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**Exploration of residential diversion within a restorative  
justice framework in the management of young sex  
offenders in SA**

**By**

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**Professor Roland Graser**

## **DEDICATION**

### **This study is dedicated to the following people:**

My mother Maria Gxubane for her encouragement, financial and emotional support despite having had to deal with her own battles regarding her chronic sickness.

My late maternal uncle Mr. Velaphi Alton Gxubane, who escorted me in all the research field trips that we undertook in and around Gauteng may his soul rest in peace.

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## ABSTRACT

The *study explored* the use of residential diversion within a restorative justice framework in the management of youth sex offenders in South Africa. The research design combined qualitative and quantitative approaches with a *predominantly qualitative* thrust in the gathering, analysis and presentation of data. A *non-probability purposive sampling method was adopted* with three sets of samples, namely, youth ex-sex offenders, their significant others, and key informants from various professions who were involved in the management of youth ex-sex offenders and/or their victims in a variety of settings. Three semi-structured interview schedules were developed in advance and used as tools for data collection through in-depth face-to-face interviews with each research respondent.

According to most of the youth respondents the sexual interactions between them and their 'victims' were consensual and mutual; hence, no violence was involved. The youth respondents and their victims often stayed in close proximity to each other or in the same household. It would seem that these are the dynamics that motivated the prosecutors that dealt with these youth sex offences to divert rather than to prosecute. The findings of the study showed that there are various interwoven factors that contribute to youth sex offending in SA generally. These include amongst others, *abuse victimisation, the influence of alcohol and drugs, peer pressure, parents' failure to discuss sex with their children, media, experimentation, girls' provocative dressing style and dancing, lack of sexual knowledge, lack of social skills and the effects of poverty such as overcrowded households which lead to exposure to adults engaging in sexual activities.*

The recognition that therapeutic work with sex offenders requires specialised knowledge and skills, and the unfamiliarity with the Child Justice Act amongst many respondents pointed to a dire need for further training of all role-players in the child justice system. A number of potential benefits and challenges that could be anticipated in the application of the restorative justice approach within a residential diversion were highlighted. It was found that there was confusion and a lack of understanding amongst the professionals on a number of practice related issues. The study proposes multi-disciplinary practice guidelines, which will hopefully help to clarify roles and responsibilities of the different professionals, para-professionals and the community in promoting best practice in the study focus area.

## CLARIFICATION OF CONCEPTS

Terms are defined in contexts that are *operationalised* in the study:

**Youth sex offending** refers to abusive sexual acts ranging from mutual touching and fondling to actual intercourse; what makes these acts abusive and illegal is, firstly, that the victim is immature to understand what is happening and incapable of giving consent, either legally or realistically, and secondly, that access to the victim is achieved through pressure, coercion or deception (Boland and Jamieson, 1985).

**Youth sex offenders** are persons between the ages of 10 and 17 years who have attempted to or have committed sexual offences with a child usually younger.

**Significant other** refers to a parent, a guardian or another adult person who acts as a parent to the child.

**Girlfriend** (often also called a 'lover') refers to a girl with whom a young person is in a love relationship.

**Diversion** refers to the process of referring children who are under the age of 18 and who have committed offences, in cases where there is enough evidence to prosecute, away from formal criminal justice proceedings to informal procedures as recognised by the legislation (Sloth-Nielsen and Gallinetti, 2004).

**Residential diversion programme** refers to a rehabilitation programme in a residential setting to which a young offender is diverted by a court of law, with the aim of restoring the young offender to a law-abiding way of life through treatment and/or empowerment with job skills.

**Restorative justice** refers to an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to identify and address harms, needs and obligations collectively, through accepting responsibility, making restitution,

taking measures to prevent a recurrence or the incident, and promoting reconciliation (Child Justice Act 75 of 2008).

**Exploration of residential diversion within a restorative justice framework** refers to the exploration of a residential diversion option from a restorative justice perspective.

**Youth secure care centre** refers to a residential placement to which a youth offender is referred by a court of law to complete a diversion programme. Such a place is often used as a detention facility for youth awaiting trial.

**Multi-disciplinary team** refers to a team of professionals working with the youth offender at a certain given time and/or at different stages of the criminal process. The disciplines of professionals who are involved in the area of residential diversion include: justice (magistrates and prosecutors); social work (probation officers; secure care, and NGOs); child and youth care; health (medical practitioners, nurses and occupational therapists); education (teachers and secure care centre workshop instructors); psychologists; and so on.

**Family Group Conference (FGC)** refers to a restorative justice response to the offence that enables families to find solutions to their own difficulties within a professionally supportive framework (Batley and Dodd, cited in Maepa, 2005).

**Family conference** refers to a family gathering convened by a social worker to promote dialogue, problem solving and possible reconciliation between the youth offender and his family and/or social support systems.

## LIST OF ABBREVIATIONS

### Respondents:

**YR:** Youth respondent

**SO:** Significant other (sometimes referred to as **SOYR** meaning the significant other of the youth respondent)

**MAG:** Magistrate

**PROS:** Prosecutor

**PO:** Probation Officer

**SCCSW:** Secure care centre social worker

**NGO:** Non-Governmental Organisation

**NGO-O:** Respondent working mainly with offenders

**NGO-V:** Respondent working mainly with victims

**NGO-B:** Respondent working with both victims & offenders

### Other abbreviations:

**APO:** Assistant Probation Officer

**CJA:** Child Justice Act 75 of 2008

**DCS:** Department of Correctional Services

**DSD:** Department of Social Development

**DYC:** Dyambu Youth Centre

**FC:** Family conference

**FGC:** Family group conference

**IDP:** Individual Development Plan

**IMC:** Inter-Ministerial Committee on Youth at Risk

**OT:** Occupational therapist

**RJ:** Restorative justice

**SA:** South Africa

**SAYStOP:** South African Young Sex Offenders Project

**SW:** Social worker

**YSO:** Youth sex offender

**YSORDP:** Youth sex offenders' residential diversion programme

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# CHAPTER 1

## CONTEXTUAL BACKGROUND AND ORIENTATION TO THE STUDY

### 1.1 INTRODUCTION

South Africa (SA) did not have a formalised child<sup>1</sup> justice system and was in the final stage of formulating one at the commencement of this study. This chapter presents a contextual background to the study, the research focus area, the rationale for the study and the motivation for undertaking it, the significance of the study, its overall aims and objectives, the key research ethics that were taken into consideration when this study was undertaken, as well as its limitations and challenges. This is followed by information on the youth sex offenders residential diversion programme (YSORDP), which serves as a case study for this research (see Appendix 1 for information on Dyambu Youth Centre (DYC), the secure care centre for male youth offenders awaiting trial where the YSORDP was offered). Even though the study focuses primarily on the residential diversion of male youth sex offenders (YSOs), most of the findings and recommendations of the study are relevant to community based diversion as well as to the management of youth offenders in general. It needs to be noted that the author is aware that some sex offenders are female, however the pronoun 'he' when reference is made to an offender is used for convenience purpose since the YSOs who participated in the study were males.

### 1.2 CONTEXTUAL BACKGROUND TO THE STUDY

SA's transformation to a democracy within a human rights framework, as well as its commitment and accountability towards international benchmarks for children's rights, particularly the United Nations Convention on the Rights of the Child (CRC) (1989), had a significant influence on shifts in policy and legislation in the country

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<sup>1</sup> The word 'child' is used interchangeably with the word 'youth', referring to any person under 18 years of age, as stipulated in the United Nations Convention on the Rights of the Child (CRC) (1989) and the Constitution of the Republic of SA (1996).

(Skelton, 1999). The Project Committee of the SA Law Commission was appointed in 1996 by the then Minister of Justice, Mr. Dullah Omar, to investigate the youth justice system as part of the National Plan for Action in guiding legislative and policy shifts in SA (SA Law Commission, 1997). The Project Committee prepared Issue Paper 9 (1997) and Discussion Paper 79 (1999), both of which were distributed widely in order to elicit comments. The subsequent responses were then collated into a Report on Juvenile Justice released in 2000 together with a draft Child Justice Bill (CJB). The CJB was approved by Cabinet in November 2001 for introduction into Parliament in August 2002 as Bill 49 of 2002. Subsequent to the introduction of the CJB in the Parliament, the Child Justice Alliance<sup>2</sup> has been involved in various rigorous advocacy, research, lobbying and media strategies, which were aimed at drawing the government's and the public's attention to a need for a formalised child justice system in SA.

Having disappeared from the public eye for more than five years, the CJB was brought back before Parliament in February 2008 for public hearings. In the re-drafted 2007 CJB<sup>3</sup>, children who committed serious offences were excluded from the process of assessment<sup>4</sup> by a probation officer (PO) and, consequently, excluded from the possibility of diversion. In other words, the cases of children charged with serious offences like rape, would proceed straight to trial in a child justice court. Such bifurcation<sup>5</sup> of offences seems to have been informed by the general misconception that diversion and restorative justice (RJ) are inappropriate when dealing with serious youth offences. Skelton and Tshela (2008: 4) noted that SA too has shown

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<sup>2</sup> The Child Justice Alliance is a lobby group and inter-organisational coalition made up of NGOs, CBOs, academic institutions and individuals who campaigned for the Bill and the transformation of child justice in SA. The author is a member and attends the quarterly meetings of the Child Justice Alliance Driver Group, representing the University of Cape Town's Department of Social Development.

<sup>3</sup> The 2007 CJB cabinet version was introduced in the National Assembly as Section 75 Bill. Available: [http://www.childjustice.org.za/downloads/ChildJusticeBill\\_2007.pdf](http://www.childjustice.org.za/downloads/ChildJusticeBill_2007.pdf)

<sup>4</sup> Assessment is refers to: "an evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor" (Probation Services Act No. 116 of 1991).

<sup>5</sup> Bifurcation refers to a policy of separating out the minor offences from the serious offences with the intention of being tough on the latter.

signs of opting for the American zero tolerance and 'get tough' approaches, which have begun to permeate other youth justice systems in the world. On the other hand, scholars such as Skelton and Tshehla (2008) and Zehr (1990) argue that there is strong evidence that such approaches are not effective in reducing crime.

In 2008, I made a submission to the justice and constitutional development portfolio committee that, while it is clear that diversion may not be appropriate for all cases, the assessment process is nonetheless essential to evaluate the child. The family circumstances of the child, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged child offender in relation to the offence and any other relevant factors that might guide the court to make an informed decision whether to recommend diversion or not. Therefore all children who are in conflict with the law must be assessed by a PO (Gxubane, 2008).

The CJB was re-drafted in line with most of the submissions that were made during the public hearings. The CJB was signed into law on 7th May 2009, and came into operation on 1st April 2010 as Child Justice Act 75 of 2008 (CJA). The values and principles of the CJA as reflected in its Preamble state that the Act creates a separate criminal justice and procedural system for children, entrenching the principles of RJ in the criminal justice system and promoting crime prevention initiatives.

CJA section 34 (1) makes provision for the assessment of every child who is alleged to have committed an offence. The CJA further entrenches RJ across different levels of criminal procedure processes. This includes early interventions, such as section 61, which entails diversion to family group conferences (FGC) and section 62, which makes provision for diversion to victim-offender mediation (VOM). CJA section 53(2) (a) sets out the level one option of diversion for minor offences, and section 53(2) (b) sets out the level two option of diversion relating to most serious offences.

### 1.3 THE RESEARCH FOCUS AREA

This study focuses on the use of residential diversion within a RJ approach in the management of YSOs. According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as “The Beijing Rules” (1985), the child justice system needs to prioritise diverting child offenders out of the criminal justice system as early as possible into suitable diversion programmes run by competent staff. Diversion can be closely linked to the concept of RJ, which involves a balancing of rights and responsibilities.

Since the early 1990s, NICRO<sup>6</sup> has been at the forefront of community-based diversion programmes for young offenders who committed petty offences (Muntingh, 1997; SA Law Commission, 1997). These programmes did not specifically cater for YSOs. However, as the number of YSOs increased dramatically in the criminal justice system, a need for effective interventions with this kind of offenders emerged (Ehlers and van der Sandt, 2002).

In November 1997, a group of concerned individuals met to discuss various approaches and intervention strategies to address the situation of YSOs in SA (Ehlers and van der Sandt, 2002). This resulted in the development of the South African Young Sex Offenders Project (SAYStOP), which produced a diversion programme manual for YSOs. However, SAYStOP and NICRO diversion programmes have been strongly criticised by scholars, such as Cupido, et al (2005) and Sheerar and Graser (2005) for their lack of a sufficient RJ orientation in their overall design. Hence this study focused on exploring the management of YSOs, which promotes a RJ approach within a residential diversion rather than a community-based diversion framework.

