prison Fellowship International is an inter-faith and inter-denominational organization and therefore does not exclude anyone. Non-Christians are welcome to participate as long as they accept the presenters, who are volunteers, as Christians and that the programme is based on the Christian perspective (<http://www.pficjr.org/slideshows/standards/PS5.htm> visited on 2008/01/02).

In Rwanda the Prison Fellowship uses the Umuvumu tree Project, as this is an indigenous tree, which takes the place of the Sycamore tree. Rwanda was devastated as a country in 1994 after 13 weeks in which masses of Tutsi people were tortured and killed by Hutu's. With about 110 000 people in prisons for these atrocities, it was realized that getting to them through the normal court procedures would be an impossible task. They resorted to what is referred to as "gacaca" courts, which are open air courts in communities. Prison Fellowship

International reports on people who had a change of heart in prison as a result of a spiritual experience. They requested to talk to their victims and ask for forgiveness. The Sycamore/Umuwubu Tree project helps offenders understand the impact of the crimes on victims, and also guide them to take responsibility for their deeds ([www.pficjr.org/newsitems/programs/stp/articles](http://www.pficjr.org/newsitems/programs/stp/articles) visited on 2008/01/02).

Luke 17: 3-4 “If your brother sins, rebuke him, and if he repents, forgive him” and Matt 18:21 relates that Jesus expected forgiveness even more than three times, which was the norm at the time. “Lord, if my brother keeps on sinning against me, how many times do I have to forgive him? Seven times?” and Jesus answered “No, not seven times, but seventy times seven” (Newell 2000:70). This seems to be a very simple requirement – if an offender repents, he has to be forgiven; even the repeat offender (Luke 17:4b). However, questions are asked about the difficulty to forgive even rapists and murderers. This perspective or concern is understood by Newell (2000:75) when he says “Forgiveness cannot be forced or arranged, but it can be an expectation that we all work towards and pray for”.

### **7.3.3 The difficulty of forgiveness**

“With towel and basin” the words used by Max Lucado (1998:17-23) when explaining how Jesus was able to forgive, even though He knew beforehand what his friends were up to. He was able to stay with friends who betrayed Him, forgave those who did terrible things, and even washed their feet. The essence of forgiveness from a Biblical perspective is to be able to say “forgive us our trespasses as we forgive those who trespass against us”. In some instances it is easier to forgive than in other situations. Parents might find it easy to forgive their children for doing something wrong. However, it is much more difficult for a parent to forgive somebody who has harmed their child. It should be understood that forgiveness does not condone the wrong, or minimize the harmful effects. It

also does not replace justice (Newell 2000:70). An offender can still be sent to prison or any other form of punishment, but that does not replace the need for Restorative Justice. That is why Restorative Justice is practiced with sentenced offenders – being forgiven does not mean the court order is changed.

Forgiveness is a humbling experience, as illustrated by former Defense Minister, Adriaan Vlok, when he washed the feet of the Reverend Frank Chikane who was his enemy during the apartheid years. The issue of forgiveness within a Restorative Justice paradigm is that the perpetrator does what he/she needs to do, irrespective of the response of the offended. In this case Adriaan Vlok felt the need to ask for forgiveness, even though he must have thought about the possibility that Reverend Chikane had the option of refusing to grant him forgiveness (Newspaper article on the next page). Lucado (1998:22) further states, “Relationships don’t thrive because the guilty are punished, but because the innocent are merciful”. It has to be kept in mind that the offended always has a choice to forgive or not. Repentance, forgiveness and reconciliation are rooted in a spiritual background and certainly do not come easy to either the victim or offender (Hadley 2001:9).

### Newspaper article 3: 'To forgive is divine'



Source: Sowetan 14 September 2007

#### 7.4 The Victim's Choice

Tutu (1999) explains *To forgive is not just to be altruistic. It is the best form of self-interest. What dehumanises you, inexorably dehumanizes me. Forgiveness gives people resilience, enabling them to survive and emerge still human despite all efforts to dehumanize them.* Self-interest implies that forgiveness is not only something that the victim does for the offender; it is also something that the victim does for him/herself. The victim makes a deliberate choice or decision to take back his/her power, by no longer allowing the offender to hold the power over the victim's emotions and the way the victim live his/her life (Consedine 1999: 189).

The victim experiences a sense of resentment towards the offender, understandably so. The offense has changed the victim's worldview and the self worth the victim had before the crime happened (Newell 2000:72). Any form of



therapy should acknowledge the resentment the victim legitimately has. The victim should also experience that the Criminal Justice System and the community agree that what happened (the crime) was wrong and that it was not the victim's fault. Quite often the victim is directly or indirectly blamed by relatives, friends and even fellow church people. It is important for the victim not to feel isolated. The victim is more likely to get to the point of forgiveness if he/she feels accepted and understood. Although the criminal act is despised, the offender as a human being is not rejected. If the victim openly rejects the offender, then the process of forgiveness cannot start, because the victim needs to be emotionally prepared to make that decision.

Wright (1999:59-60) postulates that forgiveness is an individual choice and that only the victim in that specific circumstances can decide when he/she is ready and able to forgive. Zehr (2002 a: 8) postulates that this decision must be voluntary. This usually only happens after a process of therapy or counseling during which the victim was helped to deal with the hurt and anger. Wright explores the question whether forgiveness can help overcome hurt and anger, and if so, if victims can be helped to get to that point. This view is supported by Newell (2000:71) who describes forgiveness as a very personal experience. Indeed, from a Christian perspective it is Biblical to forgive and not to hate or take revenge. It needs to be kept in mind that forgiveness is a process and victims and their families need time to deal with the hurt and anger until they are ready to forgive in order to get closure. Newell (2000:71) postulates that the victim first has to deal with the event itself, overcome resentment, fear and anger and regain a sense of self worth. It is also important that the deed or the crime be separated from the offender. This then brings us to the state of hating the offense but not the offender. Those who never get to that point should not be judged. Also, the victim should then be guided spiritually and or psychologically to get to the point of facing whatever caused the hurt and pain. The victim has to acknowledge being victimized before the process of healing can start. It would be helpful if the

offender at this stage shows remorse or makes an effort to repair the damage or pay restitution (Zehr 1990:47).

One of the misconceptions is that forgiveness implies forgetting what has happened or to pretend that it was not so bad. The victim can never forget the trauma he/she has experienced, but should also be encouraged not to allow the crime incident to define his/her life (Zehr 1990:46-47). Zehr further postulates that the negative feelings brought on by the crime could destroy the victim like a “festering wound”, while forgiveness frees and empowers the victim. The victim can then find closure and move on with his/her life as a survivor or victor, instead of a victim.

The researcher referred to the difficulty for offenders to repent, but it is equally difficult for victims to get to the point of forgiveness (Umbrecht et al., 1999: 339). In the much published case of William Kekana, convicted of multiple murders and rapes, the family of the victims rejected his plea for forgiveness. The offender’s father also verbalized the feelings of the family and community when he said that his son got what he deserved. The offender made some choices contrary to the guidance by the parents, and has to face the consequences, which in this case was 6 life sentences and 60 years imprisonment (Kotlolo, Sowetan 28 July 2006:1). Clearly in this case there is a very long road to healing for all parties involved and an even longer road to forgiveness, if it will ever happen.

## **7.5 The offender’s responsibility**

*“A person who admits his guilt makes himself defenseless and vulnerable. He is weighed down. But he can begin to be free from alienation and the determination of his actions by others. He comes to himself and steps into the light of a truth that makes him free. Liberation through confession is a painful process, but once made he has traveled some distance towards reconciliation. The next step is forgiveness”* (Newell 2000:69). People in general do not want to

expose themselves as weak or inadequate. It would really take an emotionally matured person in a prison to come to the point of repentance. This person will have to get rid of any pretence of strong outer being and get in touch with his/her sensitive inner being. This is not an easy thing to do.

Offenders experience guilt and need to feel safe enough to express that guilt. If not, they will use different kinds of mechanisms to hide their own pain resulting from guilt. Offenders then concentrate on their own victimization or convince themselves that the crime was not that serious and that victims are insured. The guilt could also manifest in the form of anger (Zehr 1990: 50). "*Confession followed by repentance is a key to healing for offenders, but they can also bring healing for victims*" (Zehr 1990: 45-52).

The researcher is of the opinion that some offenders don't even realize the extent of the harm that crime cause to victims. They often pride themselves in "only stealing" but they never "harm" the people they steal from. The responsibility and challenge for Correctional Services in terms of sentenced offenders lie in making them aware of the human consequences of crime. In support of this view, du Toit, a social worker in Correctional Services with more than 16 years experience reckons that offenders with long sentences for serious crime are more likely to benefit from Restorative Justice. She states that after long term intervention by a multi-disciplinary team, they gain insight in the harm victims suffered. Only after the barriers of rationalization have been broken down, will they assume responsibility (Du Toit, personal interview 25 January 2008). This relates to the programmes referred to in chapter 4 that have to be in place in the prisons. Rehabilitation programmes should bring the offender to a stage at which he/she decides to change the offending behaviour. It is much more than attending a programme for the sake of getting parole. Part of the rehabilitation programmes should always, in the researcher's opinion include a session/s that specifically focuses on the harm that victims experience. Offenders need to fully comprehend what their behaviour did to the victims. This part in the researcher's

opinion should be compulsory. It is only then that the offender might decide that he needs help to change his ways. Victim impact statements could also form part of group discussions and information given to offenders.

Offenders are part of communities and communities should take it upon themselves to prevent further harm to victims. Community members should also visit correctional facilities and share their experience and expectations with offenders.

The ultimate goal is that offenders should have an understanding of the effects of crime and take responsibility to repair the harm as far as possible. However, having said that, the White Paper on Corrections in South Africa (2005:81) requires that victimization of offenders be recognized and that they also need to forgive those who victimized them (White Paper on Corrections in South Africa 2005: 80). Offenders need an experience of forgiveness. First of all, offenders who have been victims themselves or who are victimized should also receive help. They might have gone into crime as a response to their own victimization. If they have been hurt and harbour grudges then they have to be guided spiritually and otherwise, to also forgive their perpetrators.

Another form of forgiveness that is important to offenders is self forgiveness. Many offenders do in fact realize the harm their behaviour has caused not only to the victims, but also to their own family and spouse. The researcher, as a former social worker, is aware if many offenders whose biggest spiritual challenge is to forgive themselves. Especially those offenders, who had a religious or spiritual experience or background, have to go through a process and really find it difficult to forgive themselves. Often children and the spouse had to go through the humiliation of the offender being arrested, the court appearance and often media coverage, and finally the sentencing and imprisonment. It is especially difficult for families who were or are affluent with a specific status in the community, to accept the devastating effect the criminal behaviour of the offender has on the

entire family. Some have children in good schools or universities who have to explain to others about the loved one in prison. Offenders are eventually forgiven by the family but might sometimes still not get to the point where they can forgive themselves. It is worth remembering in this case the promise in Psalm 103: 12 “As far as the east is from the west, so far does he remove our sins from us”, because committing crime is in essence a sin against God in the Christian perspective. A victim once confessed: “It is hard for me to forgive someone who has really offended me, especially when it happens more than once. I begin to doubt the sincerity of the one who asks forgiveness for a second, third, or fourth time. But God does not keep count. God just waits for our return, without resentment or desire for revenge” (Nouwen 1988: 68). He further postulates that it is easier to forgive if you believe you are forgiven yourself and experiences the freedom there is in forgiveness. “By not forgiving, I chain myself to a desire to get even, thereby losing my freedom. A forgiven person forgives” (Nouwen 1988: 68).

