

CHAPTER 1

GENERAL ORIENTATION

1.1 Introduction

Ten years into the South African democracy, several changes are evident in the ways in which the Criminal justice system deals with crime. The Department of Correctional Services (DCS) had to make a paradigm shift in terms of how the people in correctional centres are treated, and like the rest of the Criminal Justice system made major changes in the way it operates. The Department of Correctional Services had to move away from being an institution of punishment, to correcting the offending behaviour and to become *...one of the leading correctional systems in the world* (Correctional Services Minister's speech, Select committee on Security and Constitutional Affairs, 17 August 2004). The Department developed new policies recognising correcting of offending behaviour as its core business and give quite substantial space to Restorative Justice and restoration in the White Paper on Corrections 2005 (White Paper on Corrections 2005: 17,18,34,40,43).

The National Institute for Crime Prevention and Reintegration of Offenders (NICRO) started in 1992 with a programme of diverting juveniles from the formal justice system. NICRO started pilot projects of Victim Offender Mediation within the Restorative Paradigm. Together with other community based organisations

this Non-government organization (NGO) initiated and piloted programmes, which brought dramatic changes in the Juvenile Justice system in South Africa. These efforts and others were aimed at keeping children out of courts and out of prisons (Skelton & Frank 2001:107-108).

However, according to the Department of Correctional Services (DCS) Annual report (2003/2004:26), juveniles younger than 18 years still find themselves in correctional centres. Some are awaiting trial detainees, while others have been sentenced for various crimes, for different periods of time. This study will focus on the application of Restorative Justice in the South African correctional system. The Deputy Minister of Correctional Services expresses concerns about the number of children in correctional centres. The non-availability or insufficient secure places of safety for juveniles contributes to the problem of overcrowding (Deputy Minister of Department of Correctional Services Budget debate: vote 21; National Crime Prevention Strategy 1996: 10).

Traditional rehabilitation programmes in the South African correctional centres seem to be inadequate if one looks at the overcrowded situation according to the Department of Correctional Services Annual Report (2003/2004: 27). This study will attempt to look at Restorative Justice Programmes, which in conjunction with Rehabilitation and Correctional Programmes, seek to bring change in the lives of sentenced offenders (Mahlangu, personal interview, 17 June 2005). It is hoped that these changes will lead to a reduction of re-offending, and in some cases

also impact positively on the lives of victims in particular, by restoring them to the extend possible and the safety of the community in general.

Restorative Justice is practiced in correctional centres, by amongst others, NGO's, like Khulisa, NICRO, and Restorative Justice Centre in Pretoria. Restorative Justice is described as "healing the effects of crime", implying healing for both offender and victim (Consedine 1995:11).

This study will also refer to the relevant legislation, policy or draft policies regarding corrections. The relevant statistics, aspects of the South African Constitution, Act 108 of 1996, Correctional Services Act (Act 111 of 1998) as well as the White Paper on Corrections 2005 will be quoted and or referred to. The researcher is of the opinion that it will help the reader to understand the context of the study in general and the application of Restorative Justice with sentenced offenders in particular. The reader will be able to draw conclusions about the impact of restoration and Restorative Justice in SA Corrections and decide if presenting these programmes inside correctional centres can restore the balance.

1.2 Choice of Subject Matter

Research, according to Nesor (1980:4) is influenced by the following factors:

- Necessity and desirability of research
- Availability of data

- Interest of the researcher

1.2.1 Necessity and desirability of research

Department of Correctional Services wants to correct the offending behaviour of those entrusted in its care. The rehabilitation programmes alone, are not effective in achieving that. Restorative Justice and specifically Victim-offender mediation (VOM), gives the victim the opportunity to meet the offender face to face. The approach of some non-government organizations (NGO's) and Correctional Services of screening and training offenders in preparation for Victim offender Mediation seems to make an impact. The application of Restorative Justice in Corrections and its possible positive effects needs to be researched, as it might alleviate the problem of re-offending. Even if re-offending is not reduced, some offenders might come to realize the harm they have caused to victims, and the mere acknowledgement of this might already have a healing effect on some of the affected parties.

1.2.2 Availability of data

The researcher extensively researched the available resources on the subject, including both South African as well as international resources. These resources include books, periodicals, journals, speeches, reports, Internet sites etc. Official documents, some in draft form of the South African Government Departments,

specifically Correctional Services, as well as relevant Acts have also been studied.

This literature study helped the researcher to understand the background of the Restorative Justice approach as well as current developments in the field.

1.2.3 Interest of the researcher

The researcher worked for ten years as a social worker in private welfare organisations, and as such worked extensively with crime victims. The dissatisfaction of victims with the Criminal Justice System was apparent. They lived in fear, not knowing whether the offender had been apprehended or not, or fearing the day the offender is released. Those who did get involved in court cases only did so in as far as they were used as state witnesses.

The researcher had been employed by the Department of Correctional Services since 1997. Offenders in different correctional centres are currently being informed about Restorative Justice and Victim Empowerment. The dissatisfaction of both offenders and victims with their court cases is clear. This research project attempts to touch on the abovementioned issues, and make some recommendations, which might be helpful for the Department of Correctional Services, based on the current practice of Restorative Justice in SA Corrections.

1.3 Aims of the Research

The purpose of the research is to:

- Understand the process involved when sentenced offenders want to get involved in restorative justice
- Study theory on the implementation of restorative justice internationally
- Make recommendations about the way forward in terms of implementing Restorative Justice in South African Corrections

It finally looks at the possible healing effect that Restorative Justice might have on offenders. The following quotation by (Bayse 1995: iv) illustrates this desired outcome:

“Healing Involves Pain, Pain is a very useful feeling. One of the worst things that can happen to someone is to lose the ability to feel pain. When this happens, they can be hurt and not know it. Over the years, many inmates have lost their ability to feel emotional pain. Because of this, many have never had to accept responsibility for their own actions.

As inmates begin to realize how much grief they have caused others, their personal pain can become almost unbearable. They earned that pain, and staff members should not attempt to take it away. Instead, acknowledge their pain, but let them feel it. Help them realize that this pain is the consequence of their own actions. It is part of what they earned the moment they committed the crime. It is not something that someone else did to them. Surgery hurts, but the healing it produces makes it worth the pain.

Effective pain relief requires forgiveness and living a new lifestyle that does not cause more pain.

Remembering the pain of past mistakes is an effective motivating tool.

1.4 Rationale for the Research

Rationale refers to the reasons why the research is conducted. According to Champion (1993:10) people do research because of various reasons, like being curious or even to get answers to practical questions. The researcher learned about current practices on Restorative Justice in South African Corrections by means of personal discussions with people in correctional centres who are presenting/facilitating Restorative Justice courses. A preliminary report by the Restorative Justice Centre in Pretoria also confirms the implementation of Restorative Justice in some correctional centres. The bulk of information focus on practices in a few overseas countries as well as ancient African practices and what we can learn from them. This research might also indicate the necessity of developing a unique approach to Restoration and Restorative Justice in SA corrections.

The rationale of a study, and specifically this study, would not be relevant without taking the diversity of the South African people into consideration. Therefore, this study and the rationale thereof are linked to the rising crime rate in South Africa. The media constantly informs us of the incidents of crime and the increasing amount of violence involved.

The White paper on Corrections 2005 (2005: 9, 14, 15) and the Correctional Services Act, Act 111 of 1998 demand changes in the way the Department of Correctional Services deals with convicted offenders. These documents are quite vocal on the aspect of re-offending, and Restorative Justice within corrections might be one of the methods in which to effectively deal with the problem of offenders returning to crime after their release (White Paper on Corrections 2005:14,52).

The Department of Correctional Services has been criticized as not doing enough to prevent ex-offenders from going back to crime. Victims do not feel safe when thinking about the release of offenders. The question is if offenders are equipped or empowered not only to take responsibility for themselves financially, but also empowered to take responsibility for their actions. Victims should be empowered to take back the power that was taken from them by the offender and communities should be empowered to once again take up its responsibility as peacemakers.

An investigation into Restorative Justice may contribute to more support from the relevant authorities to make resources available for the implementation of Restorative Justice in all correctional centres, with all offenders who are interested.

1.5 Methodology: Literature Review

An extensive review of literature was conducted. The focus was mainly on the application of a restorative approach in a correctional setting.

Brown (1987:34) says about literature review that it is an essential skill that researchers have to develop to improve their scientific study. Literature review is an essential part of preparation for the research. It helps to critically analyse existing literature. This literature study includes International, African, as well as South African resources on the application of restorative justice with offenders. Restorative Justice in its original or ancient form as well as the modern application thereof had been studied and explored by social scientists and scholars like Zehr (1985); Van Ness (1990); Van Ness & Heetderks Strong (1997); Umbrecht (1994); Bazemore & Umbrecht (1994), Braithwaite (1999); Strang (2000); and others, whose work will be constantly referred to throughout this dissertation.

1.6 Demarcation of the Study

Restorative Justice in the South African Correctional system is researched, with reference to the traditional African practice. A brief overview is given about the application of Restorative Justice in some other countries, namely Canada, New Zealand, United States of America (USA), Belgium and South Africa.

The relevant documents of the Department of Correctional Services are quoted extensively to indicate the official and legislative foundation of or for Restorative Justice.

This study focuses mainly on the application of Restorative Justice in a correctional setting, excluding community corrections. The researcher will use the terms “correctional center” and “prison” interchangeably, depending on its applicability in a specific context.

1.7 Relevance of the Study to Department of Correctional Services and South Africa in General

The Department of Correctional Services has in its Strategic planning document (2005/6-2009/10:8) the rehabilitation and reintegration of offenders as priorities. Part of this reintegration has to do with involving the community in the rehabilitation and integration of the offender. Restorative Justice in general and Restoration in particular, are important aspects of the department’s plight to bring the prison community closer to the community and to create a sense of safety (White Paper on Corrections 2005:38-40).

Everybody who is involved in shaping the behaviour of the offenders will have a better understanding of their behaviour. The researcher will be able to make

certain recommendations, based on the findings of this research (Sarantakos 1998:15).

The Department of Correctional Services benefits in the sense that this study might, according to Sarantakos (1998:17) increase the knowledge base on research in general, is educational and stimulates even more research in the field of Restorative Justice in a correctional setting.

1.8 Definition of Concepts

The following definitions are central to the study and will be used frequently. The intention is to clarify these definitions to prevent any misunderstanding and to ensure that reader and researcher attach the same meaning to the same concepts. The majority of the concepts specifically refers to Restorative Justice in general, and will be applied to the specific field of Restorative Justice in the South African Correctional system.

1.8.1 Restorative Justice

It essentially wants to correct the harm that was caused by crime. It would mean that the person, who commits a crime, should come to realise the harm the victim suffers, be it emotionally, physically, financially or otherwise. The offender

should further more attempt to make right, by apologising and trying to compensate the victim (Zehr 2000:28).

According to Umbrecht, Restorative Justice is also a victim-centered approach. It gives the parties who are mostly affected by the crime, including the offender, the opportunity to make some inputs. Families on both sides are also involved as support systems. This by implication means that the victim, who is usually left powerless by the crime, is now empowered to make a contribution in restoring the harm to him or herself personally (Umbrecht 2000:1). *Restorative Justice is a systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders and communities caused or revealed by the criminal behaviour.* (<http://www.restorativejustice.org/default/htm>) visited on 3/2/2005.

1.8.2 Retributive Justice

According to Siegel & Senna (2002:404) retributive justice wants to punish the offender proportionate to the crime, according to the principal of “just deserts”.

The rationale behind this would be to deter prospective offenders.

1.8.3 Crime

Crime within the Restorative Justice context is according to Howard Zehr (2002:19) the violation of the victim. Violations create obligations and

Restorative Justice creates that opportunity for the offender to restore, to make right to the extent that it is possible.

Siegel & Senna (2002:39) explain crime as a violation of laws of a specific community or country. This contradiction of laws disturbs the peace and harmony of communities, which need to be restored.

1.8.4 Justice Cluster

Role players, such as Department of Correctional Services, South African Police Service, (SAPS) Department of Justice and Constitutional Development, Department of Social Development and Community based organizations, include the professional people and community members who are involved in dealing with crime.

1.8.5 Department of Correctional Services (DCS)

This government department is mandated to incarcerate convicted offenders, as well as Awaiting Trial Detainees (ATD's), in terms of a court order. It is responsible for the safe custody and rehabilitation of the sentenced offender, including the successful reintegration into the community (Correctional Services Act, Act 111 of 1998:14).

1.8.6 Prison / Correctional Centre

A prison refers to any building or place established in terms of the Correctional Services Act (Act 111 of 1998) where offenders are incarcerated under protective custody, to serve a sentence. However, it is also utilized for the safe custody of Awaiting Trial Detainees. All outbuildings, premises and land utilized for this purpose are included. The term “correctional center” will be used in this study where the Department of Correctional Services context is applicable. However, it needs to be noted that the Correctional Services Act (Act 111 of 1998) uses the term “prison.”

1.8.7 Prisoner/Offender

A prisoner is any person ordered by a court of law to serve a period of time in a Correctional centre, as punishment for committing a crime. This also includes those offenders who are detained, until their next appearance in court (Correctional Services Act, Act 111 of 1998:14). The term “offender” and “prisoner” will be used in this study and meant to refer to a sentenced offender who could be male or female, juvenile or adult.

1.8.8 Primary / Direct Victims

Primary victims are the people that are directly harmed by crime, physically, emotionally, financially or otherwise. They are the person/s who sustained injuries during an armed robbery, or who was hijacked and killed, or the person who is left with emotional scars because of an attempted rape. According to the United Nations (1992:211) a victim is someone who individually or collectively suffered harm as a result of a crime. This is the result of a criminal act in a specific country.

1.8.9 Secondary Victims

They are the people who suffer indirectly because of a crime that was committed, e.g. the dependants of some one who was murdered (United Nations 1992:211). Secondary victims could also be the members of a community who is preyed on by criminals. They might not be directly attacked or robbed, but they are aware of these crimes and live in fear, or have to change their life style, in order not to fall prey to crime. It could also be the taxpayer who now has to pay more for products, because of added costs linked to increasing security costs.

1.8.10 Victim Empowerment

Victim Empowerment is part of a National Programme, which is the key programme under Pillar 1 of the National Crime Prevention Strategy 1996 www.socdev.gov.za visited on 2005.02.09. It is all the efforts that are made to assist the victim to cope with the trauma of crime. It also includes providing medical treatment or referral to seek therapy in coping with the crisis. It attempts to motivate the victim to regain control over his/her life. The victim is not handled as if he/she can no longer think or make rational decisions. The victim is allowed to make decisions e.g. to press charges or not, whether to change his/her life style and according to Camerer (1997:4) to be assisted to deal with the complex Criminal Justice System. The victim's life will have changed because of the crime; the victim is empowered to cope with those changes as best as he/she possibly can. (This subject will be covered extensively in chapter 5).

1.8.11 Victim Offender Mediation (VOM) or reconciliation

This implies a dialogue between affected parties. It is the process during which contact is established between the victim and the offender. Mediation in the restorative approach is only possible once the offender takes responsibility for the crime. The process is dynamic, which means it is different for different people in different circumstances. A very important aspect of this mediation is

that it should be completely voluntary, on both the side of the victim, as well as the offender. It involves a lot of preparation by a skilled and specially trained mediator, who would listen to both sides, and negotiate with the different parties and their support systems for a neutral place to meet to try to discuss the issue at hand, and if at all possible, come up with an amicable solution. Before this mediation meeting, the mediator would have had to handle a lot of negative emotions coming from one or both sides.

1.8.12 Parole

Siegel & Senna (2002:486) describe parole as ...*the early release of a prisoner from incarceration subject to conditions set by a parole board.*

1.8.13 Correctional Supervision and Parole Board (CSPB)

Consists of selected people with a specific background, who meet at regular intervals, to review the position of offenders. The parole board looks at the institutional file of the prisoner, which contains information of his/her conduct (including a wide range of aspects inside the prison), to decide if early release would be advisable.

1.8.14 National Crime Prevention Strategy (NCPS)

The National Crime Prevention Strategy was established in 1996 by the South African government as an initiative to address the unacceptably high crime rate in the country (National Crime Prevention Strategy 1996: 2). The Criminal Justice System made a paradigm shift and committed itself to focus more on the needs of crime victims/survivors, and no longer only on convicting of offenders. Government has now undertaken to form a partnership with civil society to uphold, respect and protect the rights of victims of crime.

1.8.15 Structure of the dissertation

The rest of the dissertation is structured as follows:

Chapter 2 covers the Background and Explanation of Restorative Justice. This chapter deals with the most important developments in South African Corrections pertaining to its inception, legislative and policy development and how and when Restorative Justice became part of the paradigm shift in service delivery in Correctional Services. It also elaborates on the effects of overcrowding on the Restorative Justice approach. The relevance of an inter-governmental and inter-sectoral approach is discussed. The historical background of the Restorative Justice approach, referring to biblical and ancient practices, punishment models and the purpose of punishment, as well as the theory of Restorative Justice are

covered. The chapter is concluded with current initiatives in South Africa in the Restorative Justice field and the similarities between Restorative Justice and Moral regeneration.

Chapter 3 introduces the reader to the International trends in Restorative Justice by discussing the Application of Restorative Justice in a few other countries with specific reference where possible, to practices in Corrections.

Chapter 4 provides details of the Application of Restorative Justice in SA Correctional Services. The implementation of this approach in the Correctional Centres is in line with the Strategic realignment of the Department of Correctional Services where rehabilitation, correcting of offending behaviour and successful reintegration is the main focus of service delivery. The role of different components in Department of Correctional Services as well as the management of challenges is discussed to give a clear picture of what is currently happening within Correctional Centres.

Chapter 5 deals with Victim Empowerment in the South African Public Service. This helps to picture Department of Correctional Services as part of the broader Government initiative to focus service delivery on assisting victims of crime in South Africa. This is in line with the Service Charter for Victims of Crime in South Africa, which guarantees better services to victims, both inside Correctional Centres and especially in communities. Throughout this chapter the

important and elevated role of different stakeholders, namely the community, victim and offender are emphasized.

Chapter 6 allows the researcher and reader to form a summary and make deductions from the information that was presented on the topic. It deals with the different issues that were covered in the previous five chapters. It finally presents the Recommendations of the researcher, which could hopefully be relevant and add value to the Criminology field of studies, especially regarding Restorative Justice and the implementation thereof in a Correctional setting.

CHAPTER 2

BACKGROUND AND EXPLANATION OF RESTORATIVE JUSTICE AND CORRECTIONS

2.1 Introduction

In this chapter the background of the South African Correctional System and Restorative Justice will be discussed. This is necessary to understand that the correctional system as it is today is fundamentally different to the former prison system. The way in which offenders were treated then, would not have allowed for a restorative approach. To understand the application of Restorative Justice in a correctional setting, one needs to look at the evolvement of the Criminal Justice system which initially, from Biblical times gave a very important role to the victim of crime (Cilliers 1981:22). This has changed as the Criminal Justice System developed, but in the recent years the Criminal Justice System has moved back to recognizing the role of victims in dealing with crime. The History of Victim Empowerment and Victim Compensation is relevant for South African Corrections and Restorative Justice, but will be dealt with separately in chapter 5, because of the enormity and significance of the topic.

Prison Services in South Africa used to be part of the Department of Justice. The conditions since inception of prisons had been described as “appalling”. The Minister of Correctional Services, minister Balfour alluded to that in his

Budget Vote Speech on 13 April 2005 (minister's speech at the National Assembly Budget Debate: Vote 21 2005) when he quoted the former president, Nelson Mandela in saying about prison conditions: *Prison and the authorities conspire(d) to rob each man of his dignity... the authorities attempt(ed) to exploit every weakness, demolish(ed) every initiative, negate(d) all signs of individuality – all with the idea of stamping out that spark that makes each of us human and each of us who we are.* Prisons were used only to lock people up, without much emphasis on treatment or rehabilitation. Also in this chapter the most important changes in the then Prison department will be discussed, as well as the influence of relevant pieces of legislation. The different acts and Bills that are most relevant will be discussed to indicate the systematic change, and in the last 10 years, the dramatic change in the prison conditions.

The researcher tried to present the changes in chronological order to make understanding of changes easier. Some of the acts and Bills are not directly part of Department of Correctional Services System, but the relevance thereof as well as the relationship with the Department of Correctional Services operations will be outlined. These documents that will be referred to, form part of the inter-departmental and in some cases inter-sectoral working agreements between Department of Correctional Services and the other government departments as well as civil society where applicable. The following pieces of legislation had/have an impact on the development of the Department of Correctional Services: The Prison's and Reformatories Act, Act 13 of 1911, Correctional

Services Act, Act 8 of 1958, Correctional Services Act, Act 111 of 1998, the South African Constitution, Act 108 of 1996, National Crime Prevention Strategy (1996), Child Justice Bill (2002), Service Charter of Victims of crime in South Africa (2004).

Imprisonment, in fact the existence of the Department of Correctional Services is the direct result of offenders being sentenced by courts. It is therefore necessary that the justice system that deals with offending be researched, and the relationship of ancient judicial systems, Biblical concepts of crime and punishment be highlighted. The discussion will be concluded with the purposes of sentencing in explaining why offenders are sent to Correctional centres and have been sentenced over the years.

Restorative Justice as one way of dealing with the aftermath of crime from a Correctional Services perspective will be attended to. It is hoped that this comprehensive discussion of all relevant aspects of Correctional Services provides the reader with insight in the implementation of Restorative Justice, with specific reference to implementation in the Department of Correctional Services system.

Restorative Justice as part of the criminal justice system has its roots in ancient civilizations, like Greek, Arab, Roman and Asian. It implies returning to the ancient view that crime involves human beings and communities, and does not

primarily harm the state, as is currently practiced in the retributive justice system. It wants to restore the moral fabric of the community. The modern or western way of Restorative Justice, which was influenced by industrialization as from the 1970's, will also be looked at.

Restorative Justice is discussed in this chapter as one of the possible ways of dealing with crime and its after effects, referring to community service and restoring the balance as well as services to sentenced offenders. The historical background of Restorative Justice, the different programmes as well as current initiatives in South Africa will also be discussed. The aim of this chapter is to give a clear picture of Restorative Justice as a philosophy, its aims and application as well as the differences between Restorative Justice and Retributive Justice. Sentencing trends are important factors that lead to imprisonment and consequent overcrowding. It is therefore necessary to look at the aims and philosophy of sentencing, which are deterrence, rehabilitation and retribution. These are discussed in this chapter.

Finally the similarities between Moral Regeneration (White Paper on Corrections 2005:40) and Restorative Justice as expressed by the Department of Correctional Services will be quoted, as it is believed that Restorative Justice essentially appeals to the moral norms and standards of individual community members, which, in the opinion of the researcher, if generally accepted and practiced, might reduce violations of people's rights to safety, dignity and respect.

The researcher again emphasizes the important role of communities in dealing with crime, keeping peace and restoring the balance and according to Van Ness & Heetderts Strong (2002:109) to reintegrate both victim and offender.

2.2 Imprisonment in South Africa: A Paradigm shift in Corrections

The history of transformation of the correctional system in the South African Department of Correctional Services in the previous century is quite remarkable in terms of the changes the department has effected in the way in which it deals with offenders in its care. This part of the dissertation will concentrate on the background of what used to be known as prison services, according to the White Paper on Corrections 2005 (2005:12). This will give a better understanding of the positive changes that had been effected over the past century and especially in the past 10 years, which makes the implementation of Restorative Justice in corrections possible. This created conditions conducive for the correcting of offending behaviour in a secure, safe and humane environment (White Paper on Corrections 2005:14). Department of Correctional Services legislation and inter-governmental developments that had an impact on the approach within Department of Correctional Services regarding treatment of offenders, are discussed to show the pattern of changes which resulted in this current approach to changing offending behaviour.

2.3 Inception of prisons

There is a direct and very important relationship between corrections and Restorative Justice. Prisons only used to be holding places for those rejected by society. In the retributive system there was no place for contact between victim and offender. The role of imprisonment over the years has changed. Prisons used to be far away and most feared places. However, changes in the criminal justice system and the availability of Restorative Justice processes, now allow communities to become more involved in correctional centres and the individuals inside the prison walls. There is, according to Muntingh (2002:22) the recognition of those behind the walls as community members with human rights, as people with and from families and more importantly, as community members who are going to return to society.

Correctional centres in South Africa holds approximately 180 000 South African citizens. The way in which South African corrections deal with offenders impacts on the re-adjustment of the offender and even of re-offending tendencies, which according to Nair (2002:5), is as high as 80% and Muntingh (2002:20) an estimated 85 - 94%. Offenders have not always been valued as human beings who can once again contribute to society. Treatment in prisons in the old days was a form of punishment. It is therefore critical to look at changes, which led to this paradigm shift in which Restorative Justice processes are now practiced.

Apparently the first South African prison was build in 1781 and another 22 in the following almost 50 years. Offenders at that stage were viewed as outcasts and were kept far away from communities and on farms. This is confirmed by the location of prisons like Robben Island.

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

The Prisons and Reformatories Act, Act 13 of 1911, led to prisons being utilised as reformatories. According to the White paper on Corrections, 2004 “ Courts started playing an increasing role in the development of prison law, inter alia, with findings that it was unlawful to detain awaiting-trial prisoners in solitary confinement and the ruling that offenders who felt they had been unfairly treated in prison had the legal right to approach courts of law for intervention.”

A system of early release was introduced during this time, where offenders could be released for good behaviour. Although rehabilitation was already part of the prison policy, there was also harsh punishment, like whippings, solitary confinement, dietary punishment and additional labour for transgressions. Offenders were segregated on racial grounds, as this was the policy of the then government. The 1945 Landsdowne Commission on Penal and Prison Reform recommended that offenders should no longer be hired out for cheap labour, that rehabilitation efforts and literacy programmes to offenders should be increased,

and criticised the militaristic management style as it contradicted the goals of rehabilitation (White Paper on Corrections 2005:29). This impacted on the treatment of offenders and more efforts were put into rehabilitation. The government now showed the political will to treat offenders in a more humane way. Nair (2002:5) postulates that without respect for human rights there can be no rehabilitation or correcting of offending behaviour, as the circumstances in which the offenders are held should be conducive for change.

The Correctional Services Act (Act 8 of 1958) was amended in 1993, the same year in which the Interim Constitution was introduced (White Paper on Corrections 2005:31). Human rights, including that of offenders were acknowledged. The changes were aimed at doing away with inhumane practices like solitary confinement, corporal punishment and punishment on a spare diet was abolished (Dissel 2002:8-15).

The political climate in the country and the enforcing of apartheid's laws, led to an influx of mainly political prisoners. This contributed to the over population of prison facilities which was already a problem in those early years. Many people in South Africa had been imprisoned during the time when the Group Areas Act (Act No.36 of 1966), Pass laws and the Prohibition of Mixed marriages Act (Act no.55 of 1949) were still in place (Van Zyl Smith: 1992). All of these emphasize the way in which offenders were treated. There was nothing in place to confront them with their wrongdoing, in order for them to take responsibility for crimes

they have committed. Some people were incarcerated because of their political convictions and not because of criminal activities, per se. The Truth and Reconciliation Commission (TRC) dealt with part of this unfair treatment, by the government of the day, in a restorative way, although not all dimensions of the process were fully restorative. The way the Truth and Reconciliation Commission dealt with the imbalances of the past has put South Africa on the international agenda in terms of Restorative Justice approach to crime and wrongdoing, and healing the wounds of the past.

2.5 Prison Reforms

During the 1990's the government announced that it planned to introduce extensive reforms in the prison system in line with the 1996 Constitution (South Africa Constitution, Act 108 of 1996). The Prison Service was subsequently separated from the Department of Justice in 1990 and renamed the Department of Correctional Services (White Paper on Corrections 2005:31). This brought about important changes to prison legislation. An important milestone in this period was the introduction of the concept of dealing with certain categories of offenders within the community rather than inside prison – a system known as non-custodial “correctional supervision”. This was introduced as a more cost-effective way of dealing with offenders, while keeping them in their respective communities. This was seen as one way to alleviate the problem of overcrowding. The release policy and the automatic system of remission were

revisited and a system of credits, which prisoners could earn for appropriate behaviour, was introduced.

The Interim Constitution of the country, introduced in 1993, acknowledged the fundamental rights of all the country's citizens, including that of offenders. This resulted in the introduction of a human rights culture into the correctional system in South Africa.

2.6 Constitution of South Africa (Act 108 of 1996)

During October 1994, a White Paper on the Policy of the Department of Correctional Services recognised the fact that the legislative framework of the Department should recognize the basic human rights of the people in its care and these documents, together with the Constitution of the Republic of South Africa, (Act 108 of 1996) include the core values of the Department of Correctional Services.

The main human rights reflecting Correctional Services are:

- Human dignity (Section 10)

Offenders have the right to be treated with respect for their humanity and dignity.

The correctional system is expected to be committed to reformation and social

rehabilitation. Conditions in which they are detained should be in line with human dignity.

➤ Equality (Section 9)

Offenders have the right not to be discriminated against on grounds of race, gender, social status, HIV status, background, etc.

➤ Rights underlying humane treatment of every detainee (Section 35)

This includes the right not to be tortured, or subjected to any other cruel, inhuman or degrading treatment or punishment.

➤ Right to health care services and other associated rights (Section 27)

Health, social and psychological services are provided to support offenders. Special needs of women and children are taken into account.

➤ Children's rights (Section 28)

Children are entitled to education in correctional centres. They are entitled to be housed in accommodation suitable for their age, separated from adults. They have the right to special protection and interventions that respect their age and development needs, (Section 29) provides for the right of education, and children up to a certain age can be compelled to attend educational programmes.

➤ Freedom of religion (Section 31)

Offenders can decide which religion to belong to and also have the right to have articles in their possession of religious value. This right is specifically relevant to Restorative Justice practice, as the Spiritual Care directorate currently presents certain parts of the Restorative Justice programmes. When Restorative Justice was launched in the Department of Correctional Services, the Religious care section played a major role. The practicing of Restorative Justice is not limited to Christian religion, e.g. the Restorative Justice programme of Pollsmoor prison in Cape Town was co-developed with Christian and Muslim inputs (Hope Prison Ministry programme).

Section 35 is most applicable to the correctional operations as it outlines the rights of sentenced offenders as well as awaiting trial detainees. The constitution assumes humane incarceration. Overcrowding in the researcher's opinion infringes on some of these rights. (More detail discussion of overcrowding in chapter 4)

According to the White paper on Corrections (2005:31) the transformation of the Department in the first five years of the new democracy entailed:

The demilitarisation of the correctional system on 1 April 1996 in order to enhance the Department's rehabilitation responsibilities;
progressive efforts to align itself with correctional practices and processes that have proved to be effective internationally, and the introduction of independent

mechanisms aimed to scrutinize and investigate its activities, such as the appointment of an Inspecting Judge (White Paper on Corrections 2005:97). These changes brought about a paradigm shift in Corrections and an environment conducive to changing offending behaviour, within a Restorative Justice paradigm, has been created. More groundbreaking changes are still being implemented in Centres of Excellence, which will be referred to in chapter 4.

During 1998 a new **Correctional Services Act (Act 111 of 1998)** was drafted which was based on the Bill of Rights, and recognized certain basic human rights of offenders. The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful, and safe society by:

- enforcing sentences of the courts in a manner prescribed by the Act;
- detaining all offenders in safe custody whilst ensuring their human dignity, and
- promoting the social responsibility and human development of all offenders and persons subject to community corrections.

2.7 Overcrowding, poor Prison conditions and Restorative Justice

Overcrowding of prisons during the 1980's was mainly as a result of upholding of apartheid's laws as was reported and condemned by the 1984 Judicial Inquiry into the Structure and Functioning of the Courts. Progressive changes started

taking place with the closing down of prison outstations and a general decline in the use of prison labour for agricultural purposes.

Prisons, however, mainly remained overcrowded with little emphasis on rehabilitation or correcting of offending behaviour. Although some rehabilitative processes were taking place, it did not seem to have any positive impact. The declaration of a State of Emergency on 21 July 1985, until 1990 gave wide powers to the police to lock up people opposing the government of the day. The mass detention of political prisoners in prisons during this period compromised the overcrowded situation even more (White paper on Corrections 2005:30).

Prison conditions are bad and inhumane, according to prison inspector, judge Fagan (Fagan 2003/2004:4). It is interesting to note that even in 2004, 10 years into democracy, respect for human rights are still being questioned. During 1990 prisons were desegregated and offenders of all races and cultural backgrounds were incarcerated together. During 1994 the average daily prison population stood at 110 933, compared to 184 576, which represents overpopulation of 72 853 in March 2004. Has the 10 years of democracy changed anything in terms of the way in which offenders are treated and has the announcement of taking a restorative approach by Department of Correctional Services in 2001 when Restorative Justice was launched, made any difference in the way offenders are treated?

Indeed, it is the researcher's experience in Correctional services that corporal punishment had been abolished. Offenders can no longer be placed in solitary confinement for punishment. When it does happen, there must be very good reason, authorized by the head of the correctional center. Serious overcrowding does create unbearable conditions in some correctional centers, and are alluded to by the inspecting judge (Fagan 2003/2004:4). All these changes were positive in the opinion of the researcher as it recognizes the offender as a human being, with dignity and the ability to change (White Paper on Corrections 2005:47). It can be linked to Restorative Justice where the offender as an important role-player in the Criminal Justice System is recognized. Although the offender is serving a sentence, it does not necessarily mean that he/she takes responsibility for the offense. The harsh prison conditions in the past, rejection and little rehabilitation were not conducive for convincing offenders of their wrongdoing. The current correctional system in South Africa, although not perfect, at least recognizes the possibility of the offender taking responsibility, of the offender restoring harm to the victim and of the offending behaviour to be corrected. These are necessary conditions for any restorative processes to take place within the correctional system.

The South African society emerged from the apartheid era and since 1994 operated under a democratically elected Government. The political background of the country was one of the reasons for the high crime rate (National Crime Prevention Strategy 1996:3).

<http://www.polity.org.za/html/govdocs/policy/crime1.html?rebookmark=1>) visited on 2005/05/20.

Table 1 Indicates the Daily averages of sentenced and awaiting trial offenders for the 10 years between 1984 and 1994:

| Year | Male | Female | Total |
|-------------|-------------|---------------|--------------|
| 1984/85 | 103 314 | 5641 | 108 955 |
| 1985/86 | 106 542 | 4859 | 111 401 |
| 1986/87 | 109 097 | 5001 | 114 098 |
| 1987/88 | 107 018 | 4463 | 111 481 |
| 1988/89 | 107 074 | 4483 | 111 557 |
| 1989/90 | 105 924 | 4270 | 110 194 |
| 1990/91 | 98 299 | 3476 | 101 775 |
| 1991/92 | 98 840 | 3428 | 102 268 |
| 1993 | 108 284 | 3514 | 111 798 |
| 1994 | 108 066 | 2867 | 110 933 |

Table 1 shows the steady increase in the prison population from 108 955 in 1985 to 110 933 in 1994. Clearly imprisonment did not deter those offenders. Table 2 shows another 10 years (1996 to 2004) of increase in the prison population despite the freedom that was brought about by the new democratic dispensation in South Africa. It also shows the prison population has increased from just over

110 000 to 180 574, with overcrowding of 63% and cell accommodation for 114 000 (Department of Correctional Services Annual report 2003/4:24). The Department of Correctional Services adopted the Restorative Justice approach in 2001, according to Mlotswa & Gerber (2001/2002:10) and it would be interesting to see if it had any effect on re-offending and incarceration tendencies.

These two tables (Department of Correctional Services Annual report 2003/04:24) indicate a steady increase in the number of offenders in correctional facilities and confirm overcrowding. It again raises the question of overcrowding and the myth that prison sentences are necessarily deterring offending behaviour. The deeply emotional content of Restorative Justice processes would require individual attention. It will also challenge the existing staff component in Department of Correctional Services, which is already inadequate to effectively deal with the need for services (Desai 2002:11). The preparation for a process like Victim Offender Mediation can take months and offenders need to attend correctional programmes targeting their offending behaviour, in which Restorative Justice is included. Security risks, which are a reality in correctional centres and specifically in overcrowded situations, would make it difficult to dedicate employees to deal with Restorative Justice, when security requirements also need to be prioritized.

The community expects Department of Correctional Services to keep offenders in safe custody, but at the same time expects rehabilitation and correcting

offending behaviour. Standard minimum sentences were introduced in 1997, which amongst others, led to an increase of imprisonment and longer sentences (Fagan 2003/2004:24). The abolishment of the death penalty after 1994 also led to those prisoners now serving relatively long sentences. The assumption could now be made that these offenders now got a second chance to restore relationships with their victims. On the other hand, this is one of the factors contributing to overcrowding of correctional centres with the inevitable strain on already scarce resources. Being on death row is certainly traumatic and the severity of the sentence certainly implies the severity of the crime. One can then assume that these offenders also need healing and personal restoration.