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<sup>6</sup> The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) is one of the main non-governmental organisations charged with the provision of youth offenders’ community-based diversion programmes in SA.

## 1.4 RATIONALE FOR THE STUDY

I observed that there has always been some confusion with regard to how youth sex offences are dealt with by the child justice system in SA. For example, a much publicised case in the media which involved a 15 year old girl from Jules high school who accused two schoolmates aged 14 and 16, of raping her on the school premises and filming the sexual act (SABC NEWS, 2010). Initially, the boys were charged with rape but when the girl made her second appearance in court, she confessed that the sex had been consensual (SABC NEWS, 2010). The court then withdrew the case, which led to stronger public outcry. The two boys and the girl were subsequently charged with statutory rape in terms of the Sexual Offences and Related Matters Amendment Act 32 of 2007<sup>7</sup>. It was only later that the boys and the girl were diverted into the community based programme according to the provisions of CJA. Whilst the case under discussion might have been suitable for community-based diversion, in some cases, though, the residential option of diversion is the only viable option, as will be seen in the discussion of the research data in Chapter 5.

In cases where the victim and the offenders stay in the same household or in close proximity to each other, it is often in the interest of all the parties that the perpetrator be removed temporarily from the community whilst he or she undergoes rehabilitation with regard to the problem that led to their unlawful sexual behaviour. Similarly, this creates an enabling environment for the victim to heal through therapy. Only when the necessary condition has been created where the victim and the perpetrator together with their families are ready and willing to engage, can they be brought together in a FGC. It is hoped that such RJ process will allow both parties to discuss the aftermaths of the sex offence and possibly mend the broken relationships so as to promote healthy families and communities.

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<sup>7</sup> In the Sexual Offences and Related Matters Amendment Act 32 of 2007 a sexual intercourse between two people who are under 16 years of age is illegal with or without consent.

## **1.5 MOTIVATION FOR UNDERTAKING THE STUDY**

The motivation to undertake this study was prompted by my social work practice experience, having worked with the YSOs, their victims and their families in the YSORDP for a period of just over six years. As both a practitioner and a researcher, I want to contribute towards knowledge building and promoting best practice in the residential diversion and RJ.

## **1.6 SIGNIFICANCE OF THE STUDY**

A limited number of South African studies (Baptista and Wood, 2002; Berg, 2004; Dhabicharan, 2002; Eliasov, 2004; Gallinetti and Kassan, 2008; Meys, 1999; Redpath, 2002; Steyn, 2005; Wood and Ehlers, 2001; Wood, Welman and Netto, 2000) have been conducted on YSOs and intervention programmes focused on them. Those that have looked at diversion focused mainly on community based diversion programmes, with little or no focus on either residential diversion or RJ approach. This is apparently the first in-depth kind of a study to investigate the application of both the residential option of diversion and a RJ approach in the management of YSOs in SA.

The study hopes to contribute towards a better understanding of youth sex offenders and how they could be managed through residential diversion within a RJ framework. This approach is in line with one of the main principles of the CJA, which seeks to entrench a RJ philosophical approach in the management of youth offenders in SA generally.

## **1.7 THE OVERALL AIM OF THE STUDY**

The *overall aim of the study was to explore* a residential diversion option from a restorative justice perspective and to propose multi-disciplinary practice guidelines for the management of YSOs in SA.

### **1.7.1 The specific objectives of the study were three-fold:**

The *first objective* of the study was aimed at following up on ex-YSOs and their significant others (SOs) after they had engaged with the YSORDP that I facilitated whilst I was employed at DYC after a period of five years or more, in order to:

- Determine their profile; and
- Explore their perceptions on the following:
  - The circumstances surrounding the youth respondents' (YRs) sex offences, which led to their enrollment in the programme in the first place;
  - The major contributing factors to youth sex offending, and the role of the family in the prevention of youth sex offending in SA;
  - Their experiences of the programme and the impact of a FGC, if one was convened with them during the YRs' enrollment in the programme;
  - The YRs' criminal histories prior and post participation in the programme;
  - The YRs' reintegration back into the community subsequent to their release from the programme;
  - Any closure and reconciliation between the YRs and their former victims, and between the families of the two parties;
  - The structure, content, facilitation, and duration that the YSORDPs need to adopt so as to be effective in the rehabilitation of YSOs;
  - The possible benefits of YSORDPs within a RJ framework in the management of YSOs in SA; and
  - The possible challenges regarding the above-mentioned approach and suggestions on how they could be overcome.

I believed that the ex-YSOs and their SOs would be able to offer rich insights to the study based on their direct engagement with the YSORDP.

The *second objective* was to survey a sample of the *main professional youth justice service providers* who are working with YSOs and/or their victims and/or their families so as to explore their perceptions on the following practice-related aspects of YSDORDPs:

- Decision-making in diverting the YSOs;
- Referral system of YSOs to YSORDPs;
- Facilitation of YSORDPs;
- Family group conferencing (FGC);
- Victim versus offender initiated RJ processes;
- Court reporting procedures;
- Reintegration of ex-YSOs back into the community post-release from YSORDP;
- Referral system used to refer the victims of YSOs to counselling services;
- Victims' services post-release of YSOs;
- Perceptions of professionals working with victims on the YSOs; and
- Their perceived role in the practice of YSORDPs within a RJ framework.
- The possible benefits of YSORDPs within a RJ framework in the management of YSOs in SA; and
- The possible challenges regarding the above-mentioned approach and suggestions on how they could be overcome.

The *third objective* was to propose *multi-disciplinary practice guidelines for YSORDPs within a RJ framework* in SA, based on the findings, conclusions and recommendations of the study.

## 1.8 METHODOLOGY

This section presents a brief overview of the research design and methodology of the study; these are discussed in more detail in Chapter 3. The research design in this study combined qualitative and quantitative approaches with a *predominantly qualitative* thrust in the gathering, analysis and presentation of data. The study combines aspects of both basic and applied research, as it seeks to understand the phenomenon under investigation as well as to suggest workable solutions in dealing with the problem (see especially Chapter 7). On this score, De Vos et al (2005) stated that the purpose of applied research is to address the problems that professionals experience in practice.

It has to be noted that due to the fact that part of the social research enquiry in this thesis involved a follow-up investigation of ex-YSOs and their SOs, the research design needed to include an evaluative component. However it should be noted that the evaluative component of the study, complemented the exploratory-descriptive component of the study, which was the main focus of the study, as will be seen in the presentation and discussion of the research data in Chapters 4 and 5.

The purpose of the study was not to establish a direct cause-and-effect relationship between a residential diversion programme as an independent variable (IV) and the dependent variable (DV) of not re-offending. After all, a host of extraneous variables can come into play in the ex-YSOs' thinking, attitude and social interactions other than the diversion programme, all of which can influence their behavior and prompt them to re-offend. Instead, I wanted to explore and describe the nature and magnitude of various dynamic factors that came into play in shaping the thoughts, attitudes and behaviours of the ex-YSOs who had completed the rehabilitation programme.

The study adopted a *non-probability purposive sampling* method. Three sets of samples participated in the study, namely, the ex-YSOs, their SOs, and the key informants from various professional groups who were involved in the management of ex-YSOs and/or their victims in a variety of settings. These professionals were drawn from major clusters of youth justice service providers; they included magistrates, prosecutors, probation officers, social workers from the youth secure care centres, and community based social services professionals from the NGO sector in Gauteng and Western Cape provinces.

Three semi-structured interview schedules were developed in advance and used as tools for data collection with each sample set. Data collection tools included a document study. The files of 31 ex-YSOs who had been targeted for participation in the research were studied. These files were obtained from DYC, Soweto and Johannesburg magisterial courts. They were consulted, firstly, to obtain their physical addresses and contact details, and, secondly, to be able to use the information gathered on the ex-YSOs' files for *research data verification so as to maximise the validity of the research findings from the interviews*. The primary method of gathering data that was employed in the study in line with the research design and the objectives of the study were *in-depth face-to-face interviews*.

Research data were analysed and presented mainly qualitatively and occasionally quantitatively, using *triangulation*. The research data were quantified and presented in tables wherever appropriate. The qualitative research data were synthesised and interpreted in relation to the themes and sub-themes that emerged from the research data analysis, most of which related to the research objectives (see Chapters 4 and 5). Flowing from the major findings of this study and those of other studies, conclusions were reached and recommendations were made (see Chapter 6). Lastly, based on the conclusions and recommendations of the study, multi-disciplinary practice guidelines were presented (see Chapter 7).

## 1.9 KEY ETHICAL CONSIDERATIONS

- **UCT ethics clearance policy**

In formulating the research design and methodology, I took cognisance of the code of ethics relating to the study of human beings as research subjects, as outlined on the websites of both the South African Council for Social Services Professions, [http://www.sacssp.org.za/htm/code\\_of\\_ethics.html](http://www.sacssp.org.za/htm/code_of_ethics.html) and the University of Cape Town's (UCT) Guide to Research Ethics on Human Subjects <http://web.uct.ac.za/depts/dpa/res-code.htm>. The study was granted ethics clearance by both the Department of Social Development where I am registered and the Ethics Committee of the UCT Faculty of Humanities Graduate School.

- **Practitioner-evaluator**

Some parts of the follow-up component of the study placed me in the position of being both a practitioner and evaluator simultaneously, since I had worked with all the YRs and with some of their parents and guardians when I facilitated the YSORDP. Everitt et al (1992) noted that the fundamental role of the practitioner-evaluator is one of engaging in and facilitating dialogue. This means that, as the practitioner, not only was I involved in the process of evaluating my own practice experience, but I also provided an opportunity for the research participants to evaluate their experiences of professional engagement with me. I therefore had to be open to self-criticism, based on an understanding that evaluation has to do with change and not defense.

- **Practitioner-researcher**

The practitioner-researcher role enabled me to reflect on my work throughout different stages of research and to identify areas of practice, which I could have dealt with much more effectively than I had done when I facilitated the YSORDP. For an example, in one instance, a victim of one of the YSOs was called in for FGC when she had not received any preparation for such a social encounter. This further traumatised the victim. Many social work respondents pointed to this common practice error amongst practitioners who try hard to promote a RJ response to

crime. Hence in Chapters 5 and 6, practitioners are warned about this possible practice error in helping to promote good practice in the field of RJ. In support of this purpose of research, Strydom (1998: 51) asserts that research needs to “help to implement practice more effectively and to use the best method for a particular situation”.

- **Informed consent, voluntary participation, confidentiality and anonymity**

When the respondents were approached and requested to participate in the study they were given a cover letter which explained the purpose of the study and how their participation would help contribute in the research focus area. Most of the respondents including the youth ex-offenders were literate and conversant with the language of English in which the letter was written (see Appendix 2). With regard to those who were not, the letter was translated into the language spoken by the respondents. This was easily done, as I understand and speak almost all South African languages.

The purpose and the benefit of the study were further clarified in helping the respondents to make an *informed decision* whether they wanted to participate in the study or not. All respondents participated in the study *voluntarily*. Respondents were further informed that they had a right not to answer any research question that they did not wish to answer. They were also informed that they had a right to withdraw from the interview at any stage. They were further assured of *confidentiality* regarding all the information they divulged, and *anonymity*. This enabled the respondents to participate freely in the study.

- **Avoidance of harm and debriefing of subjects**

I was aware that some issues that would be discussed in the interviews would require the ex-YOs to retrieve unpleasant memories about their past. Therefore I had to be sensitive and alert to any signs of discomfort during the interviews. I was willing to provide debriefing for the respondents afterwards, if the need arose, but fortunately, none of the respondents needed emotional de-briefing. Debriefing of participants at the end of a research session may be one way in which a researcher

can minimise the harm that can be triggered by the interview process (Strydom, 2005).

## **1.10 CHALLENGES AND SOME LIMITATIONS OF THE STUDY**

- **Qualitative research design and case studies**

The qualitative research design and case studies have inherent limitation as they rely greatly on subjectivity and the findings are not easily generalisable. Such designs also limit the size of the sample. However, subjective perceptions that are derived from qualitative approaches to research offer a richer understanding of complex human problems that require in-depth investigation, as will be seen in Chapters 4 and 5.