*“Restorative Justice is not any particular program, but a framework for viewing crime and its aftermath”* (Lerman 1999). The asking and giving of forgiveness within the Restorative Justice Process can therefore not be prescribed, it will happen when and if the parties are ready.

## **7.6 Modern day application: A Real life case study**

All of the above discussions might still seem a bit far off, as if it could only have happened as part of not so real biblical stories. However, a modern day real example was brought to our attention through a front page story carried by Beeld of 8 February 2008. “Verdagte skotvry nadat slagoffers hom vergewe”, roughly translated means that the offender walks free after being forgiven by the victims. The researcher now wants to link the point that had been made in chapter 1, to this real life situation.

## Newspaper article 4: Verdagte skotvry nadat slagoffers hom vergewe

BEELD 8/2008

# Verdagte skotvry nadat slagoffers hom vergewe

Christel Raubenheimer

'n Jong man het gister vry en met " 'n tweede kans" uit die Pretoriase streekhof gestap nadat sy slagoffers hom vergewe en saam met hom gebid het en die saak teen hom teruggetrek is.

Mnr. James Baloyi (20) is van 'n ernstige rooftog en poging tot moord aangekla nadat hy in Maart verlede jaar twee vroue in 'n huis in Erasmuskloof, in die ooste van Pretoria, aangeval en beroof het.

Hy het mev. Esther Makgoba, die huiswerker, met 'n mes gesteek. Mev. Bertha Pretorius, die huiseienaar se skoonma, is nie beseer nie.

Die polisie het Baloyi minute ná die rooftog in 'n veld agter die huis gearresteer. 'n Polisiehelikopter en 'n menigte polisieledede het ná die rooftog na die boosdoeners help soek.

Mnr. Myndert Bloem, die huiseienaar, was by toe Baloyi gearresteer is en het Baloyi toe 'n drukkie gegee en hom in die naam van Jesus vergewe.

Gister het Makgoba én Pretorius in die hof ook gese dat hulle Baloyi vergewe.

Verskeie belangstellendes het die saak kom bywoon.

"Ek kan eerlik vir die hof sê ek het hom vergewe. Die hof moet vir hom sê wat hy gedoen het, was baie sleg," het 'n emosionele Makgoba, wat nog nie ten volle van haar beserings herstel het nie, gesê.

"Ek wil vir jou sê ek is nie kwaad nie. Jy moet verander en 'n kind van God wees. Ek het jou lief. Jy het my amper doodgemaak. Ek is jou ouer," het sy aan Baloyi gesê.

Pretorius het gesê mense moet



hande vat en bid oor misdaad. Sy het hom ook 'n paar rand in die hand gestop om hom op sy voete te help.

"Wat hy gedoen het, is verkeerd. In my hart het ek hom vergewe," het sy getuig.

Bloem het in die hof Baloyi se hande geneem en saam met hom gebid. Hy het ná die verrigtinge gesê Baloyi het sy hart daar vir die Here gegee.

Ook landdros Graham Travers het Baloyi gemaan om die reguit pad te loop.

"Ek hoop nie jy sien dié vergifnis as 'n teken van swaakheid nie. Om wraak te soek, is baie moeiliker as om te vergewe," het hy gesê.

Travers het gesê Baloyi kry 'n tweede kans wat hy nie andersins sou gehad het nie.

"Die manier om nou terug te betaal, is om te luister na wat jou meerdere aan jou gesê het: Draai weg van die verkeerde en doen iets om jou gemeenskap te bou."

Mnr. George Pieterse, die aanklaer, het die saak teen Baloyi teruggetrek. Hy is ná byna 'n jaar in aanhouding 'n vry man.

"Ek is dankbaar vir hulle vergifnis en belowe as ek hier uitloop, sal ek op die reguit pad bly en verantwoordelik wees," het hy gesê.

Albei vroue het hom in die hof omhels.

Konst. Os Redelinghuys, wat Baloyi destyds gearresteer het, het gesê hy is teleurgesteld met die uitslag.

"Almal kla hoe swak die polisie is, maar as die polisie hul werk doen, wil die publiek nie saamwerk nie," het hy gesê.

Mev. Esther Makgoba buite die hof in Pretoria. Mev. Bertha Pretorius Foto's: HERMAN VERWEY

Source: Beeld 8 February 2008

It is argued that Restorative Justice creates opportunities for offenders to better understand the results of crime on victims and communities (Gelstorpe & Morris 2002: 43; Zehr 1990: 162) and for offenders to take responsibility for their actions (Gelstorpe & Morris 2002:243). Offenders have the opportunity to make a decision about confession, repentance, forgiveness, and reconciliation related to their criminal acts, they can make amends by taking part in a healing act of restitution. Ultimately, Restorative Justice offers the opportunity for offenders to find deeper connections with the community. In this regard Elechi (1999:364) postulates that in restoring the harm to victims and communities, the relationship between communities and offenders should not be disturbed.

A 20 year old man, James Baloyi, was charged with robbery and attempted murder after attacking a woman and her helper in their house in the East of Pretoria. He stabbed the helper and injured the other woman. The home owner's mother-in-law was also at home at the time, but was not physically injured. The home owner, Mr. Bloem was present when the man was arrested shortly after the incident by a fairly big police contingent. Immediately then did the owner give a hug to the offender and said that he forgave him in the Name of Jesus. That seems to have been the only driving force for forgiveness, no preparation, no work or intervention with the offender, no Victim Offender Mediation (VOM); it does not seem as if the offender actually asked for forgiveness. It would then seem that asking for forgiveness is not a requirement to be forgiven.

The offender then spends another year as an awaiting trial prisoner in custody. Did any intervention take place? What kind of changes did the offender make in terms of his behaviour? Was he involved in any other crimes before this one, or misconduct while in custody? What was the treatment like while he was in custody, and of course, how much did it cost the tax payer, including Mr. Bloem?

When the offender eventually appeared in court, he was also forgiven by the helper who was stabbed as well as the mother-in-law who was certainly also traumatized by the events. They verbalized the wrongness of his actions, but chose to pray with him and to forgive him. They even gave him some money to put him on the way. In theory these people were direct and secondary victims of a serious crime. The helper has not recovered fully of her injuries even a year after the event. Who is responsible for the medical costs, even if she gets it free at a state hospital, it is still not the offender who is paying. One can't help to wonder about the long term effect of all this on the quality of life of all affected, do they get nightmares, are they more cautious when locking their doors, how were the neighbours affected by knowing a serious crime happened so close to them? It is also possible that the primary victims are not at all affected in the normal way, as they might experience what the Bible refers to " ...peace that surpasses all understanding".

The words of the magistrate Graham Travers to the offender are of particular interest: "*Ek hoop nie jy sien die vergifnis as 'n teken van swakheid nie*". He said the offender should not see forgiveness as a sign of weakness. The offender had a second chance and the way he should pay back is to listen to his elders and to turn his back on wrong things and to rather build the community.

In an ideal situation this should be the end of the story with all of us happy that the twenty year old young man will go on and make a success of his life and later come back and even give some guidance to other juveniles who might get involved in crime. However, the situation begs a more analytical approach. The researcher would be interested to understand how the role players got to the point of forgiveness. It has been argued before that deciding to forgive is entirely the choice of the victim. Granted. We can then also suppose that the home owner can decide, which he did, to forgive the offender without even assessing the damage, checking if the offender even realizes the impact of the crime.



What we do need to ensure as a community is that this young man is integrated into a caring group of people. He needs to be confronted with the factors that led to the crime. He has to make choices about his life and future behaviour. He needs to be assisted in finding a job or advancing his school career especially now that he does not have a criminal record. This young man had certainly been traumatized by life in custody. It is a challenge for his immediate family and his specific community to give him the necessary support to set goals for himself as law-abiding citizen and to be supported to achieve those goals. In line with the African tradition his family is also suppose to meet the family of the victims, there should be an apology and a ceremony to celebrate the birth of a new relationship. James made promises of changing his behaviour. In the formal proceedings, especially in the government sphere there should be a monitoring function to make sure he honours his agreements – who is going to hold James accountable so that other innocent people do not become victims of crime? He has accepted the forgiveness and the money, but did they talk about his future plans? Indeed, Restorative Justice is forward looking and victims feel better if they know that the offender understands the full impact of his crime, and that he does not intend to come back, like in the case of another brutal crime on the very same front page. A professor of Pretoria and his daughter were attacked in their home for the second time in a month. They were both shot and the professor believes it is the same perpetrators who were disturbed the previous time who came back for revenge.

This could be a long and complicated way of looking at things and be pessimistic or to accept that it is still possible that an offender can really change because he wants to, without any external pressure. Also that we can believe that it is possible for Christians to forgive unconditionally, even someone who has harmed them, and even pray for that person.

Chapter 3 starts with the following quote: *Restorative Justice focuses on the harmful effects of offenders' actions and actively involves victims and offenders in the process of reparation and rehabilitation (Van Ness & Strong 2002:27).*

The media covered other stories of forgiveness as follows:

"She can forgive...but she can't forget!" (Daily Sun, 30 November 2007: 1).

"A story of hope! Gogo comes face-to-face with a killer" (Daily Sun, 30 November 2007: 4). In this story an offender killed his girlfriend, asking forgiveness of the grandmother, who responded: "... while it is tough, I forgive him... although Lindeka, my granddaughter will never come back". "I killed him, but I'm sorry" An offender who is serving 12 years imprisonment, send a letter through the newspaper to ask forgiveness from the family. He eventually met the mother of the deceased, and as born again Christian she says she forgives him. She also met the offender's mother and said she does not hate the offender.

Only time will tell if forgiveness by the victims in the Baloyi case is enough justice for the community at large. Clearly that is not the sentiments of the arresting officer, constable Redlinghuys, who feels that for once the Police Service did their job well, apprehending the offender almost immediately, after going out with an effective force of resources, bringing the offender to justice, and then justice is not served. The South African President, Thabo Mbeki in his 8 February 2008 State of the nation address assured the public about the positive changes in the Criminal Justice System, also "... to bring the Victim's Charter to live". Firstly, for the Criminal Justice System in the researcher's opinion, it would beg streamlining of services and better cooperation. It would also mean proper assessment of an offender's risk to the community, to inform a decision if he needs to be in custody on state costs for a year. Obviously that is what most of the public and the police would like to see. The point however, is that this very offender, who was obviously seen to be dangerous at the time of arrest is released, with virtually no intervention in terms of addressing his offending behaviour. The Criminal Justice

System needs to answer if the costs spent on this individual for the year in custody is justified, was it not possible to bring him and the victims together earlier and also to have brought the offender before a court much sooner? If forgiveness after a year of custody is the only requirement to be set free, then the researcher would submit that the use of Restorative Justice at courts should be practiced and implemented much more vigilantly. The overhaul of the Criminal Justice System should include recruitment and training of all criminal justice personnel, including police, to ensure that all have the same understanding of what could be achieved without necessarily sending “dangerous” offenders to prison. Having said that, one has to immediately appreciate the fact that the victims as ordinary citizens were not specially trained, no state funds were spend on long procedures, they just did what felt right for them and obviously for them justice was served.

The Restorative Justice Centre in Pretoria reported on a similar outcome during the Annual General Meeting in 2004 where an accused paid for the funeral costs and other expenses of the victim's family. The role players engaged in a restorative justice process and the deceased's mother accepted an apology from the offender during Victim Offender Mediation (VOM). This was part of a pre-sentence project of the Restorative Justice Centre – the magistrate and prosecutor accepted the agreement between the victim and offender and imposed a suspended sentence and 3 years Correctional Supervision, provided that all agreed payments are made. The court and the victims clearly did not regard the offender as a danger to the victims or the community.