Table 2 Shows imprisonment rates for the 10 years between and including 1995-2003/04

| Year | Male | Female | Total |
|-------------|-------------|---------------|--------------|
| 1995/96 | 107 512 | 2535 | 110 047 |
| 1996/97 | 118 476 | 2980 | 121 456 |
| 1997/98 | 134 704 | 3592 | 138 296 |
| 1998/99 | 139 541 | 3462 | 143 003 |
| 1999/00 | 154 716 | 3966 | 158 682 |
| 2000/01 | 162 425 | 4162 | 166 587 |
| 2001/02 | 168 016 | 4187 | 172 203 |
| 2002/03 | 177 300 | 4253 | 181 553 |

| Year | Male | Female | Total |
|-------------|-------------|---------------|--------------|
| 2003/04 | 180 388 | 4188 | 184 576 |

2.8 The National Crime Prevention Strategy (NCPS)

The new government embarked in 1996 on a move to address crime in South Africa, by amongst others, recognising the role that victims of crime should play in reforming the criminal justice system. The Victim Empowerment Programme in the Public Service will be discussed in full in chapter 5.

The National Crime Prevention Strategy 1996 resulted from this initiative. The NCPS was build on four (4) pillars of which pillar one is the most relevant for the purposes of this study, namely community values and education and the objectives were to enhance the efforts of the criminal justice system as a deterrent to crime as well as supporting and recognising the role of victims (National Crime Prevention Strategy 1996:1).

The four pillars cover the following aspects:

Pillar 1 National programmes

The Criminal Justice Process aims to make the Criminal Justice System more efficient and effective. It must provide a sure and clear deterrent for criminals

and reduce the risks of re-offending. Potential offenders should realize that punishment will be swiftly and surely – unfortunately the process to convict offenders sometimes takes very long and often offenders are never caught. This might create the idea that “crime pays” and that offenders are then willing to take the chance. The following steps have been identified as necessary to make the Criminal Justice System more effective. All government departments should play a role, and certainly, Department of Correctional Services, which is on the receiving end in the system, should involve itself in terms of crime prevention, at least on a secondary level.

- Re-engineering of the Criminal Justice Process to speed up the process between reporting crime and sentencing. This will already significantly reduce overcrowding caused by vast numbers of Awaiting Trial Detainees (National Crime Prevention Strategy 1996:7).
- Criminal Justice Information Management – an updated effective system will reduce the time wasted when attempting to find an Awaiting Trial Detainee already improved by the Department of Correctional Services with the tracking system. Classification based on crime patterns and previous convictions should be available on the system.
- Crime Information and Intelligence
- Prosecutorial Policy
- Appropriate community Sentencing
- Diversion Programme for Minor Offenders
- Secure care for Juveniles

- Rationalisation of Legislation
- Victim Empowerment Programme

The Department of Correctional Services has a problem of overcrowding. Diversion is a recognized option in the Restorative Justice paradigm. The Child Justice Bill (2002:20) advocates that the use of diversion be considered in all cases where children and juveniles are in conflict with the law. If that can happen, then many children will rather be dealt with in communities instead of being remanded in custody. The researcher is of the opinion that diversion could also be practiced with adult awaiting trial offenders, depending on the circumstances of the crime, nature of offense and availability and willingness of victim and offender.

If adequate Secure care facilities for Juveniles can be established, outside the Correctional system, then the prison population will be reduced by at least 28 000. The number of sentenced and awaiting trial juvenile offenders stood on 28 827 during 2004 (Department of Correctional Services Annual report 2003/4:24).

Victim Empowerment within the Restorative paradigm is practiced by civil society as well as the public service. It reduces secondary victimization of victims of crime and gives a more significant role for victims. In the context of Department of Correctional Services Victim Empowerment attends to the needs of both

victims in the community, as well as sentenced offenders who are being victimized in correctional centres (National Crime Prevention Strategy 1996:10).

Pillar 2

Reducing crime through environmental design focuses on designing systems to reduce the opportunity for crime and increase the ease of detection and identification of criminals.

- Environmental Design and Maintenance
- Identification System: The Department of Correctional Services has launched the use of a tracking system inside the correctional centres. This will easily detect offenders who have to go to court or who had been involved in crime inside the correctional centres. Sometimes offenders refuse to go to court, which causes postponement of cases, and contributes to the overcrowding caused by awaiting trial detainees. Overcrowding places a burden on resources in Correctional Services and would make application of Restorative Justice more difficult as individual attention is compromised.
- Motor Vehicle Regulation
- Corruption and Commercial Crime

Pillar 3

- Public values and education concern initiatives aimed at changing the way communities react to crime and violence. It involves programmes that utilize public education and information in facilitating meaningful citizen participation in crime prevention.
- School – based education against crime

The White Paper on Corrections 2005 (2005:38) advocates Correction as a societal responsibility. Societies should be actively involved in preventing its members from committing crime and become a burden to the South African Correctional system. Dealing with conflict in a Restorative way should already start at school going age and form part of moral values taught to children as part of the socialization process.

If community members care for each other and for upholding community values, then they would deal with conflict and accept their responsibility to keep peace in communities. This is described in the White Paper on Corrections 2005 (2005:39) as primary prevention.

Pillar 4

- Transnational crime programmes aim at improving the controls over cross border traffic related to crime and reducing the refuge that the region offers to international criminal syndicates.
- Transnational Organised Crime
- Border Control and Ports of Entry

It also wanted to minimize the tendency of communities to take the law into their own hands. There was a total lack of trust in the entire judicial system, also resulting from the practices under apartheid. Another important aim was to reduce the backlog in court cases and finally, but most importantly, to give a bigger role to victims in the justice process. Other important outcomes were the development of protocol for dealing with children in conflict with the law, especially establishing secure care facilities.

In summary, the National Crime Prevention Strategy 1996 wanted to:

- increase the efficiency and effectiveness of the criminal justice system as a deterrent to crime and as a source of relief and support to victims;
- improve the access of vulnerable groups to the criminal justice process, including women, children and victims in general;
- focus the resources of the criminal justice system on priority crimes;

- forge inter-departmental integration of policy and management, in the interest of coordinated planning, coherent action and the effective use of resources; and
- improve the service delivered by the criminal justice process to victims, through increasing accessibility and sensitivity to the needs of victims of crime. These were aimed at addressing the negative effect of crime and the justice procedure on primary and secondary victims, by making available programmes that could reduce the negative effects and provide certain skills to victims.

Through the National Crime Prevention Strategy 1996 victims were placed central in the justice process, compared to the marginalised position that they previously had. The inputs of victims were now valued. They had to be informed about their cases, court dates and progress with the investigation. The Criminal Justice System had to become more sensitive to the needs of victims and moved to delivering of quality services in a coordinated way. Previously services were provided, but had been fragmented and inaccessible to the majority of people who needed the services. This structure no longer exists in its original form, but some government departments have developed their own Victim Empowerment strategies in cooperation with civil society.

2.9 Biblical Background of Restorative Justice and Punishment

Rev. Lesenjane submitted during a Symposium, entitled *National Symposium on Correctional Services: A Collective Responsibility (1-2 August 2000:24)* that: *the laws of the country need to continue to be seen to be applied with justice to all, including the victim. This can be attained while forgiveness is sought and is given. Forgiveness and justice as concepts do not necessarily preclude punishment. Indeed, punishment meted out with justice can actually be restorative.*

Crime and punishment are concepts known to human kind both in the modern world as well as from ancient times. People become desperate about crime and how to solve it or deter potential offenders, especially when thinking about serious, violent crime. Crime and punishment have always been a reality, even before and during Biblical times, as postulated by Harcourt when he quotes Ezekiel 7:23 *The land is full of bloody crimes and the city is full of violence* (Harcourt 1975:159). Victims and communities alike, experience growing rates of panic and sometimes uncontrollable emotion, stirred up by being victimized, or even by the fear of becoming the next victim.

Sin, wrongdoing and crime are real concepts in the Bible and the way in which people dealt with crime in the Bible will be briefly referred to in this chapter: it would seem that in the Old Testament the emphasis was on restoration and

restitution, instead of punishment only. Van Ness (1986:120) postulates that *shalom* is derived from the same root as *shillum*, meaning restitution (Ex 21:36). This is said despite the belief of “an eye for an eye”, as this is interpreted as rather restoring proportionately according to the harm that was done – that people in biblical times were more concerned about restoring “shalom”, than with punishment (Cilliers 1981:21; Van Ness 1986:20). *Shalom* not only also means the absence of conflict. It also means completeness, fulfillment, wholeness, restored relationships where people live together in peace and harmony (Is 32:16-18).

The New Testament refers to prison quite often, but mostly in a negative way. The concept of prison was since its inception in the 16th century a negative one. It was used to hold people who waited to appear in court or who waited to be punished or put to death (Cilliers 1993b: 30). The conditions were appalling, hence the prison reform throughout the ages. During the Roman reign prisons were usually overcrowded and did not respect human rights. Even in the New Testament it was used for torture of prisoners (Matt 18:34). Quite often people died in prison (Matt 25: 36) and suicide was common (Phil 1:19-24).

Zehr (1990:197- 199) compares guilt of the offender in Biblical terms, with guilt according to contemporary justice, as “An offender will forever be affected and defined by (his) offense, no matter what good qualities he has or may develop...(His guilt) will define his job possibilities, his career potential, the rest of

his life...Nothing in the criminal justice process will allow him to overcome that - not even if he repays his "debt to society" by serving his time". While Biblical Justice means encouraging offenders to understand and acknowledge the harm they have done and then taking steps, even if incomplete or symbolic, to make that wrong right... When we offend, we cannot assume that because we have experienced forgiveness from God or even from the one wronged no other obligation remains". The offender will in terms of the criminal justice process always carry with him the stigmatization brought about by the crime – it would be difficult for the former offender to start over if he is not accepted by the community. Biblical justice does not ignore the crime, but create circumstances for the offender that is conducive for him to start over and correct his mistakes.

2.10 The Historical development of victim compensation

Karmen (1984:3) confirms the opinion that in ancient times, before the onset of Roman and Western law, victims used to be the central people in the criminal justice system, as it was known then. Usually families of both victim and offender would come together, allow all the interested parties to give input about how to deal with the offense and restore the victim, and the outcome would generally be the wish of the community represented by those present. It would seem that traditionally in South Africa this is how people dealt with crime, as well as the indigenous communities in amongst others, New Zealand and Canada. Restorative Justice returns to the ancient view that crime involves human beings

and communities. Crime does not primarily harm the state, as is currently practiced in the retributive justice system. The modern or western way of Restorative Justice, which was influenced by industrialization as from the 1970's, will also be looked at.

According to Cilliers (1981:21) restitution to victims was the most important goal of adjudication in ancient times although the application differed in the different communities. These communities governed themselves and decided about suitable punishment. The central theme was to take revenge and punish the offender equal to the harm that was inflicted upon the victim, which refers to the *lex talionis* principle. The whole community would take responsibility for taking revenge or to restore the victim and would see the crime as an injury to the group. The principles of revenge were:

- The injury to an individual was seen as an injury to the group
- The aim of revenge was not to punish, but on revenge and retribution
- The collective nature of revenge and retribution meant that the whole group had to take revenge because of the injury to one member of the group
- The group to which the offender belonged, had to take responsibility for the offense, and if the offender could not be found, then revenge will be taken out on any other member of the group
- The motive for the offense was not taken into account

2.10.1 Code of Hammurabi, around 1700 BC

During this period reparation to the victim was important. The aim of the code of Hammurabi was to look after the interests of the weak, by protecting them from the wicked and evil. This strengthened the power of the state and also repaired the relationship between offender and victim (Cilliers 1981:22). The offender had to suffer to the same extent as the suffering caused to the victim. This code was the first formal attempt to look after the interests of the community. It emphasized restitution to victims of property offenses (Van Ness & Strong 2002:8).

The aim of this code was: *to cause justice to prevail in the land, to destroy the wicked and the evil, to prevent the strong from oppressing the weak, to go forth like the sun...to enlighten the land and to further the welfare of the people* (Cilliers 1981:22). This shows similarities to the aims of Victim Empowerment in that it wants to advance the rights of the vulnerable victims. It also repairs the relationship between victim and offender. This time was known as the golden era of the victim.

The primary function of compensation during this period in history was for the offender to pay back whatever the victim has lost. According to Goldberg (1970:1) in Cilliers the community was punished when it failed to trace the offender/criminal.

Section 200 of the Code of Hammurabi stated that Victim compensation in some cases was quite heavy, up to 30 times more than what the victim lost. The idea was to deter potential criminals and according to Smith (1981:15) in Cilliers the code was at times very harsh, exactly to deter. According to Schultz (1965:239) in Cilliers everybody in the community was responsible to compensate the victim in a case where the offender escaped from custody. This code was the first written policy regarding compensation to the victim and to take care of the welfare of the community.

2.10.2 Mosaic law

The Justice system was based more on revenge, the concept of *an eye for an eye*. During this period restitution to the victim was also important. In the book of Exodus, e.g.21: 22-25 reference is made to compensation paid to the victim, and the measures that were used.

Exodus 21:22-25

“If men contend with each other, and a pregnant woman (interfering) is hurt so that she has a miscarriage, yet no further damage follows, (the one who hurt her) shall surely be punished with a fine (paid) to the woman’s husband, as much as the judges determine. But if any damage follows, then you shall give life for life, eye for an eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, and lash for lash.

Also in Deut 22:18-19 compensation had to be paid to the father of a daughter who had been harmed and not to the state. *And the elders of that city shall take the man and rebuke and whip him. And they shall fine him 100 shekkels of silver and give them to the father of the young woman, because he has brought an evil name upon a virgin of Israel. And she shall be his wife; he may not divorce her all of his days.*

During this time the penal code was mainly based on crimes against religious codes. Punishment was aimed at compensation of victims. The religious leaders and political leaders were caught up in a power struggle for political power. According to Oliver (1978:55) in Cilliers (1981:20), the offender was required to pay for the medical costs of a victim.

2.10.3 Roman Law

In the case where an offender took something from the victim, the offender was expected to pay back double of what he/she took. Someone who owed money to another person was totally at the mercy of that person. The latter could decide what he wanted to do with the guilty party, either to cut up his body or to sell the guilty party and his family as slaves. A thief had to repay double the value of what he took. If the article was found after searching, then he had to pay three times the value and four times the worth if he obstructed people from searching his house, five times if violence or threats were involved. In some cases the

families of the offender were also subjected to revenge. The Law of 12 tables made provision for the payment of predetermined fines in certain cases especially of physical assault. These unlawful acts were known as *iniuria*.

In Biblical times the king acted as the administrator of justice (1 Kings 3:11). The Old Testament had three kinds of laws, namely moral, religious and civil laws (Van Ness 1986:128). The latter is relevant to this study. It contained prohibitions obstructing justice and penalties for wrongdoing. Life was seen as more important than property. The principle of an eye for an eye is known as the *lex talionis* and refers to the principle of proportion and limitation on revenge.

Restitution used to be the most common response to crime (Van Ness 1986:133-134). Imprisonment and fines were not common. Prisons were only used to hold persons until they could appear before court. Even in the case of David after he committed adultery and ordered the murder of Uriah, restitution by paying the poor man four sheep was the appropriate punishment (2 Sam 12:14). The New Testament case of Zacchaeus (Luke 19:1-10) after repenting, promised to pay back fourfold anyone he cheated. The Christian faith had been in favour of restitution over the years. According to Van Ness (1986:138) the purpose of justice was to build a stronger community with shalom which is the “active, creative, reconciling peace” The aim was to restore the victim and to hold the offender responsible. This promoted good relationships and reconciliation in the community.

2.10.4 Compensation/Restitution to the victim during the 19th Century

According to Killinger & Cromwell (1978:74) in Cilliers (1981:30) the compensation of victims did not receive much attention until the end of the 19th century. Jeremy Bentham (1748-1832) emphasized the obligation of communities towards the victim (Cilliers 1981:20). This eventually led to the agreement that offenders had to pay restitution to the victim and the rights of victims were advanced. Already at this early stage there was an acknowledgement that legislation did not make adequate provision for compensation of victims and the income of prisoners should be used to compensate victims.

2.10.5 Compensation to victims during the 20th Century

Mendelsohn was one of the first people who placed emphasis on the plight of the victim and the book of Von Hentig in 1948 “The Criminal and his victim” (Smit 1981:20) in Cilliers. Margery Fry made an important contribution regarding state compensation (Lamborn 1974:86) in Cilliers. She emphasized restitution where the offender had to pay for the harm and loss of victims as a form of restoration for the offender (Hudson & Galaway 1980:124) in (Cilliers 1981:24). *Repayment is the best first step toward reformation that a dishonest person can take. It is often the ideal solution.* During 1963 Fry published an article in The Observer about her concern over the existing legal avenues and postulated that the state

should be made responsible for the victimization of community members as a result of crime (Floyd 1972:4) in Cilliers. The state was according to Fry responsible to compensate victims of violent crime. The United Kingdom and New Zealand legislatures were inspired by this and introduced compensation systems for the victims of crime. Other countries followed and South Africa is also currently looking at a state compensation fund for victims of crime (South African Law Commission report 2001: IV).

2.11 The Historical and Philosophical development of Different models of punishment

Throughout the history of prisons different models of punishment were implemented, with varying levels of success and different reasons why it was abolished, or became less popular.

The development of the prison system is associated with different models of management, all of which had the rehabilitation of offenders in mind (Cilliers 1998:25). This part of the dissertation will look at these models, and highlight the most important characteristics.

2.11.1 The medical model

This model was based on the individualistic treatment of offenders. This approach became more prominent during the early 1900 - 1920's and was based

on the belief that offenders are mentally ill and should be treated for the illness or psychological deviation. The following are some of the principles on which this model is based:

- People's actions and behaviour are based on past experience
- The therapist should expose these factors
- The therapist should apply his/her knowledge to control this behaviour
- Treatment of offenders is aimed at changes in the offender's happiness and health (Bartollas 1985:26).

Offenders should, according to this model, not be punished because they did not have a choice over their behaviour, as punishment will harm the self-image of the offender. Offenders were not held accountable for their behaviour, unlike in Restorative Justice where accountability and taking responsibility by the offender are key concepts. However, the popularity of this model declined, as it did not decrease the trends in re-offending, and according to Naser (1997:230) the prison environment was not conducive to practice the principles of treatment.

2.11.2 The adjustment model

This model is based on the following views:

- The offender is responsible for his own behaviour and past problems should not be used as an excuse for criminal behaviour. The offender is capable of leading a law-abiding life.
- Offenders need help to cope with demands of the community
- The offender's interaction and relationship with others in the community should be understood in order to understand and address his criminal behaviour.
- The offender is able to unlearn negative behaviour and learn alternative behavioural patterns

The adjustment model tried to teach the offender socially acceptable behaviour, instead of, like the medical model, concentrate on the "illness" of the offender (Neser 1997:234).

2.11.3 The re-integration model

The philosophy of this model is based on the following assumptions:

- The problems of the offender should be resolved inside the community. This links to the Restorative Justice approach, which emphasizes the role of the community in dealing with crime.
- The community has a responsibility towards the offender concerning the re-integration of the offender into the social order. Opportunities should be given to the offender enabling him or her to develop law-abiding behaviour patterns and to utilize them. There is a direct link between this model and Restorative Justice. The offender should be assisted in the process of re-integration. The community should offer opportunities to the offender to work, to rebuild relationships and to be productive. These are necessary to restore the dignity and humanity of the offender. This links to the next premise.
- The community has an obligation to provide community support systems in order to bring about the objectives of integration.
- Imprisonment is used only when the safety of the community is threatened.

This model is based on small community centered institutions with little emphasis on supervision and security. It presents prison programmes, which allow the offender to leave the correctional facility and associate with the community. In the process of community integration, assistance and employment are given priority.

2.11.4 The justice model

David Fogel (1975) in Oliver 2002 summarises this model as: *...properly understood, the justice perspective is not so much concerned with the administration of justice as with the justice of administration.* Fogel further proposed that the judicial system should have the same concern for victims as it has for offenders.

Sentenced offenders should have access to grievance procedures in correctional facilities. Attendance of treatment programmes should be voluntary and better working conditions for correctional officials should be looked at.

The rights of all offenders, even the dangerous ones should be protected
Offenders should be regarded as responsible people with their own will and the following points are relevant:

- The justice model should bring fairness into corrections
- Offenders deserve to be punished, although it proposes limits to the use of imprisonment as a form of punishment
- Offenders participate on a limited scale in the management of a prison by having more say in matters that affect their everyday lives.
- The offenders have a say when choosing prison programmes when addressing their criminal behaviour, through their involvement in drawing up their sentence plan.

- Complaints of unfair treatment of offenders are heard and settled by an administrative mechanism.
- Rights are granted to offenders in accordance with the rights they are entitled to in terms of legal prescriptions. In South Africa the South African Constitution (Act 108 of 1996) protects the rights of offenders.
- It is critical to the flaws in the rehabilitation model

2.11.5 The neo-utilitarian punishment model

Its founders Bentham and Beccaria developed this model from the classical school of criminology. The latter wrote *Essay on Crimes and punishments* in which he condemns the penal practices of his time (1738-1794), amongst others, discretion by judges, capital punishment, use of torture to obtain confessions and excessive punishment for minor offenses (Oliver 2002:13-14). Bentham (1748-1832) emphasized the concept of free will and recognized offenders as rational people making rational choices, e.g. to commit crime. According to Hesselink-Louw (2004:218) the central theme of the classical theory of crime is that crime occurs when the benefits outweigh the costs. People make a deliberate choice to commit crime in the absence of punishment. In 1975 Wilson and Van Den Haag developed the neo-utilitarian punishment philosophy.

According to Cilliers (1998:28) and Naser (1997:243) the philosophy of this model is based on the following assumptions:

- The government should take responsibility for an orderly system where citizens feel happy and secure.
- The basic aim of punishment is to maintain order.
- There is a general assumption that punishment deters criminal behaviour and therefore a view arises that punishment is both educational and moral.
- The offender has chosen out of rational considerations and with a free will to commit a crime.
- Crimes like burglary, car theft and murder are treated with much greater seriousness than for example, whitecollar crime because it creates an atmosphere of fear and violence that seriously threatens the community.
- Offenders are only deterred from crime when they know that they could be sent to prison.
- Rehabilitation does not reduce crime rates, consistent with the theory that "nothing works"
- Imprisonment is meant to be a difficult experience, meant to punish criminals.

According to this model the criminals deserve punishment and the community needs to be protected – this increased the popularity of this model. This model is influenced by the indeterministic approach that postulates that the offender committed the crime purposefully. No programmes are offered in this model, as it is believed that the offender cannot change.

2.12 Purpose of punishment

According to van Ness (1986:88-97) and Cilliers (1992:23) there are specific aims with punishment, namely deterrence, rehabilitation and incapacitation, which will now be discussed. The Criminal Justice System recognizes crime prevention as an important outcome of punishment, and the Restorative Justice system also claims to prevent crime and reduce re-offending. Punishment and Corrections, in this case South African Corrections are closely linked. Imprisonment seems to be the punishment of choice for most courts. The public often asks for severe punishment especially in cases of violent crimes. Department of Correctional Services forms an integral part of the Criminal Justice System, as well as inter-departmental and inter-sectoral bodies in the prevention and administration of crime and its consequences. However, it is commonly said that Department of Correctional Services is at the receiving end of the Criminal Justice System and the public expects prison to be a serious form of punishment (Mbetse, Ramsingh, Sokupa & Moodley 2001:14). Department of Correctional Services should therefore be aware of the purposes of sentencing, which has a direct impact on the growth of the prison population, on available resources and of affecting the sentences of the courts.

2.12.1 Deterrence as purpose of punishment

Deterrence is often cited as a possible positive outcome of punishment. The rising statistics, as indicated in tables 1 and 2, in the prison population in South Africa only, is a clear indication that deterrence, as a goal of punishment is not reached. Many reasons come to mind: the “wheels of justice turn slowly” is one of the most obvious reasons. Punishment is only effective when it is swift and certain – cases often take years to be heard in court – potential offenders know that they might not be caught in the first place, and that it could take years for them to appear in court. In this process evidence might be lost or witnesses no longer be available, with the result that prosecution is not very likely to take place. For too long there was a reliance on deterrence – *both the fear of being caught and the fear of punishment...* to regulate criminal behaviour. Cilliers in Glanz ed (1992:29) contends that the community should take responsibility for the crime problem, in conjunction with government departments.

This concept is understood when it is assumed that long sentences deter potential offenders, but there is no proof to that effect, and it would be difficult to find enough people who could confirm that they did not commit a crime because they feared possible punishment. Many crimes are committed in the heat of the moment, where the offender did not consider possible consequences, and was therefore not deterred by punishment that other people received. During the 1800's in England there were 160 crimes punishable by hanging, including stealing of bread. Up to 40 people were executed on a daily basis, but the crime

rates did not drop (van Ness 1986:91). Deterrence could only be effective if all potential offenders are knowledgeable about sure punishment for similar cases. Often however, people are not even aware of the outcome of court cases because they are simply not interested or do not read because of illiteracy. Severe punishment is therefore not very likely to be a deterrent factor.

The abovementioned attempted to indicate the underlying aims of sentencing. However, these were influenced by the history of sentencing and specific schools of thought in the history of the penal system. The researcher therefore deemed it necessary to also discuss the following important developments in history. The reason for this is to provide better understanding regarding different sentencing options and the re-surfacing of victims as important role players in the justice system. Restorative Justice as a current trend in the justice system might not last forever, and might also lose its popularity like other philosophies, which are no longer as prominent as it used to be.

2.12.2 Rehabilitation as purpose of punishment

The modern rehabilitation model is geared to change the behaviour of offenders. Offenders are sent to prison with various sentences based on the discretion of the courts. Harcourt (1975:163) states that the aim of punishment is firstly protection of the public and rehabilitation of the offender. In correctional facilities they are obliged to attend rehabilitation programmes whereas with the justice

model, participation in programmes is voluntary. These rehabilitation programmes are based on therapeutic intervention. Once they have served a certain portion of their sentence, they could be released on the discretion of the parole board as law abiding citizens (Correctional Services Act, Act 111 of 1998:66).

Rehabilitation is the “core business” of Department of Correctional Services, and Restorative Justice is an approach that supports and strengthens this goal (Shishuba 2002:29). It would seem that the rehabilitation approach on its own cannot curb the high rates of re-offending. The overcrowding in South African correctional centres, and in fact, worldwide, makes it virtually impossible to reach the goals of rehabilitation. People are not treated individually and their individual reasons for committing crime are not addressed. The conditions in correctional centres are often questionable in terms of respect for human rights, which leads to a situation of “prisons carry a large number of hopeless people and turn them into bitter hopeless people” (Time magazine in Considine 1994:4). It is widely accepted that not all offenders in the system will be rehabilitated, and prof. Luyt acknowledged this when asking that Department of Correctional Services should concentrate on those who could still be rehabilitated (<http://www.pmg.org.za/viewminute.php?id=3851>) visited on 3/2/2005.

The possibility of reaching the goals of rehabilitation might be destroyed by the mere fact of imprisonment. Prisons are known to be violent, overcrowded

places, and not geared to address the needs of the inner human being. It often violates human rights of the very same people that it wants to correct (South African Law Commission 2000: *“Rehabilitation cannot occur in a repressive environment where punishment exceeds legal curtailment of the prisoner’s right to freedom of movement”* (Nair 2002:5) This model started losing its popularity in the 1970’s because for some scholars it did not seem to reduce the rate of re-offending (Ward 1973 in Oliver 2002:25). However, others believed that especially alcohol and drug treatment, treatment for sexual offenses and cognitive skills development, with the necessary supervision seems to reduce the risk of re-offending (Oliver 2002:39). According to Correctional Services, rehabilitation should take place within a safe enabling environment (White Paper on Corrections 2005:41).

2.12.3 Incapacitation as purpose of punishment

According to van Ness (1986:94) it does prevent the offender from committing another crime while being incarcerated. It is the researcher’s opinion that this reason does not stand its ground in the face of the many crimes committed in correctional centres. Often judges are restricted by prescriptions in the law in meting out punishment or sentencing, which might be a problem in that it demands mandatory sentences (Harcourt 1975:161,162). The reason why victim empowerment in correctional centres is necessary is exactly because vulnerable offenders are being assaulted by other offenders and cases of corruption are

being investigated against corrupt correctional officials. Incapacitation as such does not deter those who want to commit crime. The likelihood of further crime is predicted although no one can really give any guarantee about human behaviour. Criminologists who do risk profiling usually talk about future behaviour being predicted by past behaviour. This in the researcher's opinion is a contradiction in terms. Programmes targeting offending behaviour are offered in correctional centres. Correctional services should have the confidence that behaviour has indeed changed. It seems unfair that people could be punished because of what others believe they might still do – what if they choose to change? The sentenced offender who has indeed decided to change his behaviour will only prove that if he/she is given a chance to be reintegrated.

The relationship between this aim of punishment and Restorative Justice becomes clear when a restorative approach forms part of the programmes offered while the offender is incapacitated. The offender is confronted with the negative effects of the crime, while given the opportunity to change his/her behaviour.

2.13 Restorative Justice and Corrections

Restorative Justice is a philosophy dealing with the aftermath of crime. It is gaining popularity in South African communities, following the development of the National Crime Prevention Strategy (NCPS) in 1996, as an attempt of the South

African government to address high crime rates in South Africa. It's apparent success in other countries since the 1980's might also be contributing to its increasing popularity in the Criminal Justice System and also dealing with community disputes. The concept of Restorative Justice causes discourse amongst its proponents, and even more so to it's critics. It is often referred to as an "old", traditional way of dealing with conflict, and yet it is also a "new paradigm" in dealing with crime. What is abundantly clear though is that it has roots in many faiths and indigenous cultures. *In societies where Western legal systems have replaced and/or suppressed traditional justice and conflict resolution processes, restorative justice is providing a framework to reexamine and sometimes reactivate these traditions* (Zehr 2002:5).

2.14 The philosophy of Restorative Justice

A philosophy is a way of thinking based on a number of assumptions, which guides practices and practical implementation. The philosophy of Restorative Justice is based on the following assumptions:

Crime affects offenders, victims as well as communities. Unlike Retributive Justice, Restorative Justice believes that all these role players are affected by crime in one way or the other and that all role players are hurt by crime. Crime is more than violation of a law.

According to Ladikos (1997:38) the state should involve other important stakeholders, namely victims, offenders and communities in making decisions about the aftermath of crime. The state in the retributive paradigm used to involve victims only when they were needed as witnesses. The state should take responsibility for law and order, while communities take responsibility for peace. This recognizes the roles and responsibilities of the different stakeholders. Communities are responsible for socialization. Community norms and values that are instilled should promote peace and not conflict. These values should also teach community members about respect for each other and other people's property. Communities should therefore take responsibility for its products, whether they are victims or offenders. When the peace in a community is disrupted, then communities, in the form of community organizations, faith based organizations, and others, should take responsibility to restore the peace.

Restorative Justice seeks to restore the victim, offender and the community after an offense had been committed. It wants to restore the balance that was disturbed because of the conflict situation, and to repair the harm to the extend possible. "We need to discover a philosophy that moves from punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation and harshness to community and wholeness, from negativity and destructiveness to healing, forgiveness and mercy. That philosophical base is restorative justice" (Consedine 1993:10). With this, it is not meant to create the impression that punishment is not an option. On the contrary, Consedine does

acknowledge punishment as an option where appropriate. It should just be borne in mind that punishment, imprisonment or any other harsh response should not be the first option, but rather taking into consideration the interests of all affected parties, notably the victim, offender and community. Considine (1993:183) links Restorative Justice with practices of indigenous cultures in different countries with roots in the religious communities.

Restorative Justice furthermore creates opportunities for offenders to take responsibility for their actions and to make amends. It recognises the potential of offenders to change as well as to repair the harm, and it finally gives priority to the right of communities to be protected and to feel safe.

Restorative Justice emphasizes the importance of elevating the role of victims and community members through more active involvement in the justice processes, 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 1996:88).

2.15 The values of Restorative Justice

- Encounter (a meeting, narrative, emotion, understanding, agreement)
- Amends (apology, changed behaviour, restitution, generosity)

- Reintegration (acknowledging human dignity and worth, providing material assistance, offering moral and spiritual direction)
- Inclusion (an invitation, acknowledgment that the person invited has unique interests and recognizing that he or she might want to try alternative approaches (Van Ness and Heetderks Strong: 2002: 53-151).

2.15.1 Encounter

Encounter according to the South African students dictionary, is a dialogue, usually to deal with difficulties, as is indeed the situation when victims and offenders have to resolve the problems that were created by the crime. Encounter in essence means the contact and discussion between the parties involved in crime. In the Restorative Justice system the victim and offender would get together and discuss the crime and its effects on the victim. If the case goes to court, the victim would in this dispensation of Restorative Justice, be allowed to talk, be allowed to give information on the impact that crime has had on his/her life.

Encounter according to van Ness & Heetderks Strong (2002:55) includes mediation, conferencing, circles and impact panels. All of these forms of encounter give an opportunity to the victims and offenders to meet face to face. Unlike in retributive systems, the victim is not only a witness. The victim is allowed to give an impact statement about the crime, as the victim is recognized as standing central in the whole ordeal.

Victim Offender Mediation allows for the presence and intervention of an impartial, correctly trained person in the informal yet structured environment in which both parties feel safe, physically and emotionally. They are empowered to share, to listen, to learn, to understand, to agree and to commit. An important outcome is an agreement and a commitment from the offender to make right to the extent possible, to pay restitution if possible and appropriate. In a correctional facility the offender serves a sentence and has often also suffered losses because of that, like loss of income, family relationships, respect, etc. The offenders might have thought up to that time that they have paid their debt to society by serving a sentence, and might also themselves be angry at the system for what they perceive to be unfair punishment. During the encounter they realize that the harm was actually done to another human being. The narrative (story telling) of the victim help them to realize that the burglary that might have seem trivial touched the lives of the victims in various ways, like children being fearful, getting nightmares, victims deciding to move out of the area, trauma because of re-adjustment in a new area, and a host of other possible negative results. The offender might have thought that stealing from rich people has no real effect as insurance can replace their belongings, without realizing the human effects and that some of the harms cannot be restored fully.

The purpose of Victim Offender Mediation or Victim Offender Reconciliation programme(VORP) is to reach an outcome which is acceptable and fair to both victim and offender. Caution should however be taken not to create unrealistic

expectations that victims necessarily have to reconcile with the offender but that the focus be rather on the process of mediation and not on the outcome as reconciliation and or forgiveness. During the mediation it is important that time be allowed for both parties to share their stories about the crime where the injustice to the victim will be identified. This in the researcher's opinion is linked to vindication as a right and a need of the victim as discussed in chapter 5. The parties will then discuss what is needed to make things right – what the victim would want to see the offender doing, which could be monetary refund (restitution), community service, and like in the case of sentenced offenders, an apology and taking responsibility for his/her offending behaviour, and even committing to make use of opportunities in the correctional facility to correct the offending behaviour. Conferencing in the form of Family Group Conferencing (FGC) would as the term implies, involve relatives of both parties as support systems. This form of encounter is the well-known New Zealand system practiced by the Maori people that was enacted in 1989. Other interested parties could also attend this meeting, including police. Again victim and offender are allowed to share expectations and feelings, but the support systems are also allowed to talk. After the discussion the victim and support system would typically express their expectations, the offender and support systems would confer and decide to what extent these expectations can be met.

Circles are also a form of encounter but would normally take place in pre-sentence stage where the parties involved would decide on the appropriate

sanctions. In this context where the focus is on sentenced offenders, it would not be appropriate, as the court in the Retributive Justice system already decided on the sanction, which is imprisonment, without addressing the harm to either victim or offender.

Impact Panels bring groups of victims and related or unrelated groups of offenders together to talk about the impact of crime. This would typically involve victims of for instance burglaries, talking to offenders who committed burglaries. The Prison Fellowship Ministry in New Zealand uses the Sycamore Tree Project principles to take groups of 5-6 victims into prisons, to talk to the same number of offenders, as part of a 12-week programme. This programme follows a specific curriculum, with teaching of responsibility, repentance, forgiveness, restitution and reconciliation as intended outcomes. Offenders are then expected to write letters of apology to their victims, without posting it. This concept is found in the so-called symbolic reparation, which is referred to by Zehr in chapter 1 (Zehr 2002:28). This form of encounter is especially helpful to victims in cases where offenders are not apprehended. In the South African correctional system, this might be the most appropriate Restorative Justice programme, where lack of human resources and lack of appropriately trained mediators in Department of Correctional Services might be stumbling blocks in organizing Victim Offender Mediation, without re-victimising victims. This could be linked to moral regeneration as discussed towards the end of this chapter. Offenders can learn and understand why communities are upset and angry about crime, learn about

values of the community and appropriate ways to uphold these values. Victims might in some cases even offer assistance to offenders who are serious about changing their offending behaviour. Impact panels could take place prior to sentencing as part of a court order, or in a correctional facility, as part of compulsory pre-release conditions. Ideally it should form part of rehabilitation and a daily restorative approach.