- **Sampling**

Due to the limited overall population size of ex-YSOs (31) who completed the YSORDP and their SOs, they were all considered for participation in the study. However tracing of ex-YSOs' places of residence was a major challenge, as some had relocated and changed their residential addresses without notifying the authorities. Some were in custody, as they had re-offended; for instance, I interviewed one youth respondent at the court holding cells on the day of his court appearance. One or two had passed away; for instance, the mother of one possible respondent informed me that he had committed suicide two years back.

Eventually, twenty (20) ex-YSOs out of the thirty-one (31) who completed the YSORDP were successfully traced. Some of these were instrumental in helping me to locate other youth ex-offenders who lived in the same neighbourhood as theirs. Their cooperation appeared to be due to the good relationships I had established with them during their enrollment in the programme at DYC. Fortunately, moreover, the twenty who were successfully traced, were all willing to participate in the study. Twenty out of thirty-one (65%) was a good response rate taking into account the challenges that follow-up studies often face with regard to attrition of targeted research respondents. The study's response rate also compares well with some of similar SA studies' response rate. For instance, Baptista and Wood (2002) could only

trace 6 of 28 (21%) children successfully to participate in the research for their follow-up study on ex-YOs who had participated in the SAYStOP diversion programme.

For various reasons, only 10 out of the 20 (50%) parents and guardians participated in the study. Some were either not traceable and/ or not reachable, as they were no longer staying with the YRs (see Chapter 4 on YRs' living arrangements at the time of the research), and two refused to participate in the study.

- **Findings**

The researcher anticipated some threats to the internal validity of the findings, since the respondents had known the researcher as a social worker during their enrollment in YSORDP at NYC. In an attempt to overcome this challenge, I clarified the researcher role that I assumed in the study and distinguished it from that of a social worker in the centre. This was done right at the beginning, when consent for participation in the study was negotiated with prospective respondents. The purpose of the study and that of each research interview were clarified once again before each interview commenced, so as to create a common understanding and avoid false expectations on the side of the respondents.

The above challenge in turn yielded positive benefits for the study, since youth offenders often take time to develop trust in helping professionals. Fortunately, I had previously, as well as during the interviews, developed trust and good rapport with all YRs and some SOs who participated in the study. Therefore the YRs and their SOs understood the purpose and the long-term benefit of the study. They participated voluntarily and did not expect any favour in return. They spoke freely and openly when assured that none of the information that they shared would make them identifiable or that it would be shared with other participants nor their parents and/or guardians.

- **Insight from the victims**

I am aware that an insight from the YRs' victims would have enriched the understanding of the phenomenon under investigation, even more so as the study uses a RJ frame of reference. However, the collection of data from the victims has ethical implications. Victims' participation in the research could have caused harm and/or damage, as some might have moved on with their lives. In an attempt to overcome this challenge, I interviewed social workers working with the victims of YSOs. This helped me to gain an understanding of some relevant research variables from the victims' perspective.

### **1.11 YOUTH SEX OFFENDERS RESIDENTIAL DIVERSION PROGRAMME**

The problem of increasing number of YSOs was identified while I was a social worker at NYC. I became concerned about this problem, particularly as there was no specific programme at the centre that catered for YSOs at that time. This led to an interest to develop an intervention programme specifically for the YSOs. I consulted the relevant literature, looked out for training aimed at understanding YSOs, and investigated available interventions that were targeting YSOs in SA.

The only intervention that was being developed at that time was the SAYStOP diversion programme. Having identified major weaknesses with that programme, however, I was inspired to design a much more comprehensive programme of intervention for YSOs. I had already attended training sessions of Childline Gauteng and Johannesburg's Child Abuse Treatment and Training Services (CATTs) on YSOs' treatment programmes. These training programmes were mainly designed for community based treatment programmes of YSOs. I therefore had to adapt and draw from different aspects of these training programmes to suit a residential setting.

Probation officers (POs) from Soweto and Johannesburg juvenile courts started referring YSOs specifically to be enrolled in the programme at NYC, either for diversion purposes or as a sentencing option. Some courts diverted YSOs who had

pleaded guilty to the programme after their first appearance at court. Other courts only referred YSOs to the programme later, that is, either during trial or after trial as a sentencing option. Some YSOs, who were found to be suitable for the programme during general intake assessment at DYC, were diverted to the programme after direct negotiation with the concerned court's control prosecutor. As a result, POs would not be informed about these kinds of diversion arrangements.

### **The nature of the programme**

The programme was a therapeutic and educational individual and group programme aimed at treating youth perpetrators of sexual offences so they could gain basic sex education and an insight into the impact and the far-reaching consequences of their unlawful sexual behaviour. The programme mainly assisted the youth offenders in the following areas of treatment and education:

- To take responsibility for their anti-social sexual behaviour,
- To develop empathy for their victims,
- To acquire basic education with regard to human sexuality,
- To develop personal competency, and
- To prevent relapse.

The group programme used to run over a minimum of eight to twelve sessions, accommodating only eight to twelve members in a group, so as to allow maximum participation and sharing.

RJ processes were not part of the diversion programme. It was only until when I began to deal with cases of sibling incest<sup>8</sup> and/or where the youth offender stayed in close proximity with their victims that I realised that RJ seemed to be the best option. RJ processes were mainly applied through FGCs. However, DYC social workers were not required to convene FGCs even where they were appropriate. DYC social workers were also not required to conduct home visits. Therefore, if a DYC

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<sup>8</sup> Restoration of relationships is important for reintegrating the youth after they have successfully completed the residential sexual offenders' diversion programme.

social worker wanted to conduct a FGC, the family would be telephoned and invited to come to the centre. In breaking away from this norm, I had to convince the DYC management that FGCs were important. In a few cases, I was offered the necessary support such as transport and a security escort to conduct a home visit for the purpose of convening a FGC. In most cases, however, home visits had to be conducted during my own time after working hours and at my own risk.

Of the 31 YRs who were enrolled in the programme, FGCs were only convened for five (5) YRs. Only two (2) YRs for whom FGCs were convened participated in the study. Two other YRs who had committed sibling incest could not be traced. It is likely that their families had relocated. The other youth respondent who was charged with attempted sibling rape was the one who had committed suicide, as mentioned earlier.

#### **Completion of the programme**

A general progress report of the YSO, both at the centre and in the programme, was regularly communicated to the referring prosecutor each time the young person had to appear in court. A final detailed report was submitted to the referring court outlining my assessment of the young person and his environment, social diagnosis of the circumstances surrounding the sex offence, treatment themes that were tackled with the young person, the young person's response to the treatment programme, recommendations to the court regarding possible withdrawal of the case, and future long-term plans for behaviour management and support.

The statistics of the programme from 2002 to 2005 are summarised in Table 1 below.

**Table 1: Statistics of the YSORDP at DYC from 2002 to 2005**

<b>Age</b>	<b>No. of offenders</b>
15 yrs	16
16 yrs	8
14 yrs	4
12 yrs	2
13 yrs	1
TOTAL	31
<b>Nature of offence</b>	<b>No. of offenders</b>
Rape	15
Attempted rape	1
Indecent assault <sup>9</sup> (sodomy)	10
Incest rape	4
Incest attempted rape	1
TOTAL	31

## **1.12 CONCLUSION**

This chapter has presented a contextual background and orientation to the study, the focus area of the study, the rationale for the study, the motivation for undertaking the study and its significance, the overall aims and objectives of the study, an overview of the methodology that was followed in investigating the research problem, and some information on the YSORDP. The next chapter reviews the literature that is relevant to the research topic area.

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<sup>9</sup> This offence refers to male rape, which used to be referred to as 'sodomy'. This offence is currently referred to as 'rape' in the Sexual Offences and Related Matters Act 32 of 2007.

# CHAPTER 2

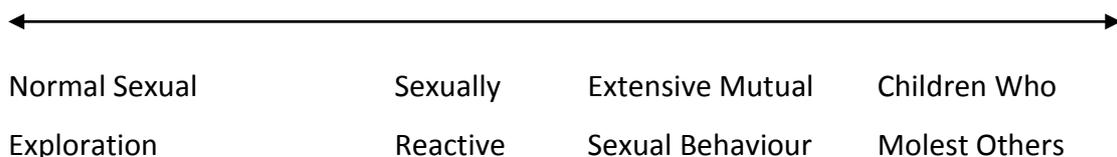
## LITERATURE REVIEW

### 2.1 INTRODUCTION

A good theoretical understanding of youth sex offending is essential before formulating or designing any intervention to address this behavioural phenomenon. Such an understanding will, firstly, help to guide practitioners' therapeutic assessments and social diagnosis of these youth offenders and their specific type of sexual offences. Secondly, it will inform the nature of the interventions that will be necessary for dealing with each type of offender, given their specific family background, his or her victim, and the particular circumstances surrounding the offence. It is against this backdrop that this chapter has been formulated. This chapter has been divided into two broad sections that inform the research topic, namely, youth sex offending, and the restorative justice (RJ) approach within residential diversion in the management of youth sex offenders (YSOs) in SA.

### 2.2 CONCEPTUALISING YOUTH SEX OFFENDERS

It is very important for practitioners to be knowledgeable about different types and characteristics of the YSOs. Such knowledge will guide their decisions on the nature of social interventions that might be appropriate for the individual circumstances of each type of the YSO. Johnson and Feldmeth (1993:41) offer a useful framework for understanding youth sexual disturbances by proposing that it could be placed along a continuum:



- *Normal sexual exploration (Group 1)*

These are children who are engaged in childhood sexual exploration. Sometimes, it is unfortunately reported to the police as rape, even when both parties have

consented or when there is only a small age gap between the children who are under 16 years of age. Their sexual behaviour often involves normal sexual exploration; hence most of the courts decide to divert such sexual offences rather than to prosecute the children.

- *Sexually reactive (Group 2)*

The sexual behaviour of children in this group indicates that they are likely to have been sexually abused. According to Cunning and MacFarlane (1991), cited in Johnson and Feldmeth (1993: 41), the phrase “abuse-reactive children” suggests that “children who sexually abuse others are reacting to their early trauma in abusive, aggressive and inappropriate ways”. Based on my practice experience of working with YSOs, it would often only be at a later stage in therapy when I would discover that the YSO had been sexually abused in the past and that they had not shared or discussed their experiences with anyone.

- *Extensive mutual sexual behaviour (Group 3)*

Children in this group will often engage in a wide range of adult sexual behaviours and do so secretly. They will often use persuasion but not emotional coercion or force when involving other children. They do not show the spontaneity, shame or anxiety of the children from groups 1 and 2, nor do they express the anger or aggression of children from group 4 who are discussed below. The children in this group have often experienced much loss and betrayal by adults and often use sexual acting out as an attempt to make human connection in a chaotic, cruel and dangerous world (Johnson and Feldmeth, 1993).

- *Children who molest others (Group 4)*

The sexual behaviour of children in this group tends to be more extreme and to have become a pattern. The children in this group often have no empathy for their victims and will often deny responsibility. They have often been sexually abused themselves; hence they may be harbouring intense feelings of anger, loneliness, rage and humiliation, which they act out through sex and aggression (Johnson and Feldmeth, 1993).

It is important to note, however, that these four groups are not mutually exclusive; Johnson and Feldmeth (1993: 48-49) point out that, “(e)ach group includes a very wide range of children. Some are on the borderline between groups, or move between groups over a period of time”.

Another categorisation of YSOs that is useful in understanding the risk factors associated with youth sex offending was offered by O’Brien and Bera (1986). They proposed a seven category classification of YSOs:

- *Naïve experimenter*: These offenders tend to be young (11-14 years old) with a limited history of acting-out behaviour.
- *Undersocialised child exploiter*: The adolescents in this category demonstrate chronic social isolation and social incompetence. Their abusive behaviour is likely to be chronic, and includes manipulation, rewards or other enticement.
- *Pseudo-socialised child exploiter*: The adolescents in this category have good social skills and present themselves confidently. They may have been victims of some form of abuse. They often have little guilt or remorse.
- *Sexual aggressive*: This type is more likely to come from abusive, chaotic families, and they often have a long individual history of anti-social acts, poor impulse control and substance abuse. They feel little guilt or remorse.
- *Sexual compulsive*: The family in this category is often emotionally repressive and rigidly enmeshed. Their offences are repetitive and often of a compulsive nature. Offending is motivated by a desire to alleviate anxiety.
- *Disturbed impulsive*: There is a history of psychological disorder, severe family dysfunction, substance abuse and significant learning problems.
- *Group influenced*: The adolescent engages in assaultive behaviour in the company of a peer group. The motivation is the desire for approval.

It needs to be noted, that O’Brien and Bera’s (1986) seven category classification should not be conceptualised as distinct categories of classifications. In reality, these categories of classifications overlap with each other. In other words, a YSO may present with characteristics from two or more of these categories.

