I would like to extend my sincere thanks and appreciation to some special people who contributed to the successful completion of this dissertation.

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-Maytham, brothers and sisters for support and faith in me for being able to complete this project.

My colleagues and friends for valuable inputs.

Prof. Cilliers for professional guidance and making available his expertise, but more importantly, enthusiastically talking about “us” and “we” really made the lonesome journey bearable.

Mrs. Burger at UNISA library for information on available sources.

Last, but not least, our Heavenly Father whose grace is sufficient for me.
The Application of Restorative Justice in the South African Correctional System

M F Plaatjies

Master of Arts

Criminology

Prof C Cilliers

Summary

This dissertation is the culmination of extensive literature study on the application of Restorative Justice in the South African Correctional System. International and national resources on the application of Restorative Justice both in Corrections and as pre-sentence option had been studied.

The background of the penal system and the development of Restorative Justice as part of the Criminal Justice System are investigated by looking at ancient practices, indigenous and modern practices. The study intends to draw on experience from other countries, while at the same time advocate for the development of a uniquely South African model or practice.

The role of the most important stakeholders, namely victim, offender and community is emphasized with reference to the challenges that offenders face in terms of reintegration and the lack of resources in communities to enable them to honour Restorative Justice agreements.

Key terms: Restorative Justice; Background of Restorative Justice in Corrections; addressing the harm; restoration; paradigm shift; Victim Empowerment; Overcrowding; International trends; Elevated role of different stakeholders; White Paper on Corrections 2005
### Table of Contents

#### Chapter 1  General orientation

1.1 Introduction  
1.2 Choice of subject matter  
1.2.1 Necessity and desirability of the research  
1.2.2 Availability of data  
1.2.3 Interest of the researcher  
1.3 Aims of the research  
1.4 Rationale for the research  
1.5 Methodology: Literature review  
1.6 Demarcation of the study  
1.7 Relevance of the study to Department of Correctional Services and South Africa in general  
1.8 Definition of concepts  
1.8.1 Restorative Justice  
1.8.2 Retributive Justice  
1.8.3 Crime  
1.8.4 Justice cluster  
1.8.5 Department of Correctional Services (DCS)
Chapter 2  Background and Explanation of Restorative Justice

2.1  Introduction 21

2.2  Imprisonment in South Africa: A Paradigm shift in Corrections 25

2.3  Inception of prisons 26

2.4  Relevant Acts, Legislation and Bills bringing about Transformation of Correctional Services 27

2.5  Prison Reforms 29

2.6  Constitution of South Africa (Act 108 of 1996) 30

2.7  Overcrowding, poor prison conditions and Restorative Justice 33

2.8  The National Crime Prevention Strategy (NCPS) 39

2.9  Biblical Background of Restorative Justice and Punishment 46
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.10</td>
<td>The Historical Development of victim compensation</td>
<td>48</td>
</tr>
<tr>
<td>2.10.1</td>
<td>Code of Hammurabi, around 1700 BC</td>
<td>50</td>
</tr>
<tr>
<td>2.10.2</td>
<td>Mosaic Law</td>
<td>51</td>
</tr>
<tr>
<td>2.10.3</td>
<td>Roman Law</td>
<td>52</td>
</tr>
<tr>
<td>2.10.4</td>
<td>Compensation/Restitution to the victim during the 19\textsuperscript{th} century</td>
<td>54</td>
</tr>
<tr>
<td>2.10.5</td>
<td>Compensation to victims during the 20\textsuperscript{th} century</td>
<td>54</td>
</tr>
<tr>
<td>2.11</td>
<td>The Historical and Philosophical development of different models of punishment</td>
<td>55</td>
</tr>
<tr>
<td>2.11.1</td>
<td>The medical model</td>
<td>56</td>
</tr>
<tr>
<td>2.11.2</td>
<td>The adjustment model</td>
<td>57</td>
</tr>
<tr>
<td>2.11.3</td>
<td>The Reintegration model</td>
<td>57</td>
</tr>
<tr>
<td>2.11.4</td>
<td>The Justice model</td>
<td>59</td>
</tr>
<tr>
<td>2.11.5</td>
<td>The neo-utilitarian model</td>
<td>60</td>
</tr>
<tr>
<td>2.12</td>
<td>Purposes of Punishment</td>
<td>62</td>
</tr>
<tr>
<td>2.12.1</td>
<td>Deterrence as purpose of punishment</td>
<td>63</td>
</tr>
<tr>
<td>2.12.2</td>
<td>Rehabilitation as purpose of punishment</td>
<td>64</td>
</tr>
<tr>
<td>2.12.3</td>
<td>Incapacitation as purpose of punishment</td>
<td>66</td>
</tr>
<tr>
<td>2.13</td>
<td>Restorative Justice and Corrections</td>
<td>67</td>
</tr>
<tr>
<td>2.14</td>
<td>The philosophy of Restorative Justice</td>
<td>68</td>
</tr>
<tr>
<td>2.15</td>
<td>The values of Restorative Justice</td>
<td>70</td>
</tr>
<tr>
<td>2.15.1</td>
<td>Encounter</td>
<td>71</td>
</tr>
<tr>
<td>2.15.2</td>
<td>Amends</td>
<td>76</td>
</tr>
<tr>
<td>2.15.3</td>
<td>Reintegration</td>
<td>79</td>
</tr>
</tbody>
</table>
2.15.4 Inclusion