All of these forms of encounter explicitly or implicitly imply that the parties talk personally, that they acknowledge certain emotions like fear and anger, that they understand better without necessarily agree with or justify the crime and that there is a strong possibility of reaching an agreement which would satisfy both parties to various extent.

The telling of stories, the narrative in the encounter, differs from the formal and adversarial justice procedure. Sentenced offenders experience a different form of reporting. In court they were allowed to address the court within the legal boundaries, or even not at all, when legal representatives, talked on their behalf. Similarly, the victims only took part in the court procedures when they were needed as witnesses. In this Restorative Justice encounter they are allowed to give a subjective account, which is already some form of healing for the victim.

The possible outcome of encounter is understanding, changed behaviour, possibly reducing re-offending and could bring healing.

2.15.2 Amends

Amends as a value of Restorative Justice, is that which is seen as important in the attempt to make right the wrongs and restore the balance. Members of a certain community usually share the same values, but the offender might have rejected certain values, therefore his/her life is not guided by those values.

Often a victim would be satisfied or feeling better knowing that the offender is offering a sincere apology. Also, that the offender would admit what happened to the victim was wrong, and also admit, "I did it". Once again, this would give the victim the experience of being vindicated. Unlike in the retributive justice system where the defense for the offender would try to portray the victim as the one at fault as if something that the victim might have done brought on the attack/crime. If the defense succeeds in doing that, then it would be difficult for the offender to apologize to someone who "asked to be robbed/raped" or whatever the crime had been. In such cases the victim comes away from the court feeling guilty for not preventing the crime.

The ideal in Restorative Justice approach is a sincere apology from the offender where he takes down his defenses and would not say "I am sorry you feel hurt", but rather "I am sorry I have hurt you". The offender apologises sincerely because it is the right thing to do, without any guarantee of forgiveness. Forgiveness should therefore not be an expectation. By forgiving the victim takes back his/her power/control, while the offender gives up power/ control.

“Apology is an exchange of shame and power between the offender and offended.” The victim was disempowered by the crime – the victim often experience pain and shame –the apology restore power and the offender takes the blame and shame. The offender who is properly prepared and voluntarily offers the apology will no longer be arrogant but rather offer humility and take responsibility unconditionally.

Another way of making amends would be to pay restitution to the victim-although money cannot make up for the emotional damage, or replace things of sentimental value, it is still a public acknowledgement of the wrong done to the victim, and therefore a form of vindication for the victim. Making amends also implying going the extra mile, to be prepared to do more than what is required. In terms of restitution the offender might pay the monetary value of what the victim lost, but might also offer to do something for the community. This would not undo the past, but would attempt to repair the harm. The community of the victim is a secondary victim and will also benefit by the community service.

One often finds that victims are prepared to assist especially first time juvenile offenders who realize the wrongness of their behaviour, and who wants to change their behaviour. Victims might even help to pay for the education of offenders. Victims are interested to hear about changed behaviour, and want to prevent crime from happening to other community members. According to van Ness (van Ness & Strong) offending behaviour can be changed by attending

anger management classes, or substance abuse education, which are some of the programmes offered by South African Department of Correctional Services to sentenced offenders in correctional centres, aiming at targeting offending behaviour.

Restitution in the Retributive Justice system is a sentence an offender receives against his will, as opposed to accepting the obligation to pay restitution. This could make a difference in how the offender views his guilt and responsibility towards the victim and society.

Community service as making amends is appropriate if a prison sentence is not an option. Prison sentence should be the last option, only where society needs to be protected against violent and dangerous offenders. Restitution for offenders in the Department of Correctional Services within correctional centres is not applicable. In countries where sentenced offenders do pay restitution, they are provided opportunities to do meaningful work and are paid market related salaries. Part of the salary is used to pay restitution. Meaningful work restores the offender's sense of dignity and worth, reduces the burden on the state to take care of the victim, and again serves as vindication of the victim. If offenders could stay in communities, pay restitution and make right to the victim, then they are more easily reintegrated in the community, saving the government lots of money, which could be used for rehabilitation of the more dangerous offenders in correctional centres.

2.15.3 Reintegration

An offender with a criminal record faces tremendous challenges when attempting to find a job in the formal sector. Being unemployed and not welcomed by your community poses serious risk for re-offending. The offender needs to be supported by friends, family and communities to lead a crime free life. Offenders from prison face even more challenges because of stigmatization.

The process of reintegration in the case of sentenced offenders should start long before the offender is released from the correctional centre. For an offender to be motivated to change and to become a law-abiding citizen, he would need to know that he is being accepted as a human being. The offender needs to take responsibility to make himself more acceptable to the community by for example honouring community values and norms. When going into crime the offender discards community values and a process of moral regeneration might rekindle those values or in some cases, instill it for the first time. For offenders to be integrated, they would need material assistance, acknowledgement of human worth and dignity and the belief that they can change as well as spiritual and moral guidance.

Even victims need to be reintegrated. Victims are sometimes blamed by members of the community for becoming victims, as if they have done something to invite the crime. Communities feel more vulnerable if one of their own fall

victim to crime, because it means that they are not as safe as they would have liked to think. They would respond with anger, wrongly aimed at the victim, without realizing that anger is the manifestation of fear, frustration and hurt. Victimization erodes the sense of safety, many questions are asked and blaming of the government is common as well as the victim who should have taken better pre-cautions. The victim experiences some form of rejection. Victims feel even more out of control and make friends and family feeling uncomfortable if they cannot deal with what has happened to them and to move on. Interestingly enough, both victim and offender experience stigmatization, both feel embarrassed, experience shame, both feel isolated, not understood, disorientated, experience damaged relationships and a sense of loss, also in terms of employability. The offender is less employable after a prison sentence, while the victim is less employable after suffering serious physical harm. It is worth noting that victim and offender have the same needs: information, money, employment, transport, treatment, decision making skills, circle of support, spiritual support in various degrees.

2.15.4 Inclusion

Inclusion means the opportunity for direct and full involvement of all individual parties, victim and offender, to be part of the procedures that follow a crime. The most important way of including victims is to provide information about the Criminal Justice System. Victims need to know what is expected of them, but

also what to expect when they have to go to court, court dates, bail application, plea bargains and the outcome thereof, postponements, rights and obligations. The victim needs to be informed about available support services to deal with the after effects of crime. The victim will feel included, part of the process if he/she is informed about important issues, as well as escapes of the offender, parole hearings of sentenced offenders, as well as parole violations. The Criminal Justice Systems of different countries have different rules about allowing victims to attend the court hearings, especially if the victims are called as witnesses.

Another way of inclusion is to allow for victim impact statements. Again, it is not allowed in all courts. A victim impact statement allows victims to inform the court about the impact of the crime, emotionally, physically and financially. Victims of serious violent crimes often suffer permanent damage of which the court can be informed. Victim impact statements can be verbal or in writing, by the victim or family members or even a legal representative.

In the Retributive system the submission of victim impact statements might be a problem, as the outcome of the case should reflect only what the law says in terms of specific offenses. If the victim impact statement is allowed, is very emotional, very convincing and the victim has suffered serious harm, would that then influence the sentencing? The question could also be asked about fairness and consistency. Would the offender whose victim is more eloquent receive harsher punishment than the offender whose victim gave a poor statement or

none at all? In the Restorative Justice paradigm, the outcome of the case would reflect what is necessary to restore the victim to the extend possible.

An invitation to the victim to get involved already shows respect for the victim as important part of the process of dealing with crime. The victim's rights as member of the community is recognized and respected.

2.16 Fundamental principles of Restorative Justice

The fundamental principles of Restorative Justice are quoted and discussed for better understanding. Restorative Justice is a philosophy, a specific way of looking at crime and dealing with the after effects of crime. It could also be seen as a way of preventing crime in the sense that through the process of Restorative Justice the offender is made to understand the human suffering caused by crime. When the offender only faces the formal criminal justice system, which is a faceless state institution, he/she might not realize that the victim in the community still grapple to get answers as to why this crime took place. Once the offender, the victim and significant others are involved, then there is a better understanding about the community as secondary victim.

- Crime is fundamentally a violation of people and interpersonal relationships: victims and the community have been harmed and are in need of restoration. Victims, offenders, and the affected communities are

the key stakeholders in justice. The person who suffered an injury, and or his family members is directly affected by the crime and often suffers trauma or post-traumatic stress. The secondary victims also become important stakeholders in the Restorative Justice process to explain how the crime affected them, and what they would need to be healed or restored. Although the Criminal Justice System sees the state as the victim, it really is not, and this role/conflict should be given back to the real stakeholders (Christie 1977: 176).

- Violations create obligations and liabilities (Zehr 2002:65). Offenders' obligations are to make things right as much as possible. The community's obligations are to victims and to offenders and for the general welfare of its members. Victims have been violated by crime. The Restorative Justice process seeks to empower victims to take part in the process to define the harm done to them, and what the offender's obligations are in terms of addressing the harm. Offenders also form part of this process, as the idea is for them to voluntarily accept the obligations that have been created by the crime they have committed. Obligations could be a number of options, like restitution, meaningful community service, apology, or whatever is appropriate and agreed to in this individual case. Offenders also have an obligation to themselves, in addressing the needs in themselves or personal problems that led to committing of crime. The community, as important stakeholder, also

needs to be involved. Communities are responsible for the socialization of both victim and offender, and should therefore be involved in decisions on how to support victim and offender, provide services and resources needed to restore both, and create an atmosphere that is conducive for the re-integration of victim and offender. Communities should assist offenders to make amends.

- Restorative justice seeks to heal and put right the wrongs. The needs of victims for information, validation, vindication, restitution, testimony, safety, and support are the starting points of justice. The victim needs to know if the offender had been apprehended or not. If yes, when the offender will appear in court and if the offender got bail or is outside in the community. If the victim needs to be in court as a witness, he/she needs to have that information beforehand, to be able to prepare properly for the court hearing, emotionally as well as to give evidence. Paying of witness expenses takes place in certain cases, and the victim needs to be informed about this. This information the victim will get from the police as well as officials from the court. This then implies that different service providers are involved in assisting the victim of crime.

The information is important but is not enough on its own. The victim also needs to hear that he/she has the right to be hurt, to feel violated, and that others also agree that what happened (the crime), was not right.

The right to restitution or monetary compensation should be acknowledged. Victims suffer losses especially in cases of economic crime and some immediate needs would include replacement of locks, car keys, etc., alternative transport arrangements if for instance a car was stolen. Victims are also interested in recovering their property, some can be replaced with insurance payouts, but other stuff with sentimental value is irreplaceable. Poorer people often suffer even more, as they often do not have insurance and cannot afford to replace a stolen car. This is confirmed by Holtman's postulation that, old people often face more difficulties as a result of crime *The impact of victimization is not felt equally by all victims of crime. There are a number of environmental factors that cause a variance in impact. The more obvious of these are age and poverty. For instance, when an old person is mugged and robbed of a possession, the physical injury is likely to take longer to heal than when a younger person is mugged in the same way. Similarly, a very young child is less likely than a young adult to know how to ask for help or to resist a sexual attack and may take much longer to recover* (Holtman 2001:2).

According to these principles, the victim has a right to offer testimony –which is also the right to give information. One could argue that there will be no crime to pursue if there was no victim. The victim should therefore be central in the criminal justice system. The victim needs to tell what happened and what the crime did to him/her. This is linked to the admissibility of victim

impact statements in court as well as in Corrections, during the parole hearing of offenders. This right of victims is therefore not restricted to the trial, but also even when an offender is considered for re-integration into the community.

This right to be heard would empower victims, who were often left powerless by the crime – they are now heard, and hopefully their needs and feelings will be taken into consideration.

This principle recognizes the right of the victim to feel safe. The sense of safety and security was violated by the crime. People want to believe that their environment is safe. People often spend a lot of money in creating safe places for themselves, which are often a little less than a prison. When an offender intrudes this safe place, the victim is traumatized, especially when feeling that this one place, home, which was supposed to be safe, is no longer safe. In cases of violent crime, spousal abuse, child abuse, and other similar forms of crime the victim's immediate need is to be safe. Often placing the offender in a Correctional setting is one way of ensuring the safety of the victim as well as the community.

The process of justice maximizes opportunities for exchange of information, participation, dialogue, and mutual consent between victim and offender.

- Offenders' needs and competencies are addressed. Restorative Justice recognizes the humanity and potential of offenders. It also acknowledges that offenders often themselves had been victims of crime and or abuse. This is particularly relevant in the Correctional System, as offenders might come from violent backgrounds and need guidance and support to change. Offenders should be helped to first understand his/her own victimization to be able to understand the impact of his crime on the victim. The Department of Correctional Services has a Victim Empowerment approach and focuses on an Anti-rape strategy to prevent victimization of vulnerable offenders in correctional centres, as well as treatment programmes for those who already suffered harm in correctional centres. The existence of prison gangs is acknowledged and efforts are made to ensure that vulnerable and special categories of offenders are housed separately from violent and aggressive offenders.

- The justice process belongs to the community, by making resources available to support both victim and offender. Communities are involved in Family Group Conferencing and Victim offender Mediation, as family members and or supporters of victims and offenders. The community members give inputs on how best to deal with the consequences of the harm. Communities have to take responsibility for peace and how to deal with conflict.

- Justice is mindful of the outcomes, intended and unintended, of its responses to crime and victimization (Zehr 2002:64-69). It is necessary to make sure that there are follow-up and monitoring mechanisms in place, to make sure that agreements made in Victim Offender Mediation or Family Group Conferencing are honoured. Support systems take equal responsibility, and make sure that the agreement is fair to both parties, and realistic in terms of the offender being able to pay restitution, if that was part of the agreement. Victims might experience re-victimisation if agreements are not kept, and there is no feedback or follow through.

2.17 Differences between Restorative Justice and Retributive Justice

Some Restorative Justice practitioners have compared Restorative Justice with Retributive Justice in order to show the benefits of involving the different parties involved. Others like Kathleen Daly in (Roche 2004:55) views these differences as artificial, and refers to it as “myths”. She argues that the conception of Restorative Justice as “good” and Retributive Justice as “bad” is unrealistic and a way of “selling” the superiority of Restorative Justice. She further contends that it does not always happen or is realistic to expect that harm be repaired, healing to take place or reintegration of the offender be achieved. She says that “holding the offender accountable” is a step in the Retributive process, which should get equal attention.

Table 3 Outlines the Differences between Retributive Justice and Restorative Justice

| <p>OLD PARADIGM OF RETRIBUTIVE JUSTICE</p> | <p>NEW PARADIGM OF RESTORATIVE JUSTICE</p> |
|--|---|
| <p>1. Crime defined as violation of state.</p> | <p>1. Crime defined as violation of one person by another.</p> |
| <p>The state is seen to be the victim as a result of the influence of Roman law where the role of victims has been reduced to that of a witness. The state has taken the place of victim and investigates facts.</p> | <p>The personal harm of crime to the victim as a human being is recognized-the physical harm and emotional damage are dealt with in cooperation with victim and offender and important support systems – state is not seen as primary victim.</p> |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|---|---|
| 2. Focus on establishing of blame based on guilt, on past (did he/she do it?) | 2. Focus on problem solving, on liabilities/obligations, on future (what should be done) |
| The Criminal Justice System only focuses on the crime and to establish guilt. Does not look at what can be done in future to assist victim and offender | All parties involved try to find most effective ways of dealing with the aftermath of crime and to involve the offender in taking responsibility for making right, to pay restitution, repair damages or do community service. |
| 3. Adversarial relationship and process are normative. | 3. Dialogue and negotiation are normative. |
| The relationship is formal and process is strictly based on the letter of the law and no discretion is allowed, sentences/sanctions are prescribed. | Processes like Victim Offender Mediation, Family Group Conferencing allow for dialogue between victim and offender. Other significant parties like relatives of victim and offender are also allowed to make inputs about the impact of the crime |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|---|--|
| 4. Imposition of pain to punish and deter/prevent future crime. | 4. Restitution as means of restoring both parties; goal of reconciliation/restoration. |
| Crime creates a wound for the victim. Punishment creates a wound for the offender. The Criminal Justice System makes no provision for healing of these wounds. The sentencing of the offender does not necessarily heal the wound of the victim, although they might experience a feeling that justice has been done. | When offenders take responsibility to restore the harm to the extent possible, the process of healing for the victim starts. Just the mere fact of acknowledging the harm done and accepting blame could start a process of restoration –this also allows for face to face encounter, where the offender might offer an apology to the victim. |
| 5. Justice defined by intent and process; right rules. | 5. Justice defined as right relationships; judged by outcome. |
| The Justice system follows prescribed rules in dealing with crime-does not take relationships in consideration, or feelings of the parties involved. Dialogue between parties is not encouraged. | Feelings of all affected parties are taken into consideration, as well as restoring of relationships. Fear, anger and hurt of all involved parties are dealt with during dialogue. |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|--|---|
| <p>6. Interpersonal, conflictual nature of crime obscured, repressed; conflict seen as individual versus the state.</p> | <p>6. Crime recognized as interpersonal conflict; value of conflict is recognized.</p> |
| <p>The case is referred to as the state versus offender, although the state has not suffered harm. The state prosecutes on behalf of the victim, although inputs from victims are not always sought.</p> | <p>Conflict is valued as a reason for the problem or the crime. The individuals involved and the circumstances, which led to the conflict, are taken into consideration.</p> |
| <p>7. One social injury replaced by another.</p> | <p>7. Focus on repair of social injury</p> |
| <p>The offender might serve a prison sentence to “pay his debt” to the state, but does not necessarily accept it as fair punishment that he deserves for the crime. The offender might come from prison even more angry and with the feeling of being victimized by the Victim and the system.</p> | <p>The offender realizes that he did not commit a crime against the state, but that the life of a fellow community member had been negatively impacted by the crime. The offender might be more likely to “pay a debt” to a real person, than to the state which did not really feel the harm</p> |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|---|---|
| 8. community on sidelines, represented abstractly by state | 8. community as facilitator in restorative process |
| The victim and community are marginalised and do not form part of the justice process. | The community is recognized as an important role player who should take responsibility for both victim and offender. A community member usually facilitates the process, and community members are welcome to attend certain Restorative Justice processes. |
| 9. Encouragement of competitive, individualistic values. | 9. Encouragement of mutuality |
| The defense and prosecutor both try to prove they are right or to win the case, while the victim and offender might not agree on the outcome and there is usually a win-loose situation | Mutual agreements form part of the process where victim and offender agree on what needs to be done to restore the harm and what would be within reach of the offender to offer. |
| 10. Action directed from state to offender: victim ignored and offender passive | 10. Victim and offender's roles recognized in problem solution; victims rights/needs recognized; offender encouraged to take responsibility |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|--|---|
| The “state is harmed” and the state decides on measures to punish the offender, while the victim might need something totally different to restore the balance | The offender takes responsibility for the crime and the victim is vindicated by the fact that the wrong is acknowledged |
| 11. Offender accountability defined as taking punishment | 11.offender accountability defined as understanding impact of action, and helping to decide how to make things right. |
| Often offenders do not have a say in the court procedures. Legal representative talk on their behalf, some might want to tell their side of the story, the actual truth, but it might jeopardize the case and they are advised against that. | Restorative Justice gives the offender an equal opportunity to talk about the circumstances surrounding the crime – this brings more understanding about what might have been possible motives for the crime, without justifying the crime. When the offender gets a chance to listen to the victim, he might realize his responsibilities and agree on what would be necessary to restore the victim. |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|---|---|
| 12. Offense defined in purely legal terms, devoid of moral, social, economic, political dimensions | 12. Offense understood in whole context-moral, social, economic, political |
| Crime is viewed as a violation of laws of a specific community or country | The background, culture, socialization, spirituality of both victim and offender are taken into account when dealing with crime and its effects. |
| 13. "Debt" owed to state and society in the abstract | 13. Debt/liability to victim recognized |
| The offender might serve a prison sentence to "pay his debt" to the state, but does not necessarily accept it as fair punishment that he deserves for the crime. The offender might come from prison even angrier at the feeling of being victimized by the system. | The offender realizes that he did not commit a crime against the state, but that the life of a fellow community member had been negatively impacted by the crime. The offender might be more likely to "pay a debt" to a real person, than to the state which did not really feel the harm. |
| 14. Response focused on offender's past behaviour | 14. Response focused on harmful consequences of offender's behaviour |
| The Criminal Justice System focuses mostly on the crime committed and what evidence would be needed to | Restorative Justice focuses on who has been hurt, what is needed to repair the harm, what role the offender should |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|---|---|
| proof guilt. | play in restoring the balance |
| 15.Stigma of crime unremovable | 15.Stigma of crime removable through restorative action. |
| The offender from prison “served his time” but is not necessarily accepted by the community. They would find it hard to find employment, face rejection and would be the first to be suspected if another crime is committed. | The offender who accepts obligations caused by the crime he/she committed, who publicly admits wrongdoing and cooperates in restoring the victim and community will certainly be more likely to be successfully reintegrated back into the community. |
| 16.No encouragement for repentance and forgiveness | 16.possibilities for repentance and forgiveness |
| Defense for the offender try to place guilt on the victim or show how the victim was at fault by doing or not doing certain things, which could have prevented the crime. It would then be difficult for the offender to apologise to someone who was essentially “contributed” to the crime. The defense tries it’s utmost to create | The offender, who is facing a victim and listens to the victim’s account of the crime, realizes the human impact, also on secondary victims like children or spouses. The offender is respected enough to get a chance to explain his side of what happened. The offender can offer an apology and there is a possibility that the victim might |

| Old paradigm of retributive justice | New paradigm of restorative justice |
|--|---|
| “reasonable” doubt and after several times in court, the offender might start believing in his own innocence. | understand and choose to forgive the offender. |
| 17.Dependence upon proxy by professionals | 17.Direct involvement by participants. |
| Legal representatives in court primarily want to “win” their case and could do so on technical grounds. Cases might be closed because of lack of evidence, although the parties might know what really happened. The offender, who is “free” because of these loopholes in the system, might never face up to the human consequences of their crime. | The victim and offender talk directly to each other if they so choose, not through legal representatives, in difficult legal terms. The victim and offender as well as respective support systems can make inputs about possible solutions for the problems created by crime. |

2.18 Signposts of Restorative Justice

The following are signposts developed by Zehr and Mika in (Roche 2004:79) to take into consideration when determining the restorativeness of programmes which focus on the harms of wrongdoing more than the rules that have been broken.

Show equal concern and commitment to victims and offenders, involving both in the process of justice. Parties have to be respected as human beings, feelings are considered, and both need to get a chance to give account of their experiences from their point of view.

Work toward the restoration of victims, empowering them and responding to their needs as they see them. Victims feel violated and may suffer from Post Traumatic Stress. Victims might have different needs, depending on the age of the victim, previous experience of victimization, financial implications, which could be worse for poor victims. The response, experience and feelings of victims should not be generalized, even if they are victims of the same crime. Volunteers and helping professionals should not assume that they know what victims need. That could increase the feeling of disempowerment.

Support offenders while encouraging them to understand, accept and carry out their obligations. Offenders are also community members. Their actions are

partly a result of the socialization process, negative role models, perceived needs, gang-subcultures, etc. Offenders are also scared and uncertain about the Criminal Justice System and what to expect. Offenders, like victims also need support and guidance. Restorative Justice processes like Family Group Conferencing and Victim Offender Mediation aim to involve support systems of both victim and offender. When agreements are reached, the community and support systems should assist offenders to honour their agreements. Offenders might accept responsibility to repair damage, but might need the financial back-up of family members.

Recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable. Crime causes harm and addressing the harm implies certain obligations on the side of the offender. When reaching an agreement of what needs to be done to restore the victim, the personal circumstances of the offender should also be taken into consideration. Juveniles might not be able to pay big amounts of money for restitution. It might be more realistic to do meaningful community service that will benefit the victim.

Provide opportunities for dialogue, direct or indirect, between victims and offenders where appropriate. The use of Family Group Conferencing or Victim Offender Mediation will be determined by the nature of the crime and the willingness of the parties to meet. If this need is identified, then a process of preparation of all the relevant parties will commence, dealing with expectations

from both sides. These processes are arranged on an entirely voluntary basis with due respect for the differences between the parties, pertaining to culture, background, qualification, financial means, etc. The mediator will ensure that no further victimization takes place.

Involve and empower the affected community through the justice process, and increase their capacity to recognize and respond to community bases of crime. The community is responsible for restoring and keeping of peace. The community should take responsibility for the well being of both victim and offender.

Encourage collaboration and reintegration rather than coercion and isolation. Informed consent should be sought from both victim and offender. In the case of minors, the parents or guardians should be involved. Even sentenced offenders should only be involved in any of the Restorative Justice processes when they understand the implications and agree to be involved and motives and expectations have been cleared.

Give attention to the unintended consequences of our actions and programs, by showing respect to all parties including victims, offenders, justice colleagues and all other volunteers and or professionals involved. A multi-disciplinary team will ideally manage the process in correctional centres, where people with different skills and expertise will be involved in assessment and support of the offender.

Crime wounds ...justice heals (Mika & Zehr 1997).

2.19 Programmes usually associated with Restorative Justice

The researcher will now discuss the different programmes that are usually associated with Restorative Justice. As mentioned before, an evaluation of the restorativeness of programmes needs to be made depending on the aims, content and parties involved. The Victim Empowerment Programme is also a form of Restorative Justice and will be discussed in full in chapter 5.

2.19.1 Victim Offender Reconciliation Program (VORP) Mission statement is as follows:

VORP is a voluntary process of mediation that provides an opportunity for restorative justice by encouraging victims, offenders, and the community to participate actively in healing. Restorative justice promotes reconciliation and restitution between offender and their victims. We believe that restorative justice will contribute to a peaceful and just society where every individual is respected.

<http://moodle.ed.uiuc.edu/wiked/index.php/VORP>) visited on 2005.05.10.

Victim Offender Mediation (VOM) programmes bring together victims and offenders, usually with relatives on both sides as their support system. All parties are allowed to give input during the session. It gives opportunity for dialogue

between victim and offender in a structured setting. A concern that can be raised is the possibility of either the victim or offender from a minority group, or the other party, who might be emotionally stronger than the other, could overpower the one who is less eloquent. The researcher is also concerned that poor offenders might not be able to pay restitution, and might for that reason be excluded from the process. Care should also be taken where different race groups are involved that existing negative feelings or attitudes not overshadow the aims and goals of the session. This session usually takes place some time after the crime was committed, depending on the readiness of the participants. Ashworth (2003:164-165) submits that this process of Victim Offender Mediation could take place instead of a formal court hearing, or after the hearing before or after sentencing. Victims get a chance to ask some questions and the offender explains the crime as well as his/her own position or circumstances under which the crime was committed. Victim Offender Mediation takes place even in prison after the offender had been convicted (Umbrecht 2001:255). In overseas countries, like America, there is an increasing demand from victims of serious and violent offenses to meet with the offender. Separate meetings precipitate this meeting with the victim and offender, together with their support system.

2.19.2 Family group conferencing (FGC)

It is similar to Victim Offender Mediation, but this meeting is usually exclusive, and involves family members only. Again all parties are allowed to talk and the families decide on the appropriate sanction for the offense. In both programmes a specifically trained mediator organizes the meetings. The mediator usually arranges for follow-up, to ensure that agreements are honoured. Family Group Conferencing (FGC) in South Africa had been piloted since 1996, mainly regarding juvenile justice.

2.19.3 Victim-offender panels

Victim offender panels are usually found in the correctional environment. Groups of unrelated victims from communities usually visit correctional facilities and tell unrelated offenders about their experience as victims. This is usually done as part of group therapy and also as a result of proper preparation of all relevant parties. This might be useful in the current set-up of Department of Correctional Services where at this stage, there are no specifically trained or dedicated employees who would only focus on Restorative Justice. The general focus of people when they hear about Restorative Justice is to think about Victim Offender Mediation. Mediators need specialized training and should have the time and commitment, as well as resources to facilitate the process. This is currently not in place in Department of Correctional Services, hence the

suggestion of Victim-offender panels, which might be less taxing in terms of human resources, finances, practical arrangements, etc.

2.19.4 Diversion

Is usually a pre-sentence way of dealing with offending behaviour, which is usually applied with juveniles in conflict with the law. This is encouraged in the Child Justice Bill 2002, which promotes the use of a Restorative Justice approach as a way of keeping juveniles outside the criminal justice system. Diversion could also be one of the ways in which further overcrowding of correctional facilities could be prevented (Mubangize 2002:28).

2.19.5 Community service

This programme could be at least partly restorative, and be part of a diversion agreement, depending on the circumstances. It could also be part of a sentence imposed by the court, where the offender is not imprisoned, but as part of certain conditions does productive work for the community, at a place where there is a need, and in consultation with the victim. This is an opportunity for offenders to make amends and to restore relationships with the community; therefore the service should have personal meaning to the victim. The community needs to be actively involved for community sentence to succeed as community support through availability of employment, acceptance of the offender and crime

prevention are all important factors (Cilliers 1992:24). Lack of resources in certain communities, ignorance of court personnel, misconceptions of the public about alternative sentences and parole are some of the factors that might hamper the frequent use of alternatives to imprisonment (Cilliers 1992:24).

2.19.6 Restitution

In cases where the offender can afford, he/she pays restitution to the victim. This is usually appropriate in cases of economic crime like burglaries, where the offender could offer or be ordered to repair damages or pay for the loss of possessions. The idea is to restore the victim to the position before the crime. Compensation to the victim is a form of punishment that, like fines, probation, suspended sentence and correctional supervision, does not cause physical pain to the offender (Cilliers 1992:22).

2.19.7 Compensation

It is usually an amount paid by the state to victims of crime, whether the offender is apprehended or not. It is an official recognition of harm suffered by the victim, also to restore to the extent possible. Different countries have different requirements for paying compensation. All the abovementioned programmes usually include verbal or written apology from the offender.

2.19.8 Support circles

Support circles, initially practiced in Canada, function as a support system for sexual offenders about to be released, as well as a continued service after release. It aims to assist the offender with finding accommodation and to be accepted in the community where they are released. The circle of support consists of ordinary community members who volunteer some of their time to be available to the ex-offender when needed. The circle would also deal with difficult situations with the ex-offender, e.g. if the offender is highly stressed or at risk of re-offending. Support services would also include finding employment, dealing with rejection and stigmatization.

Zehr (2002:50-51) also describes another type of circle, which is a sentencing circle. It is formed to decide before the court case about possible recourse after a crime was committed. The decision of this circle is recommended to the court as agreed upon by the community members who had been involved in the sentencing circle.

2.20 Current initiatives in South Africa on Restorative Justice influencing Corrections

Restorative Justice Initiatives were developed in different forms and locations all over the country, e.g. the Restorative Justice Initiative is an NGO in Gauteng, which initiated a Victim Offender Conferencing project in 1999. According to

Dissel (2002:33-34) members of different communities were trained and dealt mainly with cases of domestic violence, assault, property crimes and disputes between neighbours. Courts and the police had referred quite a number of these cases. An important aspect to remember when dealing with these cases, was the restoration of balance, as the offender and victim usually functions on an unequal basis.

The Restorative Justice Steering committee had been in existence since 2004 and aims to, amongst others

- Coordinate all Restorative Justice practices countrywide, which means that these services will no longer be fragmented and un-coordinated. This could lead to better utilization of scarce resources and more effective and efficient service delivery.
- Secondly, to come up with a country report on Restorative Justice, the practices, strengths and weaknesses, linked to minimum standards to which programmes should adhere. This country report will contain information of exact locations of services and specify target groups for whom services are meant
- Highlight possible malpractices– some programmes might claim to be restorative, while it is really not, or get funding for that purpose while other activities or goals are pursued
- Potentially give guidance on which Restorative Justice model/practice would be most appropriate for a specific situation. Different Restorative

Justice programmes are more applicable in certain circumstances, depending on the individuals involved, type and severity of crime and availability of resources.

- The steering committee will rate these programmes or projects on the scale used by Howard Zehr, in terms of programmes being completely restorative on the one side of the continuum to those not restorative, or partly or potentially restorative on the other side, based on the research currently conducted. Programmes that are presented can be rated and the potential service users can then decide which would be more suitable for the specific situation.

This report will not be descriptive or downgrade programmes, but will be informative. This could prevent secondary victimization of victims who do not have to go to different service providers, being referred back and forth, without receiving any quality service.

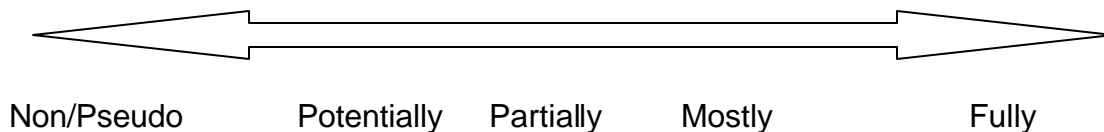
This is currently (February 2005) being researched by the Restorative Justice Centre in Pretoria, with the assistance of various stakeholders, both in government and civil society.

This research will hopefully encourage people practicing Restorative Justice to start keeping record of what they are doing, the processes that they have followed, successes and possible pitfalls. This committee is by mutual agreement

steered by the Department of Justice and Constitutional Development. Relevant government departments are represented as well as those organizations in civil society which assist either victims or offenders or both.

It hopes to write up all Restorative Justice practices and even evaluate the restorativeness there of, possibly using this model of Zehr.

A RESTORATIVE CONTINUUM



The key questions asked when using this continuum include:

Does it address harms and causes? Harms and causes are addressed if questions are asked to the stakeholders, if the harm suffered was properly restored, to take expectations of victim and offender into consideration.

Is it victim- oriented? Is the victim at all involved, was the victim given a chance to decide whether he/she wanted to be involved and is it respectful of the harms suffered by the victim as experienced by the victim, even though the material and or physical loss might not be major. Programmes in correctional centres should be subjected to this, and to rethink whether the programmes are indeed victim-oriented.

Are offenders encouraged to take responsibility? Support programmes for victims should attend to these criteria. These programmes are necessary and certainly helpful to victims, but if offenders are not involved, how will they own up to their responsibility to correct the harm done to the victim? They could only do that when they are confronted with the human consequences of the crime, when they are supported by their significant others and the community to take responsibility for the crime, to be accountable and with the necessary support decide how to restore the victim, and decide on future behaviour which will not do more harm.

Are all three-stakeholder groups involved? Restorative Justice practices require the involvement of victim and offender as well as their respective communities and support systems, even if the exact victims and offenders are not involved, groups of unrelated victims and offenders could be brought together and learn from each other.

Is there an opportunity for dialogue and participatory decision-making? Processes like Victim offender Mediation and Family Group Conferencing allow for dialogue and mutual agreements. This is especially the case in diversion of children from the justice system (Child justice Bill 2002). These processes only take place after intensive preparation of both victim and offender during which dialogue takes place as well as decision-making by the relevant stakeholders.

Is it respectful to all parties? All victims and offenders should have their rights respected, especially the right to dignity, information giving and receiving as well as access to quality service.

...simply labeling a process "restorative" does not necessarily mean that restorative justice values are reflected in that process or that restorative justice objectives are being met (Morris & Maxwell 2001:270).

In the case of Restorative Justice programmes in a correctional centre/prison, the question could be asked about the degree of restorativeness, like if offenders are taught the principles of restorative justice, without involving victims or victim representatives.

Programmes could also only be about victim impact, where unrelated victims come into correctional centres, talking about their experiences as victims, with a group of unrelated offenders. These two examples could be seen as at least partly restorative, as it contain certain elements of restorative justice. Zehr questions the restorativeness of offender rehabilitation programmes and contends that: *Offender treatment can be seen as a part of prevention and, along with offender reintegration, has some kinship with restorative justice. However, as conventionally practiced, many efforts at treatment or rehabilitation offer little that is explicitly restorative. They could, however, function restoratively, and some do, by organizing treatment around offenders understanding and taking responsibility for harm and, in addition, giving as much*

attention as possible to victims' needs. In the researcher's opinion it would be difficult to apply the principles of Restorative Justice in an overcrowded correctional situation, where resources and infrastructure to hold these sessions are severely compromised. Unfortunately, the conditions in corrections are not yet conducive for effective rehabilitation. The content of these programmes and others, like religious programmes or pre-release programmes could be potentially restorative depending on the extent to which it answers the abovementioned questions (Zehr 2002:54-57). It is clear that there are no hard and fast rules about what is restorative justice and what is not –however, the involvement of the most important role-players are once again emphasized, namely the victim, offender and community.

Finally, the relationship between Restorative Justice and Moral Regeneration is discussed. The researcher is of the opinion that these similarities are relevant to contextualize Restorative Justice as a community response to crime and the violation of community norms.

2.21 The relationship between Moral regeneration, Restorative Justice and Corrections

A Restorative Justice approach runs like a golden thread through the whole White paper on Corrections 2005. Chapter 9 deals with the needs-based correctional sentence plan and recognises the importance of strengthening relationships and

this quotation in the White Paper 2005 of Rule 66 (1) of the ***The Standard Minimum Rules on the rehabilitation of people under correction*** is applicable:

On the rehabilitation of offenders in correctional centres, Rule 66 (1) of the Standard Minimum Rules indicates:

To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his (or her) social and criminal history, his (or her) physical and mental capacities and aptitudes, his personal temperament, the length of his (or her) sentence and his (or her) prospects after release.