## 2.3 ETIOLOGICAL THEORIES OF YOUTH SEX OFFENDING

Different theories have been proposed to explain why youth, particularly males, commit sexual offences. According to Perry and Orchard (1992), as well as Carnes (1983) and Knapp (1984), sexual offences are not primarily sexually motivated. In other words, the youth that commit sexual offences do it to meet certain unmet basic emotional and social needs. These scholars make an analogy between alcoholics and sexual offenders to illustrate the point. They argue that alcoholics do not simply drink out of thirst, but for a wide range of reasons, which may include depression, anger, feelings of failure and so on. Similarly with sex offenders, they do not commit sexual offences out of an uncontrollable sexual desire. Sexual offences are often committed for one or more of the following reasons, namely: to exert control, to exact revenge, to release anger, to scare someone in the hope of feeling stronger and better about themselves, to feel wanted, or to impress someone (for further discussion, see Carnes, 1983; Knapp, 1984; Perry and Orchard, 1992).

This sub-section looks briefly at some of the most influential etiological theories, which can be valuable in helping to understand youth sex offending, namely: *developmental theory, cognitive theory, family systems theory, and learning theories*. It is important to note that no single theory can comprehensively explain the reasons for youth sex offending. Many aspects of these various theories are interwoven, and therefore practitioners working with YSOs need to draw from a mix of different theories to be able to comprehend the reasons that may have motivated a specific youth sex offence (Lyell, 1999; Ryan, 1997).

- **Developmental theory**

This theory attempts to explain the behaviour of YSOs by focusing on internal and external developmental challenges to which the youth responds, as well as stimulation by peers and media. Developmental theorists assert that early childhood experiences within the context of the family and the environment are essential in the development of human sexuality. Factors such as a lack of empathic care, family trauma, physical and sexual abuse, neglect, scapegoating, undefined family roles and

boundaries, exposure to sexually traumatic experiences or explicit materials in the environment may contribute to the development of sexually deviant and abusive behaviour (Freeman-Longo, 1982; Halonen and Santrock, 1996; Lyell, 1999; Ryan, 1997; Steene, 1994; Weiten, 2004).

- **Cognitive theory**

This theory is based on one element that has been found to be common amongst many sexual offenders, which is a thinking pattern that makes them believe that their sexual behaviour is acceptable, justifiable and not harmful. Almost all sex offenders employ different cognitive distortions to justify and maintain their deviant sexual behaviour (Lyell, 1999; Ryan, 1997). The most common cognitive distortions I have identified after working with a number of YSOs include minimisation, denial and justification.

- **Family systems theory**

This theory considers the family as a major contributor to youth sex offending behaviour. It looks at family experiences, which shape and maintain such abusive sexual behaviour. Two types of family structures have been identified among the families of YSOs. One is characterized by rigid patterns of interaction, high parental expectations, severe punishment, poor communication, and excessively strict rules about sexuality. The other is characterized by inadequate family boundary setting, frequent crises, and deviant attachment patterns (Awad and Saunders, 1991; Bischoff et al, 1995; Davis and Leitenberg, 1987; Hanson, Lipovsky and Saunders, 1994; Knopp, 1982; Perry and Orchard, 1992).

Lyell (1999) asserts that there is ample evidence that most YSOs come from unstable and disturbed backgrounds, such as disadvantaged socio-economic communities, poor education, poor parental care, instability, and poor attachment. YSOs may have been exposed to sexual deviance and/or observed sexual activities of their parents and/or have been sexually abused themselves.

- **Learning theory**

This theory is based on the assumption that, as human beings, we are born with blank slates, which are imprinted by experience (Ryan, 1997). In other words, who we have become today has been shaped by what we have seen and learnt as a result of our life experiences. Learning theories are generally grouped into the three sub-types discussed below: *Classical conditioning, operant conditioning and social learning.*

- *Classical conditioning*

Learning through classical conditioning was originally described by Pavlov to demonstrate a physiological response to a paired stimulus (cited in Weiten, 2004). For instance, if a child has been sexually abused by an adult male over a long enough period of time, he is likely to perceive “maleness” in terms of this behaviour. Classical conditioning learning theory has been used many times in the literature to explain that most perpetrators of sexual offences have themselves at one time been victims of sexual abuse. Their sexual behaviour is therefore a learned, conditioned reaction based on their own childhood victimisation (Becker and Kavoussi, 1989; Hawkes et al, 1997; Hunter and Lexier, 1998; Ryan, 1997).

- *Operant conditioning*

The operant conditioning learning theory which was developed by Skinner is based on the belief that as human beings we tend to repeat those behaviours that are followed by favourable consequences and to avoid those that evoke unpleasant feelings (cited in Weiten, 2004). A young person’s early experience of sexual behaviour may or may not have included sexual arousal but may have been paired with some reward or punishment. Thus a YSO may realise and learn that children give him less trouble than peers of the same age. He may therefore be more likely to continue his sexual abusive pattern of behaviour either by forcing non-consenting victims to cooperate, or by projecting his desires onto younger children who are less questioning or resistant in order to fulfill his sexual drives.

- *Social learning*

The social learning theory, which was originally developed by Bandura, assumes that, as human beings, we base our behaviour on learning from others' experiences (cited in Weiten, 2004). Children acquire considerable knowledge and skills not only by direct experience but also by listening to and observing other people. Hearing stories of sexual encounters, seeing other young people or parents engaging in sexual behaviour, watching pornography and so on may encourage the young person to emulate such sexual behaviour. Apart from learning sexually abusive behaviour through direct victimisation, many children grow up in environments that expose them to high levels of sexual deviance and violence, thus teaching them that this type of behaviour is acceptable.

The above-discussed theories are re-visited below in Chapters 4 and 6, using an eclectic approach in the sections exploring the circumstances surrounding the YRs' sex offences.

## **2.4 SOUTH AFRICAN RESPONSES TO YOUTH SEXUAL OFFENDING**

According to Steyn (2005) and Wood and Ehlers (2001), it was only during the 1990s that the South African government and civil society organisations began to recognise the seriousness of the escalating problem of youth sex offending. At that time, however, children who committed sexual offences were rarely prosecuted or held accountable for their behaviour. Wood (1998) points out that one of the reasons why victims and their families sometimes did not press charges is because the victim and/or their families often had a close relationship with the child offender, they were living in the same community, attending the same school or even biologically related. Even the YSOs who were convicted, were often given postponed or suspended sentences and sometimes community service orders due to the absence of appropriate sentences (Ehlers and van der Sandt, 2002; Wood and Ehlers, 2001). This meant that children were returned to the community without any interventions that might have assisted them to understand and change their abusive sexual behaviour (Ehlers and van der Sandt, 2002).

Childline<sup>10</sup> (Durban) in Kwa-Zulu Natal was the first organisation in SA to offer an in-depth community based programme for juvenile perpetrators of sexual offences (Steyn, 2005; Stout, 2003). Childline's rehabilitation programmes were often offered as diversion programmes but they were also used as a sentencing option. The themes that were covered by Childline's programmes included: taking responsibility for the offence; self-awareness; understanding other people; developing victim-empathy; enhancing communication and improving family relationships; learning about sexuality socialization issues; and preventing relapse (Dhabicharan, 2002).

Another community-based NGO that developed a programme for YSOs was the Teddy Bear Clinic in Gauteng. According to Omar (2003, cited in Gallinetti, 2004: 71), the Teddy Bear Clinic<sup>11</sup> programme began in 2000 with a request from the Protea (Soweto) court control prosecutor "because there were no services available for young sex offenders and NICRO was not equipped to deal with them". Most of their referrals were court mandated. Facilitation of the programme was done by two workers – one male and one female – and at least one of the facilitators would be a qualified professional psychologist or social worker. The programme was usually offered in a group method of social work over a ten-week period with sessions of one-and-a-half hours' duration, but it was extended to twelve weeks when necessary.

#### **2.4.1 SAYStOP diversion programme**

Of particular relevance to this study is the SAYStOP diversion programme, which was adapted and presented in a residential setting. In this case, it was in Bonnytoun, a government run youth secure care centre for male youth offenders awaiting trial, which is located in Wynberg, Western Cape Province, in SA (Wood and Ehlers, 2001).

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<sup>10</sup> Childline is a national non-governmental organisation that provides preventive, educative and rehabilitative services to the public with a focus on abused children or children affected by abuse.

<sup>11</sup> The Teddy Bear Clinic is an NGO located in Parktown (Gauteng) and also at Soweto magistrate's court, which works with victims of child sexual abuse and adolescent perpetrators of youth sex offences.

- *Structure of the SAYStOP programme*

This diversion programme was designed for children between the ages of 12 and 18 years who have committed a sexual offence, who are first offenders, and where – according to the available evidence – there are few aggravating factors. It comprises an assessment phase and ten structured group sessions, and it has a psychosocial life skills development and educational focus. In its standard application, the structured sessions are two hours long and are held one afternoon per week over a period of ten weeks. The central aim of the programme is to encourage the child to take responsibility for his actions and to develop insight regarding the impact of his behaviour on the victim (Ehlers and van der Sandt, 2002; Wood, 2003; Wood and Ehlers, 2001).

Each session of the SAYStOP has certain set objectives within a specific theme. Exercises and activities were developed to accomplish these objectives and to assist children to acquire important life skills. The child's parent(s) or an appropriate adult attend both the first and last sessions. The topics covered in the SAYStOP diversion programme include: crime awareness, self-esteem, sexuality, socialisation and gender myths, victim empathy, anger management, relapse prevention and preparing for the way forward (Ehlers and van der Sandt, 2002; Wood, 2003).

- *Piloting of the SAYStOP diversion programme in a residential setting*

Six of the POs who attended the training on the SAYStOP diversion programme were employed at Bonnytown and were therefore in a position to facilitate the programme. However, it must be noted that, when the SAYStOP diversion programme was presented at Bonnytown, it was not for diversion purposes. It was used as a prevention and life skills educational programme for the young offenders who were awaiting trial for sexual offences at Bonnytown. It was thus adapted and presented as a 3-day intensive programme due to logistical reasons. The parents of the children could not participate in the programme as was required of them. Instead, the staff of Bonnytown acted as mentors and support to the children who participated in the programme (Wood and Ehlers, 2001).

Through the pilot application of the diversion programme at Bonnytoun, the SAYStOP working group was able to assess the feasibility of running such a programme in a closed institution. At the end of the residential diversion pilot of the SAYStOP programme, the facilitators made the following observations and concluding remarks:

- Parents are generally unwilling or unable to attend the first and last sessions of the group programme for a variety of reasons, including long distances and costs of travel, work commitments, difficulty tracing parents and in a few cases an apparent lack of interest;
- Social workers facilitating the programme were able to observe the immediate effect on the boys attending the group diversion programme;
- Running the programme in the intensive adapted version of the SAYStOP diversion programme ensured that the momentum of the group was maintained,
- On the down side, some boys reported that they felt labeled and stigmatised within the institution as a result of attending the programme; and
- Facilitators should ensure that the confidentiality of the child's criminal offence history is protected, and they should be vigilant that the child's attendance at the programme does not lead to stigmatisation.

(Wood and Ehlers, 2001: 15).

#### **2.4.2 Youth sex offending consultative workshops**

The South African government's social and political will to address the problem of youth sex offending became evident when it established partnerships with international children's rights agencies and civil society in devising a strategic national response in SA. Two consultative workshops were held, one with service providers for child sex offenders<sup>12</sup> and the other one<sup>13</sup> to explore theoretical

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<sup>12</sup> It was organised by the Child Justice Project, a United Nations Development Programme (UNDP) Technical Assistance Project of the Government of SA. The objectives of the workshop were to look at the field of "Child Sex Offenders" and to review existing projects and programmes, with the aim of improving the work in this area (UNCDP Child Justice Project, 2002).

perspectives on the effective treatment and management of YSOs and the role of government and civil society in this regard (Open Society Foundation (OSF) – SA, 2003).