2.16 Fundamental Principles of Restorative Justice

2.17 Differences between Restorative Justice and Retributive Justice

2.18 Signposts of Restorative Justice

2.19 Programmes usually associated with Restorative Justice

2.19.1 Victim Offender Reconciliation Program (VORP) & Victim Offender Mediation

2.19.2 Family Group Conferencing

2.19.3 Victim offender panels

2.19.4 Diversion

2.19.5 Community service

2.19.6 Restitution

2.19.7 Compensation

2.19.8 Support circles

2.20 Current Initiatives in South Africa on Restorative Justice influencing Corrections

2.21 The relationship between Moral regeneration, Restorative Justice and Corrections

2.22 Summary
Chapter 3  International trends: Restorative Justice in other countries

3.1  Introduction 120
3.2  Background Information of the Criminal Justice System 124
3.3  Families of law 126
3.3.1  Civil law 126
3.3.2  Common law 126
3.3.3  Socialist law 127
3.4  NEW ZEALAND: Criminal Justice System 127
3.4.1  Political system 127
3.4.2  Legal system 128
3.4.3  History of Criminal Justice System in New Zealand 128
3.4.4  Objectives of the Criminal Justice System 128
3.4.5  Age of criminal responsibility 129
3.4.6  Prison system in New Zealand 129
3.4.7  Staff – offender ratio 130
3.4.8  Training of warders 130
3.4.9  Background Information on Restorative Justice in New Zealand 130
3.4.10  Education in New Zealand Corrections 131
3.4.11  Family Group Conferencing 133
3.4.12  Revised policy 133
3.4.13  Outcomes of the Act 134
3.5  CANADA 139
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.5.1</td>
<td>The Criminal Justice System in Canada</td>
<td>139</td>
</tr>
<tr>
<td>3.5.2</td>
<td>Legal system</td>
<td>139</td>
</tr>
<tr>
<td>3.5.3</td>
<td>History of Criminal Justice System in Canada</td>
<td>140</td>
</tr>
<tr>
<td>3.5.4</td>
<td>Age of responsibility</td>
<td>140</td>
</tr>
<tr>
<td>3.5.5</td>
<td>Prison system in Canada</td>
<td>140</td>
</tr>
<tr>
<td>3.5.6</td>
<td>Staff – Offender ratio</td>
<td>141</td>
</tr>
<tr>
<td>3.5.7</td>
<td>Training of warders</td>
<td>141</td>
</tr>
<tr>
<td>3.5.8</td>
<td>Mission statement of Correctional Services Canada</td>
<td>141</td>
</tr>
<tr>
<td>3.5.9</td>
<td>Background Information on Restorative Justice in Canada</td>
<td>142</td>
</tr>
<tr>
<td>3.5.10</td>
<td>Community conferences</td>
<td>142</td>
</tr>
<tr>
<td>3.5.11</td>
<td>Circles of Support and Accountability</td>
<td>143</td>
</tr>
<tr>
<td>3.5.12</td>
<td>Restorative Justice Coalition</td>
<td>143</td>
</tr>
<tr>
<td>3.5.13</td>
<td>Healing Lodges for Aboriginal offenders</td>
<td>144</td>
</tr>
<tr>
<td>3.5.14</td>
<td>Legal framework in Canada</td>
<td>145</td>
</tr>
<tr>
<td>3.6</td>
<td>UNITED STATES OF AMERICA</td>
<td>146</td>
</tr>
<tr>
<td>3.6.1</td>
<td>Background of the Criminal Justice system of the United States of America</td>
<td>146</td>
</tr>
<tr>
<td>3.6.2</td>
<td>Restorative Justice in the United States of America</td>
<td>147</td>
</tr>
<tr>
<td>3.6.3</td>
<td>Prisons/Jails in the United States of America</td>
<td>150</td>
</tr>
<tr>
<td>3.7</td>
<td>BELGIUM</td>
<td>150</td>
</tr>
<tr>
<td>3.7.1</td>
<td>Restorative Justice in Belgium prisons</td>
<td>151</td>
</tr>
<tr>
<td>3.7.2</td>
<td>Purpose of the Restorative Detention project</td>
<td>152</td>
</tr>
<tr>
<td>3.7.3</td>
<td>Community Involvement</td>
<td>154</td>
</tr>
</tbody>
</table>
Chapter 4  Restorative Justice in South African Corrections