The restoration of relationships addresses both morals and the Restorative Justice principles. Community members with positive relationships and shared values will communicate what is important to their children; values influence overall behaviour and guide people's actions, for example to be law-abiding, if that is what is valued by the community. These beliefs and values will also inspire people to do the right thing. This relates to the high crime situation in this country. The history of the country under apartheid, poverty of the majority of the South African citizens and family breakdown, call for moral regeneration.

Both movements are small and would mutually benefit from supporting each other. Restorative Justice as part of the formal Criminal Justice System is said to be still in the beginning stages in South Africa. It is built on the African tradition of dealing with conflict, but to be part of the formal Criminal Justice System is still a new paradigm.

Leadership is a key in the development of both movements.

Leadership entails vision, values, people development and strategic alignment (Platt 2005). Communities should take responsibility to develop skills in people, so that they become self-sufficient, also develop skills like conflict resolution, communication, and others, to ensure living in peace and harmony. Restorative Justice expects communities to be responsible for keeping peace in communities.

Both movements would benefit from a nation-wide increase in awareness of morality and good positive societal values. Morals are basically those aspects that are valued by individuals in the community, based on what is valued by those who form our opinions. Children would learn to value the property and privacy of others if that is what their role models do. If people do not value something or someone else, then it becomes easier to violate that person or object. Those who offend, usually believe that they have a need that has to be fulfilled immediately. All people have needs, but the person who breaks a law to fulfill that need, lack the emotional maturity to postpone immediate needs.

They want to immediately satisfy or fulfill the need, despite the harm that might be caused to others.

Morality and Restorative Justice both have a spiritual connotation. According to Alan Platt (sermon 8 May 2005), fulfilled people have the following values: Honesty, Humility, Generosity, and Morality. Human beings all have a need to be connected in some way to a higher power, for some it's God, for others something else, but whatever they believe will influence behaviour. Restorative Justice and the Moral regeneration movement will have to tap on this to instill certain values in communities, which will be respected by all.

Both movements need to be seen in the context of socio-economic development. For example there seems to be a connection between increased immorality and unemployment. Communities and government need to make resources available for people to develop themselves, find employment and education.

Both movements emphasise the involvement of the community and looking beyond the individual for solutions. Communities have resources and infrastructure, which should be coordinated and shared to fulfill the needs of all people. Both movements hope to bring some stability to society, re-building communities and assisting communities to adapt to change.

Both movements agree that there needs to be an increased level of community debate about justice. Restorative Justice acknowledges the important role of victims and offenders, but most importantly of communities in dealing with the aftermath of crime. Communities are responsible to support and guide victims and offenders on how to restore relationships, communities are important to reintegrate these parties back into the community.

The White Paper on Corrections (2005:90) postulates that successful reintegration is the ultimate end result of successful rehabilitation, which is only possible when social development, and moral regeneration took place. The White Paper furthermore promotes moral regeneration referring to promotion of ethics as enshrined in the South African Constitution (Act 108 of 1996) a transformed community and a spirit and practice of goodwill amongst offenders and communities (White Paper on Corrections 2005:40).

These sentiments about moral regeneration are echoed by the Ten point Plan of the department of Social Development in its efforts to rebuild family life, communities and social relations. Restoration of ethics, care and human development in all programmes require an urgent rebuilding of family, community and social relations in order to promote social integration.

2.22 Summary

Restorative Justice clearly means different things to different people depending on the culture, background and circumstances in which the crime took place. Other factors like the seriousness of the crime and the extent of healing would also play a role in people's readiness to take part in the Restorative Justice process. It should be borne in mind that Restorative Justice is a philosophy, a set of values, which will determine how to deal with the aftermath of crime, and in some instances to prevent crime or at least reduce the rate of re-offending. These aspects and how other countries deal with crime in a restorative way will be dealt with in the next chapter.

Imprisonment is clearly a harsh option in dealing with crime and its aftermath. Imprisonment should be used sparingly and only those people who are involved in serious violent crime, and who pose a real threat to the safety of the community should be incarcerated. This will have a significant impact on prison overcrowding as well as on rates of re-offending, as the smaller number of people in correctional centres might benefit more from rehabilitation programmes in correctional centres. Rehabilitation efforts do not seem to be effective in preventing re-offending at this stage, partly because of overcrowding and no possibility of individual attention to offenders' problems and reasons for offending. Diversion, as a Restorative Justice programme could be an effective

way of dealing with overcrowding on its own or with alternative forms of sentencing (Mubangizi 2002:29).

This chapter also focused on how communities over the times, dealt with conflict and Christie's notion that conflict belongs to the people, are relevant (Christie in Roche 2002:4). He furthermore contends that the judicial system "steals" the conflict from the community denying them to deal with it in a way that would work for them. Christie goes on in saying that "conflicts as property" should be returned to its rightful owners. Victims should be paid, instead of the state taking the fines that offenders pay. The victim of crime already lost materially, was hurt physically and or emotionally and because of the state taking over, also loose control over his case. Court cases are referred to as "the state versus the offender", without any reference to the victim, although the state has not necessarily been hurt.

In this chapter the researcher focused on the philosophy and fundamental principles of Restorative Justice as a basis for the dissertation and to ensure common understanding. The development of Restorative Justice in South Africa as well as the differences between Restorative Justice and Retributive Justice form the groundwork of why Restorative Justice as philosophy is gaining popularity both in South Africa and the international arena.

The background of Restorative Justice was going to be incomplete without having emphasised the role of ancient penal practices, reference to biblical times, and finally the development of certain punishment models that were in place in certain era's during history. A brief overview of current initiatives in South Africa concludes this chapter and will be followed in the next chapter by international trends in Restorative Justice.

CHAPTER 3

INTERNATIONAL TRENDS: RESTORATIVE JUSTICE IN OTHER COUNTRIES

3.1 Introduction

Restorative Justice practices in different countries are basically a combination of traditional and modern practices and had been informed by indigenous and customary responses to crime (Van Ness, Morris & Maxwell 2001:4). What is a common thread throughout the different practices is the involvement of key stakeholders, namely victim, offender and community as professed by Marshall in (Van Ness et al 2001:5) that Restorative *Justice is a process whereby all the 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.*

What makes the definition of Restorative Justice difficult is the fact that it is practiced differently in different communities, although the Restorative Justice principles are applied. This makes provision for innovation where the needs of communities and unique features and cultural practices are taken into consideration. Despite this, there is still the common understanding that victims, offenders and the communities take a central role in Restorative Justice and dealing with its conflicts.

Restorative Justice proponents like Sterling (2004:51) criticise the modern justice system because of its impersonal, formal and bureaucratic way of dealing with crime and drug addiction in the life of an offender. More than just the life of an individual is touched by imprisonment. The incarceration of an individual does not teach him/her to be accountable, as he/she cannot care for families while in prison, but it does impoverish families, impoverish relationships and eventually impoverish a culture (Braman 2004:27). Restorative Justice recognizes the personal harm, the personal dimension of crime. This implies that the role of the victim, offender and their respective families is acknowledged. However, it is necessary to realize that not all informal processes are necessarily restorative. According to Findley in (Roche 2004: xii) informal justice could be cruel, oppressive and even violent. Here the community courts in South Africa, which at some stage became kangaroo courts, could be noted.

This chapter will focus on different forms of Restorative Justice being practiced by indigenous and westernised communities as an effective way of dealing with conflict. It has been practiced over the past 25 years in Australia, Canada, England, Wales and New Zealand (Van Ness, Morris & Maxwell 2001:4). Sanctions and actions taken are based on the cultural background and familiar practices in that specific community. Community members used to know what to expect when an offense was committed, as people grew up with these customs. In Africa for instance a rich culture of story telling is found which date as far back

as story telling can go. Generations followed practices that were taught by generations before them.

Restorative Justice is not necessarily an alternative form of justice, rather it is a combination of practices that work for certain communities based on its needs, traditions, cultures, norms and religious practices. The most basic feature of this form of justice is the more prominent role given to the needs of victims in the process to resolve conflict and to deal with “healing the wounds of crime” (Zehr 2002:28).

Recent developments in Restorative Justice no longer view reconciliation and forgiveness as the ultimate aim of Restorative Justice. Even in African indigenous law reconciliation was not always the focus if the parties involved were strangers (Roche 2002:520). However, those are still desirable outcomes, but offender accountability and taking responsibility for harms done are even more valued. In indigenous countries the victim and offender used to be from the same community and all understood common practices of dealing with crime. Currently, because of industrialization, communities are fragmented and not necessarily bound by the same norms and values. In these cases Restorative Justice is practiced in a modern way, but the basic philosophy and principles as explained in chapter 2 would still be applicable. The disadvantage of some of the indigenous practices was that in patriarchal or matriarchal communities overpowering of one of the parties was possible, also in the case of minorities or

lower class groups there could easily have been a power imbalance. Griffiths (1999:291) professes that the rights of women have also not always been respected, because of traditions in specific communities. Restorative Justice is about restoring the balance, and in relationships of physical and sexual abuse the relationship is totally unbalanced and one of disempowerment of the victim.

The Criminal Justice Systems of New Zealand, Canada, the United States of America, Belgium and South Africa are discussed with reference to the legal family, characteristics and similar features. The following aspects will be dealt with: Judicial process, penalties, prison/Corrections, Training and staff – prisoner ratio. These aspects have a bearing on the Restorative Justice system and the involvement of the relevant parties, namely victim and offender, as well as communities. Restorative Justice is also concerned about what happens in the police sections and in courts directly affect both victim and offender, and decisions of Parole Boards also directly affects victims and the safety of communities. The legal families that are distinguished are: civil law, common law and socialist law.

The same headings for discussion of different aspects of Restorative Justice in the different countries will not necessarily be used, as the intention is not to compare Restorative Justice practices. The idea is only to briefly refer to what is in the researcher's opinion the most relevant to the study. The researcher will furthermore attempt to show where appropriate, how Restorative Justice is

practiced in correctional facilities, which might not be the case in all the countries under discussion. These discussions are not in any way exhaustive or representative of the scope of what really happens in the Restorative Justice field in various countries, and do not claim that. It merely confirms that Restorative Justice is gaining ground in the justice systems by returning to the ancient practice of victim focus to restore the balance that was disturbed when a crime is committed.

3.2 Background Information of the Criminal Justice System

The Criminal Justice System of a country is not its legal system. The Criminal Justice System as we know it had its origin in the United States during the mid 20th century. The first school of Criminal Justice started in New York at Albany in the 1960's. Beccaria's famous treatise "On Crimes and punishments", focused mostly on administration of criminal justice and not on causes of crime. In this sense he is the "father" of criminal justice, much like Lombroso is the "father" of scientific criminology. The scope of criminal justice is broadened by the variety of options in dealing with crime, like diversion, treatment of offenders, Family Group Conferencing, Victim Offender Mediation and the different types of offenders and offenses. The demands of the state produce the basic structures of Criminal Justice Systems and not the Legal system or law per se.

It must be kept in mind that system in this sense is not exactly the same as system in the general sense, which consists of different parts, which all play a role in achieving one goal. The different parts of the Criminal Justice System are not necessarily dependent on each other and might even have different and conflicting goals. One generally thinks or assumes that the police, courts and corrections would be working towards the same goal, but these goals might be conflicting (Bumgarner 2004:7-8). Corrections might have treatment, or like in the case of South Africa, correcting of offending behaviour of offenders as a goal, which might be hampered by the courts sending more and more offenders. This leads to overcrowding, which renders the goals of treatment, rehabilitation, and or correcting of offending behaviour virtually impossible. The police might also feel that the court's decision not to prosecute, for whatever reason, is counterproductive to their efforts to apprehend offenders. The three (3) most important parts of the Criminal Justice System are the Police, Courts and Corrections. The South African minister of Justice, Ms Mabandla announced that major changes are in the pipeline for the country's Criminal Justice System to make it more effective and to enhance better cooperation between the different components of the Criminal Justice System (SABC news Morning live 25/05/2005).

3.3 Families of Law (Civil law, Common law and Socialist law)

Civil and Criminal Justice System in South Africa are primarily Roman Dutch law, but also influenced by British and continental systems (Skelton & Potgieter 2002:478).

In this section the researcher will explain the different families of law. This is deemed necessary to give a background to the reader in order to understand what informs the legal procedures of the different countries that are discussed.

3.3.1 Civil Law

Civil law refers to the Romano-Germanic family of law where rules of law are intimately linked to ideas of justice and morality. This family gives special importance to enacted legislation in the form of “code” (David & Brierly 1968:22).

3.3.2 Common Law

Common law is historically English and emerged after the Norman Invasion in 1066. It is premised on the notion that judicial decision seeks to provide the solution to a trial rather than to formulate a general rule of conduct for the future. It is much less abstract than civil law (David & Brierly 1968:24).

3.3.3 Socialist Law

Socialist law is strictly subordinate to the task of creating a new economic structure. Ambition is to return to society and create the conditions for a new social order in which the very concepts of state and law will disappear (David & Brierly 1968: 26).

3.4 NEW ZEALAND: Criminal Justice System

3.4.1 Political System

Although the political system has a British heritage, it developed its own distinct identity. It is linked to Britain by the retention of the monarchy, but is governed by Westminster-style parliamentary system. It has a unicameral legislature.

Most governmental organizations function on national level. The social and political culture is described as a liberal democratic one, with the following ideals: democratic representation, rule of law and open scrutiny of and restriction upon government power. It is based on the protection of civil liberties, maintenance of law and order and preservation of an egalitarian ideology that underpins much of New Zealand's social and political life.

3.4.2 Legal system

The court structure is a three-tier hierarchy of District, High court and Court of Appeal. Consistent with the common law heritage, criminal trials are primarily adversarial in nature. Extensive police pre-trial diversion is characteristic.

Youths under 17 are dealt with under the Children, Young Persons and Their Families Act of 1989. This new system is largely non-adversarial in nature. Young offenders are dealt with outside of the court system in an informal justice process, where participation of victim and offender, families and community are encouraged (Maxwell & Morris 1993).

3.4.3 History of Criminal Justice System in New Zealand

The Criminal Justice System has its foundation in the British colonization of New Zealand, which culminated in the signing of the Treaty of Waitangi, between the Crown and many of the indigenous Maori chiefs in 1840. The criminal law has been codified since the Criminal Code Act 1893, so that all substantive offences are contained in legislation.

3.4.4 Objectives of the Criminal Justice System

To protect the community from violent offenders, to create a more cost effective Criminal Justice System with an increased emphasis on community participation

and decision making, to provide for the needs of victims through the sentence of reparation, and to discourage the use of imprisonment for property offenders and other minor offenders (Galaway & Spier 1985: 22).

3.4.5 Age of criminal responsibility

According to Winterdyk (2003:xxv) the age of criminal responsibility is 10 years, however in terms of the Crimes Act of 1961 and the Child, Youth and their Families Act of 1989, a child between 10-13 cannot be prosecuted for any offense other than murder and manslaughter and cannot be convicted for murder or manslaughter unless he/she knew either the act or omission was morally wrong or that it was contrary to law. Prosecutions of children under the age of 14 are very rare.

3.4.6 Prison system in New Zealand

New Zealand has 20 separate penal institutions and 2 incorporate separate corrective training institutions for youths between 16 and 19 years of age. There are 3 female prisons, but one houses male prisoners in a separate wing because of the decline of female prisons in the last few years. The average daily prison population was 4 512 during 1993, which represents 133 per 100 000 of the population. 142 of the prison population in 1993 were females, which represent 3.2% of the total prison population. It also shows an over representation of

Maori's in the Criminal Justice System (Winterdyk 2003:xxv). The New Zealand Maoris is only 15% of the population, but represents 43% of the prison population. Cilliers (1993c: 23) postulates that an important objective of the penal system is to hold prisoners in humane conditions and to ensure public safety.

3.4.7 Staff – offender Ratio

The corrections department employs 2600 staff, of which 1700 are prison warders. The staff – offender ratio is 1:2.6.

3.4.8 Training of warders

No special qualification is required, but potential warders have to pass a pre-entry examination on basic arithmetic, literacy and comprehension. Six weeks of in-prison training is offered.

3.4.9 Background Information on Restorative Justice in New Zealand

The first programmes on victim – offender reconciliation in New Zealand started in 1989. Aboriginal communities practiced Restorative justice when dealing with conflict among themselves. Indigenous Restorative justice was repressed in New Zealand by European colonialisation while retributive justice was advanced.

Dispute resolution in New Zealand mainly took the form of family group conferencing where victim and offender, as well as respective family members would come together to deal with the aftermath of crime, and try to find a solution (Naude 2003:1-9). New Zealand seems to be taking the lead with the most developed Restorative Justice and mediation programmes, from which other countries are learning or taking guidance and seem to have quite an advanced system of mediation programmes (Braithwaite 1998:4). It is the opinion of the researcher that this might only be the case regarding Family Group Conferencing (FGC). More information about this form of Restorative Justice will be provided later in the chapter.

3.4.10 Education in New Zealand Corrections

According to Halstead (1999:50) the following principles might produce positive results in adopting a Restorative Justice approach in education in a correctional environment:

- Include students in democratic decision-making
- use a “family group conference” response to misdemeanors
- include institution staff in the process
- create an environment where change can happen
- avoid threats of punishment
- use the least amount of authority possible
- not all offenses will suit this approach

- reinforce all attitude changes

Correctional staff should remember that treating people as if they are responsible, often lead them to act in a responsible way (Halstead 1999:50). Offenders usually realize that they are in prison because of trust that they violated. Often people are sentenced and judges would refer to the position of trust that they have occupied in the community and also refer to expectations from the community. In prisons one finds people who never took responsibility for their own lives, but you also find those who were breadwinners in families, and are supported by their loved ones, because of what they have done for the family. These people are now offenders, but have not lost their roles as fathers and care takers. They need to know that they are trusted. They are “paying” for the wrong they have done, and needs to be supported to be able to once again become trusted members of the society. If however, they are not trusted in prison where they spend a significant amount of time, if they are “brainwashed” to believe that “a prisoner will always be a prisoner”, then it would be extremely difficult for them to believe otherwise when they are released. This, in the researcher’s opinion goes together with labeling. Restorative Justice wants to do away with stigmatisation, but offenders wearing clothes which lable them as prisoner, everyday, for a number of years, create the perception that they can be nothing more. The researcher is of the opinion that it is a contradiction in terms to lable someone as a no good, and the following day when he is back in the community, to expect him to be some one who is respected and has self-respect.

3.4.11 Family Group Conferencing

Restorative Justice in New Zealand and other countries like South Africa, Canada, etc. got started as a result of work that was done with juveniles in an attempt to keep them out of the criminal justice system as far as possible.

The researcher will now focus on some progressive legislation and policies in this regard as well as ways in which cases against juveniles are handled.

The Children, Young Persons and their Families Act of 1989 (CYP & F Act) came into effect on 1 November 1989 (Winterdyk 2002: xxv). The aim of this act was to deal differently with young people who broke the law, compared to those young people in need of care. It also made a paradigm shift in its approach to crime issues by no longer dealing with it in a “welfare” type of approach, but rather in a justice approach. This implied that the causes for crime are investigated, the family/community is involved, the rights of victims are acknowledged and the juvenile offender is involved and his/her rights protected.

3.4.12 Revised policy

Some legislative amends were made to the Act as a result of the flaws that were discovered. Attention had to be paid to the vulnerability of the young people, because of their age, certain limitations pertaining to arrest were introduced, but

more importantly, diversion had been revisited. Previously it used to be a body consisting mainly of professional and co-opted members of the community, who acted as quasi-judicial. The solution, Family Group Conferencing, as part of policy, limited arrests, eliminated the quasi-judicial procedures, was not susceptible to net widening and had restoration of harmony as primary goal.

These goals moved away from the adversarial method of working, had the potential for creating better relationships, as it moved from the confrontational atmosphere of courts to the less formal approach of Family Group Conferencing (FGC).

3.4.13 Outcomes of the Act

The following are the intended outcomes or goals of the Act regarding how to deal with young people in conflict with the law

- Diversion, to keep the young offenders out of the system for as long as possible. This is similar to what is being practiced in South Africa by non-government organizations, such as National Institute for Crime prevention and Reintegration of Offenders (NICRO). The South African Child Justice Bill 2002 also promotes diversion as first and preferred option of dealing with young people in conflict with the law. Diversion in essence means protecting the child from the harsh

realities of the Justice system, by dealing, where possible, with the young offender and victim in the community. In South Africa diversion is not yet fully operational, as it depends on referrals from court or police officers that believe that Restorative Justice can work. Diversion is usually coupled with Victim Offender Mediation or Family Group Conferencing where family members and other support systems of both victim and offender are involved.

- Accountability, to make sure the young offenders take responsibility for their actions and try to repair the harm to the extent possible. During the process of Restorative Justice (which usually includes dialogue, preparation of all parties, Victim Offender Mediation or Family Group Conferencing) the victim and offender are given the opportunity to engage in a discussion about the crime. The victim's input is crucial in letting the offender understand the human impact of the crime. The young person might have thought that taking some electronic equipment might not harm rich people, but during encounter he might learn about the effect on the children e.g. having nightmares, or an elderly person being anxious, or the family deciding to move, with all the stress related to that. The young offender might not be able to pay restitution, but together with his support system might decide to repair damage, or do community work that would mean something to the

victim. Being accountable implies taking responsibility, which can go a long way in starting the healing process in the victim.

- Enhancing well-being and strengthening families as the support system to the young person. During Family Group Conferencing or Victim Offender Mediation the family and or support system of the young offender is present. They realize the effect that the crime had on the victim. They might also realize the effect their role modeling had on the offender. Families might now become closer in dealing with this problem, and deciding as a unit how to deal with the problem, and to prevent a criminal career from developing. Older family members might be willing to make resources available to the offender to improve his education or work opportunities.

- Protecting the rights of these young offenders is necessary, as the idea of Restorative Justice is also to restore the offender. Offenders should also not be victimized by the process, or humiliated in any way. It is possible that older, richer more eloquent victims might be able to force or convince a young insecure offender to do certain things against his will or to agree to something that might ultimately not be able to deliver on (Griffiths 1999:291).

- Ensure that victims become involved and that their rights are protected as well. For any Restorative Justice process to be inclusive and fully restorative, all relevant parties, namely victim and offender as well as communities need to be involved. The process must be voluntary for all parties. A trained mediator will contact the victim about the proposed plan of action, and do proper preparation if the victim is interested to be involved. However, the victim's choice not to be involved should be respected. Should the victim decide to take part in the process, then the mediator should make sure that the victim is not attacked, even verbally by the offender, or made to feel that he/she contributed to his/her own victimization.

- During Family Group Conferencing seek consensus on how to handle the aftermath of crime and what needs to be done in future. The Restorative Justice process is not a court case. The idea is not to get a guilty verdict or to prove that one or the other party was right. The Family Group Conferencing only takes place after extensive preparation of all parties and the mandate is clear: to deal with the harm done by the crime. That implies that the offender already takes responsibility for having committed the crime. Both parties come to tell their stories, and the meeting to agree upon a way forward to repair the damage to the extent possible.

- Taking culture into consideration in dealing with each case in terms of problem solving and obtaining services. In ancient times, before the onset of the Roman law, the victim was central in the discussions on how to deal with crime. Communities then used to be much smaller and close knit. The elders in the community would deal with the crime in a way that is known to, and expected by all in the community. The outcome of this meeting, where community members were involved, and had a chance to speak, would generally be the will of the community. The meeting would not deal with crime and punishment outside of their cultural boundaries. However, with industrialization, families and communities became fragmented. In cities there are no sense of shared values. Young offenders might act according to what they grew up with, which might differ vastly from the norms and values of the victim, and often of the mediators. Mediators should be mindful of these factors.

This Act changed the approach to Youth Justice in New Zealand, which led to remarkable success in reducing the number of juveniles in secure care facilities. In South Africa the Child Justice Bill also proposes some important changes in the way justice deals with juvenile offending, and even makes provision for “other forms of Restorative Justice” implying that initiative can be used in dealing with different cases, depending on background, culture, social norms, etc. More information on this will be provided in the next chapter.

3.5 CANADA

3.5.1 The Criminal Justice System in Canada

Canada is a federalist country and a member of the British Commonwealth. The country is divided into 10 provinces and 2 territories, which are run by a parliamentary democratic government in which executive and legislative power is split between the central and provincial units. Responsibility for various parts of justice is shared and divided among the federal, provincial and municipal levels of government. The 2 territories receive power from the federal authority and the 10 provinces governments may grant certain powers to the local or municipal government.

3.5.2 Legal system

The legal system of Canada uses an inquisitorial process in some proceedings; an adversarial process is used for both civil and criminal trials. In civil cases the plaintiff is in court, while in criminal cases a prosecutor would represent the plaintiff.

3.5.3 History of Criminal Justice System in Canada

The Criminal Justice System emerges from two traditions: Roman law and English common law. The New France was established in 1664 in accordance with the laws of the English mother country. English common law came to Canada via the English settlers and was partially introduced into Quebec through the conquest (1763). Today civil law in Quebec is based on the Code Civil du Quebec, which is derived from the French code Napoleon. In other Canadian provinces civil law is based on the English common law (Van Loon & Whittington 1976:160).

3.5.4 Age of responsibility

Under the Young Offenders Act of 1985, the age of adult culpability is 18 years.

3.5.5 Prison system in Canada

In 1990 there were 221 small adult prisons with a capacity of between 100 and 499. There were 162 provincial prisons, including jails, 2 municipal prisons and 59 federal penitentiaries, all these institutions house maximum and minimum prisoners. The annual admissions of prisoners are 114 818, of which 9 551 are female. 4296 were admissions to penitentiaries. Canada has no private prisons.

3.5.6 Staff – offender ratio

During 1990 there were 1930 officials in management and 11 955 custodial officials.

3.5.7 Training of warders

Generally community college or degrees are required. They also have to participate in local training programs of 6 weeks class and in-service training according to a buddy system. Training is an on going process.

3.5.8 Mission statement of Correctional Services in Canada (CSC)

The Correctional Services of Canada, as part of the criminal justice system and respecting the rule of law, contributes to the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.

This Mission reflects what all communities want: a place where families can raise children in safety, a place where the rights of victim and offender can be viewed in balance in a respectful manner. CSC's Mission views the safe reintegration of offenders as the best and most effective means of ensuring a safe community.

CSC recognizes the important role of the community in accomplishing this.

3.5.9 Background Information on Restorative Justice in Canada

Restorative Justice formed an important part of the justice system of aboriginal communities like New Zealand and Canada (Roach 2000:256). Canada seems to have taken the lead in implementation of alternative justice policies (Griffiths 1999:1). The first programme of victim-offender reconciliation started in Kitchener, Ontario in Canada almost 30 years ago. Two probation officers got permission from the court to take the juvenile offenders to their victims. They admitted committing the crimes, apologised and also obtained cost estimations and repaired the damage (McCold 2001:43).

By the end of the 1990's there were about 100 victim-offender programmes running in Canada. It is now practiced in many other countries worldwide, with different emphasis; some call it Victim Offender Reconciliation Program (VORP). A number of Restorative Justice programmes will now be discussed, and according to Griffiths (1999:280) all programmes have been designed to suit the needs of the specific community for which it was developed.

3.5.10 Community Conferencing

Community conferencing is practiced in Canada, based on what the Maori's in New Zealand refer to as Family Group Conferencing. Community conferencing allows the participation of supporters of both victim and offender, who are not

necessarily family members. The purpose of this meeting is to create better mutual understanding, reach an agreement and prevent future offending (Griffiths 1999:283).

3.5.11 Circles of Support and Accountability

This is a community reintegration initiative where volunteers of communities offer support to sex offenders, before their release from prison, and also assisting them with re-integration after release. The main aim of this project is to reduce the rate and risk of re-offending. This project was piloted in Mennonite, Ontario and also intends supporting victims in their journey to healing. This project requires the cooperation between police, professionals, communities, victims, offenders and Correctional services in Canada. The offender is held accountable, but is at the same time offered a safe environment in which to re-integrate back into a community, with his human rights being respected.

3.5.12 Restorative Justice Coalition

The Restorative Justice Coalition had its origin in 1998 when chapel volunteers, Correctional Services, offenders and community representatives came together to talk about what Restorative Justice could mean for victims, offenders and communities, and explored the possibility of addressing the aftermath of serious crimes. This initiative was brought on by the realization that the justice system

was not effective. The Coalition aims are rehabilitation, representing communities, balance needs of offenders and victims, restore cohesion, arrange restitution and repair the harm created by crime.

3.5.13 Healing Lodges for Aboriginal offenders

A number of these lodges exist since the late 90's to specifically deal with the needs of Aboriginal offenders in Canada. This is an initiative of the Canada Correctional Services. Services to offenders are based on cultural and traditional practices, and allow the involvement of their communities, elders and even facilities for children to stay with their mothers. The offenders are allowed to work outside of these lodges and are carefully selected.

The focus of all the lodges is mainly on preparation for release and to make re-integration easier. Spiritual aspects are emphasized, as well as taking responsibility and being accountable to victims and communities. The rationale behind the creation of these lodges has to do with the imbalance of the prison population in Canada. Statistics showed that Aboriginal people are dramatically over represented in prisons. The Aboriginal people only represent 2% of the total Canadian population, yet 17.8% of the prison population is Aboriginal people. The Canadian Correctional Services also found that prison programmes do not work with Aboriginal people and that they respond much better to programmes presented by their own people. The programmes deal with healing on spiritual,

emotional, mental and physical level, based on an individualised healing plan, which in some instances is also called a personal life plan.

There are separate lodges for males and females, which are build inside their communities. Even the construction of some of these lodges represents the worldview of the Aboriginal people.

3.5.14 Legal framework in Canada

Sections 81 & 84 in the Corrections and Conditional Release Act govern the involvement of Aboriginal communities in federal corrections. This encourages Aboriginal communities to become active partners in the rehabilitation of Aboriginal offenders.

The Law Commission of Canada states that Restorative Justice is based on the principles that, crime is a violation of a relationship among victims, offenders and the community, restoration involves the victim, the offender and community members and that all parties should reach consensus (Naude 2003:1-9). It is encouraging that these important components of Restorative Justice are acknowledged by the formal legal system. This would hopefully make application of Restorative Justice, which is practiced mainly by the informal system, more accessible for these important role players.

3.6 UNITED STATES OF AMERICA

3.6.1 Background of the Criminal Justice System of the United States of America

There is a complex relationship between the Criminal Justice System and the legal systems. The Criminal Justice System in the United States of America has its roots in the English common law. The diversity in the Criminal Justice System is held together by political structure of the United States federal System of government. The Federal Law enforcement agencies are responsible for the investigation of the violation of federal laws in the whole of the United States. According to Senna & Siegel (2001:118) no single agency has unlimited powers and enforces only the laws and reports to a specified government department. The Criminal Justice System is also based on the Constitution of the United States of America and the philosophical rule of law (Black 1990:1332). The Criminal Justice System does not necessarily address the informal, traditional or customary way of dealing with crime. It focuses mostly on the formal application and on nation-states, not cultures.

The American Criminal Justice System is more decentralized than the Criminal Justice System of South Africa. In South Africa there is only one police department, while the United States of America has various autonomous police departments. America consists of 50 states, each with its own independent

Criminal Justice System. The overarching goal, according to Cole and Smith in Bumgarner, is to do justice (Bumgarner 2004:8). The two values of the Criminal Justice System in America is crime control by ensuring efficiency, speed and finality in prevention, apprehension and punishment of offenders. The second value is due process, where the Criminal Justice System is based on fair and reliable information about the crime. This value emphasises an adversarial process where the rights of the defendant are protected. It is also characterized by formal decision making and following of procedures.

3.6.2 Restorative Justice in the United States of America (USA)

Restorative Justice as a philosophy looks at creative solutions to justice problems, as is clear from the “circle sentencing” practice in Native America. It again emphasizes the involvement of communities in dealing with crime in innovative ways that are acceptable to that specific community. It implies that inputs are sought from schools, community organizations, families and individuals with an interest in the victim and or offender.

Umbrecht says that Restorative Justice and Victim Offender Mediation are normally associated with non-violent crimes. It would appear however, that victims of violent crimes are increasingly interested in Victim offender Mediation, as is indicated by the long waiting list of parents of murdered children in Texas USA for Victim offender Mediation. It would seem that these grieving secondary

victims get a sense of closure once they were able to tell the offender about the hurt and pain, and for some, to get answers from the last person who saw their children alive (Umbrecht 2001:256).

In the state of Pennsylvania at the State Correctional Institute, a Victim-Offender Reconciliation Project is in place, which seeks to:

- Encourage inmate participants to take personal responsibility for past crimes
- Enable inmates to learn the actual consequences of crime for victims
- Help all participants understand crime in a context of restorative justice
- Enable victims and offenders to interact in an educational setting
- Help inmates and victims move toward mutual understanding and healing

Umbrecht (2001:255-311) refers to work being done within the Restorative Justice paradigm inside correctional facilities with violent offenders. This is referred to as advanced mediation and dialogue in crimes of severe violence and the model is Victim-Sensitive Offender Dialogue (VSOD).

The process of preparing both victim and offender is obviously relatively long and could be anything from 9 months to 2 years. The mediators would need longer training specifically to deal with the more difficult and emotional cases. The training would also deal with any negative feelings of the mediator, as well as attitudes and biases.

Victims request to talk to the offender is followed by thorough screening of both victim and offender, but victims are eventually allowed to express their feelings and let the offender understand the impact of the crime on their lives.

The following should be kept in mind during this process:

- Forgiveness is a possible outcome, but should not be the ultimate aim of the session
- Expectations of both victim and offender should be dealt with during the preparation phase
- The process should be voluntary on both sides
- Separate meetings should be held with both parties prior to the mediation
- Debriefing is necessary both before and after the session
- Follow-up could be done separately or combined, to make sure the contract is honoured and if any other issues need attention, or if referral for other services is needed
- The mediator should be mainly on the background during the session, allowing free flow of communication, yet know when to intervene to prevent victimization of either party
- Allow for repetition of certain information
- The outcome should be accepted
- Allow for some form of closure depending on the need of the parties.

The abovementioned are very important issues and should be provided for in Correctional services policies. Correctional services should have procedures in place on how to respond when victims request a meeting with offenders. The South African Correctional Services does not yet (at this stage) have official policy available for these types of requests, although the Service Charter for Victims of Crime (2004) makes provision for this right of victims.

3.6.3 Prisons/ Jails in the United States of America

The United States has two types of facilities, jails and prisons. Jails are used for offenders with a sentence of 12 months or less, and prisons house offenders with a sentence of more than 12 months. They distinguish between federal and state prisons. These facilities are overcrowded, compared to for instance South Africa, where in United States of America 600 per 100 000 people are in prisons and in South Africa 265 per 100 000.

3.7 BELGIUM

The offender population in Belgium has increased, as is the case in most other countries, including South Africa. During the 1980's the offender population stood at 6000 and went up to 8500 in the following ten years. The Correctional system in Belgium, in cooperation with tertiary institutions, launched research

and pilot projects in some prisons, in an attempt to address the crime situation and dealing with the aftermath of crime.

3.7.1 Restorative Justice in Belgium prisons

The researcher will describe the process, which is referred to as “restorative detention” which was piloted in 6 Belgium prisons since 1998. Two years after that, in 2000 this restorative detention project became part of the correctional policy which implies a general restorative approach in all correctional facilities. The background of this project is relevant for better understanding for its existence and apparent success. The project was born from the realization that imprisonment does not solve the problem of crime, and that it should be the very last resort. Where imprisonment is unavoidable, the important stakeholders, namely the victim, offender and broader community should be involved and engage in effective problem solving. Restorative Justice is practiced in Belgium prisons also with serious or severe cases (Hagemann 2003:223).

Objectives of imprisonment

- ensuring safe and dignified imprisonment
- preparation for integration
- prevention of relapse

This new direction or paradigm shift in corrections was brought about in 1996 with the *Orientation Memorandum on Penal and Prison Policy*. This pilot project started in 1996 and was part of the correctional policy.

Like the South African National Crime Prevention Strategy (NCPS), the Restorative Justice approach and victim empowerment were initiated as a result of high crime rates. In the case of Belgium, it was initiated by researchers in Penology and Victimology initially aimed at the prison system in general as well as punishment. This led to the interest in Restorative Justice. Victimological research was conducted about violent property crime and since 1986 a more victim oriented approach was taken. The marginalisation of victims was the focus of these studies.

3.7.2 Purpose of the Restorative Detention project

This project aims to look at how punishment in general and imprisonment in particular could contribute to a balanced approach to all the relevant stakeholders in addressing their needs.

The following concepts had to be kept in mind:

The prison community as a whole had to be taken on board, including the prison staff. It was necessary to properly train them, and also involve service providers in communities in these training sessions. Staff working with offenders and those

working with victims came together and shared experiences. This led to better understanding of each other's frustration, problems, etc, and created better working relationships.