Some of the resolutions that were made at the United Nations Development Programme's (UNDP) Child Justice Project (2002) workshop, which are relevant to this study and are worth noting, since reference will be made to some of them in other parts of this thesis, included the following:

- *Working with child sex offenders requires a special kind of persons.* These people need to be carefully selected, and be provided with rigorous training and ongoing support;
- *Relationship is a critical aspect in working with child sex offenders.* Research into this population of children indicates that they are relationship deprived. How can we expect children to develop empathy and an appreciation of the impact of their behaviour on others if they are not dealt with in the context of an empathic and understanding relationship? This underlines the importance of selecting carefully the professionals who work in this field.
- There is relatively little research in SA on child sex offenders; only Wood (1998) has profiled 20 children from the Western Cape who were ex-offenders. The research gaps include:
  - *Longitudinal studies / Programme evaluation*
  - *Attitudes of professionals*
  - *Etiology of youth sex offending*
  - *A need for integration of the work done by different sectors:*
  - NGOs tend to be fragmented; but implementation (and therefore integration) is a key factor in the roll-out of programmes.
  - Tertiary institutes need to be involved in order to emphasise research, and to ensure reduction in gaps between policy and practice.

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<sup>13</sup> It was hosted by the Open Society Foundation for SA (OSF-SA). Many role players attended the workshop; I attended as one of the facilitators of the youth sex offenders residential diversion programme at DYC where I was employed at the time.

- A need for more international comparative research:
- Such research is needed, but is not urgent,
- SA research is more urgent,
- Programmes developers need to be cautious when adapting material, and
- Programme developers need to be confident that we can come up with our own, local responses
- *Existing strengths* is that SA has programmes, which need to be built upon:
- Sharing of resources – we need not reinvent the wheel,
- Service providers should develop criteria in replicating and developing programmes, and
- Diversion options already exist.

The next section looks mainly at studies that have been conducted on YSOs and their treatment programmes in SA. The reviews of these studies will be picked up again in Chapters 4 and 5 because their findings are relevant to this study. Frequent reference will be made to studies that were conducted on SAYStOP, since it received more research focus than other YSO programmes in SA. This is partly because UCT's Institute of Criminology, a partner in the SAYStOP consortium, was responsible for the research and evaluation of the SAYStOP diversion programmes.

## **2.5 STUDIES ON YOUTH SEX OFFENDERS AND THEIR TREATMENT PROGRAMMES**

Generally, there is a paucity of research focusing on YSOs in SA. The bulk of the studies on YSOs and their treatment programmes have been conducted overseas (Gallinetti and Kassar, 2008; Wood and Ehlers, 2001). I thus had to refer mainly to overseas studies, although most of the findings of those studies cannot be easily extrapolated to the South African context. SA is a developing country and has a diverse and complex multi-cultural, socio-economic and political background.

Wood and Ehlers (2001: 6) outline a number of important contextual variables that I also believe need to be given careful consideration in the development and facilitation of a diversion programme for YSOs in SA generally. These include:

- It is imperative that the programme is *not only developed for implementation in the urban areas but for rural areas as well*;
- There are *varying education and literacy levels amongst the child sex offenders*;
- The *programme needs to be facilitated in the first language of the participants*, if not the programme may fail to reach the children. This poses a great challenge when taking into account that twelve official languages are spoken in South Africa and that many of the children in the criminal justice system do not speak or understand English or Afrikaans. Therefore language may be a barrier in the facilitation of the programme;
- The programme would need to *cater for adolescent, pre-adolescent and latency aged children*. The group diversion programmes will need to be separated according to these three age groupings, since children will be faced with different age-specific developmental challenges; and
- *There are different cultural and religious beliefs*. This is very important especially in South Africa where colonisation and westernisation attempted to enforce *certain cultural and religious beliefs as superior to others*. Children need to feel that their *cultural and religious beliefs are important and are treated with respect*.

Wood (2003: 16) pointed out that, even though “South Africa has seen a growth in the number, scope and intensity of diversion programmes for children..., very few studies have been conducted to evaluate the effectiveness of these interventions”. In a project on developing minimum standards for diversion programmes in SA, Dawes (2004) also points out that he had to rely largely on evaluation programmes that had been developed and implemented overseas. He attributes this to the difficulty of locating outcome or impact evaluations that meet accepted criteria for methodological rigour, which he argued are still lacking in SA (Dawes, 2004).

Nonetheless, Dawes (2004) did note that there are some promising impact evaluations such as those that have been conducted by Eliasov (2004) and Muntingh (2001). He strongly believes that if South African diversion programmes are to demonstrate their effectiveness and efficacy, it is crucial that their research methodological rigour be improved because programme evaluation is a complex field of study. He supports Lipsey (1995, cited in Dawes, 2004), who argues in favour of meta-analysis studies because they are considered the best scholarly methods, rather than traditional research review techniques. Meta-analysis is defined by Dawes (2004: 26) as “a statistical tool that was developed to facilitate large scale reviews of studies”. Lipsey (1995, cited in Dawes, 2004), asserts that meta-analysis studies are able to reveal broad patterns of findings in a group of studies with much more clarity and consistency. Conversely, a major limitation with most of meta-analysis studies is that very few consider offender characteristics when answering the essential question of ‘what works for whom’ (Dawes, 2004: 27).

In a meta-analytical study, which analysed the findings of 33 studies on recidivism rates among YSOs in the United States of America (USA), Reitzel and Carbonell (2006: 401-421) found that:

- The overall recidivism rate for YSOs was 11.8%;
- The recidivism rates for YSOs are significantly lower than those who commit non-sexual offences, whether violent or not;
- Recidivism rates in other categories of offenders ranged from 22.5% for violent non-sexual offences to 29% for non-violent and non-sexual offences.

They concluded that a child convicted of a sexual offence is about half as likely to reoffend as a child convicted of violent non-sexual offences (Reitzel and Carbonell, 2006). This supports Weinrott’s assertion (1996, cited in Baptista and Wood, 2002) that relatively few juvenile sex offenders are charged with a subsequent sex offence.

## 2.6 RECIDIVISM AMONGST YOUTH SEX OFFENDERS

Baptista and Wood (2002) pointed out that determining recidivism is exceptionally complex. They noted that scholars employ different operational definitions of the phenomenon of recidivism, which leads to a great variation in the calculation of recidivism rates. This is worsened by a lack of standardisation around the duration of the follow-up period, which in turn makes it difficult to compare and synthesise different research (Centre for Sex Offender Management, 1990). Baptista and Wood (2002) argued that difficulties with follow-up studies in SA are compounded by the lack of official criminal justice system data, which often leads researchers to rely on questionable self-reporting of re-offending.

Baptista and Wood (2002) asserted that, by conducting such evaluative follow-up studies, they were effectively responding to the concerns raised, from both skeptics and advocates of the SAYStOP diversion programme, about its effectiveness given its short duration. Their study, like others which focused on SAYStOP diversion programmes, attempted to determine the programme's success through gauging recidivism rates, assessing the impact of the programme content, and exploring the children's experience of attending the diversion programme. The SAYStOP diversion programmes follow-up studies indicate that none of the children interviewed reported any sexual re-offending after attending the programme. Only one child had recommitted a non-sexual criminal offence (Baptista and Wood, 2002).

Weinrott (1996, cited in Baptista and Wood, 2002: 9), pointed out that it is unclear whether the general significantly low recidivism rate on youth sex offences is due to "deterrence, humiliation, lack of opportunity, clinical treatment, increased surveillance, or inadequate research methodology". Scholars such as Barnoski (1997) and Muntingh (2001) question the timing of longitudinal follow-up studies on YSOs. For instance, Barnoski (1997) argues that, when measuring recidivism, at least 18 months should have elapsed from when the children were released into the community before an evaluation study is initiated. This is to allow for sufficient time to capture most of the ex-offenders' re-offending activities.

Relevant here is Professor Clear's keynote address at the conference on recidivism in SA of the Open Society Foundation for SA in November 2010, which I also attended. He argued that, with regard to measuring recidivism and identifying recidivists, research has shown that a three-year cut-off time is typically used to determine whether a person recidivates. A major reason for the use of this three-year cut-off period according to Clear (2010), is that it was recommended by a US Presidential Commission Report in 1973. Referring to Blumstein et al's (2009) study as emerging evidence, Clear (2010) argued that seven years would be a better cut-off period for identifying recidivists. NICRO and SAYStOP follow-up studies, however, were mostly conducted within a short-period of time, that is, only one to two years after the youth had completed the programme. Given the different South African context variables that make longitudinal evaluative follow-up studies difficult to conduct, as already discussed in Chapter 1, it would seem that a three to five year interval is a realistic period for such studies to be conducted. I believe that such a longer period is likely to produce more reliable and valid research data on ex-offenders' general criminal tendencies and re-offending behavioural patterns than using an interval of only one or two years. Hence this study adopted a five-year interval to investigate the recidivism rates among ex-YSOs. The theme of recidivism amongst YSOs will be explored in great detail in Chapters 4 and 6.

### **2.6.1 Effectiveness of SAYStOP programmes**

The ultimate goal of diversion treatment programmes is the rehabilitation of offenders. An intervention programme can only be considered to be effective, if it is able to achieve its aims and objectives. Wood (2003) and Steyn (2005) identified the following as *effectiveness indicators of a SAYStOP programme*:

- The SAYStOP intervention was useful for holding children accountable and teaching them to take responsibility for their abusive behaviour;
- It was also fairly successful in accomplishing the set aims and objectives of each session held with children;
- The information on programme content was regarded as positive and, apart from the more entrenched beliefs about gender stereotypes and notions of power, the participants retained many of the concepts taught;

- The programme helped young people to acquire knowledge (i.e. regarding the human body, sexuality, myths and adolescence) so that they could make appropriate decisions. SAYStOP believed that child sex offending results largely from inadequate knowledge about sex and sexual behaviour. At the same time, it acknowledged broader causes, such as socialisation and adverse social conditions, hence its psycho-social approach to intervention;
- Group work was seen to be a necessary and beneficial aspect of the intervention.

One of the shortcomings of the SAYStOP diversion interventions, as identified by Wood (2003: 17), however, was that the programmes “were less effective in assisting children to develop respect and empathy for their victim”. In my view, such a deficiency in diversion programmes raises a major concern, not only because of my advocacy of RJ but also because of my understanding of what diversion programmes should seek to achieve. Diversion programmes were initially established to promote a RJ approach to the management of young offenders in SA (Inter-Ministerial Committee on Youth at Risk, 1998; the White Paper for Social Welfare, 1997; South African Law Commission, 1997). This is further reflected in some of the main objectives of the CJA, which are stated as follows:

- To expand and entrench the principles of RJ in the criminal justice system for children who are in conflict with the law, while ensuring that they take responsibility and accountability for crimes committed; and
- To balance the interests of children and those of society, with due regard to the rights of victims.

Steyn (2005) concluded that the content of the SAYStOP diversion programme manuals were highly educational and thus had great potential for primary prevention. The programme’s content needs to be broadened, however, to include themes that target the specific characteristics of participants that could lead to relapse.

Steyn (2005) believes that a range of intervention options needs to be explored in dealing with YSOs, given the fact that each individual is different, as are the circumstances surrounding each case. I believe that intervention programmes, which are designed to target the offending behaviour, need a more therapeutic rather than educational emphasis.

It is also noted by Steyn (2005) that most of the activities indicated by the SAYStOP manual rely on group interaction and thus on sharing experiences and views to stimulate experiential and social learning. This raises an important practical issue regarding the individual versus group facilitation method of diversion programmes. This is one practice related research theme that this study explored in detail. The findings in relation to this research theme are presented in Chapters 4 and 5, and the recommendations in Chapter 6.

Wood (2003: 17) in her review noted that the children she interviewed suggested that the programme might be more effective if it were lengthened or if additional follow-up measures were incorporated. However, at the end of her programme reviews, she recommended the contrary. She insisted “that the programme needed to be preserved in its current form (rather than lengthening it) and used as a cost-effective starting point for all children believed to be appropriate candidates” (Wood, 2003: 17). Moreover, “at the end of the ten sessions, the facilitators [should] re-assess each participant as to whether the programme was adequate or whether on-going, more intensive and specialised intervention of a longer duration was needed” (Wood, 2003: 17). I tend to differ with Wood because based on my practice experience offenders should not be made to stay for the duration of the treatment programme, if it does not address their problems. For instance, if one group member is persistently presenting problematic behaviour that disturbs the functioning of the group during the group sessions, this needs to be picked up early and addressed accordingly, rather than waiting until the end of the programme.

Wood (2003) further recommended some principles drawn from international literature, which she believes could make the diversion programmes under review

more effective. In developing diversion programmes that are more likely to be effective, she advocated for effective practice based on the so-called 'What works' theory. This theory was formulated as a scholarly response to a report by Martinson (1974, cited in Ferrara, 1992), contending that 'nothing works' in the rehabilitation and treatment programmes of juvenile offenders (Gxubane, 2006). The 'What work's theory was further developed by scholars such as Andrews et al (1990) and McGuire and Priestley (1995). In support of this theory, Wood (2003) stated that interventions that have been found to be effective in reducing recidivism were judged to be appropriate in terms of the principles of risk, criminogenesis, and responsiveness, as briefly described below.