Obviously, the Corrections System will then not be at the receiving end of this individual case. If this can happen in one court, can it happen in other courts? Do judges need Restorative Justice training? If it is indeed a viable option, then another research project might look at the possible positive effect on overcrowding.

During 16 years of doing counseling, the researcher was time and again confronted with the angry question from victims of crime, especially also when they hear about the research topic; “do you expect me to forgive someone who has killed my mother?” or “do you expect a rape victim to forgive a rapist?”. The answer is quite simply, “no, no one expects anything from any victim other than to be kind to him/herself, and allow the grace of God to bring healing”. For some it will happen soon after the event, for others it will take years. Each one of us has our own journey, we all, victims and offenders have choices to make, and we will live with the consequences of those choices. (Lilly 1977: 18) states that “...we are victims when others hurt us, but when we hurt others we are offenders. An unforgiving spirit is a spirit in bondage” – therefore even if the offender is in prison and the victim is not, the person in spiritual bondage cannot be totally free.

## **7.7 Summary**

In all the semi-structured interviews with correctional officials, management, academics and those implementing restorative justice, it came out without fail that forgiveness is not a requirement for a successful Restorative Justice process. It is a possible outcome, but can never be imposed as an expectation from the offender. Preparation before an encounter should clarify this.

Forgiveness is also not something the victim does for the offender - it is a gift to him/herself not to carry the burden of hatred and bitterness with them for the rest of their lives. This was illustrated by the real life story of Baloyi and the direct victims who forgave him. Different faiths and traditions emphasise forgiveness as an essential part of a strong and healthy community life and provide guidance to their members on how to get to the stage of forgiveness. It is generally accepted to be an entirely voluntary process. Hadley (2001:9) describes Restorative Justice as a “deeply spiritual” process, which includes elements of repentance, forgiveness and reconciliation.

## CHAPTER 8

### CONCLUSIONS AND RECOMMENDATIONS

(A Model for Implementation of Restorative Justice in the South African Correctional System)

*Restorative Justice focuses on repairing the harm caused by crime and reducing the likelihood of future harm. It does this by encouraging offenders to take responsibility for their actions and for the harm they have caused, by providing redress for victims and by promoting reintegration of both within the community (Van Ness & Strong 2002:49).*

#### 8.1 Introduction

In this report the researcher explored how the Department of Correctional Services has evolved over time to come to this point where an approach as challenging and controversial as Restorative Justice forms part of its efforts to address offending behaviour. The mere consideration of the approach in a highly security conscious environment needs to be acknowledged as a milestone in itself. The angry and fearful community wants to hear that dangerous offenders are removed from society. The Zeerust community where four people had been gunned down by a teenager in 2007, called for the death penalty during a court appearance on 14 April 2008. Correctional Services is expected to ensure the safety of the community. It has to keep offenders safely in its facilities, while creating conditions to impact those areas that cannot be dealt with by using locks and barbed wire.

In this chapter the researcher will do an analysis and evaluation to determine and or confirm if the objectives of the study had been achieved. The study aimed to make a contribution to the field of Restorative Justice in South Africa and its value for sentenced offenders and victims of crime. It is the researcher's opinion that this aim was achieved in that the researcher did in fact explore Restorative

Justice as it is implemented in the Department of Correctional Services, and as an outcome, presents a South African model specifically for the implementation of Restorative Justice in prison.

## **8.2 Evaluation of objectives**

The researcher will now indicate each one of the objectives with a brief discussion of how they were achieved:

### **8.2.1 Objective 1**

To explore international models of restorative justice with sentenced offenders

In chapter 1 the researcher summarized the literature study that had been conducted through the Internet, in books, journals and even the print media on the definition and implementation of Restorative Justice. A more comprehensive description of Restorative Justice, where and how it is implemented is given in chapter 3. The researcher explains the use of Restorative Justice in a few countries, especially where success is reported. Importantly though, is to note that not all restorative practices that work in other countries should be blindly copied into the South African situation. The bibliography indicates the plethora of resources available on the topic, mostly international, but African sources are also indicated.

### **8.2.2 Objective 2**

To explore new trends, challenges and gaps both internationally and in South Africa

As a result of insufficient information on a local level regarding Restorative Justice in general and the implementation specifically with sentenced offenders, the search was broadened to include international and African literature on the topic. The entire chapter 3 is dedicated to Restorative Justice as a response to crime, as opposed to imprisonment as a response to crime, which was dealt with at length in chapter 2.

Gaps and challenges that have been identified in the South African Correctional Services include the lack of sufficiently trained personnel to implement restorative justice in the different prisons. What had been found is that pockets of good work are done in the different regions or provinces. It was furthermore found that these services are not well coordinated. The correctional personnel who are involved or presenting programmes mostly do it because of their personal conviction (Skelton & Batley 2006), and not because they have been specifically trained as Restorative Justice facilitators or mediators. It became apparent that training was not standardized and that there are no monitoring mechanisms specifically for restorative justice in place, which is consistent with concerns raised by Hargoven (2007: 88-89) regarding decisions of who will be responsible for measuring and monitoring the impact of restorative justice interventions. Another important challenge was the absence of uniform policy and procedures until the latter part of 2007.

### **8.2.3 Objective 3**

To explore views of some role players pertaining to the role that Restorative Justice could play in prison with sentenced offenders. This study, through a qualitative research approach, intended to answer questions about the potential benefits of restorative justice, from the perspective of correctional staff, experts and academics.

The researcher conducted a total of 30 semi-structured interviews with correctional officials, academics and service providers who are in some or other way involved in Restorative Justice with sentenced offenders. Some are presenting programmes themselves, while others are facilitating the involvement of external organizations that go into correctional facilities to present restorative justice programmes and do intervention. Themes that had been explored included but were not limited to forgiveness, reintegration and restoration, which gave researcher a better understanding about different views on the potential benefits of restorative justice with sentenced offenders.

### **8.2.4 Objective 4**

To generate more ideas on the practical application of restorative justice in a correctional setting and to identify critical areas where more research is needed.

During interviews as well as the entire research process the researcher became aware of different ideas and creative options of how sentenced offenders could be encouraged to take responsibility for the harm that their behaviour caused victims and communities. Flexibility is indeed a requirement for the implementation of restorative justice with people from different backgrounds with different needs (Marshall 2003: 28-29). The researcher is confident that the content of the report and specifically the summary of findings and recommendations will provide Correctional Services management with insight



into the training needs and challenges of personnel who are currently dealing with restorative justice issues.

### **8.2.5 Objective 5**

The final outcome is to provide guidelines for good practice in the form of a unique South African model for the implementation of Restorative Justice in the Correctional System, taking into consideration differences in provinces, unique circumstances of victims and offenders as well as cultural and religious practices.

This the researcher presents as one possible option of how to deal with the scourge of crime and its devastating effects on human life and indeed the future of the nation. This is in line with a front page story carried by an Afrikaans newspaper (Beeld 14/02/2008) warning that the children of the nation is constantly exposed to high levels of violence, which cause them to be aggressive. The headline “Trauma-tydbom” suggests that it is only a matter of time for children exposed to severe violence to act out the violence they have experienced, while others present with difficulty to sleep and or concentrate on schoolwork (Raubenheimer 2008: 1). One cannot but wonder about the possible factors that were at play in the years and months before a seemingly normal teenager from Zeerust randomly shot at a black community and killed four innocent people in 2007. The messages that such a grieving community knowingly or unknowingly pass on to the younger generation should not go unchallenged by concerned members of communities and should certainly be prevented and addressed by government.

It is the researcher’s contention that offenders who are allowed to explain their side of the story in a restorative encounter, will also refer to those influences and painful experiences if applicable. While these should not be seen as excusing criminal behaviour or in any way minimizing the harm to the victim, it should definitely be noted to prevent a similar or even worse crime from happening.

### 8.3 The research question (Actuating questions)

According to De Vos (1998:115-116) research is based on certain questions, which need to be addressed. These questions are also aimed at providing/finding answers to the gaps that have been identified and on which the research is based. The following research questions guided the study on which the findings and recommendations are based. The questions are answered under certain themes as indicated in bold immediately following each question:

How could restorative justice compliment existing programmes in prison to address the consequences of crime, involving all the relevant role players? **(Restorative Justice as a response to crime, chapter 3; Role players in restorative justice mainly dealt with in chapter 6).**

What would be the role of the sentenced offender in restorative justice while serving a sentence? **(The offender as important role player, also dealt with in chapter 6; Forgiveness, chapter 7)**

Could restorative justice interventions lead to crime prevention and thereby curb re-offending? **(Restorative Justice as a response to crime mainly dealt with in chapter 3; Creating an enabling environment, chapter 4).**

What is expected from victims and communities to make it possible for sentenced offenders to make amends? **(The victim and community respectively as important role players, also dealt with in chapter 6, as well as under the theme forgiveness in chapter 7).**

What would be the role and function of multi-disciplinary team members in making restorative justice in prison a well-coordinated and widely acceptable process? **(Creating an enabling environment, mainly dealt with in chapter 4, under the theme holistic approach).**

**The semi-structured interviews concentrated on the following general themes, which are addressed as part of the researcher's recommendations:**

- knowledge and training on Restorative Justice
- general views on the possible effectiveness of Restorative Justice programmes in prison
- reasons for re-offending by those who attended Restorative Justice programmes
- views on Restorative Justice, with specific reference to the relevance of forgiveness and remorse
- problems that might hamper the effectiveness of Restorative Justice during imprisonment
- problems that might hamper the effectiveness of Restorative Justice after release

#### **8.4 Training and skills development**

Training on Restorative Justice and Victim Empowerment is needed for employees in the Criminal Justice System, to ensure that ignorance about cultural preferences does not compound the trauma for the victim. Coetzee (2003: 67) postulates that training should include knowledge of yourself, the client that you are working with as well as developing skills and creativity. Cultural awareness training (Wallace 1998:209) bench marking, adjusting training to fit the unique South African situation, with a diverse population and 11 official languages is needed. There are more languages or dialects that are used in different provinces, which might affect the way people interact with each other.

During 2004/5 the Department of Justice coordinated training where role players from the different government departments were trained on the basic information in the Victim's Charter (2004). It is also important that all correctional personnel have a common understanding of restorative justice to be able to advise offenders as to why they need to be involved in healing of victims as well as healing of communities as a whole. Personnel need to be aware of differences and preferences of the variety of cultural and religious groups and be supported and well-trained (Giffard 2002:38). Training for restorative justice practitioners and volunteers on the basic principles of Restorative Justice, in the researcher's view should be standardised. There must be a general orientation or training (Manaka, Free State Chaplain in Department of Correctional Services, personal interview 11 March 08) on the policy on Restorative Justice as well as the policy on Victim's involvement in the parole boards. The policies of directorates in Correctional Services such as Spiritual Care, Correctional Programmes and Social Work, which refer to Restorative Justice and or restoration of relationships, should also form part of the orientation. That should then be followed with specialized training to enable practitioners to mediate in petty crimes. It is recommended that an agreement be reached for the entire Criminal Justice System about the requirement of more experience and training to mediate in crimes of severe violence. This is in line with international practice as outlined by Amstutz (1999: 68-71) and Karmen (2003: 325) where the need for specialized training for mediation in sensitive cases for mediators is highlighted. Mediators should be able to speak the language that is sensitive to victims issues, mediators to be aware of community resources, communication styles as well as conflict resolution. Amstutz further postulates that training should as well include developing of skills in terms of role playing as preparation to deal with serious and complicated matters. Rogers (personal interview 20 August 2007) strongly feels that mediators should be mentored, also as a form of building in standards for restorative justice, and for them to be trusted by the role players. She contends that training in restorative justice alone is not enough.