Like in the South African situation campaigns were held where initially staff were informed and trained, after which it was rolled out to offenders. The training of offenders in Belgium took various forms and the content of programmes were adjusted several times, also to include the experiences of victims. Staff working with victims was also invited to give information to offenders and staff working inside prison. Video material, books, films and other equipment were used to bring across the experience of victims. Offenders were also able to write letters to victims or enter into dialogue with them, depending on the circumstances. Offenders who participated in the various courses were carefully selected and screened, depending on the content and intensity of the courses. Offenders were led to take responsibility for their actions and develop victim empathy. The project was never done in isolation, and the community was actively involved. Part of these courses would also focus on offences suffered by offenders, creating opportunities for them to deal with these feelings.

What makes this project unique is the attention to the financial position of offenders. They were encouraged to work, the prison has to create the conditions conducive for them to work in the community and earn money in order to repay victims. A fund, run by a non-profit organization, was established, that

would screen applications from offenders. In line with the spirit of Restorative Justice, it would pay half the compensation to the victim, to give effect to the “symbolic” restoration. It was accepted that no amount would really fully replace the loss the victim suffered, especially in losses of high sentimental value.

3.7.3 Community involvement

As already mentioned, people working with victims in communities attended training with prison staff. Volunteers from external organizations came into prisons interacting with offenders in order to break down the barrier between the inside and outside world.

3.7.4 Prison conditions

Despite these changes in the services to offenders, the prison conditions remained relatively poor. Old buildings, overcrowding and often inhumane conditions, like lengthy periods of lock up, up to 20 hours per day and increasing prison population, also confront the Belgium Correctional system. The application of Restorative Justice in correctional facilities is in line with what Kay Pranis (1996:6) has to say about Restorative Justice *the concepts of restorative justice are not limited to offenders in the community. Although most corrections professionals recognize the necessity of secure custody for serious violent*

offenders, even these cases lend themselves to the application of restorative principles.

Offenders in secure custody can still participate in community service through projects such as bulk mailing assistance. If offenders in custody are provided work opportunities, they can pay off their restitution. Victim-impact panels and victim empathy classes are perhaps even more important for offenders in prison.

3.8 SOUTH AFRICA

This part of the dissertation is just a broad overview of South African practices, The next chapter will deal with Restorative Justice specifically in the South African correctional environment. Traditionally, the African people made use of traditional courts, which according to Skelton & Frank (2001:104) focused on problem solving rather than allocating blame. They would handle their own disputes or conflict amongst themselves in an informal way, which was known and accepted to the community. Both victim and offender were involved; they were able to address the court. Family, friends and any other interested parties were allowed, even to address the court. The outcome of the hearing was a joint decision accepted by everyone present. It is similar to the aboriginal traditions in countries like New Zealand (Skelton & Frank 2001:104).

Consedine (1999: 177) researched the African cultural and traditional way of dealing with crime. It is clear that those cultures emphasised the group rather than the individual. When crime was committed to an individual, the family had to be compensated. The families or tribes came together, and reached an agreement about compensation to the family of the victim. There after they had a meal together, allowing the offender back into the community.

In traditional African society, legal proceedings used to be managed by communities, usually the male leaders in a tribe or family group. The aim of these meetings (after conflict occurred) was to reconcile the parties and restore relations within the community. The restorative approach is still practiced today, in amongst others, the Eastern Cape by the Thembu people. They practice a philosophy of healing and reconciliation. These practices remained relevant to certain communities in some or other form, despite a history of colonisation 400 years ago (Kgosimore 2002:69-75). Schreiner from the Department of Correctional Services refers to the history in the way in which South Africans traditionally dealt with conflict and that the justice system should tap from these traditions (Schreiner2002: 26). She further postulates that we should however be mindful of the challenges and the need for a paradigm shift in the way communities deal with and think about crime.

3.8.1 South African Truth and Reconciliation Commission (TRC)

The South African government approved the establishment of the Truth and Reconciliation Commission (TRC) by means of legislation in 1995.

Both government and the private sector are embracing the principles of Restorative Justice. The work of the Truth and Reconciliation Commission (TRC) placed South Africa on the international agenda in terms of Restorative Justice, even though it was not fully restorative. It did, however, give victims an opportunity to share their pain and hurt (Skelton & Frank 2001:107). Through this process the South African people dealt with apartheid's crimes in a restorative, instead of retributive way. The South African community tried to come to terms with the violence and perpetrations of the apartheid's regime. The aim was not *...to conduct a witch-hunt or to haul violators to face charges, but to advance the cause of reconciliation* (Boraine 1995:2).

Desmond Tutu said that even offenders of apartheid's crimes were victims of the government of the time (Bothman 1996:8). This emphasises the approach of Restorative Justice that the offender also needs healing. That when a crime is committed, even the offender needs to be heard, the offender has a need to tell his story. Restorative Justice and the TRC (Truth and Reconciliation Commission) allow all relevant parties to tell their story. Restorative Justice also wants victims and offenders to deal with the negative effects of crime. They have to tell their story, find healing and even forgiveness if at all possible. The TRC

made the international world realize that South Africans were “able to forgive” (Kollapen 2002:25). The TRC experience clearly shows that Restorative Justice processes varies in its *restorativeness*. The process is seen to be partially restorative in that it did not, in all cases, pay compensation to all victims.

3.8.2 The South African Criminal Justice System

It is based on a political system. It consists of three branches of government, namely legislative, executive and judicial. The judicial system is responsible for legislation and enforcing most criminal laws that falls on the national legislature and national infrastructure of courts, political and community structures. The government of SA is a constitutional democracy (Skelton 2002:477). Laws are subject to the Constitution, Act 108 of 1996 (Skelton & Potgieter 2002:478).

The Criminal Justice System is administered nationally. It is an adversarial system where the state prosecutor presents cases against the accused. In terms of section 165 of the Constitution (Act 108 of 1996) the judicial authority of South Africa is vested in the Courts, which are independent, subject only to the Constitution.

3.8.3 History of the South African Criminal Justice System

South Africa became a Union of four provinces and a member of the British Commonwealth in 1910. The country has a mixed heritage of Roman-Dutch law and common law. In 1948 the policy of Apartheid was embedded in legislation, and with that, created a number of status offences. South Africa became a Republic in 1961 and in 1982 a tri-cameral parliament started operating. The white minority dominated legislation. The first democratic election was held in 1994, while the Independent Black states had their own Criminal Justice System. Criminal Law in South Africa used to be highly politicised.

The legal system uses the terms crime and offence interchangeably, and according to Snyman (1984:4) there is no technical difference.

3.8.4 Age of Criminal responsibility

A child below the age of 7 lacks criminal responsibility. In the case of a child between the ages of 7-14 the state should prove responsibility beyond reasonable doubt (Skelton & Potgieter 2002:480).

The Judicial system consists of higher courts, lower courts and regional courts. Special criminal courts for juveniles exist. The Child Justice Bill proposes that

criminal capacity of a child over the age of 10 years but under the age of 14 should be proofed beyond reasonable doubt by the state.

3.8.5 Prisons/Corrections

A total of 241 prisons, also known as correctional centres, of which 134 are for males only, and 8 for females only, with 13 centres for juvenile offenders. According to Skelton & Potgieter (2002:484) children older than 14 years can be detained in prisons if a secure facility for juveniles is not within reasonable distance from the court. 72 correctional centres house both males and females and the remaining is either on construction or not fully utilised. http://www.gov.za/yearbook_2004/pdf/15_juscor.pdf The White Paper on Corrections (2005:84) refers to juveniles or youth as offenders aged between 18 and 25 and foresees that Correctional Centres for youth should be closer to families to be more accessible and family ties to be strengthened. The number of offenders in correctional centres is 187 000, of which approximately 35 000 are Awaiting Trial Detainees (ATD's). The warder/member ratio to offenders is 1:5.

3.8.6 Parole

Parole is granted by a Correctional Supervision and Parole Board (Department of Correctional Services Strategic Plan 2005/6-2009/10:9, 10; Correctional Services Act, Act 111 of 1998:64, 65). The Minister of Correctional Services announces

remission of sentence (Correctional Services Act, Act 111 of 1998:68). Parole will be discussed in more detail in the next chapter, which specifically deals with the Correctional System in South Africa and also impacts on the rights of victims of crime in South Africa.

3.9 How the Child Justice Bill 49 of 2002 relates to Restorative Justice in South African Corrections

This Bill explicitly advocates the use of Restorative Justice in dealing with children in the Criminal Justice system. The Child Justice Bill specifically makes provision for a Restorative Justice response to crime in which children are offenders. The Department of Correctional Services currently houses children as young as 14 in some Correctional centres. From October 1998 to September 1999 a total of 4360 children under 18 were sentenced to imprisonment (Muntingh: 2000).

Restorative Justice in the Child Justice Bill means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the child's parent, the child's family members, victims and communities (Child Justice Bill 2002:6). It is in line with the broader philosophy of Restorative Justice that requires the state to involve these important stakeholders. Mbambo & Skelton (2003:271) state that the Child Justice Bill (2002) wants to reinforce childrens' respect for human rights and fundamental freedom of others.

The Child Justice Bill furthermore emphasizes diversion. This is relevant to this specific topic of Restorative Justice in South African Corrections, as it has a bearing on overcrowding, as well as the Department of Correctional Services' commitment to deal with the problem of overcrowding and children in Correctional Centres (White Paper on Corrections 2005:83,84). If children who break the law can be diverted from the Criminal Justice System, then they would not end up in Correctional centres, which are already overcrowded. The relationship between overcrowding and Restorative Justice has already been alluded to, where it is deduced that overcrowding hinders the effective/efficient presentation of rehabilitation programmes. If children are indeed send to Correctional centres, then it might be the beginning of a criminal career, which would be difficult to turn around, exactly because of overcrowding and already overburdened resources in Department of Correctional Services.

Diversion would also strengthen the Department of Correctional Services' involvement in crime prevention, where the White Paper on Corrections (2005:38,39) refers to crime prevention and correction as a societal responsibility. Diversion according to the Child Justice Bill means diversion of a child away from the formal court procedures to the informal procedures of Restorative Justice. The purposes of diversion according to Mbambo & Skelton (2003:292) are to:

- encourage the child to be accountable for the harm caused

- meet the particular needs of the individual child
- promote the reintegration of the child into the family and community
- provide an opportunity to those affected by the harm to express their views on its impact on them
- encourage the rendering to the victim of symbolic benefit or the delivery of some object as compensation for the harm
- promote reconciliation between the child and the person or community affected by the harm caused by the child
- prevent stigmatizing the child and prevent adverse consequences flowing from being subject to the criminal justice system
- prevent the child from having a criminal record.

Purposes for diversion of children from the Criminal Justice System are the same intended outcomes for Restorative Justice with sentenced offenders who are serving a sentence, except that the diverted children do not have a criminal record. Diversion also places a high priority on the child offender accepting responsibility, and therefore admitting the crime. The child is expected to make up to the victim in some way or the other. Even symbolically, restoring the balance according to Trenczek (2003:272) as children usually don't have the financial means to repay the victim for losses suffered. Community service, which is meaningful to the victim and beneficial to the community, is one option (Child Justice Bill

2002:20,21; Skelton: 3 [http:](#)

www.anc.org.za/ancdocs/pubs/umrabulo14/childjustice.html visited on 2005/05/19).

Diversion allows for a number of options, which should be innovative to accommodate the specific child, the victim and the circumstances of the crime. The Child Justice Bill makes provision for Family Group Conferencing (FGC) and “other Restorative Justice processes” (Skelton & Frank 2001:115). Support systems of both victim and offender are allowed and support systems of the child offender should be co-responsible for honouring the agreement that was reached. The purpose of diversion is also to minimize the harm to the offender as a child, as well as prevent re-victimisation of either victim or offender. Other possible outcomes of the diversion process is to teach life skills to the child offender, heal broken relationships with the victim, making sure the child understands the impact of the crime and the harm done to the victim, and to accept responsibility to restore the harm to the extend possible, through amongst others, restitution. This could be achieved through Family Group Conferencing or Victim Offender Mediation. It is interesting to note that these principles and outcomes of Restorative Justice in the pre-trial phase are similar to what is hoped to be achieved in the post-trial phase with sentenced offenders. If these can be successfully achieved with child offenders then the government and civil society have already made great strides in crime prevention, and controlling the Correctional centres population. Diversion can also be used with adult offenders.

The Child Justice Bill is not only aimed at the child offender in the community, but also makes provision for justice to children serving prison sentences. Section 47(5) of the Bill makes provision for level three diversion options where the court is likely to impose a prison sentence for a child older than 14 years.

3.10 Summary

Throughout this chapter the common principles of the Restorative Justice philosophy were highlighted. It can be summarised as recognition of the important role of victims, offenders and communities in an attempt to restore the balance. It furthermore moves away from the retributive justice system of crime as violation of the state, to crime as harm to people. Van Ness (2004:93,102) professes that Restorative Justice promotes personal understanding contrary to the impersonal approach of the formal justice system. It recognises the humanity of offenders as well, as is denoted in the kinds of treatment offenders in different correctional systems receive as well as opportunities for healing.

Restorative Justice practices and experiments started with juveniles and Restorative Justice work with juveniles is at quite an advanced stage in the different countries. Theory increasingly shows the use of Restorative Justice with adults and relative success with working with adults, involving more serious crimes.

Imprisonment is recognised as a form of punishment, but in the Restorative Justice paradigm punishment is not the main aim of the justice system. Restorative Justice rather wants to repair the social harm and involve communities in the rehabilitation of offenders, as can be seen especially in the aboriginal practices. The establishment of ‘healing lodges’ based on aboriginal community values is proof of the commitment of the Canadian correctional services.

These systems are certainly not perfect. However, it does show a commitment from government departments to support the offender in its care to become a respected lawful citizen again through successful re-integration. It is clear that reintegration does not happen overnight and that the difficulties of the reintegration process demands support from families, churches and other support systems (Misleh & Hanneman 2004:128). It is a process from the time the offender admits the crime, involving all relevant parties, namely victims, communities and the offenders themselves. The Restorative Justice systems focus on empowering offenders by making work opportunities available to put them in a position to take responsibility for themselves and significant others, and be accountable for the crime they have committed.

The Criminal Justice System of the countries under discussion are mostly adversarial in its functioning. This makes the application of the principles of Restorative Justice difficult, yet not impossible. Communities and to a large

extend, Criminal Justice agents begin to realise that imprisonment does not necessarily deter potential offenders, or guarantee rehabilitation. Offenders might serve a prison term “successfully” without ever taking responsibility for harm done to the victim, and therefore also do not take responsibility to restore the balance. The restorative initiatives of the different countries, often under trying circumstances proof to be successful in achieving the objectives of Restorative Justice and involving the three main role players, namely victim, offender and community. Although the Criminal Justice System of these few countries may differ, they are all facing the same challenges: to reduce crime and to restore public confidence in the Criminal Justice System.

The next chapter will build on this one, in that the implementation of Restorative Justice in South African Corrections will be discussed in detail.

CHAPTER 4

RESTORATIVE JUSTICE IN SOUTH AFRICAN (SA) CORRECTIONS

4.1 Introduction

The government announced the National Crime Prevention Strategy (NCPS) in 1996 as a measure to combat high levels of crime. According to the National Crime Prevention Strategy (1996:2) high levels of crime place a heavy burden on the country's Criminal Justice System and threaten the new democracy. The South African government is faced with an ever-increasing number of offenders in overcrowded correctional facilities, although only a small percentage of crimes are detected, a small number of offenders are eventually taken to court, and even less are sentenced to prison.

During the National Conference on *Restorative Justice: From Theory to Implementation* (18-20 November 2002) it was said that the focus of Restorative Justice needs to be broadened to include adults. Schreiner (2002:26) at the same conference postulates that the rich history of traditional practices should be utilized in combating the retributive and vengeful approach of the South African community.

The Department of Social Development is the lead department in Victim Empowerment Programme (VEP), while the Department of Justice and Constitutional Development takes the lead in training issues on the Service Charter for Victims of crime in South Africa. This department trained a number of government officials during January and February 2005, including DCS members, on this document. The department of Social Development will be discussed in the next chapter. This chapter will mainly deal with the application of Restorative Justice in the SA correctional system and refer to the current application of Restorative Justice in SA Corrections in the different regions and in the two private prisons.

The Department of Correctional Services (DCS) adopted the Restorative Justice approach in May 2000 as part of its strategic planning towards strengthening the rehabilitation of offenders. In November 2001 the Department of Correctional Services officially launched Restorative Justice. This approach is based on the understanding of crime as an act against the victim and the community and it aims to balance the needs and interests of victims and offenders. The criminal justice process used to be offender focused. The Restorative Justice approach gives a new meaning to dealing with crime and the offenders. The Retributive system looks at crime as a violation of laws, the Restorative Justice system looks at crime as violation of people and relationships and how best to restore.

In this new political dispensation, after 1994, the human rights of all human beings, including offenders, are entrenched (South Africa Constitution, Act 108:1996). Correctional Services demilitarised in 1996 and resolved to render quality service as well as humane treatment of offenders. According to these principles people are put first in services and government departments are expected to render quality services.

The Department of Correctional Services (DCS) had this approach to Restorative Justice in 2001:

Within the context on Correctional Services, Restorative Justice could be described as a restorative response to crime. It emphasizes the importance of the role of victims, families and community members by more actively involving them in the justice process. It is also aimed at holding the offenders directly accountable to the people that they have violated and at restoring the losses and harm suffered by the victims. It provides an opportunity for mediation, dialogue, negotiation and problem solving which could lead to healing, a greater sense of safety and enhanced offender reintegration into the community (Mlotshwa 2001:10).

Families are encouraged to support their loved ones while they are in prison, implying that support includes regular contact. However, Schreiner acknowledges that “the prison system had not been designed that offenders

could be close to families” referring also to illegal immigrants.
(<http://www.pmg.org.za/viewminute.php?id=3851>) visited on 3/2/2005.

4.2 DEPARTMENTAL VISION, AIM AND MISSION

VISION

To be one of the best in the world in delivering correctional services with integrity and commitment to excellence (Department of Correctional Services Strategic Plan for 2005/7-2009/10:8).

AIM

The aim of the Department of Correctional Services is to contribute towards maintaining and protecting a just, peaceful and safe society, by enforcing court-imposed sentences, detaining inmates in safe custody, whilst maintaining their human dignity and developing their sense of social responsibility and promoting the general development of all inmates and persons subject to community corrections (Department of Correctional Services Strategic Plan for 2005/7-2009/10:8).

MISSION

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 encouraging role.

The abovementioned can be summarised by the Strategic Plan *...from every official becoming a rehabilitator to every prison becoming a correctional centre – a place of new beginnings – to every offender becoming a nation server through correction* (Department of Correctional Services Strategic Plan for 2005/6 – 2009/10).

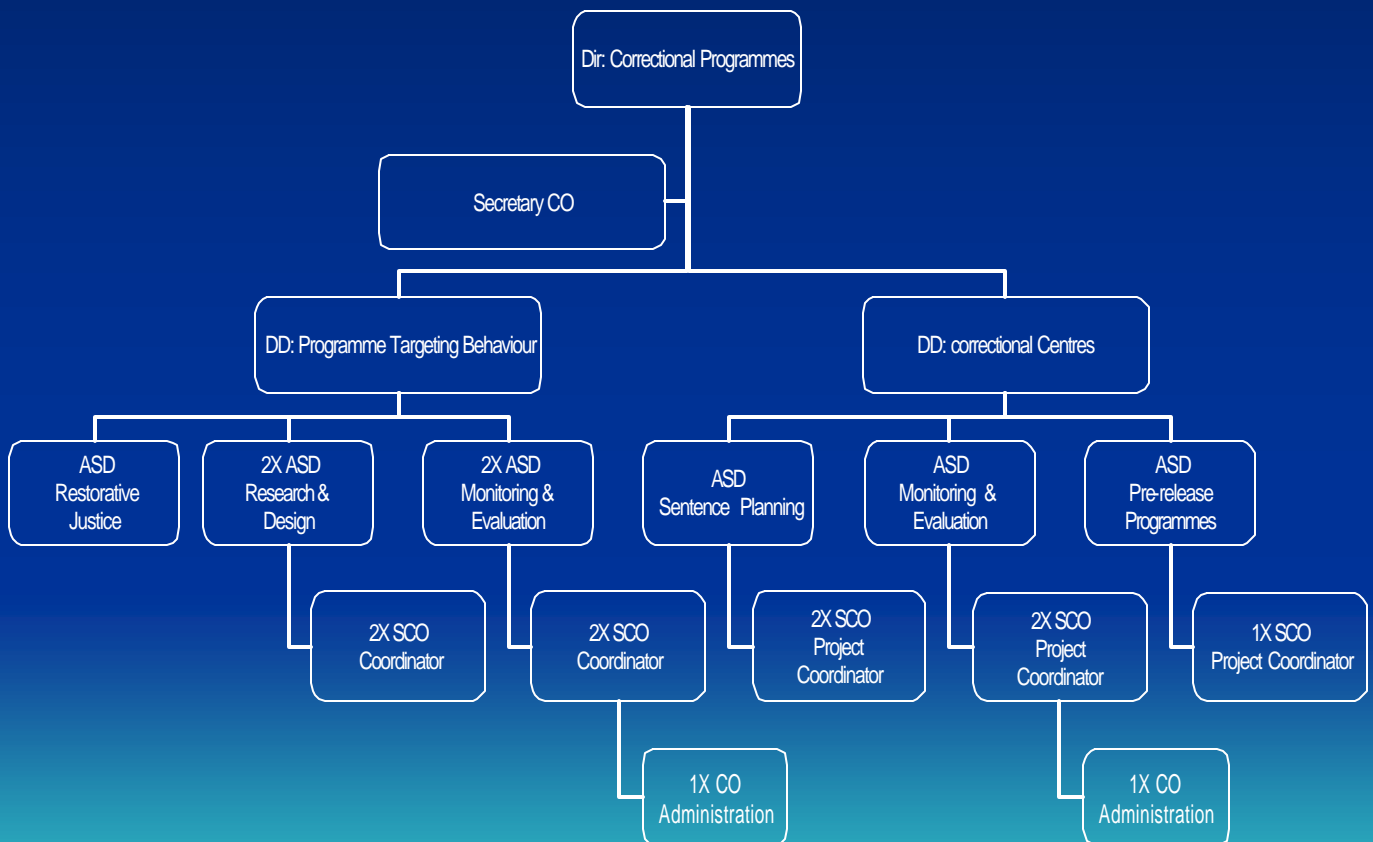
Restorative Justice is positioned within the Correctional Programmes Directorate, which forms part of the Branch, Personal Corrections. The other two directorates in this Branch are Risk Profile Management and Correctional Administration.

4.3 Directorate: Correctional Programmes

The following organogram indicates the positioning of Restorative Justice in the National Head Office of the Department of Correctional Services. This Directorate is responsible to develop policy for the application of Restorative Justice in the Department, including implementation of Victim Empowerment. It is also tasked to design, develop and source correctional programmes targeting offending behaviour. These programmes are designed to be offense specific. The four programmes that are currently available are sexual offenses, substance abuse, pre-release and anger management. It is the duty of this directorate to ensure that a module on Restorative Justice is eventually included in all the Correctional programmes and that a separate programme on Restorative Justice is designed and developed (Mahlangu, personal interview 17 June 2005).

4.3 Organogram of the Directorate: Correctional Programmes

ORGANOGRAM FOR DIRECTORATE: CORRECTIONAL PROGRAMME



It is envisaged that eventually a restorative approach will be integral of all the correctional programmes.

4.3.1 Restorative Justice Expectations

The role of the Assistant Director Restorative Justice in this Directorate is to:

Coordinate Restorative Justice implementation in all correctional facilities nationally

- Liaise with all staff members who are either presenting and or facilitating Restorative Justice programmes in the Department of Correctional Services
- Ensure that a module of Restorative Justice is included in all Correctional programmes
- Design and develop a complete Restorative Justice programme for those offenders who are interested in any one of the Restorative Justice processes
- Research best practices on the implementation of Restorative Justice in Corrections
- Make these results available and accessible in all correctional facilities
- Benchmarking of international Restorative Justice practices
- Ensure cooperation between all the disciplines within Department of Correctional Services who are involved in Restorative Justice, namely

Social work, Spiritual Care, Education, Corrections, Psychology, Parole, Pre-Release Resettlement and Community Integration.

- Represent Department of Correctional Services on inter-departmental and inter-sectoral meetings on Restorative Justice and Victim Empowerment
- Develop policy and policy guideline/procedures on Restorative Justice.

4.3.2 The Draft Policy on Correctional programmes

The success of Correctional Programmes can be achieved if more emphasis can be placed on changing offenders' attitudes, beliefs, perceptions, feelings, understanding and conduct from those influencing criminality to those desired by the larger part of the society. The effort requires full cooperation and engagement of various stakeholders and disciplines. According to the White Paper on Corrections 2005 (2005:43, 44, 72) correcting of offending behaviour is in line with what is to be achieved through Restorative Justice so that the offender realizes what he did wrong, and takes responsibility to make right.

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.

A process that is aimed at helping the offenders gain insight into their offending behaviour and also understands that the crime has caused injury to others (including the primary victim/s and the broader community).

The Correctional Programmes audit revealed that there are programmes that are rendered, but these programmes are not uniform, standardized, regulated and well coordinated. The offending behaviour must be targeted through the development and proper implementation of Correctional Programmes. These programmes need to be coordinated, informed and regulated by a policy that will guide their development and implementation (Mahlangu, personal interview 17 June 2005).

4.3.2.1 POLICY STATEMENT

The Correctional Programmes draft Policy forms part of the Department's efforts to rehabilitate offenders so that they become law-abiding citizens. The policy seeks to provide a framework to guide and inform the provision of Correctional Programmes targeting offending behaviour in correctional facilities with the aim of reducing re-offending and further criminality by offenders. The policy further aims at addressing personal restoration of the offender with him/herself and his/her relationships with others in line with the White Paper on Corrections (2005:72).

4.3.2.2 POLICY OBJECTIVES

The following are the objectives of the Correctional Programmes Draft Policy:

- to create a social environment suitable for effective correction of offending behaviour in correctional facilities.
- to provide effective and efficient Correctional Programmes to offenders in correctional facilities.
- to develop knowledge of and best practices on Correctional Programmes.
- to market Correctional Programmes both inside and outside the Department of Correctional Services.
- to develop an individual sentence plan for each offender to effect correction of their offending behaviour.
- to promote the involvement of various disciplines and role players in correcting offending behaviour.
- to create common understanding of Correctional Programmes to offenders, personnel and community.
- to restore relationships between victims, perpetrators and community.
- to prepare offenders for release as law abiding citizens.
- to optimize participation of offenders in Correctional Programmes.
- to co-ordinate Correctional Programmes rendered by all role players to offenders in correctional facilities.

According to Moodley, discussions 2004/5, Restorative Justice should form part of the offender's individual sentence plan and therefore all sections rendering services to the offender should be involved.

4.4 The role of Restorative Justice in the Department of Correctional Services

The department acknowledges Restorative Justice and specifically Personal Restoration as an important part of correcting offending behaviour. Victims, offenders, families as well as communities are encouraged to engage in Personal Restoration, family restoration, as well as community restoration in terms of the White Paper on Corrections, where the role of these stakeholders is emphasised (White Paper on Corrections 2005:8, 14,16,17,18,34,43,44). The Correctional Services Act, Act 111 of 1998 encourages family contact and also that families be informed of the transfer of an offender.

4.5 Achievements while under the Branch Development and Care

Restorative Justice initially resorted under the Branch Development and Care and the Directorate Spiritual Care and Social work used to be the lead directorates. Progress made during this time include, amongst others:

- Working agreements have been made with external stakeholders and NGO's who are busy presenting Restorative Justice programmes in correctional centres. A number of non-governmental organizations (e.g. Khulisa, Restorative Justice Centre, and NICRO) are currently involved in Restorative Justice Initiatives in correctional centres. Khulisa is running a victim-offender mediation programme with offenders and is involved in finding employment for ex-offenders with various private sector companies. The Restorative Justice Centre is assisting in awareness raising campaigns, victim-offender mediation and training of Department of Correctional Services employees in Restorative Justice.
- Close working relationships are maintained with other government stakeholders, especially regarding Victim Empowerment.
- Offenders and community members are increasingly interested in Restorative Justice, because of awareness campaigns of the Department of Correctional Services and involvement of communities
- Invitations from stakeholders for information sessions to inform them about Restorative Justice in corrections, as well as the expectations of Department of Correctional Services about their involvement
- During 2002 master trainers (40) were trained by experts from Correctional Services Canada and Queens University in Restorative Justice. It was expected from them to train other officials as well as new recruits at Departmental training colleges.

- With the introduction of the new parole boards victims will be invited to attend parole board hearings of their offenders to make presentations. This is in line with the Victim Empowerment Programme where victims of crime or their families will be given a voice and the opportunity to be heard.
- In giving effect to the White Paper on Corrections, a directorate for Correctional Programmes was established, which is currently in the process of developing programmes targeting offending behaviour.

4.6 Challenges in the implementation of Restorative Justice

The implementation of Restorative Justice requires that individual attention be given to the offender who wants to make right the harm that was caused by the crime. Offenders might not initially realize or acknowledge the pain they have caused. Others might be in denial, and yet another group might still battle with their own hurt and pain from previous victimization. A lack of resources caused by the following factors might pose a challenge to implementation. However, it needs to be mentioned that there are already a number of programmes being implemented in certain correctional centers, in spite of certain stumbling blocks. There is already some very good work being done by dedicated correctional officials on different levels. It seems that the majority of programmes focus on Victim Offender Mediation.

- Overcrowding remains a problem for all correctional operations, but especially in terms of implementation of programmes targeting offending behaviour.
- There is still a need to increase awareness on Restorative Justice, to get the full support not only of staff, but also of all communities, both urban and rural. Especially offenders and DCS staff should be informed of other Restorative Justice programmes, and that Victim offender Mediation is not necessarily applicable in all cases.
- Staff to be trained in implementing the principles of Restoration in terms of the White Paper on Corrections, 2005.
- To develop Restorative Justice Policy and guidelines, which are applicable in various regions/provinces taking the unique and diverse South African prison population into consideration.

4.7 Current situation in SA Corrections: Composition of the prison population

The question, why Restorative Justice in Correctional centres has come up several times from offenders, laymen and professionals alike. It is worth noting that 67% of the population in correctional centres is under the age of 35. Their average sentence is 9 years, which means that relatively young people will be released into society. These ex-offenders will have to be accommodated, find jobs and take responsibility for themselves, failing which, they become a risk to

re-offend and return to the Correctional Services system (Deputy minister speech at the National Assembly Budget Debate: Vote 21 2004). The balance needs to be restored in order for those ex-offenders to be successfully re-integrated into society. The following tables illustrate this point and indicate the age categories of offenders in correctional facilities according to the Department of Correctional Services Annual report (2003/2004). According to Umbrecht (2001:255) principles of Restorative Justice could also be applied in crimes of severe violence, like murder, rape, etc. Victims and or significant others need to get closure and might find it when getting some answers from offenders.

4.7.1 Juveniles in correctional centres

Table 5 indicates the number of juveniles in correctional centres as on 31 March 2003

| Ages | Unsentenced | Sentenced | Total |
|-------------|--------------------|------------------|--------------|
| 14 years | 177 | 44 | 221 |
| 15 years | 383 | 140 | 523 |
| 16 years | 885 | 513 | 1398 |
| 17 years | 1209 | 1098 | 2307 |
| Total | 2654 | 1795 | 4449 |

Juveniles in Correctional centres remain a concern. Some are serving sentences for serious crimes that they have committed, but the majority will eventually be released back into the community. It is therefore imperative that they be prepared for successful reintegration to become respected, respectful law-abiding citizens of the community. However, this will not be possible without the support from their families, the community at large, but also from the formal sector, including Department of Correctional Services and the labour market. It is estimated that juveniles constitute about 26% of the South African population, but 41% of the Correctional centres population. The South African Labour market is expected to employ ex-offenders as part of successful reintegration. However, the Department of Correctional Services itself does not employ any ex-offenders at this stage. One has to wonder about the confidence that the Department of Correctional Services has in its own product.

Social work intervention revealed that the majority of juveniles have experienced some serious emotional and social problems, amongst others: they themselves have suffered abuse, they have been victims of crime, have criminality in the family, with substance abuse, poverty, breakdown of relationships, low educational qualifications, etc. These factors can cause juveniles to resort to crime. Although it does not justify the crime, it does confirm that coping skills and rational decision-making skills are lacking. Quite a number of these juveniles see themselves as victims, blaming others for their imprisonment (Pruis, personal interview 17 June 2005). Programmes like Restorative Justice could be helpful

in convincing offenders to take responsibility for crimes committed. It could also accommodate those juveniles who have indeed been victimized to receive personal restoration, in order for them to understand the need for healing of their victims. When offending behaviour is addressed in the Correctional centres, it is important to understand the complex inter play between causal factors, social and economical factors, personal background, resilience and strengths and weaknesses of the individuals who have committed crimes. Restorative Justice programmes should be comprehensive so as to include all these aspects, as well as the need to be cared for, physically, emotionally, spiritually, while serving a sentence and correcting own behaviour.

Restorative Justice is future orientated. It therefore wants to look at what the juvenile offender can and should do with his/her life, now that offending behaviour and its causes have been addressed. The young person should be assisted in working out a realistic life plan, including making amends to the victim. Whatever is planned should take the challenges for the specific individual into consideration, like if the offender will be able to pay restitution, will the family be supportive, what community service will be possible, relevant and useful, boosting the self-image of the young person. The needs of the offender or ex-offender should be taken into consideration, as well as the help that he/she will need to make the future life plan work, like quitting a substance abuse problem.

Table 6

Indicates Age categories: Awaiting trial detainees in correctional centres as at 31 March 2004

| Gender | < 18 years | 18 to <21 years | 21 to 25 years | > 25 years | Total |
|-------------|------------|-----------------|----------------|------------|--------|
| Female | 66 | 186 | 277 | 683 | 1212 |
| Male | 2166 | 11 199 | 15 178 | 24 121 | 52 664 |
| All Genders | 2 232 | 11 385 | 15 455 | 24 804 | 53 876 |

Thousands of people of different ages are awaiting trial in correctional centers. This is one of the reasons for the serious overcrowding of correctional centers alluded to by Fagan (2004). These offenders might be interested in a process or programme of Restorative Justice, if offered to them. Some offenders might even be diverted from court, if they are willing to take responsibility for the crime and can find ways to restore the harm to the victim.

Table 7 Indicates Age categories: Sentenced offenders as well as Awaiting Trial detainees in custody as at 31 March 2004

| Gender | < 18 years | 18 to < 21 years | 21 to 25 years | > 25 years | Total |
|-------------|------------|------------------|----------------|------------|---------|
| Female | 102 | 425 | 800 | 2 993 | 4 320 |
| Male | 4 056 | 24 244 | 47 579 | 107 441 | 183 320 |
| All genders | 4 158 | 24 669 | 48 379 | 110 434 | 187 640 |

The numbers in these tables represent South African citizens; the majority of whom are parts of families, and in many instances had been the breadwinners. Incarceration deters, incapacitates and rehabilitates. It also robs communities of its members and the economy of its work force. Families are broken up for various reasons, like poverty. The majority of offenders are from poor families. Those families cannot afford to maintain regular contact, because of practical problems to get to correctional centers, as offenders are unlikely to be close to their hometowns. These families often cannot afford regular phone calls. The children of these offenders have to grow up without parents, which again negatively affect families, moral values and socialization in general. The Public Service is involved in The Moral Regeneration Movement, and will need to consider the consequences of mass imprisonment on the South African family life.

4.8 Overcrowding in correctional centres

The total inmate population at 28 February 2005 was 187 000 while the capacity is 113 825. Those awaiting trial account for 52 000 with 135 000 sentenced offenders. It means that about four out of every 1 000 South Africans are incarcerated at any given time. This gives a fair idea of the enormity of the challenge of overcrowding (Minister of Correctional Services speech: 28 May 2005). Overcrowding was caused by amongst others, the new sentencing framework which prescribes minimum sentences (South Africa Law Commission: xix).

Table 8 shows the prison population as at 31 March 2004 including private prisons

| Category | Adult male | Adult female | Juvenile male under 21 | Juvenile female under 21 | Total |
|-------------------------|-----------------------|-------------------------|---------------------------------------|---|----------------|
| | Male | Female | Male | Female | |
| Sentenced | 109 769 | 2833 | 14 935 | 275 | 127 812 |
| APOPS(sentenced) | 5952 | 0 | 0 | 0 | 5952 |
| Unsentenced | 39 299 | 960 | 13 365 | 252 | 53 876 |
| Total | 155 020 | 2793 | 38 300 | 527 | 187 640 |

(DCS Annual report 2003/2004:24)

These numbers indicate vast numbers of South African citizens finding themselves in correctional centres. The majority of these offenders will be released and have to be reintegrated into communities. It is a reality that if these people have not been helped to deal with their offending behaviour, and if they do not realize the harm that crime does to victims and communities, that they will most probably re-offend. Communities should also be assisted in dealing with their responsibilities towards offenders. They have to accept offenders as fellow citizens, assist them to become law-abiding citizens, by amongst others, providing employment and strengthen relationships and support systems.