The *principle of risk* states that the assessment of risk and the prediction of recidivism should determine the service provided. That is, intensive services should be offered to a child who is assessed to be at high risk for re-offending, whereas a child assessed to have a low recidivism risk should receive minimal intervention.

The *principle of criminogenic* stipulates that interventions should focus on altering those risk factors associated with re-offending that are changeable. Examples of such factors would be reducing drug or alcohol use, improving self-control, increasing self-motivation, dealing with relationship problems, overcoming unemployment, etc.

The principle of responsiveness demands that interventions should ensure that learning techniques and treatment approaches are suitable for the developmental capabilities of the identified target group (Andrews et al, 1990).

Wood (2003) further advocated for the *principle of community based interventions*, which are believed to be more effective than institutional treatment programmes. It is argued that, in the former, the child learns to apply his or her new coping skills in their own environment and that he can make use of family and peer support during the process of implementation (Rappaport et al, 1996, cited in Wood, 2003). Whilst this principle is ideal in the rehabilitation of young offenders, in my view it has to be approached with caution. The potential challenges and benefits of institutional based diversion programme are explored in great detail in Chapters 4 and 5.

Dawes (2005) and Wood (2003) argue that treatment programmes need to employ *multi-modal interventions* (a variety of methods) to address the child's problems, and that they should be properly managed, that they should use trained staff and that they should be run with clearly identified aims and objectives. They also note that these programmes need to be highly structured and must have *cognitive-behavioural treatment approaches* (Dawes, 2004; Wood, 2003).

The *principle of intervention integrity*, as proposed by McGuire and Priestley (1995) is in line with my motivation for conducting this study, as discussed in Chapter 1. This principle refers to treatment interventions that are based on research, and that have sufficient resources to achieve objectives; such objectives should be linked to intervention components and desired outcomes, and they should be systematically monitored and evaluated (McGuire and Priestley, 1995).

Finally, Wood (2003) proposed that, in developing diversion programmes in SA, there is a need for a continuum of services that will comprehensively respond to the treatment needs of children who commit offences. This refers to a range of services, from early interventions to reintegration and after-care. Since most sex offences like rape are considered Schedule 3 offences in the CJA, if such individuals are considered for diversion, they are most likely to be referred to a residential diversion treatment programme option. The CJA specifies that the applicable time period may not exceed 24 months (2 years) in the case of children under 14, and 48 months (4 years) for older children. As this is new legislation in SA, there seems to be ongoing debate regarding the appropriateness of such lengthy diversion periods. The appropriate length of residential diversion programmes is thus one of the research themes that this study explored, as will be seen in Chapters 4 and 6.

The evaluation study by Kingi and Robertson (2007) of the residential treatment programme available for young male sexual offenders in New Zealand identified several important issues that I concur with, which need to be taken into account by service providers and facilitators of residential programmes. These issues relate to

the adolescence stage of human development, which is the stage relevant to most of the young offenders. They include the following:

- Young people will often present with mood disruptions, risk behaviour, and conflicts with parents;
- Successful treatment includes work with families;
- Programmes need to allow for developmental and cultural contexts, so that young people can explore their identity (including their sexual orientation);
- Programmes should be structured to promote self-esteem, build on strengths, promote competencies and optimise success in negotiating developmental tasks;
- Participants need to be given opportunities to exercise their independence, and regular contacts with the family and wider community need to be encouraged as much as possible.

Kingi and Robertson (2007) lastly outline key features of YSO treatment programmes that need to be addressed by best practice. These include:

- *Programme design* – of which there are three main components: system linkages, programme comprehensiveness and commitment;
- *Pre-treatment interventions* – covering assessment and suitability, family involvement and risk assessment;
- *Treatment phase* – covering programme foundation, structure and content, and processes;
- *Staffing* – covering qualifications, supervision and ongoing training;
- *The residence* – covering the environment and risk management;
- *Progress effectiveness* – covering recording and review; and
- *Post-treatment follow-up*.

Kingi and Robertson (2007) offer a useful best practice framework; therefore, their *framework will be adopted as a frame of reference for the presentation of practice guidelines*, which will be proposed for dealing with YSOs through residential diversion within a RJ approach (see Chapter 7).

## **2.7 PROFILE OF THE SOUTH AFRICAN YOUTH SEX OFFENDERS AND THEIR FAMILIES**

Studies that profiled South African YSOs include those by Booysen (2003), Dhabicharan (2002), Gallinetti and Kassin (2008), Wood and Ehlers (2001) and Wood et al (2000). It must be noted that the profile of the YSOs implicitly covers the profile of their families as well. Research by Wood et al (2000) involved interviewing and psychometric testing of twenty South African male sex offenders between the ages of 7 and 15 years. Their study revealed the following typical characteristics of young male sex offenders:

- He resides in an urban or rural area that is characterized by overcrowding, alcohol abuse, domestic violence and crime;
- He selects a known victim who is younger than himself, and the offending behaviour is likely to be carried out by one or more co-offenders;
- He is likely to have been involved in previous incidents of sexual abuse but not likely to have been previously convicted for committing a sexual offence;
- He may have been a victim of physical or sexual abuse by a relative, step parent or older adolescent;
- He has engaged in consenting sexual interactions with a female peer prior to the offence. However, he is sexually naïve and has not received any suitable sex education;
- He is also likely to have committed a non-sexual offence, such as shoplifting, theft and housebreaking prior to the referring sexual offence;
- He attends school but has usually failed one or more times;
- He is easily angered, has poor impulse control, plays truant, picks fights, wets his bed, experiences difficulties falling asleep and can be cruel towards animals;
- He is likely to live in a community where he regularly witnesses violence, including murder; and
- He is also likely to have witnessed others engaging in sexual intercourse.

Booyesen (2003), Dhabicharan (2002), Gallinetti and Kassan (2008), and Wood and Ehlers (2001) listed the following additional typical profile features of South African YSOs:

- They tend to come from a lower-socio-economic background than other juvenile delinquents;
- They have negative, disrespectful and distorted views of women;
- They were exposed to pornographic material and inappropriate sexual messages from family and peers;
- The victims of these juvenile sex offenders are both males and females;
- They display a variety of anti-social behaviour from early childhood and often present with a common diagnosis of 'conduct disorder';
- They are less likely to be intellectually advanced or verbally articulate, and present with learning and behavioural difficulties at school; hence they have poor school performance;
- They have a deficit in a range of social skills such as self-preservation, assertiveness, sensitivity and sympathy;
- They have difficulties with inter-personal relationships and often prefer and are comfortable with peer groups younger than themselves;
- Most of them have been victims of crime during their early childhood, specifically sexual abuse; and
- The family environments most of them come from are problematic and dysfunctional, characterized by overcrowding, intra-familial violence, child abuse and neglect, parental depression, parental immaturity, interactional and relationship problems with their parents, absent fathers and poor parental role-models, with either one or both parents engaging in substance abuse.

The profile of South African YSOs and their families, as described above, will be compared with the profile of the YRs and their families who participated in this study in Chapter 4.

## **2.8 RESTORATIVE JUSTICE APPROACH**

This section of the chapter critically explores the concept of restorative justice (RJ) in detail since it is not only the main philosophical and practice framework that informs this study, but it has been adopted as a South African policy and legislative framework for dealing with young offenders. Firstly, thus, the South African policy and legislative framework with regard to the RJ approach to dealing with young offenders are outlined. Secondly, the concept of RJ is distinguished from other approaches to justice. Thirdly, the values and principles underlying RJ together with the possible benefits of RJ are explored. Fourthly, some concerns that RJ practitioners need to be mindful of when applying RJ are discussed. Finally, studies that have been conducted on the application of RJ in the management of young offenders are explored.

### **2.8.1 South African policy and legislative framework**

The White Paper for Social Welfare (1997) and the Inter-Ministerial Committee on Youth at Risk (1998) (IMC) proposed that RJ, diversion programmes, prevention and early intervention programmes should be the key principles that should inform criminal justice thinking in managing young offenders in SA. This implies a paradigm shift from the retributive justice system, which focuses on punishment, to a RJ approach, which promotes accountability and reconciliation. Both the IMC and the White Paper for Social Welfare emphasised diversion within the RJ framework because this approach seeks to channel young offenders away from the criminal justice system, providing them with an opportunity to be accountable for their unlawful behaviour, whilst they make amends to their victims rather than just being punished.

The CJA states that one of its main objectives is to promote the spirit of ubuntu in the child justice system through:

- Fostering children's sense of dignity and worth;

- Reinforcing children's respect for human rights and the fundamental freedoms of others by holding children accountable for their actions and safe-guarding the interests of victims and the community;
- Supporting reconciliation by means of a RJ response; and
- Involving parents, families, victims and, where appropriate, other members of the community affected by the crime, using the procedures contemplated in this Act in order to encourage the reintegration of children.

### **2.8.2 Conceptualising the notion of 'justice'**

Sharpe (2004) points out that in the RJ literature there seems to be more focus on the 'restoration' part of RJ, with little attention paid to the justice part of the concept. Therefore, to understand how RJ contributes to achieving the goals of justice, "...we need to be sure we understand the justice dimension of RJ as well as the restorative dimension" (Sharpe, 2004: 17). I agree with this statement, because criminal justice administration and social workers within the criminal justice system seem to be mainly focused on offenders. Victims are often neglected throughout the process, as more emphasis is placed on rehabilitating offenders. When victims are invited to participate in RJ processes, moreover, they are often not prepared for such encounters. This clearly does not seem fair to the victims. It is such biased approaches to justice that have called into question whether RJ is able to promote justice that would be seen as fair to all parties. More charges against RJ are discussed later in this chapter.

Rawls (2001) theorised that justice is about fairness. He based his theory on a fair system of social cooperation and social contracts. This theory proposes that, as members of a society, we have social contracts or agreements about how we will behave in relation to each other and what kinds of behaviour we can expect from each other. These agreements are often unconscious and unspoken, although they are sometimes codified into laws and policies. When such a contract is violated, it provokes a sense of outrage amongst other members of the society that is often expressed as "That's not fair" (Sharpe, 2004: 23).

Even though people generally cannot describe precisely what justice is, they are very much aware about what does not constitute justice. Sharpe (2004) asserts that, based on Rawls' notion of justice, there is justice between us as long as our interactions allow each of us equal opportunity to seek what is important for our own good. Sharpe (2004) argues further that there is injustice when one individual has much more freedom than another. Some injustices are minor, easily corrected and quickly forgotten, whilst others cause serious and sometimes lasting harm. Injustice debilitates, to the extent that it suspends a functional social contract by limiting a person's quality of life and the ability to have his or her needs met (Sharpe, 2004).

Sharpe (2004) noted that Western culture has often promoted the idea of justice as an intervention that metes out punishment to correct the wrongdoing. Unfortunately, this line of thinking is still pervasive in many modern societies. A different way of thinking about justice and even about crime has been proposed by different scholars in the field of RJ, including scholars such as Bazemore (1996), Pranis (2004), Van Ness and Strong (2002), and Zehr (1990). It has been shown in the literature that "justice has meant something quite different in other cultures and throughout human history" (Sharpe, 2004: 22). For instance, Van Ness and Strong (2002) note that in pre-colonial African societies, the notion of justice focused on resolving the consequences of crime for the victims and less on punishing the offender.

### **2.8.3 DISTINGUISHING RJ FROM OTHER APPROACHES TO JUSTICE**

Four other approaches to justice, namely, *retribution*, *utilitarian deterrence*, *rehabilitation*, and *restitution* are briefly described below, as discussed by Batley (2005), Brunk (2001), Skelton (2005) and Zehr (1990).

- **Retribution**

Retribution is probably the oldest theory of justice and it has its roots in religious beliefs. This approach views an offence as a 'sin', which can only be paid for by punishment. This viewpoint led to the development of the retributive theory's focus

on punishment. Punishment is used to right the wrong done in the criminal offence. The offender's suffering is what constitutes the 'payback' to the society and the victims of the offence. The strength of this approach lies in the fact that offenders are viewed and treated as morally responsible members of society. Offenders are not viewed as instruments for deterring others, nor as if they are 'sick' and irresponsible (Batley, 2005; Brunk, 2001; Skelton, 2005; Zehr, 1990).