International practice prioritises training of Corrections personnel and aspects that are covered in the training of Correctional Services in Canada, includes victim notification, security of personal information of victims, timely notification of victims of parole hearings and prevention of secondary victimization (Programs for Victims <http://www.csc-scc.gc.ca/text/prgrm/victim> visited on 2007/10/10).

Retention of personnel once they have been trained is a real challenge which also faces other government departments. Hence the suggestion for coordinated training of all criminal justice personnel where resources are pooled to ensure a coordinated and well integrated approach to training. It would then also imply cooperation between the Human Resource Development sections of the departments and a decision regarding internal development versus outsourcing. If personnel do move between departments, then they already have the basic information which is relevant in the Criminal Justice System.

The relevance of training and orientation should be evaluated against the value for personnel who want to continue with further studies. This emphasizes the need to develop a career path in the field of restorative justice, victim empowerment, and criminal justice as it would create the opportunity for criminal justice personnel to improve and expand their career within these fields.

Recording restorative justice sessions for training purposes can be explored, with due consideration for the feelings and preferences of all participants. The practices or rituals of people before and during a session like victim offender mediation might differ from region to region and can be used to sensitise all role players, to prevent victimisation of or offending any of the participants. It will also be informative as to the significance of meaning that people attach to certain rituals. Some religious groups will want to start and end the session with prayer or devotion, while others might want to perform a cleansing ceremony. It is furthermore recommended that pilot programmes with suitably trained facilitators

be initiated at certain sites, with detailed documentation of events and lessons learned, to evaluate if duplication at another site will be feasible.

As indicated in chapter 6, the Department of Education has a role to play in terms of crime prevention. Teaching learners to be more tolerant to others, who are different, will in the researcher's opinion go a long way in preventing hate crimes. Obviously this should not be attempted without the consent of parents and cooperation of community organizations (Wallace 1998:201-210). Involving relevant structures in communities such as religious groups, social clubs, etc. will in the researcher's view instill and enforce the generally acceptable morals and values. The involvement of older community members and role models will also go a long way in strengthening the moral fibre of the community.

## **8.5 Care for Restorative Justice Facilitators and staff support**

One way of caring for people is to listen to them. It is recommended that research be conducted in the form of, amongst others, focus groups with the different groups of employees in the Department of Correctional Services regarding what they would need to function more effectively. Separate focus groups can also be conducted with those employees who currently deal with restorative justice to exchange ideas of how best to implement restorative justice, when taking diversity into consideration. However, conducting research without the implementation or consideration of recommendations would be detrimental to the morale of the staff, instead of building them up. Focus groups, when conducted according to research protocols provide unique contextual data (Griffiths 1999: 300). A serious commitment by the Correctional System regarding implementation of some recommendations to improve service delivery is needed.

It is recommended that a system of peer support be initiated and encouraged amongst restorative justice practitioners. Currently professional groups like

social workers and psychologists do meet amongst themselves on a regular basis for what is referred to as group supervision. Some extra time could be dedicated to reflect on restorative justice encounters. This could serve as orientation for new or inexperienced professionals. The session might serve as debriefing to prevent the professionals from secondary victimization and it is suggested that an external facilitator – therapist be contracted. This could be a standing arrangement on a quarterly basis. The view on the need for support to Correctional officials is supported by research by the Integrated Youth Offenders Programme (Roper 2005: 4).

It is further recommended that regional or provincial specific practices be written up to be used as baseline for future reference. It could also be the starting point for orientation of new appointees and be used as good or best practice and shared with other regions. In light of the cooperation agreement in the Integrated Justice System it would be advisable if restorative justice practitioners from the different departments meet on a regular basis, which could possibly be combined with the quarterly sessions if appropriate. Combined training is another possibility where one department can take responsibility for a specific part of the training for all the relevant personnel in the Criminal Justice System. This training should address amongst others the following aspects: Cultural diversity, where the rules, taboos and protocol about physical contact (touching/ hugging), eye contact, rituals, language and bias are dealt with. The personnel should be comfortable with their own culture and preferences to be able to deal with differences from others, without bias (Umbrecht 2000: 21). Because of the emotional content of restorative justice intervention, the researcher is of the opinion that role players are so much more sensitive and need to feel accepted despite spiritual and cultural diversity, gender, sexual orientation, background and crime history.

It has to be acknowledged that Restorative Justice is implemented in some of the Correctional facilities. It therefore implies the utilisation of resources for this

purpose, including the staff component. It is therefore imperative that the staff also receive Victim support services, as they, as ordinary citizens of South Africa are equally vulnerable to become victims of crime. In the keynote address by Correctional Services Minister Ngconde Balfour at the handing over ceremony of donations to Mzamomhle Special School in Ntselamanzi Location, Alice – 14 March 2008, he highlighted the following: *“On 7 March we celebrated pockets of excellence in Correctional Services at a spectacular gala dinner held in Kempton Park in Gauteng. With initiatives such as these awards we seek to identify pockets of innovation and excellence which are demonstrated by our members as a critical mass of ambassadors to society in a bid to ensure a Correctional System that works with its people to change the offending behaviour”*.

In a statement of Correctional Services Portfolio committee chairperson, Mr. Dennis Bloem at the National assembly in Cape Town on 13 March 2008 he also referred to the Excellence Award function of 7 March saying the following: *“The awards also seek to inculcate a spirit of pride, dedication and commitment among public servants and are an indication that at least their hard work is being recognized. These are the men and women who toil very hard to ensure that this department meets its Constitutional mandate of providing professional and ethical service”* ([www.dcs.gov.za](http://www.dcs.gov.za) speeches visited on 2008/03/26). The researcher agrees with Du Preez’s (2003:263) recommendation that correctional officials should be trained in case management, as management of individual offenders is different to only ensuring safe custody. This added responsibility creates different expectations from correctional officials to be able to provide a professional service.

Finally, the availability of Restorative Justice in prison should not be a reason for courts to send offenders to prison with the aim of providing them with restorative justice options. The danger exists that offenders who are no threat to society will get a prison sentence, because courts are of the opinion that offenders will be more likely to be exposed to rehabilitation and restorative justice. It was argued



before that one of the reasons why alternative sentencing is not used as first option (Department of Correctional Services Position Paper on Social Reintegration 2008: 5), is because courts are not confident that the monitoring and rehabilitation in the Community Corrections System is effective. Research done by Skelton (<http://www.communitylawcentre.org.za/cspri/index.php> visited 2008/06/01) concluded that the use of Correctional Supervision as sentence option was declining. If therefore restorative justice in prison leads to net-widening, then it certainly defeats the purpose.

## **8.6 POLICY COORDINATION**

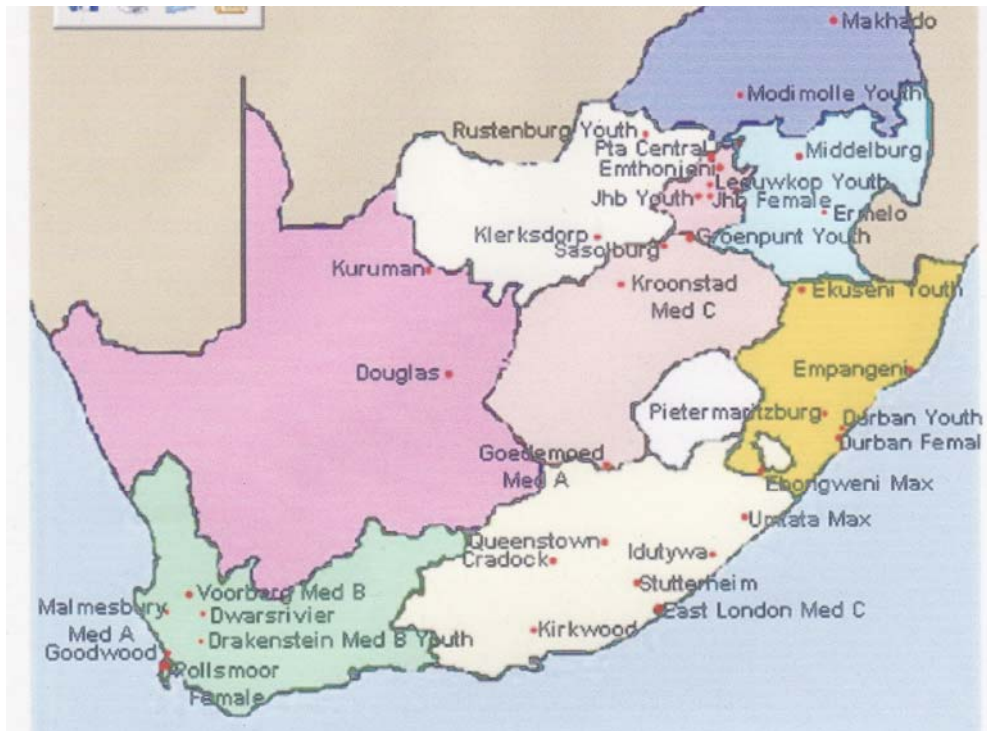
Policy on Restorative Justice in the Department of Correctional Services, the Community Involvement policy, Correctional Programmes, Spiritual Care, Victim involvement in the Parole Board and Social Work policy are some of the policies that specifically refer to restorative justice, restoration of relationships, involvement of communities and or victim empowerment. These policies have implications for the South African Correctional System regarding victims' concerns when deciding on the security classification and supervision of offenders after release (Herman & Wasserman 2001: 435). New policies imply orientation and training of correctional personnel to be able to implement the policies.

Another recommendation regarding policy development is to involve the employees who are in the "coalface" as they will have to implement policy. Most government departments develop policy at national level, far removed from reality. This is in line with the following statement by Rubenstein (1979: 444) regarding policy development for New York prisons: *"The administration (government) should not make the same rules for every institution and dictate that they all must do the same things. What might be good and advantageous at one facility, may not work well at another. Again, the solution here is to listen to the men in the field and hear what they have to say. What may work in one*

*setting, may not work in another*". This refers to general prison practice, but is exactly in line with the plea for flexibility in the implementation of restorative justice with sentenced offenders.

The recommendation is simple: training in general but also specific training on the implementation of policy in the South African Correctional Services should be coordinated especially in view of a holistic approach. Correctional Services identified 36 Centres of Excellence in which to pilot the implementation of the White Paper on Corrections in South Africa (2005: 172; Department of Correctional Services Strategic Plan 2006/07: 7; [www.dcs.gov.za](http://www.dcs.gov.za) centres of excellence visited on 2008/04/01). The map indicates the location of the Centres of Excellence, spread through all the provinces and regions. Pilot implementation of restorative justice in these centres would cover a range of different cultural backgrounds, and different orientations. Reports generated of different experiences of Restorative Justice could be used as a possible model where applicable.

**Figure 9 : Map indicating Centres of Excellence**



**Source: Department of Correctional Services**

The White Paper on Corrections in South Africa (2005) emphasises restoration of relationships and it would then make sense to also do training and implementation in these centres as a pilot and the lessons learned can be used in the rest of the correctional centres. Usually when training is done a target group is selected, which is sometimes the same group of people. On the other hand, if resources are limited, then it would make sense to initially target the personnel who will be directly responsible for implementation of the policy, in this case restorative justice interventions.