Table 9 Indicates Sentence categories

| Sentence groups | 2004 | 2002 | 2003 |
|--|-------------|-------------|-------------|
| Unsentenced | 53 876 | 55 500 | 58 144 |
| 0-6 months | 6398 | 6335 | 7 276 |
| Sentence of more than 6 months to 12 months | 6459 | 6561 | 6934 |
| Sentence of more than 12 months to less than 14 months | 6426 | 6272 | 6429 |
| Sentence of more than 24 months to 3 years | 17 579 | 17 102 | 17590 |
| Sentence of more than 3 years to 5 years | 16 633 | 16 876 | 17 180 |

| Sentence groups | 2004 | 2002 | 2003 |
|--|-------------|-------------|-------------|
| Sentence of more than 5 to 7 years | 12 143 | 12 911 | 12 649 |
| Sentence of more than 7 to 10 years | 21 326 | 20 889 | 21 325 |
| Sentence of more than 10 years to 15 years | 21 521 | 16 610 | 19 380 |
| Sentence of more than 15 years to 20 years | 9 742 | 10388 | 12242 |
| Other sentenced | 1 743 | 2273 | 2021 |
| Total sentenced | 133 764 | 123 498 | 131 604 |
| All sentenced Groups | 187 640 | 178 998 | 189 748 |
| % Occupation | 163.47% | 164.06% | 170.57% |

Table 9 indicates the number of offenders per sentence group in correctional centres as at 31 March 2004 in relation to 2002 and 2003. This table confirms what had been discussed before: that offenders in correctional centers will be going back into society. The challenge for Correctional Services is to make sure that these people do not return to correctional centres. Also, to ensure that offenders take accountability for their offenses and that victims and communities feel safe when offenders are released.

4.9 Possible solutions for Overcrowding:

Obtain funding for building of new correctional centres. Building of new prisons will be the first serious attempt in several years to increase South African prison capacity. Prison building was halted while the department considered new standards for correctional facilities. The department expects the additional 12 000 beds of the first four prisons to reduce national prison overcrowding from 72% to 58% (Minister of Correctional Services speech 17 May 2005).

But new prisons are just an emergency measure, not the solution to South Africa's overcrowded prison system. That echoes the views of inspecting judge of prisons *Reduction in our prison numbers is the correct course to adopt. We are already incarcerating far too many people*, Fagan (2003/2004:22) wrote in a report to parliament. He pointed out that four in every 1 000 South Africans were in prison, while 65% of all countries have rates of 1, 5/1 000 or fewer. South Africa has the highest rate in Africa, possibly after Rwanda.

What is required according to the Department of Correctional Services is a comprehensive strategy of the integrated criminal justice system that would include:

- Effective participation of families and communities in crime prevention and correction of offenders before they enter the criminal justice system;

This is the same sentiment expressed by Wilkins (1991:27) *the problem of crime cannot be simplified to the problem of the offender*.

- Review of the country's sentencing system to scrap minimum sentences;
- Faster court services to reduce the number of awaiting-trial detainees;
- Greater reliance on community supervision for less serious crimes; and
- More creative forms of sentencing or punishment other than incarceration.

In this regard Newell (2000:16) postulates that prisons should be used as a last resort in deciding how to deal with crime.

About 27% of the country's 186 000 offenders in correctional centres are awaiting-trial detainees and more than a quarter of these are in detention simply because they could not afford low bail amounts. If a way could be found to help these people pay bail, or if the courts could apply other options, these people would not have to be a costly burden on the state. Skelton & Potgieter (2002:493-494) propose community based sentences, Family Group Conferencing, Victim Offender Mediation, correctional supervision, limited residential care, post ponement, suspension or fines.

Co-operation with other departments like the Department of Justice and Constitutional Development, in the Integrated Justice System (IJS) in the Awaiting Trial Prisoner project, Saturday Courts project is aimed at reducing the number of awaiting trial and pre-sentence offenders. This project is unfortunately not operating at this stage because of a lack of funding.

The Justice, Corrections, Police and Security (JCPS) cluster is also promoting awareness in the Integrated Justice System of diversion programmes, and

alternative sentencing options such as community service. A recently established Justice, Crime Prevention and Security Cluster task team dealing with overcrowding will constantly monitor the criminal justice system and identify the blockages that result in increased prisoner numbers. These efforts already shows an improvement, as indicated by the decrease of Awaiting Trial Detainees (ATD's) from 58 144 as at 30 September 2003 to 49 483 as of 30 September 2004. This demonstrates improvements resulting from the efforts of the Department through the Interdepartmental Justice Sector Cluster to reduce the levels of Awaiting Trail Detainees. Reducing these numbers will ease the burden on the departmental resources. It will make services more available and accessible to more offenders in correctional centres.

The general population of offenders is growing, and the problem of prison overcrowding remains the most important influence on the Department's costs and performance, especially in relation to rehabilitation. This is in line with the report of Judge Fagan, the Inspecting Judge, suggesting that the prison population should be reduced drastically, and building new prisons is one option, although not the most effective one. Inclusion of other Justice Cluster partners are necessary, like the SAPS, should limit *unnecessary arrests*, bail should be more affordable, limit unnecessary remands of cases. Mandatory minimum sentences also increase the number of sentenced offenders with very long sentences, and the Judge is of the opinion that these pieces of legislation should be repealed (Fagan 2003/2004:24).

Overcrowding naturally exhausts the available space for individuals in correctional centres to which the Correctional Services Act, Act 111 of 1998 refers as such: *Prisoners must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lightning, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity.*

4.10 Re-offending

The high rate of re-offending in South Africa and worldwide is an undisputed fact. However, according to Skelton & Potgieter (2001) little research has been conducted regarding recidivism (the tendency to commit further crimes). Many preventative measures have been taken, seemingly without much success. Statistics show that correctional centres are overcrowded, and that re-offending are also unacceptably high, 80 % according to (Cilliers: ETV 15 June). This leads to high staff-prisoner ratio which compromises the possibility of rehabilitation and successful re-integration into the community (Giffard http://ccrweb.ccr.uct.ac.za/archive/two/11_2/restorative.html) visited on 2005/04/21. Restorative Justice aims, amongst others, to reduce crime, and certainly also re-offending. This ideal can be reached with sentenced offenders, through programmes targeting offending behaviour, of which Restorative Justice forms an integral part. Offenders need to realize and acknowledge the harm that

was done to victims. However, they also need professional help and support from families and communities to come to terms with their sentence. The majority of offenders are angry at the system, and even at victims for sending them to prison. They might also feel that they are paying their debt to society, and do not need to do anything more than that. Clearly, a change of this kind of mindset is needed for them to understand that they have not harmed the state, but that a fellow human being is suffering the consequences of the crime.

Only when offenders realize and accept their responsibility for healing the wounds of crime, can we talk about making amends, which could be in different forms. The most important achievement would be the realization of the harm done by crime, and the commitment to change future behaviour. Only when offenders have this internal change can the Department of Correctional Services hope on reducing the rate of re-offending.

4.11 Alternatives to Imprisonment

Prison overcrowding and re-offending again raise the question of successful rehabilitation, changing of offending behaviour and re-integration. One of the possible alternatives is community service as a sentencing option (Dissel <http://www.csvr.org.za/articles/artdiss2.htm>) visited on 2005/04/21. Legislation now makes it possible for courts to send someone to serve his sentence in the community instead of in prison. Again the societal responsibility is emphasized,

as the successful re-integration of an offender is largely dependent on the attitude of the community. However, while communities are fearful because they had been victimized before, they might not be willing to accept community service as sentencing option without resistance (Glanz 1994:65-68).

4.12 Rehabilitation programmes available in correctional centres

The Branches Corrections and Development and Care have as their aims to, amongst others, inform and guide offender corrections. The ultimate aim is to create an environment conducive to changing of this behaviour and attitudes that led to the offense.

This can be achieved by

- identifying and correcting of offending behaviour
- develop offender skills, both educational and other, to be law-abiding and productive citizens, and
- promote protection and stability within society, in partnership with the community and other stakeholders.

These goals cannot be achieved by the Department of Correctional Services without the cooperation of the communities where the offenders originated. The DCS realizes and appreciates the role that the community can play, and in the draft policy on Community Participation the following objectives are highlighted

which are also referred to in the White Paper on Corrections (2005), as *societal responsibility*:

- to create an environment that allows for the effective involvement of the community in the rehabilitation of offenders
- to create opportunities for the establishment and maintenance of partnerships between the Department and the community
- to regulate the rendering of rehabilitation programmes and services to offenders by members of the external community
- to formalize collaborative partnerships and networking relationships with the community, and
- to integrate and coordinate rehabilitation services rendered by the community to offenders (Department of Correctional Services Annual report 2002/03:54).

4.12.1 Directorate: Social work services

There are a number of social workers that are facilitating, coordinating and or presenting Restorative Justice programmes in correctional centres and Community Corrections.

The following services are delivered and social problems addressed through the methods of individual casework, group therapy and community projects:

- Alcohol and drug dependence
- Marriage and family counseling

- Orientation
- Placement preparation
- Sexual problems
- Aggression

Social work clients sometimes express the need to make contact with victims, and social workers often take it upon themselves to get involved in the process of Restorative Justice. However, this does not form part of their job description, and not all social workers are willing or trained to handle these requests.

4.12.2 Directorate: Psychological services

The following services are delivered and psychological problems addressed through:

- Individual therapy
- Group therapy
- Family therapy

There are currently less than 20 psychologists nationally employed by the Department of Correctional Services. Some psychologists have an interest in Restorative Justice and involve their clients either individually or as groups in Restorative Justice. One psychologist, Jeromy Mostert from Leeuwkop prison, developed a programme on Restorative Justice, with the help of amongst others,

maximum offenders, which he uses with offenders who are interested in Victim Offender Mediation. In this programme principles of Psychology and a Biblical perspective are used in reaching out to offenders who are interested in getting involved in Restorative Justice.

4.12.3 Directorate: Spiritual care

Restorative Justice initially resorted under spiritual care. There is still Restorative Justice programmes conducted successfully under this directorate, in cooperation with the different faith communities. Spiritual care workers from different communities and faiths are involved in presenting Restorative Justice programmes and also rendering Victim Offender Mediation services on request. Restorative Justice has been placed under Correctional Programmes Directorate during 2004 as part of the Department of Correctional Services restructuring process. Father Pearson during the Portfolio committee hearing on 4/2/2004 pleaded for humane conditions of rehabilitation and involvement of chaplains in the Restorative Justice processes which could lead to positive and constructive change (<http://www.pmg.org.za/viewminute.php?id==3851>) 3/2/2005.

One of the projects in Department of Correctional Services under Spiritual Care is The Sycamore tree project, which is actively working in prisons in 105 countries. These programmes are conducted by Prison Fellowship International

(PFI) and are based on what the Bible says about responsibility, confession, repentance, forgiveness, amends and reconciliation.

In Rwanda for instance, are projects of PFI in the prisons, in an effort to deal with the aftermath of the 1994 genocide. There it is uniquely called the “Ümuvumu Tree Project” referring to a Rwandan tree closest to the sycamore tree. Kathie Friedley reports that prisons can accommodate 10 000 people, but there are over 110 000 people in prisons, some housed in tents. The government engaged in traditional conflict resolution options, called, *gacaca*, which is overseen by “people of integrity”. The government also welcomed the involvement of PFI Rwanda in dealing with angry people being released from prison after spending more than 8 years in prison without trial. In a number of cases offenders request meetings with victims when they realize the harm they have caused. (<http://www.restorativejustice.org/rj3/Feature/2003/Feb/UTP.htm>) visited on 3/2/2005. Restorative Justice is not only practiced inter-departmentally, or between different sectors of the South African community. It is also practiced globally, hence this example of the implementation in an African country’s correctional system.

During the 2000 Correctional Services Symposium priest Singh, a representative of the South African Hindu Maha Sabha advocated for the improvement of prison religious care provided to all denominations and faiths. He also pleaded for equal facilities for the ministry priests to reach their people. This would enhance

moral regeneration and transformation of offenders based on their religious beliefs.

4.12.4 Directorate: Education

The Department of Correctional Services employs educators/teachers. Questions have been asked about the role of this section in Restorative Justice. Education can indeed play a significant role in changing attitudes because of their daily involvement with offenders and their teaching of life skills. Again looking at best practices in other parts of the world could add value to local practices, while recognising the uniqueness of the South African situation. (Challeen 1986) in Halstead explains *educational discipline* using the principles of Restorative Justice, which cannot be achieved when this belief is still practiced:

*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 violence is 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 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*

Educators could be instrumental in teaching alternative life skills to offenders, as the skills they have practiced landed them in trouble –they could be taught positive values. Offenders could be reminded of their upbringing where breaking of a window led to apologising and paying for the costs from pocket money or working off the debt. It does not have any positive effects to “teach someone a lesson” by punishing him/her –this only abuse abusers and victimize victimizers (Halstead 1999:42). Educators could use Restorative Justice Principles in dealing with disruptive behaviour in the class or when stationary or equipment gets lost. There are some positive results in involving students in democratic decision - making and to explain and demonstrate to them the value of giving your word when making commitments.

There are currently two representatives from this directorate serving on the National Task Team for Restorative Justice at the Department of Correctional Services Head Office.

4.13 External Partnerships: Societal Responsibility

When society takes up its role in correcting offending behaviour, then that would *ensure effective reintegration of offenders into the community*. According to the

White Paper on Corrections (2005:38) the Department of Correctional Services wants to motivate communities to get involved in crime prevention and become involved in services to offenders. This could be summed up in the words of former president Nelson Mandela “Dealing with crime, violence and corruption requires a new morality for our new nation. Indeed, it requires a new patriotism among communities, the public, the private sector, and the security forces- so that at the end of the day, each of us can answer in the affirmative the question: Have I done something today to stamp out crime” (Alexander 2002:44). This article was done on “mothers against crime” in Mitchell’s Plain, Cape Town.

The Department of Correctional Services is currently in the process of putting external organizations that are rendering services in Department of Correctional Services through a process of Quality Assurance where it is expected that the services they render or intend to render should comply with certain standards. The following three non-governmental organizations have a restorative approach and will also be subjected to the same process.

The National Institute for the Prevention of Crime and the Reintegration of Offenders (NICRO), the Restorative Justice Centre (RJC) in Pretoria and Khulisa are presenting training programmes for Department of Correctional Services employees and offenders in certain Correctional centres on Restorative Justice. These non- profit organisations also render services in communities and in some

correctional centres. It is especially known for its diversion of juveniles in conflict with the law, from the criminal justice system.

Victim Offender Mediation has a dual application: the victim and the offender could come together before the case goes to court, through a process of diversion. An agreement is usually reached on how best the harm can be restored. It could also form part of a court order, especially in cases of property crime, where a prison sentence is not imposed, but the offender is ordered to pay back certain costs to the victim (restitution).

For the purpose of this study the researcher will concentrate on services of Restorative Justice to the offender who serves a prison sentence. In this regard Van Ness (2004:96) postulates that VOM can take place both pre- and post sentence. The victim might want to ask certain questions, like why me, how did you do it, what was the motive, etc. The victim gets the opportunity to give an account of the harm suffered, fear, and other emotions experienced because of the crime.

The offender is granted the opportunity to explain his side of the story. He is confronted with the harm and long-term effects of the crime he committed, he is afforded the opportunity to apologise and make amends if he chooses to do so.

This process must be entirely voluntary on both sides. The actual meeting will only follow after a skilled mediator/s did intensive preparation of both parties.

Relationships between Department of Correctional Services and Community Based Organisations (CBO's), Faith Based Organisations (FBO's), Non-Government Organisations (NGO's) need to be nurtured and expanded to ensure that successful rehabilitation and reintegration takes place. Restorative Justice requires ongoing monitoring of agreements and evaluation to ensure better service delivery (White Paper on Corrections 2005: 90).

4.14 Restorative Justice and Forgiveness

Principles of Restorative Justice relating to community participation and community programmes require that relationships be restored which might bring about healing and forgiveness for victim and offender (White Paper on Corrections 2005:92). The researcher finds it necessary to explain forgiveness as this part of the White Paper might create the impression that forgiveness is seen as expected outcome in all cases. Forgiveness however, is a gift, voluntary, by the victim. According to Umbrecht (2001:286) it is not the goal of Victim Offender Mediation. Victims also need to know that forgiving the offender does not mean that it takes away the responsibility of the offender or that the crime is less serious. Mediators and participants should accept the outcome, also if forgiveness was not possible. Umbrecht further postulates that the mediator should already in preparation be sensitive to fears from the victim and expectations from the offender regarding forgiveness (Umbrecht 2001:287). There should be no pressure on the victim to forgive. That is the reason why

thorough preparation of both parties is necessary. There should be no unrealistic expectations from either side. It does happen that victims, even after Victim Offender Mediation, feel that they understand what happened, but can still not forgive the offender. Pressure on the victim to do so, constitutes secondary victimization. Those who have been victimized by relatives or friends also have to deal with a violation of trust.

Often, offenders have to deal with the necessary burden of forgiving themselves for the harm done to others, and for the suffering that their family now endures because of their imprisonment. The researcher has personal experience from working in correctional centres of offenders who have been long forgiven by their families, but cannot forgive themselves. This often leads to more damage of personal relationships and even suicide.

4.15 Restorative Justice Programmes rendered internally by South Africa Corrections personnel

A national audit on programmes in Correctional centres during the latter part of 2004 revealed that there are approximately 20 correctional centres out of 241 in

which Department of Correctional Services personnel currently present Restorative Justice programmes. The facilitators of the programme are mostly from the Development and Care Branch, where Restorative Justice was previously placed. The Department of Correctional Services has identified 36 prisons as “Centres of excellence” in the 6 respective regions. These centres will ideally have correctional programmes available from 1 April 2005, and will be adequately staffed and resourced. Restorative Justice will also be presented as part of these programmes.

4.16 How the principles of Restorative Justice could work in a Correctional centre to repair the harm

McGraw's saying 2005 (SABC talk show host) *you can't change what you don't acknowledge* is applicable. It is important that all Restorative Justice programmes should include this as a starting point, which can be reinforced during the process. The harm of crime can only be repaired if the offender understands and accepts that harm has been suffered, and that he/she was responsible for the suffering of the victim. As long as the offender denies guilt, he cannot restore or even begin to understand the importance of restoring the balance. The offender should be able to tell his side of what happened, but more importantly, listen to the experiences of the victim. Presenters of these programmes should be careful not to inflict more harm, either to victim or offender (Bazemore 2004:31).

It might not always be possible or practical for a sentenced offender to physically repair the harm that resulted from the crime. However, the Department of Correctional Services in cooperation with communities can become innovative in making these opportunities available to offenders. Possibilities of involving volunteer offenders in poverty alleviation come to mind. Offenders can go to work during the day, be supervised by people from the community and Department of Correctional Services, and go back to the Correctional centres in the afternoon. Inputs should be sought from communities about the type of work they need from offenders, and what would be needed to repair the harm. Security classification will have to be considered as well as response to rehabilitation programmes and programmes addressing offending behaviour. By doing this, communities are already showing commitment in reintegrating offenders. This would also require offenders, victims and communities to get rid of stereotypes about each other.

4.17 General content of Restorative Justice Programmes presented in correctional centres

- Background of Restorative Justice, nationally and internationally
- Philosophy of Restorative Justice

- Differences between Restorative Justice and Retributive justice
- Legal aspects
- Rights of offenders
- Rights of victims
- Practical implications of Victim Offender Mediation

The aim of these programmes is to give information to offenders about the Restorative Justice process. The information is very basic and should not be seen as adequate preparation for involvement in any Restorative Justice process, certainly not Victim Offender Mediation. Offenders who have received this basic information should ideally be able to approach a professional person in the Correctional centre for follow-up if he/she so desires. Proper screening would be necessary and a multi-disciplinary approach could be beneficial in helping the offender understand him/herself, come to terms with offenses suffered, to understand feelings before the crime as well as motives for interest in Restorative Justice. Meeting victims should not be seen as the ultimate goal of Restorative Justice, as healing for the offender can take place without any contact with the victim. In cases where the victim is deceased or not interested in contact, the offender still needs to come to terms with the harm caused, to take responsibility, to forgive himself/herself and to be integrated into the community.

4.18 Training of Restorative Justice Presenters/ Facilitators

It seems that master trainers in the Department of Correctional Services have trained the majority of Restorative Justice presenters who are currently facilitating Restorative Justice processes. These master trainers have been trained by a group of Canadian experts during 2002. Only two of the presenters have completed short courses at tertiary institutions and incorporate this information in the courses that they present.

All new recruits at the two training colleges complete a course on “restoration” as part of their basic training.

It seems that presentation of Restorative Justice in Department of Correctional Services is not a uniform process. It is currently fragmented and not well coordinated. The presenters and or facilitators have different levels of training, some formal and others informal training. The biggest stumbling block at this stage is the fact that there is currently no approved policy on Restorative Justice in the Department of Correctional Services. Draft policy had been developed some two years back, but has not been approved. This leads to uncertainty about procedures to follow when victim and offender requests Victim Offender Mediation or any other Restorative Justice intervention.

4.19 Challenges/problems experienced by personnel in correctional centres



Restorative Justice is a relatively new approach in the South African correctional system. It was only launched in 2002. Not all members of DCS had been trained in Restorative Justice. The following factors had been identified by some DCS members as having a negative effect on service delivery in the implementation of Restorative Justice.

- No clear policy guidelines
- No clear or uniform procedure to follow when offenders apply for Victim Offender Mediation
- Unrealistic expectations from offenders about the possible reduction of their sentence after Victim Offender Mediation
- Perceived different direction according to the White Paper on Corrections regarding restoration and Restorative Justice
- Restorative Justice forming part of ad hoc tasks, no specific people taking responsibility in the regions and on correctional centre level.

4.20 Restorative Justice in Private Prisons in South Africa

The private prison in Louis Trichart, Kutama-Sinthumule, with its 3 024 offenders, has embarked towards the end of 2004 with projects on Restorative Justice. They are currently running an awareness campaign with offenders. Planning for 2005 include a campaign with staff members (conversation with one of the social

workers). The social workers have been trained by NICRO in the basic principles of Restorative Justice.

According to Mrs. Le Roux (telephonic interview 12 February 2005) of this private prison, group therapy with offenders focuses on inner healing. Initial contact with victims was planned so that offenders could apologise for the harm they have caused. However, the focus of this group has changed in that the offenders' priority is to do something for the community to "make right". The offenders in the one group made toys for children's home, and they want to do a gardening project. There is also the understanding of the deep rooted hurts inside the offenders caused long time ago by other people, which they are also dealing with, by getting in touch with their own feelings.

Tracing of victims is sighted as a challenge, as NGO's would need funding to do that, and the SAPS does not seem to be involved in the process. Despite these challenges, a marked change is observed in the behaviour and attitude of the offenders who went through the programme. A multi-disciplinary approach is taken, involving amongst others, chaplains and psychologists. These experiences unfortunately have not yet been written up.

The private prison in Bloemfontein, Mangaung prison, housing 2928 offenders, refers to the *restorative approach*. Separate Restorative Justice programmes are not presented as such. However, the Restorative Justice approach forms

part of all programmes that are presented in the prison. The idea is for the offender to understand why he is in prison, take responsibility and also to sensitise the offender about the hurts and needs of victims. Staff did not receive specific training in Restorative Justice. Kuyler (2004 telephonic conversation 15 February 2005) refers to the programme of CARR, meaning Choice to change, Accountability, Responsibility and Reintegration as part of the Restorative Justice approach.

4.21 South Africa Constitution (Act 108 of 1996)

The approach of the Republic of South Africa to corrections is based on the Constitutional Bill of Rights. The relevant section (35) (2) guarantees offenders' access to justice and legal representation. It also states that offenders must be detained under conditions that are consistent with human dignity. Humane conditions of detention are compromised by overcrowding because of the number of children and the 58 000 Awaiting Trial Detainees (ATD's) in correctional centres (Deputy Minister's speech on 15/6/2004 Budget Debate: Vote 21).

4.22 Correctional Services Act (Act 111 of 1998)

The most important features of the Correctional Services Act (Act 111 of 1998) are:

- the entrenchment of the fundamental rights of offenders;
- special emphasis on the rights of women and children;
- a new disciplinary system for offenders;
- various safeguards regarding the use of segregation and of force;
- a framework for treatment, development and support services;
- a refined community-involved release policy;
- extensive external monitoring mechanisms, and
- provision for public and private sector partnerships in terms of the building and operating of prisons.

The Department of Correctional Services is also guided by the Correctional Services Amendment Act, which states in section 2 that:

The Act also provides for the establishment of the Judicial Inspectorate, Independent Prison visitors, and the National Council for Correctional Services. The Department is under the supervision of the Minister of Correctional Services and is also overseen by the Parliamentary Portfolio Committee on Correctional Services and Select Committee on Security and Constitutional Affairs. The National Council for Correctional Services consisting of judges, lawyers, professionals, and a number of citizens, advise the Minister of Correctional Services on policy and legislative matters.

This Act refers to the following terms which are relevant to this study and is quoted:

Correctional Supervision and Parole Board means a board appointed by the Minister under section 74 of the Criminal Procedure Act (Act No.51 of 1977).

The Act refers to prison and prisoner and the latter “means 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.

It is noticed that the Act also refers to sentenced prisoner; while in documents that were developed after the Act, the terms correctional client, offender and even inmate are used interchangeably. The 52 new Correctional Supervision and Parole Boards make provision for victims of crime to attend parole hearings and give inputs. This is a significant step in the quest to establish and promote restorative justice as an acceptable and viable mediation process.

4.23 White Paper on Corrections 2005

Department of Correctional Services introduced financial programmes in the 2004/5 financial year, committing the Department to implement the White Paper on Corrections. The White Paper on Corrections (2005:14) acknowledges that

other stakeholders need to be involved in dealing with offenders and correcting offending behaviour. The needs addressed are:

- **Correction:** which aims to address the offending behaviour of sentenced offenders.
- **Security:** which aims at addressing the safety of inmates, officials and members of the public, and taking into account the human rights of the offender
- **Facilities:** The Department of Correctional Services has to ensure that buildings are accessible to the offenders living with disabilities, and provides for the needs of children in Correctional centres. The facilities should also make provision for humane incarceration, in terms of available floor space, privacy, etc.
- **Care:** The Department of Correctional Services intend to address the well-being needs of inmates including access to social and psychological and spiritual services, which would address the strengthening of family ties, again to ensure successful reintegration back into the community.
- **Development:** aims to provide for skills development in line with Departmental and national human resource needs as well as formal education, sports and recreation.
- **After Care:** intended to ensure successful re-integration through appropriate interventions directed at both the inmate and relevant societal

institutions. This acknowledges the need for close cooperation with society.

Reconciliation of the offender with the community: The Department must address the reconciliation of the offender with the community, and heal the relationship with the victims. This includes restoration of trust and/ or loss where applicable, as an integral part of rehabilitation and reintegration. Non-reconciliation with the community poses a great risk for re-offending of the offenders, who remains alienated from the community. According to Christie (1997:24) the modern Criminal Justice System alienates the owners of the conflict. Victims and offenders are often not directly involved in the process after the crime. These stakeholders are supposed to play a more meaningful role in their own restoration.

Restoration according to Braithwaite, as cited in (Naude 2003:1-9) is: *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*"

The principles that underlie the approach to restoration and that shape the Department's approach to corrections are:

- Addressing offences committed and assisting the offender to take responsibility for such offence, which may include restoring or building positive relationships with victims where appropriate;
- Assisting offenders to deal with their own victimization, as it would be difficult for anyone to understand someone else's pain, while feeling that their own pain has not been acknowledged. If offenders dealt with their own pain and victimization, then they can no longer use it as an excuse to hurt others.
- Addressing substance abuse and anti-social behaviour, like gangsterism and other behaviour associated with certain sub-cultures.
- Engaging family members in services to the offenders while incarcerated, like in family therapy, encouraging families to support the offenders emotionally and otherwise, while serving the sentence, but especially upon release.
- Acknowledging the role that communities can play. The Department of Correctional Services is already actively promoting societal responsibility, entering into working agreements with different community based organizations. The Department of Correctional Services readily allows members of the community relative free access inside Correctional centres, which was not previously the case.

Addressing offences committed should in the opinion of the researcher imply that the offender be assisted to take responsibility for such offence, and be

accountable to the victim that was hurt, as well as to the broader community. This might, amongst others, include restoration of relations with victims where possible and appropriate. Other avenues could also be explored, like offenders doing community service, while serving their sentence, groups of victims coming to Correctional centres engaging with groups of unrelated offenders, to build mutual understanding. The voluntary participation of the different parties should always be respected. The focus is on problem solving, healing of brokenness and condemnation and the restoration of harmony with self. The restorative approach will enable the offender:

- To recognize the wrongness and to accept responsibility for their offensive behaviour;
- To deal with instances where they themselves have been victims to encourage forgiveness and restoration of relations with concerned party;
- To accept their sentences and understand why the community is angry about crime.

The Concise Oxford Dictionary defines the word restore as an attempt to bring to the original state by rebuilding, repairing... bringing back to dignity or right.

4.24 The Judicial Inspectorate

The Judicial Inspectorate is responsible for the inspection of the 241 prisons to ensure that offenders' rights are respected and that the department abides strictly by policy and legislative guidelines. The Inspecting Judge has appointed a

number of Independent Prison Visitors. The main responsibility of these visitors is to conduct visits at various correctional centres with emphasis on the humane detention and respect for the human dignity of the offenders. Their findings are reported to the Inspecting Judge.

According to Judge Fagan, the conditions in correctional centres are such that he describes it as dehumanising to the extent that human rights may be violated and rehabilitation becomes virtually impossible. He also emphasises the growth of the population in correctional centres as a result of huge numbers of awaiting trial offenders of whom 60% will not be convicted. He suggests possible solutions, like diverting certain offenders from the judicial system (Fagan 2003/2004: 26).

In the case of disciplinary procedures where solitary confinement is the outcome, the decision must be brought to the attention of the Inspecting Judge who has to make a ruling within 3 days. If solitary confinement is recommended, then it must not exceed 30 days. The offender has to be assessed on a daily basis by medical staff and psychologists where available. It should be stopped if medical staff and psychologists find solitary confinement detrimental to the physical and or mental health of the offender. The head of Correctional Centre should visit the offender once a day and 4 hourly by a correctional official.

A Restorative Justice approach like in Belgium, to deal with violations inside the Correctional centres might be more appropriate (Giffard

http://ccrweb.uct.ac.za/archive/two/11_2/restorative.html visited on 2005/04/21.

Offenders should be guided to understand why their behaviour is unacceptable and what they need to do to make things right. This is at the same time a process of socialization, as some offenders might have been exposed to deviant socialization patterns at home.

4.25 Remission and Restorative Justice

The Minister of Department of Correctional Services announced remission of sentence for certain categories of offenders during May 2005. The practical implication is that some offenders will get up to 20 months off of their sentence. Offenders who are sentenced for serious and or violent crimes are excluded from this gesture of goodwill. Those who do qualify should make use of this second chance afforded them by the government, to make right the wrongs, and create a better future for themselves (Minister of Correctional Services speech www.dcs.go.za). Again, this won't be possible without the support of families and communities. After previous remissions the community was angry every time a violation of parole was reported, or when those on parole committed offenses. Unfortunately, it is the researcher's opinion that these trends will be repeated, as long as these people are not successfully reintegrated as members of society. A concern raised in terms of Restorative Justice is about the role that victims and communities played in the decision to grant remission. What if victims, even of petty offenses, are not yet ready to deal with the idea that those offenders are

back on the street? Theory shows that even victims of petty offenses could be severely traumatized by a burglary. If victims and communities have not been consulted, then they are most likely not going to be willing to cooperate in giving these offenders a chance on finding jobs and to be accepted. They will still be stigmatized and be the first to be suspected if there is a crime committed in the community. Remission is an internationally accepted measure to deal with overcrowding. However, within the Restorative Justice paradigm, the victims still need to be consulted and recognized as partners in decisions like that, as it directly affects them. Communities need to be actively involved as support system; therefore restoration needs to be prioritized. Communities will be expected to make resources available for those released from Correctional centres (Hahn 1998:135).

4.26 Restorative Justice and Reintegration

Muntingh (2002:21) professes that the ultimate goal of Restorative Justice is to reintegrate those victims and offenders who have successfully dealt with conflict or crime. The Retributive system is not geared to deal with emotional issues and families and communities do not play any significant role. In this regard Luyt (1999:67) postulates that Restorative Justice lays the foundation for healing and restitution and empowerment. This would imply that resources be made available for the offender to honour his agreement and for the victim to rebuild his/her life (Van Ness, Heerderts Strong 2002:159).

Restorative Justice in pre-sentence phase advocates the use of imprisonment as the last resort. Restoration to victims needs to be prioritized, limited only by the safety of the community. For sentenced offenders reintegration is an even more important goal. Coming from prison is a distinct disadvantage when trying to find a job, or to prove oneself as trustworthy. The process of reintegration according to the White Paper already starts when the offender is admitted in the Correctional centre (White Paper on Corrections 2005:68, 74). It requires contact with families and communities who are willing and able to give emotional and financial support throughout imprisonment but more importantly, upon release. During a symposium in 2000 entitled *National Symposium on Correctional Services: A Collective Responsibility* (1-2 August 2000), the role of communities in reintegration of offenders had been discussed. It was submitted that while Department of Correctional Services incarcerate offenders in terms of their court orders, the social circumstances should receive equal attention and communities be prepared at the same time to reintegrate offenders to prevent re-offending. Adding to that, Ashworth (2003:164) postulates that reintegrating offenders into communities that are supportive both to the needs of victims and offenders can prevent re-offending. Contact with communities in the Restorative Justice paradigm includes contact with victims where appropriate and possible. Reintegration of offenders after making peace with victims and communities might just be easier. Cilliers (1993d: 22) professes that reintegration requires the availability of resources, of work, housing and support systems. The NGO NICRO acronym means exactly that: National Institute for the Reintegration of

Offenders. Unfortunately the name distinctly excludes victims, although it is known to also deliver services to victims of crime as well.

4.27 The Sentenced Offender as Important Role player in Restorative Justice

All the abovementioned efforts would be in vain if the offender is not understood as an individual. In terms of the White Paper on Corrections (2005:67,79) the Directorate Risk Profile Management in the Branch Personal Corrections developed tools to assess the individual from the time he/she enters the Correctional centre. These tools aim to make sense from the background, causal factors, family life, community influences, substance abuse and criminal background. This should be linked to the directorates dealing with Community liaison, Pre-release Resettlement, Community Integration and Social Reintegration. The challenges that the offenders might face upon release need to be understood and measures need to be put in place to alleviate these problems. The following are possible challenges some of which had been present as triggers of antisocial deviant and criminal behaviour. If these factors are present on release it might increase the offender's probability to re-offend (Hesselink-Louw 2004:329).

- Poverty and under development
- Substance abuse in the family

- Criminality in the family
- Culture of violence
- Gangsterism in the community
- Lack of resources
- Lack of educational and social skills
- Unemployment

Cilliers (1993d: 23) postulates that the labour market and reintegration agencies like Community Corrections, NICRO and others should cooperate in making it possible for ex-offenders to find employment and develop skills for the labour market.

Van Ness (1986:48-54) postulates that the offender suffered loss because of his/her imprisonment. These losses, like loss of close relationships, heterosexual relationships, job loss, loss of dignity and respect, loss of liberty and the right of self-determination, are equally traumatic. These losses and traumatic experiences should be kept in mind when trying to convince the offender of empathy for the victims who have suffered certain losses because of the crime. Offenders often see themselves as victims of the system and that they are already serving the community by serving a sentence.

According to Johnson (2004:85) offenders need to deal with their cognitive distortions as to why they commit crime and understand the factors in their own

life, which lead to crime. The offender needs to be healed, before he/she is able to reach out to the victim.

The developments in corrections all over the world and particularly in South Africa, acknowledges that prisons should no longer be places only to punish, but to correct offending behaviour. Finally, offenders might not be willing to meet victims, fearing they might be physically attacked by angry victims or be rejected. This according to Umbrecht (2001:274) is the reason why proper preparation of all parties is necessary. This would also start the process of building relationships and dealing with fears and uncertainties (Umbrecht 2001:276).

4.28 Summary

This chapter dealt with the realities within the Correctional system. The Department of Correctional Services as part of the South African Government adopted a different approach to dealing with victims and offenders and with the aftermath of crime. One of the ways in which these challenges is addressed was in adopting a “restorative approach” in the strategies and planning of rehabilitation programmes and programmes targeting and correcting offending behaviour.

The functions of Restorative Justice were strategically moved from the Directorate: Spiritual Care, to the Directorate: Correctional Programmes in line

with the notion that all offenders should be subjected to programmes targeting their specific behaviour, but also in the spirit of encouraging the offender to take responsibility for offenses committed.