- **Utilitarian deterrence**

This approach to justice prioritises the protection of society from the offenders. The state is perceived as the only institute that is justified to have power, which needs to be enforced to ensure obedience to the legal and moral order. It also views punishment, pain and suffering as a means of deterring potential offenders. Since it is focused on punishment, the approach claims to be victim focused. In reality, it focuses completely on the potential victims, but completely ignores the direct victims of crimes. Such an approach uses mainly imprisonment to deter others. As it was highlighted in Chapter 1, imprisonment is a short term and ineffective strategy, which also fails to deter would-be offenders. It has an inherent component of injustice in that punishment of offender is thought to have an impact on potential offenders. The punishment is not likely to fit the crime committed by the actual offender (Batley, 2005; Brunk, 2001; Skelton, 2005; Zehr, 1990).

- **Rehabilitation**

This approach is rooted in the rise of the social and behavioural sciences. The offender is viewed as either a 'patient' or a 'victim' or both. The offender is not viewed as morally responsible for the offence he or she has committed. As a patient, the offence is the product of a dysfunctional social environment, that is, a manifestation of larger social illnesses. This approach has been criticised in that it seeks to impose behavioural change through treatment. It has been widely recognised that enforced behavioural therapy is rarely successful. Conditions in prison are far more detrimental to rehabilitation than any good served by any therapeutic programme. However, the general public views this approach as a 'soft option'. It also ignores the victims of crime. RJ is often aligned with rehabilitation

theory, although some scholars argue that restoration is not the same as rehabilitation. RJ emphasises the need for offenders to take responsibility. It treats them as responsible and moral human beings and not as 'sick patients' needing treatment (Batley, 2005; Brunk, 2001; Skelton, 2005; Zehr, 1990).

- **Restitution**

This is a far more recent approach than the others. It has its roots in the economic and political schools of thought. It is based on the view that the state needs to intervene as little as possible in the running of society. Criminal offences are not seen as wrongs against the victim but as a general cost of doing business in society. Every loss or harm can be compensated for and, if compensated adequately, the wrong is cancelled out or removed. This approach has been appealing to some scholars in the field of RJ, since it is the only approach that addresses the needs of the immediate victims. However, this approach has been criticised for the following reasons: it reduces the idea of restitution to that of financial payback; it removes the need for an offender to acknowledge the wrongfulness of his or her actions and to take responsibility for them; it does not address restoration or reintegration of offenders back into the community; it favours the wealthy in the society who can afford to pay for their crimes; and it only recognises the person who has been directly harmed as a victim and ignores secondary victims like families and the community (Batley, 2005; Brunk, 2001; Skelton, 2005; Zehr, 1990).

- **Restorative justice approach**

Van Ness and Strong (2002: 27) maintain that the term "restorative justice" must have been coined by Albert Eglash in 1977 in an article, in which he distinguished between different types of criminal justice systems. Skelton (1999), conversely, argues that RJ is nothing new to SA. RJ is a theory of justice that promotes reconciliation rather than punishment of offenders. Skelton further argues that, long before apartheid and colonisation, RJ was known and understood by people living in SA. She claims that "(r)conciliation, restoration and harmony lie at the heart of African adjudication" (Skelton, 1999: 93-94).

Sharpe (2004) asserts that RJ is still a new field of study and that the rapid growth of RJ has led to increased confusion on what RJ is, and what kinds of practice can be included or excluded from this approach. Skelton and Batley (2006) point out that, during the early days of diversion practice with young offenders, all diversion programmes were considered to be restorative because their overall aim was to find an alternative to the criminal justice system and to give young offenders a chance to change their behaviour, whilst avoiding a criminal record. They also allude to the fact that “scholars in the field have become increasingly concerned about what they see as this ‘bandwagon’ approach to restorative justice”; they argue that “not all diversion programmes are restorative in nature” (Skelton and Batley, 2006: 7).

Various scholars define RJ in different ways, according to specific aspects of the concept that they want to emphasise. The Restorative Justice Network (RJN) (2003: 1) states that:

restorative justice refers to a process whereby those affected by an incident of wrongdoing come together, in a safe and controlled environment, to share their feelings and opinions truthfully and resolve together how best to deal with its aftermath. The process is called “restorative” because it is concerned primarily with restoring, insofar as is possible, the dignity and well-being of those harmed by the incident.

Van Ness and Strong (2002: 37-42) believe that three important principles are central to all definitions of the concept of RJ:

- Crime is seen as something that causes injuries to victims, offenders and communities;
- Not only government, but victims, offenders and their communities should be actively involved in the criminal justice process at the earliest point and to the maximum extent possible; and
- In promoting justice, the government is responsible for preserving order and the community is responsible for establishing peace.



inclusive and developmental approach, which offers a framework for experimenting, evaluating, reflecting and learning how far we can be innovative in the practice of RJ without compromising its integrity. The philosophical framework of RJ is very much the cornerstone of the CJA.

#### **2.8.4 VALUES AND PRINCIPLES OF RESTORATIVE JUSTICE**

RJ is informed by a number of values and principles that underpin the application of RJ processes. From this, and in accordance with the Restorative Justice Network (RJN (2003: 1), it follows that justice processes may be considered “restorative only in as much as they give expression to key restorative values, such as respect, honesty, humility, mutual care, accountability and trust”. It is believed by RJN (2003) that such RJ values are essential to healthy, equitable and just relationships.

The RJN (2003: 1) maintains that “process and values are inseparable in RJ. It is the values that determine the process and the process that makes visible the values”. In other words, the two are dependent on each other. Based on this conception, Pranis (2007) categorised RJ values as either process values or individual values:

*Process values* are those that need to characterise a RJ process and should amongst others include: democracy, responsibility, reparation, safety, healing, inclusion, reintegration, humility, respect, participation, interconnectedness, hope and empowerment (Pranis, 2007).

*Individual values* are those that need to be nurtured in individuals that are participating in a RJ process and should amongst other include: honesty, respectfulness, taking responsibility, compassion, patience, fairness, open mindedness, creativeness, good listening, accountability, and consideration of others’ needs (Pranis, 2007).

Zehr (2002) believed that if he had to sum up different values and principles of RJ into one core concept he would choose respect. He argued that respect underlies all RJ principles and must guide and shape the application of RJ processes. In my

understanding, this is the same core principle that is embodied in the African philosophy of ubuntu, which refers to the belief that we need to treat others the way we would like to be treated and to treat others with compassion.

#### **2.8.4.1 Restorative justice values and principles in practice**

Values and principles of RJ in the criminal justice system are often applied within a context of victim-offender mediation (VOM) or in a family group conference (FGC). Therefore, according to the RJN (2003) any such meeting may be considered '*restorative*' if the following conditions are met:

- It is guided by competent and impartial facilitators: This is to ensure that the process is safe and guided by neutral, impartial and trusted facilitators. It is also essential that pre-conference preparation be given to all the individuals who will participate in the gathering.
- It strives to be inclusive and collaborative: This is to ensure that the process is open to all people who have been directly or indirectly affected by the offence. The process is not restorative if key participants are required to remain silent or passive or if their contribution is suppressed by a facilitator who might have a personal agenda.
- It entails voluntary participation: No one should be forced to participate or remain in the RJ process, or be compelled to communicate if they do not want to do so. Agreements would be ideal in such gatherings, but they are not obligatory.
- It fosters confidentiality: This is to ensure that information is disclosed in confidence. No information will be relayed to people who were not part of the gathering, as this may cause harm to the participants who might have shared very personal information about themselves or others in good faith.
- It recognises and respects different cultures: Participants should not be forced to participate in processes that violate their cultural or spiritual beliefs.
- It focuses on needs: The process needs to foster awareness of how participants have been affected by the offence. Therefore the discussion

should aim to clarify the emotional, material and consequential harm that has been caused by the offence.

- It fosters genuine respect for all the participants: Every participant should feel respected, even if they are the offenders. The process needs to uphold the intrinsic dignity of every participant present in the gathering.
- It validates the victim's experience: The victim's feelings and interpretation of the offence needs to be accepted and respected. It should not be minimised or ignored. The victims should not be forced to forgive when they are not willing or not ready to do so.
- It clarifies and confirms the offender's obligations: The process should invite but not compel the offender to accept obligations identified. The offender needs to identify and address the consequences of their criminal behaviour willingly.
- It aims at transformative outcomes: The process needs to aim at outcomes that meet the present needs and obligations and to empower both offender and victim for the future. The outcomes should promote healing for the victim and reintegration for the offender. Therefore, the process is not restorative if the outcomes do not help the victim to heal or if they are aimed solely at punishing the offender.
- It observes the limitations of the RJ processes: RJ is not a substitute for the criminal justice system. It is a complement. Participants should be made aware of how the RJ process fits into the wider criminal justice system. The outcomes of a RJ process may or may not be taken into account by the referring court.

### **2.8.5 ADVANTAGES OF RESTORATIVE JUSTICE**

- **Restorative justice is indigenous**

Bazemore and Umbreit (1995) maintained that RJ is not a new approach to the criminal justice system, but that it draws on ancient concepts and practices in many different cultures. In countries such as Australia, SA, and New Zealand the concept of RJ is not a foreign one. In SA, for instance, the principles of RJ date back to the

traditional indigenous approach to justice prior to the introduction of the Western legal system by the colonial powers (Bazemore and Umbreit, 1995; Consedine, 1999; Liebmann, 2007; Skelton and Frank, 2001).

The traditional courts were conducted by chiefs and their assistants in the rural areas. In Sotho practices, the traditional leader would invite the victim, the offender, their families and members of the community in general to the 'Lekhotla' (a community conflict resolution gathering) (Dlamini, 1988; Hlatshwayo, 2002; Skelton and Frank, 2001). The traditional approach to dealing with crime places more emphasis on righting the wrong, and on promoting peace and reconciliation between the offender and the victim. Community involvement is based on a belief that if one member of the community has been harmed, the entire community has been violated. In addition, the victim will need assistance and support from the community (Consedine, 1999; Dlamini, 1988; Hlatshwayo, 2002). The move to entrench RJ in the child justice system in SA is thus returning to the traditional indigenous approach to justice (Skelton and Frank, 2001).

- **Restorative justice places victims at the centre of the justice**

In the current criminal justice system, victims are mere witnesses throughout the various processes. They are not involved in making decisions as to what will happen to the offender, but find themselves as mere footnotes in the process of justice. Not only has the offender taken power away from them, but the criminal justice system is further disempowering them. In the RJ approach, victims take centre stage. They have a say in how the crime has affected them and are afforded an opportunity to negotiate with the offender as to how they would prefer their needs to be met (Bazemore and Umbreit, 1995; Consedine, 1999; Liebmann, 2007; Morris and Maxwell, 1997; Van Ness and Strong, 2002). Zehr (1990) asserts that, in dealing with the aftermath of crime, victims' needs should be a starting point but the needs of the offender and the community should not be neglected either.

- **Restorative justice offers healing to all involved**

Just as victims need an experience of forgiveness, so do offenders. Offenders also need to put the offence behind them and to move on with their lives. In a retributive justice system, offenders are not granted a platform to confess, take responsibility, express remorse, and make things right. In the RJ approach, in contrast, offenders are encouraged to dialogue with those they have harmed and to ask for forgiveness. This process does not aim only to re-empower the victim but has a mutual healing benefit for all those who have a stake in the offence (Bazemore and Umbreit, 1995; Consedine, 1999; Morris and Maxwell, 1997; Liebmann, 2007; Pranis, 2004; Tutu, cited in Skelton and Frank, 2001; Van Ness and Strong, 2002; Zehr, 1990).

- **Restorative Justice places responsibility for crime in the hands of those who commit it**

The western judicial system transfers the offence from the victim, his or her family, and the community, to the state. The community and the victim are abstractly represented by the state in the court of law. Cases are sometimes finalised even without the victim's awareness or involvement. When the offender has completed his or her prison term, they will often feel that they have paid their debt to the victim and community. The victim and the community, however, will often find it difficult to accept the offender or to reintegrate him, particularly if they are not reassured that he or she has been reformed. RJ recognises that we are all part of the human family and that we are responsible for each other. If any member of the community has offended another, we all need to be involved in dealing with the aftermaths of the crime, since both the victim and the offenders are members of that community. The process of dealing with the crime needs to support the reintegration of both victim and offender into the community (Bazemore and Umbreit, 1995; Braithwaite, 1989; Consedine, 1999; Morris and Maxwell, 1997; Liebmann, 2007; Van Ness and Strong, 2002; Zehr, 1990).