## 8.7 Holistic approach

The personnel component of the Correctional Services consists of people with different skills and training. This implies that there will be different approaches to and views on rehabilitation and correcting of offending behaviour (Mc Alinden 2007:32-33). Professionals should resist the temptation of having to defend their territories. These differences should be embraced rather than fought. Problems with multi-disciplinary services also include but are not limited to the fact that Corrections as a career still has to be professionalised, compared to social workers, educationists and psychologists who are already affiliated to a professional council. The process is well underway as an Interim Corrections Professions Council was inaugurated (Balfour, Minister of Correctional Services Budget Vote speech, 5 June 08). It is interesting to note that Correctional Services reported on different professions working together on the celebration of restorative justice week, which shows it can be done (Department of Correctional Services Annual Report 2003/04: 34). It is noted in the same report that: "Offenders were encouraged and motivated to reach out to their victims to express their remorse and seek their forgiveness".

The training of volunteers in the different departments within the field of Restorative Justice and Victim Empowerment also differs, as well as the stipends payable to volunteers. The Department of Social Development gives a stipend to volunteers which differ from province to province, while Correctional Services pays no stipend at all. Internationally volunteers are not paid for their services, but the reality of poverty and unemployment in South Africa cannot be ignored (Hargoven 2007: 80).

The views of retributive judges versus judges with a restorative approach in the Criminal Justice System have to be taken into account, as it most certainly affects sentencing. It also impacts on the possibility of creating opportunities for victims and offenders to reconcile. Beeld (February 2008: 1) carried a front page

article about a judge who has set an offender free following forgiveness by his victims (“Verdagte skotvry nadat slagoffers hom vergewe”).

The approach to offender management should be based on best practice and be informed by the wish of the community and the community’s ability to support both victim and offender. The different government departments which are important role players in the management of offenders should also agree on the purpose of imprisonment (Cilliers 1993: 30-31). The different professions within Correctional Services should compliment each other in achieving the common goal of sending offenders back to their communities to take responsibility for their behaviour, ready and able to make a contribution to society.

It is recommended that Restorative Justice and Victim Empowerment form part of a multi-year planning process in government. It indeed appears in the Strategic plans of some government departments. However, these should also be implemented on local prison/correctional centre level within a holistic multi-disciplinary approach. The inclusion of criminologists is recommended which could ease the burden of assessments of offenders, to leave more time for therapists to concentrate on their business (Hesselink-Louw 2004; Du Preez 2003: 263).

The different professions should agree on standard procedure when offenders apply to be involved in any of the restorative justice processes. It is recommended that no offender be involved in restorative justice if it does not form part of his or her Correctional Sentence Plan. This arrangement should also form part of the service level agreement with external service providers. An integrated approach between Correctional Services and external services providers will also attend to the “coexistence of risk factors” and therefore be more effective (Roper 2005: 5).

The offender should first be involved in different programmes which will address the offending behaviour. Once that is addressed the offender should have an understanding of the factors that caused his criminal behaviour. The offender should also be assisted through different interventions like psychological, social work and spiritual care to deal with his/her own previous victimisation. In line with international practice, it is recommended that another assessment be conducted, which might include assessment of the support system and the victim (Umbrecht 2001b: 260-261). Only then can the offender proceed to the next level, which might be restorative justice. The reason why the researcher also strongly recommends that the offender's support system be involved is because they will be instrumental in holding him to restorative justice agreements and provide support after release. Currently in some cases a social worker or psychologist of Correctional Services who works with an offender also contacts the victim. It is recommended that the Department of Correctional Services rather contracts an external organization which already works with victims, to also assist the victim to deal with the trauma of the crime, before being confronted with the offence and the offender. The challenge in finding these organisations in view of funding challenges is acknowledged. This should be addressed in the government's responsibility to victims of crime, and in the words of the President Mbeki in his 2008 State of the Nation address, "...give life to the Victim's Charter".

## **8.8 Procedure when a request for restorative justice is received**

Restorative Justice as an option before sentencing increases the range of potential outcomes (McAlinden 2007:38-39) from imprisonment to include community service and electronic tagging with certain conditions and responsibilities. Alternative sentences form part of the recommendations to make use of restorative justice in the stages before sentencing. This will not only decrease overcrowding, but will also reduce the negative effects of prison life on families and communities. Imprisonment for young offenders should really be a

sentence of last resort (Skelton & Potgieter 2002: 480; Newell 2000: 116; Human Rights Watch [www.hrw.org](http://www.hrw.org) visited on 2008/01/10), but it is also accepted that some offenders might pose a serious danger to their victims and the rest of society and need to be restrained in a secure setting (Newell 2000:14-15).

Offenders should not be coerced directly or indirectly by the parole board or any other institution like the court. Although, having said that, the offender does not do anything out of his/her own free will – being in prison already implies a level of coercion. It is important to recognize the power imbalance between some victims and offenders and use this as one of the criteria to decide on the appropriateness of a restorative justice intervention. Restorative Justice as an option at any stage in the Criminal Justice process should never compromise the independence of the judiciary.

#### **8.8.1 Factors to take into account when deciding on the appropriateness of a restorative justice intervention**

- General Information on Restorative Justice through correctional programmes
- Training of restorative justice facilitators – Umbrecht (2001b:288-289) postulates that only persons with proven advanced training should be allowed to mediate in cases where severe crimes had been committed.
- Possibility of peer facilitators
- Thorough preparation of all parties and consideration for preferences, religion and culture to prevent offending or hurting any of the parties (Umbrecht 2000: 9, 15)
- Procedural issues and Practice standards (Frank & Skelton 2007).

Restorative Justice does not aim to determine facts. It also does not aim to find the offender guilty. It moves from the premise that the offender already acknowledged his or her part in the crime and is prepared to take responsibility. Therefore Correctional Services should not involve any offender who does not show proof of changed behaviour leading up to an intervention like victim offender mediation. Offenders should also have ideas on how to repair the harm. A firm support system should be in place. It is acknowledged that some offenders have lost contact with their families. The first priority should be to establish contact with family with the assistance of external partners like civil society organizations as well as the South African Police Service and the Department of Social Development. However, the real possibility exists that some offenders might not be able to establish contact or re-build relationships with their own family. Restorative work is still possible if an offender has no support system in place. This would then require a decision of a multi-disciplinary team about the desirability of restorative justice, as one of the core values is the restoration of relationships. If a decision is taken to continue despite total breakdown of family relationships, then it is assumed that the offender was able to build other strong relationships with a community of care, which could include a church or religious group, previous or prospective employers and or personnel of a shelter for homeless people. The involvement of a support system is not negotiable, but they do not necessarily have to be related to the offender.

### **8. 8. 2      Victim Offender Mediation (VOM)**

When a request for Victim Offender Mediation is received from an offender, an alert should be triggered. While it is the ultimate aim of the Correctional System to release an offender who takes responsibility for his/her own behaviour, it should not be done at the expense of the victim. Victims should not in any way be made to feel responsible to contribute to the rehabilitation of the offender.



The researcher strongly feels that no such intervention should be considered before other processes are in place, which entail the following:

The correctional staff member, who first takes the request for Restorative Justice should refer it to a multi-disciplinary team which deals with the offender. It is then assumed that the offender will be properly assessed by all available and relevant professionals (Umbrecht 2001b: 260-261). A thorough investigation and evaluation about the crime, crime history, the victim and the social circumstances should be done. For a more in-depth discussion of this, refer to the Correctional Sentence Plan as discussed in chapter 4.

Policy should also prescribe that an offender who is considered for Victim Offender Mediation should have completed all rehabilitation, development and correctional programmes and interventions as required in terms of his/her individual Correctional Sentence Plan. The multi-disciplinary team needs to agree on the readiness of the offender to take part in such an emotional encounter. Once that is established, a process of preparation of the offender by the personnel of Correctional Services, and the victim by a community organization, should be started.

It should be explained from the start to the offender that this is a long-term process, which does not necessarily have to take place inside the prison. The preparation might start in prison, but the actual meeting could also take place after the release of the offender, depending on the circumstances. Offenders should not be given false hope. Unrealistic expectations should not be encouraged. Umbrecht (2001b: 260-263) describes preparations as a lengthy process which could take months and includes preparation of all parties and the signing of a contract by the parties regarding the procedure to be followed during the Victim Offender Mediation (VOM). It also includes clarifying possible risks to all parties and a final confirmation the day before the encounter that all parties are still willing to go ahead.

The implementation of the Correctional Sentence Plan implies that contact has been established with the offender's support system. The researcher is of the opinion that it would be very difficult for any offender to give effect to a restorative justice agreement without support from family and other significant people. The process of preparation would require contact with community based organizations to render support to victims of crime. The researcher strongly recommends that the victim should not be contacted by a Correctional Services employee, because of the possible secondary victimization of the victim. It is necessary for the victim to also receive therapy, before being confronted with the possibility of facing the offender. In this regard Wemmers (2002: 55) also recommends that victim support workers should not do mediation, as it will be in the interest of all parties if the mediator is a totally independent person. This confirms the need for partnerships between the Correctional System and external organizations, so that the Community organisation can contact the victim, render support services and prepare the victim for a possible encounter, if appropriate. The need for proper assessment cannot be over emphasized. It is recommended that different service providers deal with the victim and offender, and that an independent person facilitate the actual encounter. This independent person could very well be a specially trained and skilled Corrections employee, but preferably not the same one who prepared the offender, in the interest of fairness to the victim.

If after due consideration a decision is made about an encounter, then the following factors should be taken into account:

- Transport arrangements and expenses of the victim
- Safety precautions from when the victim enters the prison
- Profile of offenders ready to meet their victims: first offenders, recidivists, and if the offender takes responsibility for the crime

- Continuity of services to offender and victim
- Follow through on Restorative agreement and recourse in case of default
- Networking with external organizations: combined training, community service
- Preparation and support of the offender
- Preparation and support of the victim, for example, visiting of the correctional centre prior to the actual encounter, which is in line with international practice as explained by Umbrecht (2001b: 277).
- Confidentiality, specifically with regard to previous offences, which only come out during a victim offender mediation session. In an interview with Amanda Dissel from the Centre for the Study of Violence and Reconciliation, the need for practitioners to grapple with the issue of confidentiality and for policy makers to make provision for that was discussed. Although therapists are bound by their professional ethics not to disclose, there still is no way of controlling what other role players in the session might disclose. If an offender admits previous crimes, especially where someone might still be in danger of either physical or emotional harm, then certainly there will be a responsibility to deal with those issues (Dissel, personal interview 17 August 2007).

## **8.9 External resources**

The Department of Correctional Services is the only department in the Criminal Justice System which has such a large number of convicted offenders as captive audience (110 000). It could be viewed as a daunting task, or one could choose

to see it as a unique opportunity to impact the nation and to assist offenders to change the legacy they will one day leave behind. It has been argued earlier that restorative justice is a relatively new field, and restorative justice intervention with sentenced offenders an even less chartered territory. It is therefore unavoidable that good practice from Africa and other countries be adopted either to kick off a process in South Africa or to improve the services that are currently rendered. The Sexual Offenders Treatment Programme (SOTP) in England & Wales is a good example. This is a very intensive programme currently being implemented in the Grendon Underwood prison. According to literature it makes use of the cognitive behaviour model. The so - called “core programme” takes at least one year to complete, which implies commitment from offenders and personnel alike. It would also imply in the South African situation an assessment of offenders as well as motivation to attend a similar programme. This again base interventions on the Correctional Sentence Plan where the offender is assessed by a multi-disciplinary team to determine, with the offender, the most appropriate programmes and interventions to address criminal behaviour, causes of this behaviour, social and psychological problems and all other factors that might affect the offender. The development of a restorative justice path for sentenced offenders should include all relevant aspects of rehabilitation, correcting of offending behaviour and reintegration as outlined in the Correctional Sentence Plan. The researcher trusts that it is clear that this is no different from the Offender Rehabilitation Path as advocated by the Department of Correctional Services, in line with the White Paper on Corrections in South Africa 2005 (Department of Correctional Services Annual Report 2005/06: 14).