The detail information about the Directorate: Correctional Programmes was meant to create an understanding of the bigger picture. Reference was made to other services that are offered to the sentenced offender, like social work, spiritual care, psychology and education, exactly because one Directorate in isolation cannot achieve rehabilitation and changing of behaviour and attitudes. Restorative Justice also proves to be cross cutting in different disciplines.

The application of Restorative Justice is also faced with the same challenges as in the case of other programmes. Overcrowding will seriously hamper the implementation of this approach, but it is not impossible to bring about change where committed offenders and DCS personnel are willing to walk an extra mile. Restorative Justice in South Africa is still in its infancy. This is in the researcher's opinion the opportune time to implement this new direction, and make it applicable to the unique conditions of the offender community in particular, as well as the unique conditions of the South African community in general.

The DCS envisages a criminal justice system that recognises the humanity of every person, even those who commit crimes against the people of South Africa. The Department is committed to bringing about a correctional system that lends

itself to correcting offending behaviour, ensuring successful reintegration by developing skills like managing emotions, change attitudes and thinking patterns and enhance values (Wright 1999:56, 57).

CHAPTER 5

VICTIM EMPOWERMENT IN THE SOUTH AFRICAN (SA) PUBLIC SERVICE

5.1 Introduction

An awareness of the plight of victims developed and became more prominent since the 1970's, mostly in Canada, United States and Europe. Compensation

for victims was one of the main issues that were attended to (Lurigio, Skogan & Davis 1990:251).

It seems that involvement of victims in parole hearings of offenders was not a high priority at the time. The victim movement in Europe, which started around 1964, coincided with the introduction of victim compensation in Britain (Lurigio et al 1990:206). The public became tired of the poor treatment of the victim by the criminal justice system, and total disregard for the needs of the victims. It seems that what was generally perceived as lenient sentences was the rationale behind this movement/wake up reaction, in favour of the victims. This movement was initiated by volunteers from communities and later supported by government funding.

Up until 1970 no attention was paid to the needs of crime victims (Kelly in Lurigio et al 1990:170- 173). People who fought for the rights of these victims published the personal trauma that victims suffered as a result of the crime.

What was done in Europe in the 1970's is now being advocated by the victim empowerment movement in South Africa, namely to inform victims of the court date, separate waiting rooms in courts for victims and offenders, training to police officers in dealing with victims of crime, like rape, etc. (Lurigio et al 1990:173). There is a general public perception that little concern is shown to the victim of crime and that perpetrators are released far too soon. In South Africa this has

led to the introduction of the 1997 Criminal Law Amendment Act (South African Law Commission 2000). This Act has two specific goals, namely to allow for severe punishment for serious offenses, as well as uniformity in the sentencing process. It also allows for minimum sentences. The latter leads to influx of offenders with very long sentences into the correctional system, which worsens the already overcrowded prison situation. Overcrowding naturally has a negative effect on rehabilitation and on providing services to victims within the correctional system.

Victim participation was resisted in courts, because it would “disturb the normal court proceedings”. It is still the case today, in some South African courts (Lurigio 1990:173). Victim participation led to greater cooperation but also easier recovery for victims from the trauma of crime, as it seems that their inclusion into the justice process is also a form of empowering (Lurigio et al 1990:175).

Already since 1980 were victims involved in plea bargaining (Lurigio 1990:176) and sentencing (Lurigio 1990:178). However, some magistrates had some serious concerns about the involvement of victims in court cases, in prof Yale Kamisar’s words: “I wince when I hear that the victim ought to testify at the sentencing or before the parole board” (Lurigio et al 1990:179). He saw this as a crime against society and others and as vengeance against the offender.

5.2 Rights of Victims

Victims have a right to information about the case especially whether the offender had been apprehended or not. Some victims are very traumatized and constantly fear that the intruder who burgled their house, for instance, might return. This fear will unnecessarily continue to upset the victim or disrupt his/her life, while the offender might have been caught and convicted already (Cox 2002:245).

In America a victim could get telephonic information about an offender's trial and sentencing by dialing a toll free number. Before this system was introduced, many victims felt re-victimised by living in fear for the return of the offender or that the offender might un-expectantly turn up at the victim's place. This programme is called Victim Information and Notification Everyday (VINE). This system helps victims to take precautions if they know the offender has been released. This service and others are state funded. Zehr (2003:69) emphasizes the need for restitution, more than rights, needs like restitution, to be heard, need for vindication and to have their power restored.

5.3 Victim compensation

Victim compensation implies "...in the criminal-victim relationship, concerns the counterbalancing of a loss suffered by a victim as a result of criminal attack..." while victim restitution "...in a criminal-victim relationship involves restoring the

victim to his or her position, which was damaged as a result of a criminal attack” (Rex 2002:250). This involves direct involvement of the offender as he/she has to pay damages. This could be an unsatisfactory outcome for some victims, if the offender is not traced, if he cannot pay and it could be time consuming and increasing the administrative burden of the state. One of the problems experienced in one of the American states is that payments are not always effectively administered. Offenders pay money but it is not paid over to the victim. The administration of such monies increase, while victims are suffering (Rex 2002:250).

State subsidized compensation is applied when other methods like civil suits, restitution or private insurance fail to reimburse victims. It usually pays out medical claims, loss of income, and loss of support for dependants of the victim, funeral costs, etc. It also only caters for certain victims of certain crimes and criteria to be able to claim, like being an innocent victim, not living with the offender, cooperation with judiciary, etc. This has been an introductory discussion of certain overseas practices, which is by no means comprehensive. The rest of the chapter will focus on the policies and practices regarding Victim empowerment of certain South African government departments.

5.4 Victim Empowerment Programme in the SA Public Service

The researcher did in previous chapters allude to some of these practices, but will now specifically focus on policy and practical implication. The Department of Correctional Services forms part of the Integrated Justice System of which the following departments are included: Social Development, South African Police Services, Department of Justice and Constitutional Development.

The **Department of Social Development** is the lead department in Victim Empowerment Programme (VEP), while the Department of Justice and Constitutional Development takes the lead in training issues on the Service Charter for Victims of crime in South Africa. The various government departments are represented in the Victim Empowerment Management Team and the purpose of this team is to:

Facilitate the establishment and integration of inter-departmental and inter-sectoral programmes and policies for the prevention of victimization and to support, protect and empower victims of crime and violence, and that such policies and programmes are properly monitored and evaluated to ensure quality service.

The terms of reference for this management body include it's intention to:

- Develop effective and adequate victim services within VEP structures
- Develop a deeper knowledge and understanding of victim issues
- Strengthening and adequately equipping resources

- Addressing needs of victims effectively and comprehensively, thus preventing secondary victimization
- Encourage cooperation within the criminal justice system
- Reinforcing socially desirable behaviour in offenders
- Preventing of victimization

According to Johnstone (2002:12) victims become more central in criminal justice in terms of Restorative Justice, by asking what should be done for the victim instead of what should be done with the offender. This is a fundamental paradigm shift in the approach to crime, justice and victimization. Victim empowerment is in line with the UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power (Resolution 40/43).

5.5 Victim Empowerment in the Department of Social Development

The department of Social Development has a fact sheet which spells out the involvement of this government department on Victim Empowerment as follows:

The final draft of the Integrated Victim Empowerment Policy is currently being costed for presentation during 2005, to Senior Management and Treasury for implementation by other national and provincial government departments and Civil Society.

One-stop Centers and shelters for women victims of violence are established in different provinces depending on the need, like the one in Upington. The

National Directory on Services for Victims of Violence and Crime, which was launched during the 16 Days of Activism on NO Violence Against Women and Children in December 2004, was updated in 2004, in collaboration with the provincial Victim Empowerment Programme Managers/Co-coordinators and their provincial counterparts.

The Minimum Standards for service delivery to the victims of violence was approved by the Director-General and workshops for implementation were conducted in five provinces. A user-friendly booklet on the Minimum Standards has been printed and distribution to the provinces has commenced.

This department also trains professionals in Victim Empowerment and Trauma Support to improve service delivery.

The department organises events to commemorate the 16 Days of Activism on No Violence Against Women and Children annually, as well as International Women's Day in cooperation with Non Government Organisations who render services to women who are victims of violence and crime. A fruit garden was launched by the Deputy Minister, Dr Jean Benjamin as a symbol of peace and hope in families with a view of preventing domestic violence. Planning for services is informed by Women's Dialogues to obtain information on the views and services expected by women. Finally, the Department of Social Development also involves its partners in the public service as well as civil

society when they hosted a Victim Empowerment Conference in Durban on 31 August to 2nd September 2004. The theme was “10 Years of Victim Empowerment: From Victims’ needs to victims’ rights – sharing achievements, strengthening the NGO sector in victim empowerment and addressing challenges.

5.6 Victim Empowerment in the Department of Correctional Services

The Department of Correctional Services (DCS) in its White Paper on Corrections (2005:14), states that it wants to hold the offender directly accountable to the victims and communities who have been harmed as a result of the violations by the offenders. Restorative Justice as a project was launched by the minister of Correctional Services in November 2001. It emphasizes the role of the victim..” One of the goals of Victim Empowerment is to create a safer society...” In the researcher’s view a safer society can only be created if the victims of crime learn that they can feel safe, that they played a part in the reaction to the harm that was done to them, as well as in decision-making regarding the offender.

The Victim Empowerment Project was established as a result of the UN declaration in 1985 in which respect for the dignity for victims is enshrined. South Africa was obliged to look into the Criminal Justice system, and evaluate to what extent this goal was achieved in terms of victims’ needs. This led to the

formation of the Victim Empowerment Movement, although some organisations already initiated this process, albeit in an uncoordinated fashion. The South African National Crime Prevention Strategy (1996:65) paved the way for justice approach, including a victim centered criminal justice approach, which includes Civil Society and the Public Service.

5.6.1 Victim Empowerment Inside correctional centers

Victim Empowerment in the researcher's opinion has a two-pronged approach. Firstly to empower sentenced offenders who have suffered harm as a result of their own victimization either before or during incarceration. The Department of Correctional Services acknowledge the fact that quite a number of offenders who are currently serving a prison sentence have been victims of various crimes themselves (Victim Empowerment document 2003:8). Social workers and psychologists attend to social and psychological problems that offenders experience as a result of serious family problems and trauma that they have experienced prior to imprisonment. These offenders might not be ready to deal with the harm of their victims, until they have been helped to deal with their own problems. Some offenders come from abusive parent-child relationships, many female offenders serve sentences for harm done to abusive partners and juveniles might have ended up in crime after running away from negative family circumstances. These people might still be carrying the pain and hurt and might not be open to deal with pain and hurt of victims. Van Houten (2002:52)

postulates that offenders also need counseling to deal with trauma. This implies that the necessary resources be made available.

Secondly, to attend to the needs of victims in the community who have been harmed by those offenders who are currently serving a prison sentence. The Service Charter for Victims of crime in South Africa, 2004 and the Correctional Supervision and Parole Boards make provision for victims to attend parole hearings. However, attending a parole hearing cannot happen without proper preparation of both victim and offender. A dedicated person per management area should be available to deal with victim's requests and ensure that offenders receive the necessary training and preparation. It should also be ensured that no coercion of either party takes place. Logistical arrangements should be made, like venues and in high profile cases, provision be made if the media needs to be informed. All these matters need to be handled with sensitivity, by correctly or appropriately trained facilitators. Referral measures for follow-up should be in place prior to the session and arrangements are made for involvement of support systems on both sides.

This project will involve identifying the offenders who would want to become involved in victim empowerment. Heads of correctional centers will oversee the process and ensure that the necessary security precautions are taken. Professionals like Psychologists, Social workers, Educators, Correctional officials, Restorative Justice facilitators and Relatives/community members will all

be involved on different levels to prepare victim and offender for the appropriate Restorative Justice model or programme. The decision to use Victim Offender Mediation, victim impact panels, diversion, Family Group Conferencing or whatever model, will depend on the circumstances, type of crime, willingness and availability of victim and offender. Preparation beforehand is just as important as debriefing afterwards, and the relevant role players will be involved.

All these people might be aware of offenses suffered by offenders, and might form part of a support structure. Factors that increase the likelihood of victimization of vulnerable offenders: gangs in Correctional centres, Correctional centres violence, gang supported fights, assault or murder, forced sexual activities or rape and intimidation.

5.6.2 New parole policy: Correctional Supervision and Parole Board

The amended Sections of the Correctional Services Act (Act No 111 of 1998), related to the establishment of new Correctional Supervision and Parole Boards was promulgated on 1 October 2004. These Boards are independent bodies consisting of both community members with a specific background and Department of Correctional Services personnel. Community members, officials from the Department of Correctional Services and officials who will be co-opted from the South African Police Services and the Department of Justice and Constitutional Development will staff these Boards. Victims or their next-of-kin

will be able to attend Board hearings or provide written inputs if not present at a parole hearing.

The parole board looks at the institutional file of the prisoner, which contains information of his/her conduct (including a wide range of aspects inside the correctional centre), to decide if early release would be advisable. This board can make decisions about release of offenders, based on certain criteria. The Department of Correctional Services is obliged to enforce the sentence from the courts. However, the full sentence does not have to be completed inside the correctional centre. This board makes decisions about which part of sentences certain categories of offenders can serve in the community.

The right of the victims to amongst others receive information about the prison sentence of the offender, sentence reduction, parole hearing and possible release is covered in the Service Charter for Victims of Crime in South Africa 2004, Victim Empowerment Draft Document 2002, SALC: New sentencing framework 2000:90).

Offenders might experience mixed feelings about this possibility, which could be because of ignorance, fear of the unknown and fear because if the whole story was told, their chances for parole could be compromised. This development is in line with the Restorative Justice principles of restoring the balance by empowering victims. By involving victims in parole hearings, they are granted

the opportunity to be heard, and their feelings to be respected (Department of Correctional Services 2003/2004).

5.6.3 Service Charter for Victims of Crime in South Africa

The Service Charter for Victims of Crime in South Africa (“the Service Charter”) and Minimum Standards on Services for Victims of Crime (“Minimum Standards”) have been approved by Cabinet on 01 December 2004. These documents have a major influence on the functioning of the Correctional Supervision and Parole Boards specifically and DCS in general, regarding the rights of victims to be involved.

The Department of Correctional Services was involved, together with other government departments and Community organizations in drafting this Service Charter, and the Department of Correctional Services is expected to:

- Ensure that sentences of imprisonment are served in accordance with the law. When release of the offender is being considered, the Department of Correctional Services will carefully consider the supervising of the convicted person released on parole.
- The victim may request to attend the Correctional Supervision and Parole Board hearings. If the victim wishes to attend, he/she will be informed of the date of the hearing, and the Board will take the victim’s concerns into account when considering the offender’s release on parole.

- In every case where the offender is released on parole the Correctional Supervision and Parole Board will attach conditions to his/her release, if the Board considers that this is in the best interests of the victim.
- Allow the victim to make a written application to the Chairperson of the Correctional Supervision and Parole Board to attend the hearing and that the Chairperson will inform the victim of the time, date and venue of the hearing;
- If the victim attends the Correctional Supervision and Parole Board hearing he/she may give his/her input either verbally at the hearing or the victim may submit a written input to the Correctional Supervision and Parole Board.
- Inform the victim, on request, when the offender is to be considered for release on parole;
- During the Parole Board hearing process inform the victim, on request or where necessary, of available support and counseling services;
- Inform the victim in writing of any changes to hearing dates or postponements and will also inform him/her in writing of the outcome of the Parole Board hearing and of all conditions imposed;
- If the victim asked to be present at a hearing, adequately inform him/her through the Chairperson of the Correctional Supervision and Parole Board, in a language he/she understands, of the procedures during the hearing and what is expected of the victim; and

- On request, and with the offender's consent, inform the victim of the developmental programs the offender has undergone and/or is undergoing to improve his/her behaviour.
- Inform the victim, on request, if the offender has escaped from custody, as well as, of any transfer of the offender and the name of the institution to which the offender is transferred; and
- Especially in rape and abuse cases, the Correctional Supervision and Parole Board may include certain stipulations in the offenders' parole conditions to minimize opportunities for them to make unwanted contact with the victims.
- Adequately inform the victim on: sentences of correctional supervision; the Parole Board's functions; what his/her role will be in the Parole Board hearing; and what to expect during the hearing;
- If necessary, provision will be made for interpreters during the Parole Board hearing;
- On request, facilitate mediation between the victim and the offender when the need arises; and
- On request or where necessary, refer the victim to appropriate internal or external service providers for counseling or support services.
- In case of a complaint concerning a correctional official, the victim to put it in writing to the National Commissioner of Correctional Services or the

Inspecting Judge. On receiving the victim's written complaint, the Commissioner will delegate it to the relevant office for attention.

Changes in the Criminal Justice system has led to moving from being offender focused, to victim focus.

5.7 Victim Empowerment in the South African Police Service (SAPS)

- The SAPS, like other service providers in this Public Service and civil society realized the need to reduce secondary victimization of victims of crime. This part of the dissertation will concentrate on the role of the SAPS, as a point of departure after a crime had been committed and was reported to the police. The SAPS engaged in a victim-centered approach based on the National Crime Prevention Strategy of 1996.

It also, amongst others, makes provision for quality service and continuity of care to ensure ongoing support where and when needed. This implies an obligation on service providers like the SAPS to:

- treat victims with fairness and respect for their human dignity and privacy, with no discrimination on grounds of race, gender, religion, marital status, sexual orientation, age, disability, culture, language
- listen and respect information provided, and also treat it with confidentiality with due regard for the administration of justice
- to provide relevant information to victims

- to restore to the extend possible a sense of security in victims
- to assist victims and to refer to relevant accredited service providers with the least possible inconvenience to victims. This implies that even in the helping relationship between the victim and service provider there needs to be a level of balance, a form of reciprocity. If the victim gives information, the service provider is expected to listen and show respect. If the victim needs protection, it should be provided, etc. Restorative Justice and Victim Empowerment aim to restore the balance.

The Minimum standards on Services for victims of crime (2004) ensures that victims are entitled to the following services when a crime is reported:

They can expect the SAPS to investigate the case, or give reasons why it will not be investigated, if such a decision is taken.

A complete statement will be taken and the victim can expect to have privacy and to get the necessary information about other available services, depending on the nature of the crime and support needed, like medical attention. The victims can expect to be interviewed in a language that he/she understands or an interpreter be made available. The victim might also request to be interviewed by a same sex police official, if available.

5.8 Resources/Services

Resources for crime prevention needed to be established, better sourced and or extended. Services were indeed available, but not always accessible to the majority of victims of crime and violence. Services were limited, fragmented, uncoordinated, reactive and, therefore, also ineffective (Prozesky & Kotze 1998:6). Support services needed to be based on the needs of victims in a specific community and be community driven in partnership with the SAPS, other government structures and civil society. Support services should provide for diversity in terms of language, culture and social conditions in South Africa (SAPS draft policy on Victim Empowerment 2004). The SAPS as part of the National Task team on Victim Empowerment market available services which in the researcher's opinion serve to both prevent crime and empower victims.

5.8.1 Victim friendly facilities

A room at a police station is especially dedicated for the use of victims of crime. Traumatized people need to be attended to in privacy as this is part of their rights as victims to be treated with respect and dignity. This will obviously make it easier to give his/her statement. It could prevent secondary victimization if other services could also be available at the same facility for example medical examinations, volunteers for counseling if needed and washing facilities. The majority of these facilities used for taking statements from children could also

include toys, even genetically correct toys used by experts to assist in taking statements.

5.8.2 Trauma rooms

This resource is usually managed by Health care services. The ideal situation would be if relevant police officials could be available at this venue to take statements from victims and or witnesses. This again would serve the purpose of supporting victims who often do not have transport, or are further traumatized by having to tell the story over and over again to different people, opening different files.

It is the researcher's opinion that sentenced offenders could get involved in maintenance of these types of facilities, and those inside correctional centres might even be used to make toys or furniture specifically as part of restoration of communities.

5.8.3 Community-based victim support centre

The venue at a police station made available in terms of the stations victim support programme to volunteers that assist the SAPS to render a victim-friendly service. This is likely to be the police station's Victim Friendly facility, but may be called a victim support centre when used by volunteers of the victim support programme. The services rendered at such a Centre must be an extension of the services rendered by the SAPS only.

A shortcoming is that certain categories of victims receive more support than others. Many service providers specialize in either rape, or child abuse, and do not make provision for other types of victims that constitutes secondary victimisation if the victim is turned away and no other services are available.

Government employees and volunteers rendering services at trauma centres or facilities should be specially trained in victim issues, so as to handle the situation with sensitivity and empathy. The SAPS has embarked on national training of officials dealing with the public.

Role players like the SAPS, Court personnel and Corrections personnel should understand and consciously endeavour to break down the barriers of the past. According to Johnstone (2002:16) police officers should be trained to know when to refer cases for diversion. Quite often, those who are supposed to implement measures to protect vulnerable groups like women and children have themselves been brought up in an environment where these groups have not exactly been

enjoying any rights of protection and was in some way seen to be “deserving” of what they got. It is therefore clear that the attempts of government and civil society to create a safer place for victims will be futile, if South African families do not take responsibility for the way in which both boys and girls are socialized. This confirms the need for moral regeneration as was discussed in chapter 4 where the need to restore moral values in communities is emphasized. It also links to the Department of Correctional Services approach in the White Paper about “societal responsibility”. Government, and specifically Department of Correctional Services that should take responsibility for sentenced offenders, acknowledge this responsibility. However, attempts to prevent crime on a primary level will not succeed unless and until families and communities once again take up their responsibility to raise children in a loving and caring environment. Communities used to care for the weak amongst themselves, communities used to take responsibility to restore the harmony that was disturbed when an offense was committed. Communities used to be involved with each other and the moral regeneration movement and Victim Empowerment within a Restorative approach might be what is needed to restore the moral fiber of the South African society.

5.9 Summary

Government departments are involved in Victim Empowerment projects in varying degrees and on different levels. It is very encouraging that government does take responsibility for victims of crime in South Africa. It also recognizes the essential role that needs to be played by civil society.

Falling victim to crime is experienced as a crisis by victims. It violates their sense of safety and destroys their trust in fellow human beings. Often community members respond with anger or judgment towards victims, unknowingly because victimization brings home the reality that no one is safe, that offenses can take away your power or control (Van Ness 1986:30).

Victim Empowerment intends to restore the victim. If power needs to be restored, then victims should not be treated as if they are not entitled to their feelings. Support systems or organizations should allow victims to be angry, hurt and even have feelings of revenge, within limits. Support system should ask what they can do to help, and do exactly that. They should be careful not to overpower victims with what they think victims need. This would increase the sense of powerlessness (Van Ness 1986).

The National Task Team of Victim Empowerment is a very encouraging and positive step towards coordinating services to victims of crime in South Africa. It will also enhance the accessibility, availability and adequate resourcing of these services to victims. Working agreements between the different government

departments and civil society might hopefully in the long term minimize the secondary victimization of victims. Victims generally are discouraged when they are sent from one office to another, without adequate information and assistance to make the experience of victimization easier.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

The high level of crime in South Africa today, and indeed in the world, is met by an outcry from communities for harsher sentences, mostly imprisonment, according to McGuire & Priestly (1995:3), and even the death penalty, which is indeed applied in for instance, the United States of America. This country's prison population increased from just over 300 000 in 1972 to just under 2 million currently (Mauer & Coyle 2004:7).

Individuals and communities affected by crime express a sense of dissatisfaction with the way in which courts deal with crime. However, it is clear that the retributive way of dealing with crime has up to now not produced the desired results. Escalating crime rates is a clear indicator of that. The community is furthermore dissatisfied with the apparent inconsistency in punishment especially for serious and violent crimes and according to Zehr (2002:3), even justice professionals are frustrated by the ineffectiveness of the current justice system. It also happens frequently that alleged perpetrators are set free because of loopholes in the legal system. People started questioning, "What works?" and even concluded that "Nothing works". In this regard McGuire & Priestly (1995:24) profess that for instance, the Medical model referred to in chapter 2 did not work. The call for harsher sentences and retribution has to be carefully balanced with human rights, alternative sentencing and victim empowerment (Camerer 1997:1).

According to the Criminal Procedure Act, No 51 of 1977, short-term incarceration does not necessarily have any rehabilitative value. The imprisonment will cost the state a lot of money, at least R100.00 per day per prisoner, while it does not have a long term changing effect on the prisoner (Annual report 2002/2003).

Restorative Justice does seem to have a place in Department of Correctional Services albeit not a prominent one at this stage. This concept has been grabbed by some managers on senior level, but has unfortunately not been successfully cascaded down to all the offenders in correctional centres and the staff on operational level. The understaffing of the Department of Correctional Services in general poses an implementation risk for Restorative Justice as well as all other rehabilitation programmes. The introduction and launch of Restorative Justice in 2001 in the Department of Correctional Services created expectations in offenders. Unfortunately not enough personnel were trained to facilitate Restorative Justice processes and those available are likely to be used in custodial services.

6.2 Discussion

The researcher will now discuss some of the issues of this topic, although all are equally important or relevant. Restorative Justice in Correctional Systems have not been developed to the same extent as the community based programmes. It is therefore safe to make the assumption that a wide range of topics within Corrections can and should be researched. The researcher also makes a recommendation to this effect. Finally, more general recommendations are made in terms of aspects that, in the researcher's opinion, deserve more deliberation within the Department of Correctional Services.

6.2.1 Restorative Justice as part of Correctional Programmes

Problems that are likely to be experienced with the inclusion of Restorative Justice as part of Correctional programmes targeting offending behaviour, are amongst others, that certain expectations will have been created in offenders. They might want to engage in Restorative Justice processes, while personnel, funding and other resources might not be available. It is envisaged that Restorative Justice eventually be included in all correctional programmes. However, it also needs to form part of all other operations and programmes in Department of Correctional Services if an overall restorative approach is to be practiced. The importance of Drug treatment in correctional centres cannot be over emphasized (Braman 2004:37). Offenders might really be sincere in their decision to restore the harm to victims and their own families, but if the drug habit is not addressed, then they will certainly relapse. Going back to crime or prison

might be experienced by the community as secondary victimization, while the person might be powerless to stop abusing drugs. Braman (2004:37) further postulates that drug addicts who relapse and appear not to be sincere with their agreements in Restorative Justice, are usually poor. Rich people can go to rehabilitation clinics, while poor people go to prisons where there is no real treatment for substance abuse.

The following principles according to Sharpe (1998) in Van Ness et al (2001:5-6) should be strived for:

Restorative Justice invites full participation and consensus. Restorative Justice seeks to heal what is broken, seeks full and direct accountability, seeks to reunite what has been divided and strengthen communities to prevent further harms. This implies and reiterates the notion of Department of Correctional Services that society should take up its responsibility and partner with the department in dealing with crime on the different levels, primary, secondary and tertiary (White Paper on Corrections 2005: 38,90).

6.2.2 Victim Offender Mediation

Offenders who will now become aware of Restorative Justice might request contact with victims. It is recommended that screening should be very thorough and that offenders contemplating Victim offender Mediation should be subjected to a full programme on Restorative Justice as part of preparation and screening.

Involvement of family as support system should also be a pre-requisite for selection. The researcher is of the opinion that the emotional content of Restorative Justice will be a self-selection factor as well as the preparation before the actual Victim Offender Mediation.

It is also evident that there is a serious concern that sentenced offenders could try to use Restorative Justice as a form of manipulation, possibly trying to get time off of their sentence, and by so doing, re-victimising the victim.

Restorative Justice is not suitable for all kinds of offenders and offenses. One of the objections against Restorative Justice is that it is not suitable for violent or serious crimes. This does not hold water, as the screening process should not consider only one criterion. When sentenced offenders apply for Restorative Justice, a comprehensive screening process should be engaged into. Screening of the victim might also be necessary, in cooperation with external organizations. According to Griffiths (1999:291) secondary victimization of vulnerable groups can take place, especially in cases of physical and sexual abuse. The behaviour of the offender during incarceration should also be considered. Victim Offender Mediation is used as advanced mediation in crimes of severe violence in the USA (Umbrecht 2001:255-312).

The offender's willingness to participate in other correctional or development programmes should be evaluated, like in Spiritual care and support programmes.

The motive for requesting Restorative Justice can be determined by weighing inputs from a multi-disciplinary Team who have dealt with the offender extensively on various levels.

It is the researcher's opinion that the availability of support systems should also play a role. Relatives should be willing to attend, willing to stay involved after release, willing to monitor and assist with honouring the agreement, like paying restitution. Not all the requests for face to face meetings can or should be granted, because of possible psychological damage to victims. The offender's willingness to accept responsibility, willingness to apologise, psychological health, and appropriateness of offender's motivation are factors that could be absent or present in offenders with serious or petty crimes. All these factors should be the guiding principles, and not only seriousness of crimes. Even if the offender seems to be suitable, it should be kept in mind that Victim Offender Mediation is not the only Restorative Justice process available to sentenced offenders. The researcher suggests that offenders first go through general information programmes, then victim impact panels and if the victim and offender are willing and available, the process for Victim Offender Mediation can then be started.

6.2.3 Involvement of communities

Restorative Justice sees things differently. Crime is a violation of people and relationships. It creates obligations to make things right. Justice involved the victim, the offender and the community in a search for solutions which promote repair, reconciliation, and reassurance (Zehr 1990:181). The obligations of the offender cannot be met without assistance from the community. Supporting relatives and friends represent the community. Making resources available to change behaviour and to pay restitution involve the community.

A number of community organisations are rendering Restorative Justice Services in correctional centres. They all share a common problem of funding. Territoriality because of financial constraints is a reality. Some organizations might call their services Restorative Justice, which it might not be. The steering committee research on Restorative Justice practices, and the evaluating of the restorativeness thereof will to a great extent alleviate this problem. The Audit and Accreditation committee of the Department of Correctional Services should tap into this resource in helping to be more effective and efficient in their evaluation of services by external stakeholders.

A word of caution in terms of parole: parole for offenders should still be experienced by offenders as fair, despite the involvement of victims. The possibility of including ex-offenders in parole boards, together with victims, correctional service people, ordinary community members, as well as legal people to make it as inclusive as possible, respecting different views. For

offenders to regain full membership of the community, they need to be held accountable to the community and victims that suffered because of crime (Johnstone 2002:13).

6.3 Possible challenges in the application of Restorative Justice in the SA Correctional System

There is the possibility that any existing programme might be labeled Restorative Justice, without fundamental changes of the content. State bureaucracy might prevent implementation of Restorative Justice programmes (Johnstone 2002:17). The involvement and access of communities into correctional centres might jeopardize security arrangements. Community members/volunteers might find it difficult to adjust to the rules and regulations of correctional centres. In correctional centres the programme for a specific day might change without prior notice if an emergency situation occurs, and all offenders are locked up for security reasons.

Restorative Justice principles require innovation and a unique approach to different cases. Bureaucracies are built on uniformity, predictability and regularity, while Restorative Justice would want to take unique circumstances, personalities and needs into consideration.

Care needs to be taken to make sure that the needs of victims get the necessary attention, as the fear is that a system that is offender driven will necessarily

neglect victims. According to Johnstone (2002:18) the question that needs to be answered is if reintegrating offenders will necessarily also heal victims, and if the two are mutually exclusive. It is the researcher's opinion that the needs of these two parties can simultaneously be addressed, if external people from affected communities are involved and take part in decision making.

6.4 Limitations of the research

The study, by its very nature was limited to correctional centres in the South African correctional system, excluding community corrections.

6.5 Recommendations

Discipline within a correctional environment is a reality. Prisons have been known over the years for harsh discipline and often violation of human rights. It would be difficult to expect offenders to respect the rights of fellow community members if the rights of offenders are violated. Restorative Justice services should be properly managed and coordinated together with effective management of offenders, to break the cycle of crime and violence in society. The researcher makes the following recommendations for the enhancement of the application of Restorative Justice in the South African Correctional system.

6.5.1 Recommendation 1:

Restorative discipline as a way of dealing with offenses and violations in the correctional environment.

It is recommended that a uniform way of dealing with crime or any other violation inside the correctional centres, especially where there are several offenders involved, be adopted so that all offenders be subjected to the same kind of discipline. This should be practiced in all correctional facilities. This implies training and re-training of all custodial members, so that practicing of Restorative Justice principles in all kinds of conflict as standard procedure be applied. A group of offenders, who was affected, like a class of learners in school, could be divided into supporters for the guilty person and others representing the rest of the prison population in that correctional centre who also suffer as a result of the violation. The victim will then decide what punishment the culprit should get-this will have to be a unique solution depending on the circumstances in that specific correctional centre. It will be even more unique in a correctional environment where intimidation and threats are realities. It is even possible that some “community members” would want to vote secretly about possible punishment, fearing revenge from the friends or supporters of the person who stole something or caused a fight.

This should be done with caution, with the following in mind from the Correctional Services Act (Correctional Services Act (Act 111 of 1998) “No prisoner must in any way be involved in the implementation of any disciplinary measures.”

Restorative Justice differs from retributive justice in that it is fair, less formal and respects the rights of the parties involved. It is interesting to note that the same Correctional Services Act, Act 111 of 1998 requires that disciplinary hearings for offenders should be fair, informal with no representation, prescribe certain penalties where rights of offenders are acknowledged. It could also be in the form of a reprimand, loss of gratuity or in extreme cases solitary confinement of no more than 30 days.

6.5.2 Recommendation 2:

Special selection and training of independent Restorative Justice Practitioners

DCS members who are interested to be involved in Victim offender Mediation between sentenced offenders and victims should be specially trained and funds made available for training at recognized institutions. Follow up training sessions should be presented, especially when dealing with more severe cases involving violence and sexual crimes. Restorative Justice practitioners or facilitators should be graded depending on the training received as well as the types of cases that can be dealt with. These members should be specially recruited, trained and appointed as such. Umbrecht (2001:257, 261) recommends intensive and advanced training. He postulates that mediators should have special skills and knowledge. This person should also have a special and experienced understanding of the painful journey of all participants. In the

researcher's opinion the training of mediators should also include a commitment from Department of Correctional Services to provide regular debriefing and counseling for mediators. Mediators should also be convinced of the necessity of dealing with personal problems in order for them to be whole people themselves.

Training could also be combined with training of external service providers in the different communities. This will improve working relationships between the different stakeholders, like SAPS, Justice, DCS and civil society, if training sessions could be presented simultaneously with due consideration for unique requirements and skills, including work in community corrections.

It is recommended that guidelines of overseas training be taken and adjusted to the unique situation and needs in South Africa and that eventually uniquely South African training material be developed, in cooperation with tertiary institutions. This links to the notion in the Child Justice Bill that makes provision for "innovation".

Training in Restorative Justice should be included in tertiary training of social workers, criminologists, psychologists, and religious workers and even in school curricula.

Training of parole board members in Restorative Justice principles and Victim Empowerment should be a priority.

The 2002 conference identified some requirements for Restorative Justice practitioners, amongst others:

- good communication and decision making skills
- conflict resolution skills
- knowledge of the criminal justice systems and procedures, training and understanding of Restorative Justice.
- People who are culturally aware, both of own culture and that of others, and who can acknowledge own bias and are prepared to deal with that.

Education of the public in general, and victims and offenders in particular, is being advocated at virtually all meetings on Restorative Justice, like the 2002 National conference on Restorative Justice in Boksburg, Johannesburg. Public awareness was identified as a key objective. The mass media should be convinced to also report on successes of the Restorative Justice process, popular South Africa television series should include conflict resolution the restorative way. Moshoeu adds her voice to this by outlining the importance of public education on the correctional system, during a portfolio committee meeting/hearing on the White paper on Corrections

4/2/2004(<http://www.pmg.org.za/viewminute.php?id=3851>) visited on 3/2/2005.

Training should include all Restorative Justice Models so that it can be practiced depending on appropriateness and needs of parties. The different models or programmes that should be explored are: Support circles, Victim Impact panels,

Community service to enable sentenced offenders to pay Restitution while serving a sentence, Diversion for awaiting trial offenders, especially juveniles.

The directorate Correctional Programmes to be involved in developing of training manuals for new correctional services recruits to ensure uniformity in the information that is disseminated in the department. Community members as volunteers of DCS are allowed to attend Restorative Justice training at the departmental training colleges and be involved in practicing the different Restorative Justice models or programmes.

6.5.3 Recommendation 3:

Restorative Justice in all correctional programmes

Restorative Justice should form part of all correctional programmes and any other rehabilitation efforts of the department. The entire staff component in DCS should be increased to ensure that these programmes can be presented and will be accessible for all offenders who are interested. However, interest in Restorative Justice or refusal of offenders to take part in Restorative Justice should not have any bearing on parole eligibility. Consistency needs to be practiced, as offenders who qualify for remission are not subjected to any such requirement, but are still allowed back into communities. Restorative Justice involvement should be properly screened in order to prevent secondary victimization of victims.

6.5.4 Recommendation 4:

Expanding of Restorative Justice Component

There is currently only one person based at Head Office responsible for national coordination of Restorative Justice processes in the Department of Correctional Services. A Monitoring & Evaluation function should form part of the functions of the Restorative Justice component. It should make use of nationally approved standards to evaluate the restorativeness of processes, prevent more harm to victims and or offenders, and to enhance accessibility and quality services. Effective monitoring and evaluation would require that practitioners/presenters/facilitators be encouraged to document their work, the outcomes and challenges, in a standardized format to eventually develop literature for this specific target group and environment. It is important for the different disciplines in the Department of Correctional Services to work closely together on Restorative Justice, as a territorial approach will harm the very people that are supposed to be helped.