4.1  Introduction  168
4.2  Departmental Vision, Aim and Mission  171
4.3  Directorate: Correctional Programmes  173
4.3.1  Restorative Justice Expectations  175
4.3.2  The Draft Policy on Correctional Programmes  176
4.3.2.1  Policy Statement  177
4.3.2.2  Policy Objectives  178
4.4  The Role of Restorative Justice in the DCS  179
4.19 Challenges experienced by staff in correctional centres 211
4.20 Restorative Justice in Private prisons in South Africa 212
4.22 Correctional Services Act (Act 111 of 1998) 214
4.23 White Paper on Corrections 2005 216
4.24 Judicial Inspectorate 220
4.25 Remission and Restorative Justice 221
4.26 Restorative Justice and Reintegration 222
4.27 The Sentenced offender as important
   Role player in Restorative Justice 224
4.28 Summary 226

Chapter 5 Victim Empowerment in the South African Public Service

5.1 Introduction 229
5.2 Rights of victims 231
5.3 Victim compensation 232
5.4 Victim Empowerment programme in the South African Public
   Service 233
5.5 Victim Empowerment in the Department
   of Social Development 234
5.6 Victim Empowerment in the Department of Correctional Services 236
5.6.1 Victim Empowerment inside correctional centres 237
Chapter 6   Conclusions and Recommendations

6.1   Introduction 252
6.2   Discussion 254
6.2.1 Restorative Justice as part of Correctional Programmes 254
6.2.2 Victim Offender Mediation 255
6.2.3 Involvement of communities 258
6.3 Possible challenges in the application of
Restorative Justice in the SA Correctional system 259
6.4 Limitations 260
6.5 Recommendations 260
6.5.1 Recommendation 1: Restorative discipline as a way of dealing
with offenses and violations in the correctional centres 261
6.5.2 Recommendation 2: Special selection and training of independent
Restorative Justice practitioners 262

6.5.3 Recommendation 3: Restorative Justice in all
Correctional programmes 265

6.5.4 Recommendation 4: Expanding of scope of the Restorative
Justice Component 266

6.5.5 Recommendation 5: Enhance the Victim Empowerment
Function/component 267

6.6 Recommendation for New research 268

6.7 Concluding Remarks 268

BIBLIOGRAPHY

xiii
LIST OF TABLES

1. Daily averages of sentenced offenders and Awaiting Trial Detainees between 1984 and 1994 36
2. Imprisonment rates for the 10 years between and including 1995-2003/4 38
3. Differences between Restorative Justice and Retributive Justice 89
4. Organogram for Directorate: Correctional programmes 174
5. Juveniles in Correctional Centres on 31 March 2003 183
6. Awaiting trial detainees in Correctional Centres as at 31/3/2004 185
7. Sentenced offenders and awaiting trial detainees in custody as at 31/3/2004 186
8. Prison population as at 31/3/2004 including private prisons 188
9. Sentence categories in Correctional Centres as at 31/3/2004 189