This Sexual Offender Treatment Programme makes provision for an extended intervention for high risk offenders who might relapse after release and can be continued even in the community if problems still persist.

Another aspect of the programme is adapted from the core programme to accommodate the needs and ability of low IQ offenders. The core programme is

complimented by a “Booster programme”, which is presented in the pre-release phase. The “Rolling programme” targets lower risk offenders. A significant feature of the programme is that it is even implemented with offenders who deny responsibility and is simply referred to as the Deniers programme.

Interestingly enough, the programme also reports lack of resources as a stumbling block, but despite this and other challenges it continues to be successful for the most part.

McAlinden (2007:9) purports that communities should be taught how to manage unknown risk. Government should encourage victims and offenders to come forward, but it also implies that government makes support services available to victims as well as offenders. This might reduce the rejection of sex offenders by fellow community members and even by service providers.

Concerns with the holistic approach as well as making use of external resources are real and should be managed. The following are possible ways in which to manage these risks: government departments to share responsibilities, as was argued earlier in this chapter, as well as in chapter 4 which deals with creating of an enabling environment. Although different role players can work together, it would be important for them to define areas of specialization to prevent duplication. The aims of these organizations often overlap. In the interest of reaching the maximum number of offenders with quality services, instead of over servicing only a few, it would require formalized service level agreements between the Department of Correctional Services and external service providers.

### **8.10 Community involvement and reintegration**

It is recommended that the Restorative Justice facilitators of the Department of Correctional Services familiarize themselves with the contact persons, aims and objectives of organizations that deal with restorative justice. The possibility of

working relations with these organizations should be explored where it does not already exist, as part of involving the community in rehabilitation and reintegration of offenders, in line with the spirit of the South African Department of Correctional Services' Position Paper on Social reintegration (2008). Some of the restorative justice service providers are affiliated to the Restorative Justice Initiative, which is a network of non-government organizations. The Restorative Justice Initiative has its office in Pretoria, tel. no 012-323 2926. Another possible link is the website of "Speak Out", which gives emergency rape information and support services, available at [http://www.speakout.org.za/emergency/support\\_gauteng.htm](http://www.speakout.org.za/emergency/support_gauteng.htm) (visited on 2008/04/18).

Correctional Services attaches great importance to restoration of normal functioning of families. In this regard the Department of Correctional Services views the restoration and maintenance of close familial relations between offenders and their families as central to cultivating loving relations. The participation of families of offenders in their rehabilitation programmes, which may include family group conferencing and providing the necessary support, will encourage better relations between the family and the offender once released. Restorative justice interventions with offenders can never be fully restorative without involvement of victims and communities (Zehr 1999; Skelton & Batley 2006:7). This is consistent with the department's policy regarding external partnerships and the realization that rehabilitation cannot be successful without the cooperation of civil society and other partners (White Paper on Corrections in South Africa 2005:90; Department of Correctional Services Position Paper on Social Reintegration 2008). Community involvement for restorative justice should not be different from other rehabilitation or integration interventions.

Communities could become involved in the following ways:

- Creative ways of conflict resolution - Talk to offenders about dealing with conflict, how best to deal with conflict not using violence, how to deal with peer pressure
- School groups visiting prisoners
- Dealing with cultural differences
- Symbolic condemnation – imprisonment
- Restorative Justice – Get involved in a structure similar to Circles of Support and Accountability upon release of sex offenders
- Collective response from schools and churches regarding crime prevention, pooling of resources by government and civil society organizations and improvement of state funding of victim services. It is also important that communities do not shift crime to other communities by refusing to accept an ex-offender.

The abovementioned also implies the need for building of strong community support – during campaigns, like the 16 Days of No Violence against women and children. The Department of Correctional Services is also a partner in this campaign and part of the outcomes should concentrate on educating parents on the grooming process before the actual abuse commences. The offender or potential offender usually befriends the family, singles out the vulnerable child and build a trusting relationship (Mc Alinden 2007: 78, 84-86, 87; Special Assignment, SABC 3, 2 June 2008). If these patterns are identified, then possible recidivism could also be curbed, to prevent the relapse of sexual offenders after release from prison.

Institutional grooming is also a dangerous phenomenon, of which managers of institutions are not always aware. A potential sexual offender could get involved in a place of secure care where he/she has access to children. Once again trust is build with the staff and vulnerable children. The potential offender might be a mentor, a donor or volunteer. Even if children then complain about their feelings of discomfort, it is often not taken seriously by the authorities until something serious happens. In this regard Correctional Services could do or commission research amongst convicted offenders (child molesters) and make this information available to the community or relevant organizations. Correctional Services should also be aware of previous offenses of current offenders, to deal with that specific problematic behaviour. An offender might serve a current prison term for an economic crime, but was previously convicted for a sexual offense, which was not dealt with at all.

Offenders have to be involved in community services that are meaningful to them as well as to victims and communities (Gar 2005: 10-11). The Department of Correctional Services should create opportunities for restorative justice practice in correctional centres (work release, transitional programming).

### **8. 10.1      Circles of Support and Accountability**

Circles of support provide a safe environment for ex-offenders to adjust in the community supported by a group of caring individuals (Mc Alinden 2007: 168-171; Zehr 2002 a: 54). Involvement in relapse prevention should in the researcher's opinion form part of the quarterly and annual assessment of officials working in the Community Corrections System. This is consistent with what Wilson et al. (2002:371) postulates regarding offenders on parole to be involved in community group conferences or other restorative justice options, instead of being brought back to prison as part of relapse prevention when risk is identified. It is therefore important that the Correctional Sentence Plan be updated or reviewed on a regular basis. Part of the review has to include risk assessment,



so that these factors that are likely to lead to recidivism be identified and managed. This implies a good relationship between the correctional official and the offenders, as well as with support structures in the community. The latter can act pro-actively by alerting even the offender and other relevant role players when risk is identified. Wilson (2002: 271-372) postulates further that in this restorative option it can be very powerful when siblings and or other close relatives tell the offender how they were affected by the crime and the subsequent imprisonment. This might be a wake up call for the offender to realize that it is not only himself who is involved, but at the same time the offender's connectedness to people who care is affirmed.

### **8. 11 Restitution and Compensation**

Morris says about restitution that: *It gives the offender a chance to earn and repay **honestly** what he stole or destroyed, and a sense of proportion related to his action. Restitution relates what they did to what they must do.*

Wallace (1998: 313) describes restitution centres that are used in some states in America, where offenders stay for 6-12 months and continue working until they have paid the amount ordered by the court. The researcher would approach the establishment of such a centre in South Africa with caution as the costs of running such a centre should be weighed against the cost to keep those offenders in prison and on the other hand to keep them in the community to continue to care for his or her family, without being a burden to the taxpayer.

## **8.12 Choices and consequences**

Interventions in Correctional Services should all drive home one message: we make choices everyday and the choices we make impacts on other people.

The diverse prison population implies vast differences in the educational or literacy level of the offenders. Correctional Services already has educational and Adult Basic Education and Training (ABET) programmes in place to address this problem. It also has to be borne in mind that some programmes would require a certain level of understanding and academic development.

It could be problematic to have these vast differences amongst offenders in the same group. For instance, a sexual offences group that runs over an extended period is usually on a different level as a short term life skills programme. The researcher suggests a very simple and well known game that can be converted to suit the needs of all groups, irrespective of academic level. The game brings home the message that choices have consequences.

The game is a conversion of the well-known “Snakes and ladders” game and works as follows:

A group of offenders can play this game as one of the sessions in a range of group therapy sessions. Usually group therapy runs over a period of at least 6 sessions, with different themes being addressed. The following is an example of themes of a rehabilitation programme/life skills group/ correctional programme:

**Session 1:** Orientation and Introduction

**Session 2:** facing the reality of imprisonment

**Session3:** crime

**Session 4:** effects of imprisonment on myself and family members

**Session 5:** effects of imprisonment on communities

## **Session 6: choices and consequences**

**Session 7:** Summary and evaluation

**Session 8:** Debriefing and Termination of the group

The programme facilitator will organize the group members around a table, where all could see the board game. The game is changed so that the ladders represent good choices and the snakes the consequences of bad choices.

It is assumed that almost everybody is familiar with how the game is played, so it does not require extensive explanation.

When a person “role the dice” he /she will count as he would with the normal game- if he lands on a snake, then he has to tell the group of a bad choice that he has made previously. The group can then give possible negative consequences.

**Choice:** use alcohol or drugs with friends

**Consequence:** loose a lot of money –that choice implies that you go down with the snake

If you land on a ladder, it represents a good choice

**Choice:** go to school

**Consequence:** improve possibility of getting a job

**Good choice:** improve qualifications

**Consequence:** getting a better job, climbing the ladder to a better life

The person who finishes first has to tell the group about good choices, as an encouragement to make good choices. The group facilitator will start playing with the last person until that person also finishes.

The moral of the game:

- Some people take longer to reach their ultimate goal
- It is possible to reach the desired outcome, even if we have made bad choices
- If we make bad choices, we will not reach our goals, “we will go down”
- If we make good choices, we will climb the ladder
- When you are in the game of life, you will make choices
- There will be consequences
- We also make choices how to deal with consequences
- When we go down, the people in our lives are affected in a bad way
- When we go up (climb the ladder), the people in our lives are affected in a good way

#### **8.12.1 What makes the game applicable to all:**

- It is familiar to most people
- If not, it is easily explained and can be learned as you play
- The facilitator can use it as a tool that people can relate to
- It is a simple game which does not need any level of academic qualification
- Those with academic qualifications are equally challenged with the consequences of choices they have made
- A group of people can take part

- The group members help each other as some will have made the same bad choices
- The consequences are “visible” –you get swallowed –you go down
- It gives people a chance in a safe relaxed atmosphere to talk about bad choices they have made
- Usually there is laughter when you go down with the snake
- People in prison, personnel and offenders need to have more fun
- People in communities can play the game and have more fun
- It opens up discussion on consequences and possible other issues as well
- It also allows reflection on good choices and its consequences
- The good consequences, achieving in life, can serve as encouragement for others in the group
- The facilitator can start by using examples in prison of good and bad choices that people make
- Can be used by any group facilitator, eg. social worker, psychologist, educationist, HIV/AIDS counselor, correctional official, spiritual care worker, parent, peer counselor, etc.
- The game can be applied with people with different skills and background
- It is especially applicable to children in prison or in schools – especially those learners who visit prisons will practically see the consequences of bad choices (SA Corrections Today September/ October 2007: 6).
- In terms of school children in communities, it can drive home the message of choices regarding friends, experimenting with drugs, truancy, etc.