Cooperation with the Research directorate on researching of Restorative Justice practices both nationally and internationally, specifically in corrections, or employing specific people to do research in this field is needed.

6.5.5 Recommendation 5

Enhance the Victim Empowerment Function/component

Victim Empowerment and victim support inside correctional centres should make provision for support for victims who want to meet with offenders by liaising with structures in communities. In this regard the Department of Correctional Services might consider taking the offender to where the victim is, on state expense and as a support service to the victims. This would alleviate the problem of victims having to come from KZN, for instance, to attend a parole hearing in Gauteng.

Rape and sexual assault in correctional centres are realities, so is fighting and violence. The harsh violent environment can be very traumatic for vulnerable offenders. The researcher is of the opinion that like in the community, there is also a “dark figure” in terms of victimization in the correctional system, as victims fear further victimization if crimes like rape, physical assault or threats are reported.

Some offenders have also been victims themselves prior to their incarceration and might not have dealt with offenses that they have suffered. The White Paper on Corrections 2005 recognises this fact, and a component on Victim Empowerment should be dedicated to deal with this kind of victims.

6.6 Recommendation for New Research

- The role of Relatives of sentenced offenders as important role players in Restorative Justice Programmes within the South African Correctional System.
- A Multi-disciplinary approach to Restorative Justice in the South African Correctional System.

6.7 Concluding Remarks

The traditional South African justice system is usually criticised as being offender focused, adversarial, too formal and punitive. However, great strides have been made in the field of Alternative Dispute Resolution, with specific reference to the use of Restorative Justice in dealing with crime and the harm it causes to all affected parties.

Restorative Justice is still in its infancy in South Africa. Some of the challenges it faces and will still face in years to come, have been expressed at the Restorative Justice conference of 2002, as being, amongst others, inadequate support for offenders upon release to successfully reintegrate into society, sensitivity to gender issues, the need for presenting of anger management already on school level and cooperation between all stakeholders. Sentenced offenders will eventually be released and the community should be ready for their return, he

further postulates that the development of policy alone is not enough to make change in the criminal justice system work, but that measures should be in place to make these policies work. All South Africans should understand Restorative Justice and their own responsibility as community members to practice it in all spheres of life.

Ancient and modern practices alike proof that the justice system on its own has not solved the problems related to crime, but *what it succeeds to do in a short term is to push it behind bars*. Literature study as well as Department of Correctional Services statistics implies that imprisonment is not the solution. A number of approaches have been tried and tested, and yet best practices have not brought down crime rates in South Africa or worldwide. Restorative Justice as a different approach might succeed in doing just that, because of its appeal to the conscience of the offender, making him/her think twice before re-offending. The community efforts in socializing children in dealing with difficult situations and conflict will also have a positive effect on moral regeneration of the nation.

Department of Correctional Services officials to work on changing their own attitude towards the people entrusted in their care, believing that

*we want them to be responsible,
so we show how they are responsible for the consequences of their choices
we want them to be positive and constructive,
so we model, reinforce and reward positive and constructive attitudes
we want them to be non-violent,
so we help them use practical, non-violent options to solve their problems
we want them to be kind and loving people,*

*so we encourage their kindness and reinforce the love they already have for family and friends
we want them to quit being the tough guy,
so we show how to respect and tolerance are fundamental to society
we want them to quit hanging around losers,
so we help them become winners
we want them to quit exploiting us,
so we remain beyond exploitation
we want them to take control of their lives,
so we show them how they can*

All sectors in the correctional system should find their role and take responsibility for applying restorative principles in all aspects of their work. Real success in Restorative Justice will be demonstrated if all South African citizens are willing to apply these principles in everyday life.

“There ...but for the grace of God go I”

BIBLIOGRAPHY

Alexander,C. 2002. Stamping out crime. *Servamus 2002:14*

Allan,A. & Allan,M. 2000. The South African Truth and Reconciliation Commission as a Therapeutic Tool. *Behavioral Sciences and the Law*, 18(4): 459-477.

Ashworth, A. 2002. Responsibilities, rights and restorative justice. *British Journal of Criminology*, 42(3): 578-595.

Ashworth,A. 2003. Is Restorative Justice the Way Forward for Criminal Justice? in Restorative Justice Critical issues. (eds) McLaughlin,E, Fergusson,R,Hughes,G & Westmarland,L. London :Sage Publications.

Article 13 of the Prisons and Reformatories Act, 1911. The Department of Prisons. Pretoria: Government Printers.

Babbie, E.1997. The Practice of Social Research. (9th ed.) Belmont: Wadsworth Publishing Company.

Badenhorst,C. & Conradie,H. 2004. Diversion:The present position and proposed future provisions. *Acta Criminologica*, 17(2): 115-130.

Bailey, KD. 1994. Methods of social research. (4th edition). New York: The Free Press.

Balfour, N. 2005. Minister of Correctional Services. From the desk of Minister Nconde Balfour, MP. *SA Corrections Today*. January/February 2005.

Banks, C. 1999. Victims in the Village: Aspects of Restorative Justice in Papua New Guinea. *International Review of Victimology*, 337-405.

Bartol, CR. 1999. Criminal behaviour: A psychosocial approach (5th ed.). Upper Saddle River, New York: Prentice Hall.

Bays, B. 1999. Habitat Taylorville One Example of how Prisons can successfully partner with Outside agencies for Restorative Justice. *Journal of Correctional Education*, 50(2): 48-51.

Bayse, DJ. 1995. Working in Jails & Prisons. Becoming part of the team. Lanham : American Correctional Association.

Bazemore, G. 1999. Crime Victims, Restorative Justice and the Juvenile Court: Exploring victim needs and Involvement in the Response to Youth Crime. *International Review of Victimology*, (6): 295-320.

Bazemore, G. Nissan, L., Burney D.M. 2000. Mobilizing social support and building Relationships: Broadening Correctional & Rehabilitative agendas. *Corrections Management Quarterly*, 4(4): 10-21.

Berg, BL. 1995. Qualitative research methods for the social sciences. 2nd edition. Boston: Allyn & Bacon.

Bless, C. & Higson-Smith C. 1995. Fundamentals of Social Research Methods: An African Perspective. Kenwyn: Juta.

Boraine, A. 1995. The healing of a Nation? Justice in Transition.

Bothman, HR. & Petersen, RM. (Eds). 1996. To remember and to heal. A Theological and Psychological : Cape Town : Human & Rousseau.

Botman, R. 1997. Justice that restores. How reparation must be made. *Track Two*, 6:17,38.

Bottiglieri, I. 2004. Redress for Victims of Crimes Under International Law. Boshof: Marthinus Nijhoff Publishers.

Braithwaite, J. 1998. Restorative Justice: Assessing optimistic and pessimistic accounts, *Crime and Justice*, 25:1-127.

Braithwaite, J. 2002(a) Restorative Justice & Responsive Regulation. Oxford: University Press.

Braithwaite, J. 2002.(b) Setting Standards for Restorative Justice. *British Journal of Criminology*, 42(3): 563-577.

Braithwaite, J. 2003. Restorative Justice and a better future. In Restorative Justice Critical issues. (eds) McLaughlin, E., Fergusson, R., Hughes, G. & Westmarland, L. London: Sage Publications.

Braman, D. 2004. Families and the Moral Economy of Incarceration in Judah, E & Bryant, M (eds.). Criminal Justice Retribution vs. Restoration. New York: Haworth Social work Practice Press.

Brown S.E. & Curtis J.H.: 1987. Fundamentals of Criminal Justice Research Anderson Publishing Co.

Budget Debate: Vote 21 by the Deputy Minister of Correctional Services, National Assembly on 15 June 2004. Cape Town: Parliament.

Budget Vote Address by the Minister of Correctional Services, National Assembly on 13 April 2005. Cape Town: Parliament.

Bumgarner J.B.: 2004. Profiling and Criminal Justice in America A reference Handbook. California: ABC Clio.

Burns, H. 2001. Citizens, victims, & Offenders Restoring Peace Project. Minnesota Correctional Facility for Women at Shakopee, September 26 – November 21, 2000. Center for Restorative Justice & Peacemaking.

Camerer, L.1997. Crime, Violence and Punishment. Putting Victims on the Agenda. African Review (6(3):1-6.

Camerer, L & Kotze, S. (eds.) 1998. Special Report on Victim Empowerment in South Africa, (the Victim Empowerment Multi-Working Group Report), ISS, Halfway House.

Center for Restorative Justice & Peacemaking. University of Minnesota. Restorative justice Conferencing: Guidelines for Victim sensitive practice. 5 February 2000.

Center for Restorative Justice & Peacemaking Minnesota Correctional Facility for Women at Shakopee Citizens, Victims & Offenders Restoring Peace Project 26-21 November 2000.

Center for Restorative Justice & Peacemaking. University of Minnesota, School of Social work. 2002. Systemic Change toward Restorative justice.

Center for Restorative Justice & Peacemaking. University of Minnesota, School of Social work. 2002. The impact of Restorative justice conferencing. Chamber-Macmillan South African Students Dictionary.

Champion, D.J. 1993. Research Methods for Criminal Justice and Criminology: Englewood Cliffs: Prentice-Hall.

Christie,N. 2003. Conflicts as property. In Restorative Justice Critical issues. (eds) McLaughlin,E, Fergusson,R,Hughes,G & Westmarland,L. London:Sage Publications.

Cilliers, C. 1981 'n Penologiese studie rakende die vergoeding aan die slagoffers van misdaad. Doktorale Proefskrif. Departement Kriminologie. UNISA.

Cilliers, C. 1992. Penologiese perspektiewe op Korrektiewe toesig as strafvorm. *Nexus*, 1992:22-24.

Cilliers, C. 1993a. The Criminal Justice System: Some thoughts for consideration. *Nexus*, February 1993:26-27.

Cilliers, C. 1993b. Gevangenhervorming: Verdigsel of werklikheid. *Nexus*, Maart 1993:30-31.

Cilliers, C. 1993c. The penal system of New Zealand. *Nexus*, April 1993: 22-23.

Cilliers, C. 1993d. Community Responsibility for the reintegration of exclaim-offenders. *Nexus*, May 1993:22-23.

Cilliers, C. 1998. Die herinskakeling van die gekommitteerde oortreder in die gemeenskap. *Nexus*, Julie 1988:5.

Coetzee, J. 1999. Unit management in the Department of Correctional Services. *Nexus*, (March), pp. 20-21.

Community Law Centre. Children in prison in South Africa. A situational analyses. Children in the Criminal Justice system.

Concise Oxford Dictionary. 1990. (8th edition). New York: Oxford: University Press.

Consedine, J. 1993. Restorative Justice. Healing the effects of crime. New Zealand: Ploughshare publications.

Consedine, J. 1999. Restorative Justice Healing the effects of Crime. Revised Edition. New Zealand. Ploughshare publications.

Cornwell,D. 2003. The role of Criminology in custodial corrections: A multi-disciplinary approach. *Acta Criminologica*, 16(5): 82-89.

Correctional Services Act, Act 111 of 1998. Pretoria: Government Printers.

Correctional Services Portfolio Committee, 6 November 2001. Restorative Workshop review; Report on Prison Visits: Discussion. Pretoria: Department of Correctional Services.

Correctional Services. 2004. Select committee on Security and Constitutional Affairs, 17 August 2004.

Cox, SM., Wade,JE. 2002. (4th ed). The Criminal Justice network An Introduction.

Crawford, A. & Newburn, T. (eds)2003. Youth Offending and Restorative Justice Implementing reform in youth Justice. Willan Publishing.

Crawford,A. & Clear,TR. 2003. Community Justice: Transforming Communities through Restorative Justice? in Restorative Justice Critical issues. (eds) McLaughlin,E, Fergusson,R,Hughes,G & Westmarland,L.London: Sage Publications.

Department of Correctional Services: Annual report 1994.

Department of Correctional Services: 2001. Restorative Justice Discussion document: Krugersdorp 26-28 July 2001.

Department of Correctional Services. *Annual Report 2001/2002*. 1 April 2001 to 31 March 2002.

Department of Correctional Services. 2003. (a) Progress report on Restorative Justice in DCS.

Department of Correctional Services. 2003. (b) Victim empowerment draft document.

Department of Correctional Services. *Annual Report 2003/2004*. 1 April 2003 to 31 March 2004. Pretoria: Department of Correctional Services.

Department of Correctional Services. 2004(a) Correctional programmes for Inmates. Draft 1. Branch Corrections.

Department of Correctional Services. 2004 (c) Rehabilitation Path. Department of Correctional Services Internal document.

Department of Correctional Services. Strategic Plan for 2005/6 – 2009/10. Pretoria: Department of Correctional Services.

Desai, Judge. 2002. Passionate about DCS. *Nexus*, August 2002:10-11.

De Vos, A.S., Strydom, H., Fouche, C.B., & Delpont, C.S.L. 2002. Research at grass roots. Pretoria: Van Schaik Publishers.

Dissel, A. 2001. Restoring the harmony between victims and offenders. Paper delivered at the Conference on Restorative Justice and Community Facilitation, Johannesburg, 8-9 November, pp 19-32.

Dissel,A. 2002. Tracking transformation in South African Prisons. *Track Two*, 11(2): 8-15.

Dyck, D. 2000. Reaching toward a structurally responsive training and practice of Restorative justice. *Contemporary Justice Review*, 3(3):239-265.

Edgar, K. 1999. Restorative Justice in prisons. *Prison Service Journal*, 130:17-18.

Eggleston, C. 1999. Restorative Justice Efforts in Correctional Education. *Journal of Correctional Education*, 50(2): 38-39.

Face – to –Face with Urban Crime: Community-Based Restorative Justice Principles: Neighborhood Planning for Community revitalization. September 1996.

Fagan, JJ. 2004. Annual Report for the period 1 April 2003 to 31 March 2004. Judicial Inspectorate of Prisons. Office of the Inspecting Judge. Annual Report, 2003/2004. Cape Town.

Felson, M. 2002. Crime and everyday life (3rd ed). California: Sage Publications.

Galaway, B & Hudson, J. (eds). 1996. Restorative justice: International perspectives. New York: Criminal Justice Press.

Garkawe,S. 1994. The role of the victim during criminal court proceedings. *UNSW Law Journal*: 17(2)595-616.

Garkawe,S. 2001. The three major victimological paradigms-a theoretical "Road map" for Victimology, (14(3): 87-101.

Giffard,C. 2002. Restorative Justice in Prisons. An option for South Africa? Track Two 11(2): 34-38.

Glanz, L. 1994. Crime in South Africa: Perceptions, fear and victimization. Pretoria:HSCR.

Griffiths, CT. 1999. The Victims of Crime and Restorative Justice: The Canadian experience. *International Review of Criminology*,(6) :279-294.

Griffiths, CT, Bazemore, G (eds). 1999. Restorative Justice. *International Review of Victimology*, 6(4):261-405.

Hageman,O. 2003. Restorative Justice in prison? In Walgrave,L.(ed). *Repositioning Restorative Justice*. Canada: Willan Publishing.

Hahn, PH. 1998. Emerging Criminal Justice. Three Pillars for a Proactive Justice System. London:Sage publications.

Halstead,S. 1999. Educational discipline using the principles of Restorative Justice. *Journal of Correctional Education*, 50(2): 42-47.

Harcourt, AB. 1975. Issues of crime and punishment in South Africa in Midgley,J. Steyn,JH. & Graser,R.(eds). *Crime and Punishment in South Africa*. Johannesburg:McGraw-Hill Book Company.

Harvey, E. 2002. Rape in Prison An Intervention by Rape Crisis at Pollsmoor Prison. *Track Two*, 11(2): 44-51.

Heise E.H. 2002. Community Reintegration Project. Circles of Support & Accountability. Revised edition.

Henegan, W. 1997. Redefining crime. *De Rebus*, June 1997: 360.

Hennessey, H. & Daly, C. 2004. Conferencing and Re-offending in Queensland. *The Australian and New Zealand Journal of Criminology*, 37(2):167-191.

Herman, S & Wasserman, C. A Role for Victims in Offender Reentry. *Crime & Delinquency* 47 (3) 428-445.

Hesselink-Louw, AE. & Holtzhausen, L. 2003. Multi-dimensional assessment, risk profiling and sentence planning in Correctional services. *Acta Criminologica*, 16(5): 111-122.

Hesselink-Louw, AE. 2004. Criminological Assessment of Prison Inmates: A Constructive Mechanism towards offender Rehabilitation. Doctor of Literature and Philosophy in Criminology, University of South Africa. November 2004. Pretoria: University of South Africa.

Holtzhausen, L. 2004. "What works?" Core knowledge required in social work with the offender. *Acta Criminologica*, 17(1): 103-114.

Hudson, B. 2002. Restorative justice and gendered violence. Diversion or effective justice?. *British Journal of Criminology*, 42(3):616-634.

Human, H. 2005. Director Spiritual Care Department of Correctional Services. Personal interview 13 June 2005.

Humphrey, JA. & Milakovich, ME. 1981. The administration of justice: Law enforcement, courts, and corrections. London: Human Sciences press.

Huysamen, G.K. 1994. Methodology for the social and behavioural sciences. Halfway House: Southern book publishers.

Iacovetta R.G. & Chang D.H (eds) 1979 Carolina Academic Press:Critical issues in Criminal Justice.

Johnson,D. 2004. From Destruction to Reconciliation: The Potential of Restorative Justice in Judah,E & Bryant,M (eds.). Criminal Justice Retribution vs. Restoration.Haworth Social work Practice Press:New York.

Johnstone, G. 2002. Restorative justice. Ideas, values, Debates. Canada:Willan Publishing.

Judah, E. & Bryant, MR.(eds). 2004. Rethinking Criminal Justice: Retribution vs. Restoration. USA:The Haworth Social Work Practice Press.

Karmen, A. 1984. Crime Victims An Introduction to Victimology. Brooks/ Cole publishing Company.

Kelly, D. 1990. Victim Participation in Lurigio, A. , Skogan, WG., Davis, RC. eds 1990. Victims of Crime.Problems policies and programs. Sage publications.

Kgosimore, D. 2002. Restorative Justice as an alternative way of dealing with crime. *Acta Criminologica*, 15(2): 69-75.

Kriel,J. 2002. Training and Development curricula for correctional staff. *Acta Criminologica*, 15(1): 110-122.

Kuyler,D. 2004. Programme Coordinator at Louis Trichart, Kutama-Sinthumule Private prison. Telephonic interview, 15 February 2005.
Let's Talk Correctional Services Canada Volume 27,no.

Ladikos,A. 1997. The experiential world of Youthful victims:an appeal to Restorative Justice in the New South Africa. *Acta Criminologica* 10(2): 38-46.

Lemley, EC. 2001. Designing Restorative Justice Policy: an analytical perspective. *Criminal justice Policy Review*, 12(1):43-65.

Le Roux, L. 2004. Social worker at Louis Trichart, Kutama-Sinthumule Private prison. Telephonic interview, 15 February 2005.

Luyt, W. 1999. Restorative justice in perspective. *Acta Criminologica*, 12(3):67-76.

Mahlangu, D.2005. Director Correctional Programmes Department of Correctional Services. Personal Interview, 17 June 2005.

Matshego, BJ. & Joubert, JMC.2002. The treatment of young offenders in the South African Correctional services. *Acta Criminologica*, 15(2):42-46.

Mauer,M. & Coyle,M. 2004. The Social Cost of America's Race to Incarcerate in Judah,E & Bryant,M (eds.). Criminal Justice Retribution vs. Restoration. New York:Haworth Social work Practice Press.

Maxwell,G.& Morris,A. 2001. Putting Restorative Justice into practice for adult offenders. *Howard Journal of Criminal Justice*, 40(1): 55-69.

Mbambo,B. & Skelton,A. 2003. Preparing the South African community for implementing a new Restorative child justice system. In Walgrave,L.(ed). Repositioning Restorative Justice. Canada:Willan Publishing.

Mbete, L., Ramsingh, O., Sokupa, S & Moodley, S. 2001. Correctional Services: A Collective Social Responsibility. Report on the proceedings of the 1st national Symposium on Correctional Services held on 1-2 August 2000 at the Technikon SA Conference Centre, Johannesburg. Cape Town: Formeset Printers (Pty) Ltd.

McCold, P. 2001. Primary Restorative Justice Practices. In Morris, A & Maxwell, G. Restorative Justice for Juveniles. Oxford: Hart publishing.

McEvoy, K., Mika, H. & Hudson, B. 2002. Practice, Performance and Prospects for Restorative justice. *British Journal of Criminology*, 42(3): 469-475.

McEvoy, K. Mika, H. 2002. Restorative justice and the critique of informalism in Northern Ireland. *British Journal of Criminology*, 42(3):534-562.

McGuire, J. & Priestly, P. 1995. (eds). Reviewing "What works". Past, Present and Future in What works: Reducing Re-offending. Guidelines from research and Practices. England: John Wiley & Sons Ltd.

McGuire, J. What works: Reducing Reoffending. Guidelines from research and Practices. England: John Wiley & Sons Ltd.

McGraw, P. 2005. SABC Talk show host.

McLaughlin, E. (ed) 2003. Restorative Justice Critical Issues. London: Sage Publications Ltd.

Mcleod, J. 2001. Qualitative research in counseling and psychotherapy. London: Sage Publications.

Midgley, J. Steyn JH. & Graser, R. 1975. Crimes and Punishment in South Africa Johannesburg: McGraw- Hill Book Company.

Miner, M. H. & Coleman. (eds.) 2001. Sex Offender Treatment. Accomplishments, Challenges, and Future Directions. The Haworth Press, Inc.

Minimum Standards on Services for Victims of Crime. For Implementing the Service Charter for Victims of Crime in South Africa.

Misleh, D. & Hanneman, E. 2004. Emerging Issues: The Faith Communities and the Criminal Justice System in Judah, E & Bryant, M (eds.). Criminal Justice Retribution vs. Restoration. New York: Haworth Social Work Practice Press.

Mlotshwa & Gerber. December 2001/January 2002. The humane solution to crime. *Nexus*, 2001/2002:10.

Mlombile, S. 2004. Acting Chief Deputy Commissioner Corrections Department of Correctional Services. Personal Interview October 2004.

Monacks, C. 2005. Director: Offender Risk Profile Management. Department of Correctional Services. Personal Interview 17 June 2005.

Moodley, S. 2005. Deputy Commissioner Personal Corrections Department of Correctional Services. Personal Interviews 2004/2005.

Morris, A. & Maxwell, G. (eds). 2001. Restorative justice for Juveniles. Conferencing, mediation and Circles. Oxford: Hart Publishing.

Morrison, A. 2002. Critiquing the critics: A brief response to the critics of Restorative Justice. *British Journal of Criminology*, 42(3):596-615.

Mostert, J. 2005. Offender Restoration and Healing Model. Department of Correctional Services.

Mouton, J. H. 2001. How to succeed in your Master's and Doctoral Studies. A South African guide and resource book. Pretoria:Van Schaik Publishers.

Muntingh, L.M. 1993. The development of victim-offender mediation Programme. Pretoria: HSRC.

Muntingh, L.M. & Shapiro, R.J. (Eds.) 1993. Diversions: An introduction to diversion from the Criminal Justice System. Cape Town: National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO).

Muntingh, LM. 2002. Tackling Re-offending. What is needed for successful offender reintegration. *Track Two*, 11(2):20-24.

Muth, WR. June 1999. Victim Impact Programs in the Federal System. *Journal of Correctional Education*, 50(2): 62-66.

Nair,R. 2002. When Punishment exceeds accountability. What it means to default on prison transformation in South Africa. *Track Two*, 11(2) 4-7.

National Crime Prevention Strategy (NCPS).1996. Pretoria: Ministry of Safety and Security. Republic of South Africa(RSA).

National Prosecuting Authority of South Africa. Uniform Protocol for the management of Victims, Survivors and Witnesses of Domestic violence and sexual offenses.

Naude, CMB. 1997. Dealing with the victims of crime-the role of the legal profession. *Consultus*, May 1997: 57-59.

Naude, B. 2001. The status of crime victims in South Africa: Developments since 1994 in Victim policies and criminal justice on the road to Restorative Justice, edited by A Fattah & S Parmentier. Leuven:Leuven University Press.

Naude, CMB., Prinsloo, JH.& Ladikos, A. 2002. An Exploration of Restorative Justice practices with specific reference to the Tshwane metropolitan area, South Africa.

Naude, B., Prinsloo, J. & Ladikos, A. 2003. Restorative mediation practices. *Acta Criminologica*, 16(5):10-22.

Naude, B. Prinsloo, J. & Ladikos, A. 2003. Restorative justice: A Global overview of its functioning and effectiveness. *Acta Criminologica*, 16(5):1-9.

Neser, JJ. 2001. Sentencing: The traditional triad, in Criminology. Reaction to crime: Sentencing, children and crime victims in the criminal justice system and specific issues, edited by JJ Neser, CMB Naude, & WJ Jacobs. Pretoria: Unisa (Only study guide for CMY 304-L).

Neser, JJ. 2001. Restorative Justice – a new dimension of sentencing in South African courts. *Acta Criminologica*, 14(3):46-51.

Newell, T. 2000. Forgiving Justice a Quaker vision for criminal justice. London:Quaker Home Service.

New Zealand restorative justice practice manual. Appendix 5. 200. Auckland Restorative Justice Trust.

Nsereko, N. 1992. Victims of crime and their rights in Criminology in Africa Mushanga, M. (ed). Rome: UNICRI.

Palacois, WR., Cromwell PF., Dunham. 2002. *Crime & Justice in America Present realities and future prospects* 2002 (2nd ed) London:Prentice Hall.

Parmentier, S. 2001. The SA Truth and Reconciliation Commission. Towards Restorative Justice in the field of human rights. In *Victim policies and criminal justice on the road to Restorative Justice*. Fattah,E. & Parmentier,S. Leuven University Press.

Pelser, E. 2000. The Broken of Society. Managing Corrections in South Africa. *Crime & Conflict*, 20:5-8.

Platt, A. 2005. *Doxa Deo Leadership Values*. Pretoria.

Presser, L & Lowenkamp, CT. 1999. Restorative justice and offender screening. *Journal of Criminal Justice*, 27(4):333-343.

Presser, L. & Van Voorhis, P. 2002. Values and Evaluation: Assessing processes and Outcomes of Restorative justice programs. *Crime & Delinquency*, 48(1): 162-188.

Prinsloo, JH. 1998. Crime prevention in South Africa utilizing indigenous practices. *Acta Criminologica*, 11(2):72-79.

Prison Act, Act 8 of 1959. The Department of prisons. Pretoria: Government Printers.

Prison Fellowship International February 2000. Restorative Justice Briefing paper. Victim, Offender & Community Meetings.

Prozesky,J. & Kotze,S. 1998. Crime Prevention through Development and Restorative Justice. *Social Work Practice*, 1:4-7.

Pruis, N. Chief Social worker, Pretoria management Area. Department of Correctional Services. Personal Interview 14 December 2004.

Ramafoko, H. 1999. A Brief history of corrections in South Africa. *Nexus*, (December), pp.19-23.

Restorative justice: The Concept. December 1997. *Corrections Today* 68-70.

Republic of South Africa (RSA). 2002. The Child Justice Bill.

Republic of South Africa(RSA). 2003/2004. Department of Corrections. Annual Report for the period 1 April to 31 March 2004. Pretoria: Government printer.

Republic of South Africa (RSA).2004. Department of Correctional Services. Presentation –Directorate Correctional Programmes

Restorative Justice. 2001. Department of Correctional Services
Directorate: Academy, Sub Directorate: Programme Design.

Restorative Justice Centre(RJC). 2001. Briefing pack for staff and board members for use in marketing and networking. Pretoria.

Restorative Justice Centre(RJC). 2001(a). Extracts from relevant policy documents. Pretoria.

Restorative Justice Centre(RJC). 2001(b). Some arguments against Restorative Justice and possible responses to them. Pretoria.

Restorative Justice 2002. National Conference. Restorative Justice: From Theory to Implementation, held on 18-20 November 2002 at Birchwood Executive Hotel and Conference Centre.

Restorative Justice Centre(RJC)2004. Annual report 2003/2004.

Roach, K. 2000. Changing punishment at the turn of the century: Restorative justice on the rise. *Canadian Journal of Criminology*, 42 (3):249-279.

Roche, D. 2002. Restorative justice and the regulating state in South Africa townships. *British Journal of Criminology*, 42(3)514-533.

South Africa Law Commission. 2000. Sentencing. (A new Sentencing Framework). Project 82. Pretoria.

South Africa Law Commission. 2001. Sentencing. (A Compensation Scheme for Victims in South Africa).Discussion Paper 97. Pretoria.

Sarantakos, S. 1998. Social research. (2nd edition). London: Macmillan.

Schreiner,J. 2002. Department of Correctional Services. Inputs on Restorative Justice: National Conference Restorative Justice: From theory to Implementation 18-20 November 2002 . Birchwood Hotel, Johannesburg.

Schurink, WJ & Snyman I. (eds). 1992. Victimization: nature and trends. Human Sciences Research Council.

Senna, J.J. & Siegel, L.J. 2001. Essentials of Criminal Justice. 3^d edition. United States; Wadsworth.

Shishuba, J. 2005. Chief Deputy Commissioner of Development and Care, Department of Correctional Services. Inputs on Restorative Justice: National Conference Restorative Justice: From theory to Implementation 18-20 November 2002 . Birchwood Hotel, Johannesburg.

Skelton, A. 2001. Restorative Justice and Juvenile Justice Reform. Paper delivered at the Conference on Restorative Justice and Community Facilitation, Johannesburg, 8-9 November, (pp 63-71).

Skelton, A. & Frank, C.2001. Conferencing in South Africa: Returning to our Future in Morris,A & Maxwell,G.(eds)Restorative justice for Juveniles. Conferencing, Mediation and Circles. Oxford: Hart Publishing.

Skelton, A. 2002. Restorative justice as a framework for juvenile justice reform. A South African perspective. *British Journal of Criminology*, 42(3): 496-513.

Skelton,A. & Potgieter,H. 2002. Juvenile Justice in South Africa.in Winterdyk ,JA. Juvenile Justice Systems:International Perspectives. Canada: Canadian Scholars Press Inc.

Sterling,E. 2004. Drug Policy: A Challenge for Values in Judah,E & Bryant,M (eds.). Criminal Justice Retribution vs. Restoration.New York:Haworth Social work Practice Press.

St.Gerard, V. 2004. Best in the Business. Working with both offenders and victims to elicit change. *Corrections Today*, April 2004:12-13.

Stout,B., & Wood,C. 2004. Child Justice and diversion: Will Children's rights outlast the Transition? In Justice Gained? Crime and Crime Control in South Africa's Transition. Eds. Dixon,B. & van der Spuy,E. Cape Town:UCT Press.

Stutzman, L. 1999. Training Issues in Victim offender Mediation. *Journal of Correctional Education*, 50(2): 68-71.

Swart, S. 2001. Doing Justice and loving mercy – the appeal of Restorative Justice to policy makers. Paper delivered at the Conference on Restorative Justice and Community Facilitation, Johannesburg 8-9 November, pp 5-13.

Terblanche, SS. 1999. The guide to sentencing in South Africa. Durban: Butterworths.

The Church Council on Justice and Corrections Satisfying Justice. A compendium of initiatives, programs and legislative measures 1996. The Church council on Justice and Corrections.

Training manual on Restorative Justice. Department of Correctional Services 2002.

Trenczek,T. 2003. Within or outside the system? Restorative Justice attempts and the penal system. in Weitekamp, EGM, & Kerner, H.2003. Restorative justice in Context. International practice and directions. USA: Willan Publishing.

Tutu, D. 1999. No Future Without Forgiveness. London: Rider.

Umbrecht, MS. 1989. Crime Victims seeking fairness, not revenge: Toward Restorative justice. *Federal Probation*, 53(3):52-57.

Umbrecht, MS. 1994. Victim meets offender. The Impact of Restorative Justice and Mediation. New York:Criminal Justice Press. Willow Tree Press, Inc.

Umbrecht, MS. 1999. Victim-offender mediation in Canada. The impact of an emerging social work intervention. *International Social Work Journal*, 42(2):215-227.

Umbrecht, MS. 1999. Victims of severe violence meet the offender : Restorative Justice through dialogue. *International Review of Victimology*, :321-343.

Umbrecht, MS. 2000. Restorative Justice Conferencing: Guidelines for Victim Sensitive Practice. Center for Restorative Justice & Peacemaking.

Umbrecht, MS, Coates, RB & Roberts, AW. 2000. The impact of victim-offender mediation: A cross-national perspective. *Mediation Quarterly*, 17(3), Spring:215-229.

Umbrecht, MS. 2001. Fact sheet: The Impact of Restorative justice "What we are Learning from research".

Umbrecht, MS. 2001. The Handbook of Victim-Offender Mediation. An Essential Guide to Practice and Research. California: Jossey-Bass Publishers.

Umbrecht, M., Coates, R., Vos, B. 2002 (a). The Impact of Restorative Justice Conferencing. Center for Restorative Justice & Peacemaking. May 1, 2002.

Umbrecht, M., Coates, R., Vos, B. 2002(b). Systemic change toward Restorative Justice : Washington County Minnesota. Center for Restorative Justice and Peacemaking University of Minnesota, School of Social Work.

Umbrecht, M, & Zehr, H. 2003. Restorative Family Group Conferences: Differing models and Guidelines for practice. in Restorative Justice Critical issues. (eds) McLaughlin, E, Fergusson, R, Hughes, G & Westmarland, L. London: Sage Publications.

Van Ness, DW. 1986. Crime and its victims. Illinois: Inter Varsity Press.

Van Ness, D., Morris, A., & Maxwell, G. 2001. Introducing Restorative Justice. in Morris, A. & Maxwell, G. Restorative Justice for Juveniles. Conferencing, Mediation and Circles. Oxford: Hart Publishers.

Van Ness, D.W., Heetderks Strong K. 2002. Restoring Justice 2nd edition, Anderson Publishing co.

Van Ness, D. 2004. Justice that Restores: From Impersonal to Personal Justice in Judah, E. & Bryant, M. (eds.). Criminal Justice Retribution vs. Restoration. Haworth Social Work Practice Press: New York.

Van Stokkom, B. 2002. Moral Emotions in Restorative Justice conferences: Managing shame, designing empathy. *Theoretical Criminology*, 6(3): 339-360.

Van Zyl Smith, D. 2004. Swimming against the tide: Controlling the size of the prison population in the new South Africa. Dixon, B. & van der Spuy, E. (eds) in Justice Gained? Crime and Crime Control in South Africa's Transition. Cape Town: UCT Press.

Victim Empowerment Document. 2003. Department of Correctional Services.

Walgrave, L. ed. 2003. Repositioning Restorative justice. Canada: Willan Publishing.

Wallace, H. 1998. Victimology. Legal, psychological and social perspectives. Allyn & Bacon.

Wasserman, H. A role for Victims. *Crime & Delinquency*, July 2001.

Wemmers, J. 2002. Restorative justice for Victims of crime: A victim-oriented approach to Restorative justice. *International review of Victimology*, 9(1): 43-59.

White Paper on Corrections, 2005. Republic of South Africa February 2005.

Wilson, R., Huculak, B., McWhinnie, M. 2002. Restorative Justice Innovations in Canada. *Behavioural Sciences and the Law*, 20(4): 363-380.

Winterdyk, J.A. (ed). 2002. *Juvenile Justice and Young Offenders: An overview of Canada. Juvenile justice Systems: International Perspectives* 2nd ed. Canada: Canadian Scholars' Press Inc.

Wright, M. 1999. *Restoring respect for justice. A symposium.* Winchester: Waterside Press.

Wright, M. 2003. Is it time to question the concept of punishment? In Walgrave, L. (ed). *Repositioning Restorative Justice.* Canada: Willan Publishing.

Zehr, H. 1990. *Changing Lenses: A New Focus on Crime and Justice.* Scottdale: Herald Press.

Zehr, H. 1997. Restorative Justice When justice and healing go together. *Track Two*, 6:20.

Zehr, H., Pranis, K. & Gorzyck, J. 1997. Restorative Justice. *Corrections Today*, 59(7):68-114.

Zehr H. 2002. *The Little Book of Restorative Justice.* Good Books. Intercourse, PA.

Zehr, H. & Mika, H. Fundamental concepts of Restorative Justice in *Restorative Justice Critical issues.* (eds) McLaughlin, E, Fergusson, R, Hughes, G & Westmarland, L. London: Sage Publications.

Zehr, H. 2003. Restorative Justice Retributive Justice in Johnstone, G. 2003. A Restorative justice Reader. Texts, sources, context. Canada:Willan Publishing.

Zellerer, E. 1999. Restorative Justice in indigenous communities: Critical issues in confronting violence against women. *International Review of Victimology*, 6:345-358.