- It is not costly at all and easily available
- The snakes and ladders can be adjusted to fit the needs of a specific group
- The facilitator could also in the previous session, ask the group to discuss choices and consequences
- These can be written into the snakes and ladder blocks as preparation by the facilitator for the next session –these blocks can be covered with a blank piece of paper
- Only when the game is played, and someone lands on a ladder, or snake, is the good or bad consequence revealed
- The group will recognize it as the consequences that they indicated the previous week
- It might also create an expectation to see where you will be landing, as we can't always foresee the consequences of our choices
- For adults, it brings out the child in us, while still teaching us valuable life lessons
- It can be used in all group interventions, whether therapeutic or not
- Some offenders take part in art competitions and could be very creative in developing a customized snakes and ladders (choices and consequences) game for the specific group
- It is not restricted to a group on a specific topic, like restorative justice, life skills, AIDS education or substance abuse – the lesson stays the same; choices have consequences

### **8.13 Building your own Puzzle – your own future**

As argued in the previous chapter, the understanding and implementation of restorative justice can be likened to building of a puzzle (see chapter 5). Similarly the life of an individual consists of different aspects, which like a puzzle has the potential to fit perfectly into each other, or, like an incomplete puzzle, is an almost impossible challenge to build. This can also be used with groups of offenders and can be adapted to the intellectual level of the offenders as well as the emotional readiness of the group. The skilled facilitator or therapist should be able to assess the group dynamics and be able to decide about the appropriateness of using the puzzle with a specific group at a specific time.

These group facilitating aids are not new at all – the point the researcher wants to make is that the concept of restorative justice can be and should be conveyed to offenders in the most appropriate manner that is applicable to that specific situation. The use of familiar symbols will hopefully create a sense of knowing, therefore a sense of safety which might assist in the process of building rapport. The aids are also not meant to only be used for restorative justice per se; on the contrary, if it is labeled as restorative justice games, then it might come to be treated exactly like that - a game. It is meant to address serious issues in a creative way. The challenges of the responsibility to bring the offender to a conscious decision to change his/her behaviour are enormous. It should not be complicated by creating a divide or tension between the different professions at work inside a correctional centre. It is merely offered as an option to use to be as inclusive as possible.

The variety of possible outcomes is deliberate: to confirm that while policy and practice standards guide implementation mainly to prevent secondary victimization, it should definitely not stifle innovation. It should be applied in a way that is sensitive to and accommodating of diversity in such a way that what used to drive people apart, can be celebrated as unifying factors.

#### **8.14 Implementation of Restorative Justice in the Department of Correctional Services**

The researcher is essentially making two seemingly contradicting points in terms of the future planning of restorative justice. Firstly, where good work in terms of the restorative justice principles is done, it should be strengthened. Resources of all rehabilitation interventions should be increased, which will also have a positive impact on the resources for restorative justice. The Department of Correctional Services should ensure that the personnel, who are involved in restorative justice interventions, receive all available training and development of skills as a matter of urgency. Without the necessary training and skills the danger exists that more harm could be done to victims, even with the best intentions.

The involvement of the offender in victim-offender mediation should not be a consideration for the parole board (Rogers, personal interview 20 August 2007). Contrary to that, Dr. Nxumalo (personal interview 31 July 2007) contends that it must be considered by the Parole board, as the offender already served the sentence, and can gain nothing, unlike a person who still has to go through a court procedure. It is the researcher's view that consideration by the parole board can put undue pressure on victims. Presser & Lowenkamp (1999: 341) postulate that victims are at risk of trauma if exposed to "unresponsive" offenders. If an offender qualifies to be paroled, then the issue of restorative justice could be pursued while he/she is in the Community Corrections System. Victim offender mediation can never be a requirement or proof of successful rehabilitation. According to Umbrecht (2001b: 290) one of the unintended negative consequences could be revictimisation of the victim, which in the researcher's opinion the Correctional System and the rest of the Criminal Justice System should guard against. Wemmers (2002: 54) agrees with this statement and warns about the risk of secondary victimization.



Secondly, it is submitted that restorative justice should not be actively marketed to offenders until and unless adequate resources are available. The widely publicised launch of the Restorative Justice approach in 2001 created expectations with offenders. Unfortunately the marketing campaign was not backed up by putting the resources and training in place that was needed for successful implementation (Skelton & Batley 2006: 115). Zehr (2002 a: 9) also argues that restorative justice is not limited to an encounter – an offender can therefore still experience personal restoration by dealing with his/her own issues, without necessarily having to meet the victim personally. What could be more useful is to inform victims of their rights through various external partners, strengthen the current practice, and only when victims indicate that they are ready and willing to meet the offender, should the process of victim offender mediation be started. Offenders should however still be involved in Restorative Justice Information programmes as part of the Correctional Sentence Plan, which should focus on victim impact and victim empathy as is already practiced by some external partners. In line with international practice, the relevant staff could also ask victims and or victim organizations what they need from Correctional Services in terms of addressing the needs of victims. The regular contact between prison staff and community organizations might in the researcher's opinion lead to a trusting relationship between the community and Correctional Services as an arm of the Criminal Justice System.

Victim Offender Mediation should not be encouraged as a necessary part of rehabilitation programmes. It should be respected as a deeply personal and individual process and accepted that the majority of offenders will not go through this specific restorative justice intervention. The emphasis should rather be on restorative justice as an approach followed by all correctional officials as part of the South African community. It should not be viewed as something new – it is just a revival of the way the African people dealt with conflict before the formal Criminal Justice System took over. It was argued before that the principles of restorative justice should be instilled on school level. The Department of

Correctional Services would do well in orientating and training where applicable all its personnel who deal directly with offenders. Problems and conflict between personnel and also with offenders should be dealt with in a restorative way. A programme like the Prison Transformation project, or others similar to that, should be implemented across the board to empower all personnel to deal with personal problems, as well as with their own victimization. Only when this becomes a way of life for the personnel, will they be able to support offenders in their efforts to restore relationships and to reach out to victims. The full and coordinated implementation of the White Paper on Corrections in South Africa (2005) will in the researcher's view eventually create the right atmosphere or environment for Restorative Justice, provided that the resources for implementation of the White Paper are available. This also implies that a vigorous programme of change management on all levels takes place. Any change, like operating a former militaristic system on rehabilitation principles, will of necessity cause discomfort and resistance. All personnel should be informed about the need for change, given a chance to voice their fears and uncertainty, be given examples of good practice, they must understand the big picture to become excited about the possible outcome. Unfortunately, if personnel view working for Correctional Services as a stepping stone in their careers, then they do not have a long-term commitment and would not embrace future planning. A feeling of being inadequate will also lead to resistance if people are not properly trained, skilled and equipped also on an emotional level to deal with new expectations.

The Communication Strategy of Correctional Services should include possible responses to media coverage of Victim Offender Mediation, possible risk or problems and an agreement on how the department will respond to that, so that a single uniformed message is conveyed to the public and specifically victims of crime. It is also important that the mass media be used to convey the concern of the Criminal Justice System with victim's of crime. A delicate balance should be struck between conveying a certain message versus exploiting victims by filming

very emotional mediation sessions in the presence of an audience (Umbrecht 2001b: 300). However, as was argued earlier, filming of sessions could also be used for training purposes. Media coverage should not be allowed only for the sensationalism it can provide.

## 8.15 Research

It is recommended that ongoing research is done on different aspects of offender behaviour, in line with the Department of Correctional Services Strategic Plan (2006/7: 36). Longitudinal studies of offenders might assist in tracking recidivism and give a more realistic picture of the figures that are currently provided regarding repeat offending. The Department of Correctional Services should also develop and maintain a data base on national, regional and local level of restorative justice interventions. It is not possible to report on success and even failure of restorative justice or any other intervention in prison, if it is not well recorded and statistics updated on a regular basis. Report writing is important to assist with analyzing trends and good practice. Different practices and dynamics in the different provinces or regions might complicate research based on comparison of practices across the board.

The implementation of policy implies that monitoring and evaluation should be conducted possibly on a six monthly basis. If serious problems are encountered, then recommendations could be made regarding the need for change of policy. Most professions require report writing about all interventions as well as evaluation of the impact. **Monitoring and evaluation** together with research are important tools for government departments to be held accountable in terms of the services they promise to deliver to the public. Monitoring and evaluation should not be separated from reporting. It also serves as guidelines for planning, improvement and expansion for future services. The researcher does not advocate a position where restorative justice will be researched, monitored and evaluated in silo. It must form part of the normal operations of the Department of

Correctional Services and be incorporated in efforts to improve compliance to internal policy and requirements from parliament and other oversight bodies. As restorative justice is still in its infancy, it is too early at this stage to draw conclusions about impact; however, ongoing evaluation will generate important lessons. Government departments in general should address weaknesses in generating reliable information; ensure the integrity of information and effectively utilising the information.

Research could also be done regarding what victims might want or expect from the Criminal Justice System in general, but specifically in terms of Parole hearings and other Corrections issues. This is in line with international practice (National Consultation with Victims of Crime in Canada, 2001; Wemmers 2002: 56). This research in Canada included interviews and focus groups with victims and communities, which indicated the following expectations and concerns:

- To be treated with respect by Corrections personnel received high priority
- That Corrections staff be trained on victims issues, to be sensitive to victims concerns, which is also consistent with Umbrecht's view (2001b: 297) that personnel should be assisted to develop a better understanding
- A decision register of the Parole board being kept, easily accessible to victims
- Offenders receiving therapy on state expense, victims don't
- Offenders can be informed about the content of the victim impact statement, while victims do not always have access to personal information of the offender
- Victims want a say in the criminal justice process, especially regarding plea bargaining

- They want information in a timely manner, also access to recorded parole procedures
- Victims want dedicated victim liaison personnel as they have to deal with different people and often have to start the process all over
- Victims want an integrated approach across the Criminal Justice System to avoid being send from one office to the other, without being helped

In the South African system some of these concerns are already addressed, but it is worth noting that victims of crime even in developed countries experience some difficulties which could add to the trauma of the crime. Research with victims will also indicate if victims are indeed interested in victim offender mediation.

In response to these recommendations the Department of Correctional Services could start by doing baseline research on current restorative justice practice in its facilities. It is important that this report and others on restorative justice in South African prisons should be used as a starting point from which more extensive research could be done. International practice could also be used as a guideline to improve local practice.

## **8. 16 Conclusion**

Mindful of the plethora of ideas surrounding Restorative Justice as an approach, the researcher has to mention that this review of Restorative Justice with sentenced offenders in the South African Correctional System is by no means exhaustive. As was mentioned in the beginning of the report, one of the aims is to stimulate more research on this and related topics. Reflective of the many challenges in the South African Corrections System, it is suggested that creative and innovative ways of evaluating and reporting on restorative justice practice be

developed. Frank (2003:25) concludes in terms of crime prevention that much learning should still be generated, which is dependent on an “information-driven approach”. She further emphasizes the need for programme theory, evaluation and documentation as well as the development of technical skills to manage and utilise information. The researcher agrees with this notion as it is also applicable to the implementation of restorative justice. This should always take place within a human rights environment, respectful of the distinctive and diverse cultures, traditions, beliefs, languages and other orientations of the role players. The report is therefore mindful of the complexity of implementing restorative justice in a prison setting. The challenges in terms of resources and the political will are equally enormous. However, it starts with a simple decision about the long term value for South Africa as a nation, and then to mobilize support from government, business, offenders, victims and communities.

“No prison system can be separated from the social reality that surrounds it” (Tolstrup 2002: 39). The researcher agrees with this statement as well as the sentiments of Edgar & Newell (2006: 12, 13) that the implementation of Restorative Justice in prison will begin to address the concerns that victims and communities have about crime. It also confirms that society has an obligation to address the consequences of crime just as the offender has the obligation to correct the harm (Zehr 1990: 180). Societies are responsible for the well-being and safety of all its members (victims and offenders). Restorative justice in prison will also assist the process of reintegrating offenders as they remain members of society. In the final analysis, and in agreement with Zehr (2002 a: 10), restorative justice has to be done “...because it is the right thing to do. Victims’ needs *should* be addressed, offenders *should* be encouraged to take responsibility, those affected by an offense *should* be involved in the process, regardless of whether offenders catch on and reduce their offending”.

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## **Annexure 1**

# **Practice Standards for Restorative Justice. A Practitioner's Toolkit**

## 1 Overview of the Toolkit

### 1.1 Introduction

The development of standards for practice is motivated by an interest in ensuring that services are of a high quality. As practitioners conduct their work in the field of restorative justice, they may ask themselves a range of questions: Is my programme achieving its “restorative” objectives? Does my programme uphold the human rights of participants? Do victims and offenders obtain satisfaction from my programme? This Toolkit aims to assist practitioners and those that seek to regulate the quality of restorative justice practice with the tools to answer these and other questions relating to the quality of practice.

This Toolkit presents a set of “Practice Standards for Restorative Justice”, and consists of a set of tools to guide their usage. The intended purpose of these standards is to guide the implementation of restorative justice programmes and processes linked to the criminal justice system. The standards presented here were developed from a review of literature in the field of restorative justice, and consultations with stakeholders in this field. They are specifically derived from a range of restorative justice values and principles, drawn from the literature, references to which are included in Part 3 below.

The project to develop these practice standards for restorative justice was commissioned by the Restorative Justice Initiative (RJI) with funding support from the Royal Danish Embassy. The brief was to develop a set of standards for restorative justice practice in South Africa, through a process of research and consultation. The researchers commissioned for the task reviewed international and local literature to develop a draft set of standards, and then consulted with key government and civil society role-players, as well as international experts before the standards were finalised. A full report on this process is presented in Part 2.

These standards are built around two central considerations: (1) to ensure that human rights standards are upheld within restorative justice processes, and (2) to ensure that programmes and processes are indeed restorative. The practice standards presented here relate to both issues, and emerge from the restorative justice values and principles that have been drawn from the literature on restorative justice. In order to specifically identify the programmes or processes to which these standards would be applicable, a definition of restorative justice had to be selected. While many programmes and processes identify themselves as operating within a restorative justice paradigm or as undertaking restorative justice, for this exercise Zehr’s definition of restorative justice below was selected as being generally descriptive of the interventions to which these standards would apply.

*Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.<sup>2</sup>*

### 1.2 The Purpose of the “Practice Standards for Restorative Justice”

The establishment of standards is usually motivated by the need to secure a specific level of quality in relation to service delivery. These practice standards seek to ensure that restorative

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2. Zehr, H. 2002. *The Little Book of Restorative Justice*. Good Books. Intercourse.



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justice programmes and processes do two specific things: (1) that they uphold human rights standards, and (2) that they maintain integrity of restorative justice values and principles.

### 1.3 Who should use this Toolkit?

This Toolkit is intended specifically for practitioners that implement restorative justice programmes and processes aligned with the criminal justice system. Therefore, these standards would specifically apply to: restorative justice interventions relating to diversion from the criminal justice system; restorative justice programmes and processes that relate to sentencing; and programmes and processes that take place in the context of correctional institutions, parole and reintegration.

These standards were not developed with the aim of regulating the wide range of conflict and dispute resolution processes, as there are significant differences between those processes that are intended to operate within in a restorative justice paradigm and those intended as alternate dispute resolution mechanisms. It should be noted therefore that these standards may not apply to general alternate dispute resolution practices such as mediation, or traditional justice practices. However, it is proposed that these standards may be modified to offer a set of standards that is applicable to these processes.

The standards were developed to apply to any restorative justice programme or process that relates to the criminal justice system. Here the words, “programme or process” are defined in their broadest form and include processes where, for example, there may not be a face-to-face encounter between the victim and offender; where someone else may represent the victim, etc. The standards are however, specific to the values, principles and objectives of restorative justice.

### 1.4 How the Toolkit and Practice Standards Should be Used

At this stage, the intention is that these practice standards should be used for the purposes of self-regulation by organisations and others that run restorative justice processes and programmes. In the future, it is hoped that they may be endorsed by different government departments and used to regulate the quality of the restorative justice programmes that are utilised by these departments.

For the purposes of self-regulation, an organisation or person that provides a restorative justice programme or process may use these practice standards to guide each of the restorative justice interventions that it undertakes, as well as for evaluating its practice on a regular basis. This Toolkit provides tools to guide both these processes.

At the outset, it should be noted that standards differ from values and principles in that they are intended to be measurable. In developing these practice standards, a balance was sought between measurability and utility. Therefore, the standards are written to enable practice to be measured, while also ensuring that this does not become too onerous a task for those that must undertake the measurement.

These standards have been developed as ‘minimum standards’, and seek to regulate only at a level to ensure that human rights standards are upheld and that programmes and processes maintain the integrity of their ‘restorative’ intentions.

It should be noted that, in the context of diversion programmes, these standards are complementary to the minimum standards that have been developed for diversion programmes<sup>3</sup>, and in these cases, both sets of standards should be utilised.

It has already been noted that these standards are intended to be applicable to a wide range of restorative justice programmes and processes, including those that may not involve a face-to-face encounter between the offender and victim. The standards have been written, however, specifically to manage some of the risks that may occur in face-to-face encounters. Therefore, practitioners that are implementing programmes and processes that do not involve face-to-face encounters may not need to use all the standards, and will have to modify this list to adapt it to their needs. This will primarily relate to the removal of those standards that relate to face-to-face encounters.

This Toolkit consists of several parts. These are intended to assist practitioners to undertake different aspects of their work in relation to restorative justice.

### **Part 1: Full Practice Standards, including Measures and Discussion of Practice Issues**

- This part of the Toolkit consists of the full set of practice standards. This is prefaced by the restorative justice values and principles upon which the standards have been based. These values and principles are discussed in more detail in the report presented in **Part 2**.
- The practice standards are divided into four sections, relating to the four general phases of restorative justice processes i.e. the Referral Phase, the Preparation Phase, the Restorative Justice Encounter, and the Post-Encounter Phase.
- Each standard is presented in the following categories:
  - **A standard statement:** this states the actual standard in full
  - **Values and principles:** this states the restorative justice values and principles to which that standard relates. Here, a link is also made to the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.<sup>4</sup> This seeks to provide a constant reminder that practice needs to uphold these values and principles.
  - **Measurable outcomes checklist:** this is intended to be used by practitioners as the restorative justice programme or process is being implemented. It will allow the practitioner to ensure that each aspect of the restorative justice process has been adequately completed. This checklist is intended to guide the daily practice of practitioners and is completed by the practitioner as the different phases of the restorative justice process are worked through. Here, the practitioner within an organisation will be able to complete the checklist as s/he works, but may need to obtain information from other sources (e.g. referring persons such as prosecutors) in some cases.
  - **Measures that may be applied for evaluation purposes:** these are intended to be used by an organisation to evaluate its practice in relation to restorative justice programmes over the longer term. An evaluation may be conducted once per year, and could involve the selection of a sample of restorative justice cases to be analysed and evaluated. An organisation may apply these measures to provide information as to the general effectiveness of its restorative justice interventions. These measures are

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3. Department of Social Development. 2007. Minimum Norms and Standards on Diversion. Pretoria: Department of Social Development.

4. United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. ECOSOC Resolution 2000/14.

## **Annexure 2:**

**Unrealistic expectations of prisons**

**Author: Challeen (1986)**

**In: Halstead, S. 1999. Educational  
Discipline Using the Principles of  
Restorative Justice**

*We want them to be responsible*  
So we take away all responsibilities

*We want them to be positive and constructive*  
So we degrade them and make them useless

*We want them to be non-violent*  
So we put them where there is violence all  
around them

*We want them to be kind and loving people*  
So we subject them to hatred and cruelty

*We want them to quit being the tough guy*  
So we put them where the tough guy's re-  
spected

*We want them to quit hanging around losers*  
So we put all the "losers" under one roof

*We want them to quit exploiting us*  
So we put them where they exploit each other

*We want them to take control of their lives*  
So we make them totally dependent

*Challeen, (1986)*

## **Annexure 3**

### **List of semi-structured interviews**

## Semi-structured Interviews

	Name	Designation & Organisation/ Company	Interview Date	Place
1.	Bitsang Joyce Matshego	Correctional Services Deputy Director Client Relations	25 July 2007	Department of Correctional Services National office
2.	Mark Johnson	UK visitor, ex offender	27 July 2007	Unisa
3.	Dr.Thami Nxumalo	Director: Khulisa, KZN	31 July 2007	Pretoria
4.	Dr. Ann Skelton	Child Law Centre	2 August 2007	University of Pretoria
5.	Lesley Ann van Selm	Managing Director: Khulisa	8 August 2007	Khulisa JHB office
6.	Clive Monacks	Correctional Services Director Risk Profile Management & member of Prison Fellowship SA	13 August 2007	Department of Correctional Services (DCS) National office
7.	Mike Batley	Managing Director: Restorative Justice Centre	13 August 2007	Restorative Justice Centre, Pretoria
8.	Amanda Dissel	CSVr	17 August 2007	CSVr office
9.	Thabo Mnyathi	Khulisa	20 August 2007	Khulisa JHB office
10.	Cheryl Rogers	Khulisa	20 August 2007	Khulisa JHB office
11.	Judge Bertelsmann	High Court of South Africa, Transvaal Division: Pretoria	27 August 2007	High court Pretoria
12.	George Lai Thom	Khulisa	4 September 2007	Pretoria
13.	Tshego Maswabi	Trainer, social worker, Restorative Justice practitioner: Restorative Justice Centre	13 September 2007	Pretoria
14.	Joel Lekgetho	Traditional leader	13 September 2007	Pretoria
15.	Grace Molatedi	Correctional Services Free State & Northern Cape Regional Head – Development & Care	19 September 2007	Pretoria
16.	Van Wyk	Correctional Services official	12 October 2007	Pollsmoor correctional centre
17.	Pastor Clayton	Director Hope Ministries: Pollsmoor Correctional centre	12 October 2007	Pollsmoor correctional centre
18.	Martie Potgieter	Chief Social worker: Pretoria Female	15 November 2007	Pretoria Female Correctional Centre

	<b>Name</b>	<b>Designation &amp; Organisation/ Company</b>	<b>Interview Date</b>	<b>Place</b>
		Correctional centre		
19.	Douw Grobler	Executive director: Prison Fellowship SA	17 December 2007	Sasolburg Prison Fellowship SA, National office
20.	Jeromy Mostert	Clinical psychologist: Leeuwkop correctional centre & Member of Prison Fellowship Ministries	15 January 2008	Telephonic & email correspondence
21.	Piet de Bruin	Correctional Services Deputy Director: DCS Parole Board Facilitation	25 January 2008	Department of Correctional Services National office
22.	Helena du Toit	Chief social worker with 17 yrs experience	25 January 2008	Correctional Services National office
23.	Reverend Fry	Chaplain Pollsmoor correctional centre	4 March 08	Pollsmoor correctional centre
24.	Claudette Van Zyl	Correctional Services Director Development & Care: Eastern Cape region	5 March 08	East London
25.	Reverend Irion	Chairperson: CSPB; Cradock	7 March 08	Telephonic conversation
26.	Reverend Manaka	Correctional Services Grootvlei Management area	11 March 08	Bloemfontein
27.	Reverend Gouws	Correctional Services Deputy Director Acting Area Coordinator Development & care: Kimberley	11 March 08	Bloemfontein
28.	Ronald Ntuli	Correctional Services Director Supervision	1 April 2008	Department of Correctional Services National office
29.	Reverend Dlula	Correctional Services Deputy Director: Spiritual care	2 April 08	Department of Correctional Services National office
30.	Maira Jones	Chief Social worker and Employee Assistance worker (EAP) in Department of Correctional Services	24 April 2008	Pretoria