## **2.8.6 SOME CONCERNS IN RESTORATIVE JUSTICE**

There are a number of concerns in the field of RJ that have been raised in the literature. The ones that are discussed in this sub-section are those that I believe are important in conceptualising and applying RJ processes. Hence, they were explored in this study (see Chapters 4 and 5).

- **The goals of restorative justice process**

It might be assumed that there is consensus amongst scholars and practitioners within the field of RJ about what this approach to justice seeks to achieve. However, this is not the case in reality. As stated earlier, the manner in which a person conceptualises RJ will influence the goals they seek to achieve by applying RJ processes. As the RJ theory expanded, both in research and practice, new perspectives emerged as to what RJ processes in the purest forms can and cannot realistically be able to achieve. In addition to that, different views emerged, which prioritised certain goals of RJ over the others, as discussed below.

According to Zehr (1990: 181), the goals that justice needs to achieve are determined by the lenses through which crime is perceived. In the retributive justice approach, crime is considered a violation of the state, defined by lawbreaking and guilt. Therefore, justice determines blame and administers pain in a contest between the offender and the state-directed rules. In terms of the RJ approach, crime is perceived as a violation of people and relationships. Crime thus creates obligations to make things right. Therefore, justice involves the victim, the offender, and the community in searching for solutions to the effects of crime. Hence, for scholars such as Consedine (1999), Pranis (2007), Sharpe (2004) and Zehr (1990), the goals of RJ are restoration and healing, which involve repairing injuries and promoting healing for those who have suffered harm, whether directly or indirectly.

Dyck (2004) and Van Ness and Strong (2002) believe that RJ processes need to aim at reintegrating both victim and offender into the community. Braithwaite (1989) theorised this as 're-integrative shaming'. Marshall (1996, cited in Skelton, 2005), believes that RJ processes need to deal with the aftermath of an offence and its

implications for the future. This is supported by Liebmann (2007: 27) who argued that “most victims are interested in offenders avoiding future offending, thereby avoiding creation of more victims”.

Batley (2005) noted that RJ is often aligned with rehabilitation theory. The association of RJ with rehabilitation theory is based on the assumption that “(a)n offender who has taken responsibility for repairing the harm done, and now has restored the trust and confidence of the community is ‘rehabilitated’ in a far broader sense than can be said of individualised therapeutic measures” (Batley, 2005: 27).

Van Ness and Strong (2002) stated that, unlike other approaches to justice, RJ focuses on the effects of the crime and involves the victim and the offender in the process of reparation and rehabilitation. This conception about justice seems to suggest that part of the perceived goal of RJ processes is rehabilitation. Skelton (2005: 66), in contrast, argues that “(r)estorative justice advocates do not ignore the importance of a therapeutic and rehabilitative approach, but do not view these as central or [as the] most important aims of a justice process”.

- **Is restorative justice inappropriate for serious offences?**

Skelton and Batley (2006) argued that the assessment of whether a case is suitable for invoking RJ options should not only consider the seriousness of the offence but also the surrounding circumstances. Cases in which there is an identifiable victim are all suitable for RJ (Skelton and Batley, 2006). The fact that RJ is thus available across the range of criminal justice system processes is also an important factor in understanding that it can be applied to serious offences too. Even where the offender has served a part or all of his or her prison term, RJ can still be part of the resolution (Skelton and Batley, 2006).

Batley (2005: 31) provides a comprehensive response to the question whether RJ is appropriate in dealing with serious offences. He states that:

Applying restorative justice principles and processes in rape and murder cases does not imply minimizing the seriousness and tragedy of such incidents, nor does it suggest that perpetrators should be let off the hook simply because they have apologized. Serious cases present excellent opportunities for victims to feel that they are heard, and for perpetrators to be confronted with the real consequences of their actions.

In a small-scale evaluation of victim-offender meetings held in a juvenile setting, Flaten (1996) described the findings of seven cases that involved serious offences, such as attempted murder and burglary. She noted that all the victims felt strongly that the mediation process should be available to everyone who desires to participate, and that the information about the availability of such programmes should be made known to all victims of crime. All the victims who participated in her study agreed that victim-offender mediation was appropriate for serious offences.

- **Restorative justice processes are offender-centred**

There is a belief that RJ processes, which are offender-oriented, only serve the offender's own selfish interests, and that these processes only seek to address the needs of the offender and do not necessarily have the needs of the victims at heart (Immarigeon, 1999). This may be a valid critique, based on my practice experience as a novice practitioner in the field of RJ. It is often easy, though unintentional, to ignore the needs of the victims by going ahead with FGC, even when the victim has not yet been prepared for such an encounter. This encounter may even trigger painful memories about the sex offence and re-traumatise the victim.

Herman (2004) argued that neither RJ nor the conventional criminal justice system fully meets the needs of the victims. As a possible way of addressing this shortcoming, Herman (2004) proposed a parallel system of justice, which is discussed below. Zehr (1990) describes three possible approaches to justice that will not only meet the needs of the victims but those of the offenders and society as well. The first possibility is the replacement of the adversarial criminal justice system

with one more like a civil justice system where guilt and punishment are replaced with responsibility and restitution.

The second possibility, supported by Johnstone (2002), is a separate or parallel justice system, in other words, the establishment of a separate RJ system that runs parallel to but independent of the mainstream criminal justice system. The third possibility is also a justice system that runs parallel to the mainstream one and is interlinked with it.

The third approach only applies where RJ responses to crime fail to materialise. This model ensures that offenders can still be dealt with retributively through the mainstream criminal justice system. Skelton (2002) indicates that the South African child justice system reflects the third approach to justice. In such cases, if a child fails to comply with RJ alternatives like diversion, the charge is reinstated by the court (Skelton, 2002).

- **Restorative justice is a soft option that ignores the need for punishment**

RJ is likely to meet with resistance from the community mainly because it does not fit well into how the community conceptualises justice. Skelton and Tshehla (2008) pointed out that SA too has shown signs of opting for the American zero tolerance and 'get tough' approaches, which have begun to permeate other youth justice systems in the world. This is informed by a general belief that exists in many communities, namely, that imprisonment of troublesome youth offenders sends a clear message that the crimes committed by young people are being taken seriously by the government and the criminal justice system. Even though studies have shown that imprisonment is not always effective in reducing crime (Skelton and Tshehla, 2008).

In my years of working with young offenders, I found that many used to confess that they would rather go to prison to serve their jail terms, than to go through the torture of having to face their victims. This dispels the misconception that RJ is a soft option.

Similarly, Consedine (1999) notes that, in his many years in prison ministry, he has observed how little remorse there is among inmates, simply because they never have to meet their victims and see the devastation they have caused. Hence he believes that prison guarantees re-offending and that it thus offers victims nothing. Consedine (1999: 187) argues that “this hardening of the arteries of emotion and repression of shame and grief are the principal causes of recidivism and in so many committing even greater crimes upon release”. Therefore prison may, in reality, be a soft option for the offenders. Zehr (1990: 201) argued that offenders’ behaviour often shows irresponsibility, when they are not engaged in repairing the harm that they have caused, prison simply “lets them off the hook, encouraging further irresponsibility”.

- **Victims want retribution and not restoration**

Zehr (1990) noted that most people assume that retribution is high on victims’ agenda, while studies that have focused on the victims suggest a different picture. Victims consider the rehabilitation of the offenders as important because it is one way of addressing the problem of safety and preventing future wrongs (Leggett, 2005; Zehr, 1990).

In a study conducted in central Johannesburg, which looked at victims’ views regarding a desirable response to criminals, the results, surprisingly, indicated that the public might be more reasonable than politicians believe when it comes to the treatment of offenders (Leggett, 2005). The study showed that victims were not as single-mindedly retributive as many would believe, particularly considering that this area has one of the highest crime rates in SA. Although many victims did express a desire for vengeance, they also consistently expressed an interest, across offence types, in telling the offender how they felt. Leggett (2005) therefore concluded that his findings support the belief that victims in SA are open to creative and restorative approaches to resolving crime.

In other research that explored challenges and opportunities for RJ in the Western Cape, from the perspectives of both victims and perpetrators of youth crime,

Shearar (2005) found that most victims and perpetrators welcomed the notion of RJ as a means of dealing with criminal cases involving young offenders. Similarly, in another study conducted in a rural area in SA, Maluleke (2004) found that, although the victims in her study had no theoretical knowledge of RJ, the majority did want to meet the young offender face-to-face and to resolve the conflict. They wanted accountability from the offenders, and stressed the importance of apology. The respondents also showed concern for the young offenders, and they wanted the offenders to change their behaviour. Maluleke (2004) therefore concluded that restorative justice seemed to be in the hearts of the people rather than mere punishment of an offender.

- **Coercion is necessary even though it is antithetical to restorative justice**

As a way of illustrating this controversial yet genuinely critical issue in the application of RJ, Van Ness and Strong (2002) compare how the retributive and RJ approaches operate to ensure the participation of offenders and victims. They note that, in terms of current criminal justice procedures, both victims and offenders are strongly coerced to participate in the criminal investigations. Such coercion is based on the assumption that not all offenders will participate willingly in the trial process or in serving fully their sentences. They also point out that not all victims will cooperate in the prosecution of their offenders. They often have to be subpoenaed to testify at trial.

RJ, with its emphasis on early and full participation of all parties in addressing the effects of crime, needs to be mindful of the fact that not all offenders and victims will be willing to participate voluntarily in such processes. The victims may avoid any encounters with the offender for various reasons, including the avoidance of secondary traumatisation. However, certain cases may be considered as appropriate for RJ processes by the judicial officer. The CJA, in addition to FGC diversion orders, makes provision for RJ sentences. However, RJ processes require victims' voluntary participation. Van Ness and Strong (2002: 181) pose a very important and appropriate question when they ask: "When such involvement is not forthcoming, however, what should happen?"

Van Ness and Strong (2002: 181) argue that “the government should have the authority (as it does today) to subpoena the victim as a witness”. This should be handled in as protective and supportive a manner as possible, “so that the victim’s participation, though coerced, will still contribute to a measure of restoration”. Nonetheless, they do emphasise that, even though subtle coercion may be necessary, it should be avoided whenever possible. To ensure offenders’ participation in RJ processes, Zehr (1990: 197) also remarked that “(o)ffenders often need strong encouragement or even coercion to accept their obligations”.

### **2.8.7 THE PRACTICE OF RESTORATIVE JUSTICE PROCESSES**

The practice related aspects of RJ processes are explored briefly with YRs and their SOs in Chapter 4 and, more specifically in Chapter 5, with regard to the professionals involved in such process. Skelton and Tshehla (2008) note that, due to the fact that RJ does not focus on punishment; there is a perception that there is less need for strong procedural protection. Advocates of RJ tend to be less insistent about procedural protection for suspects, and even see strict procedural rules as being a stumbling block to achieving restorative outcomes. Johnstone (2002) argues that this may be because many proponents of RJ see it as a non-punitive approach, focused on restitution and reparation. It is noted by Johnstone (2002) that, this approach could be dangerous because the wider context in which RJ operates is essentially one of crime and punishment. If the offender fails to fulfill his or her obligations, this should result in him or her being brought back into the criminal justice system.

Ashworth (2002, cited in Skelton and Tshehla, 2008) points out that, although communities have a major role to play in the resolution of criminal justice matters through RJ, the State nevertheless retains a responsibility to impose a framework that guarantees rights and safeguards for offenders and victims. Therefore the “(s)tate owes it to offenders to exercise its power according to settled principles that uphold citizens’ rights to equal respect and equality of treatment” (Ashworth, 2002, cited in Skelton and Tshehla, 2008: 13).

Braithwaite (2002) described as an example, an incident of a restorative community conference in Canberra, Australia. A boy had stolen from a shop and was made to stand outside the shop wearing a t-shirt emblazoned with the words “I am a thief”. Braithwaite concludes that the risk of such blatant bad practice requires the setting of standards. He believes there should be protection against what he calls “domination” or power imbalance, and that RJ processes must never be able to impose a punishment beyond the maximum allowed by the law for that kind of offence, nor to impose a punishment that is degrading or humiliating (Braithwaite, 2002). I agree with Braithwaite that such ‘community shaming’ could result in unintended effects, such as stigmatisation and discrimination.

Skelton and Tshehla (2008) maintain that the South African state as a constitutional democracy has a duty to uphold the rights of children. Hence the CJA includes among its objectives that the legislation aims to protect children’s constitutional rights, and to promote a RJ response to child offending through the involvement of victims, families and communities. The objectives of diversion in the CJA also state that they seek to promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society. Therefore, diversion programmes also have to comply with certain minimum standards, so that diversion is not exploitative, harmful and hazardous to a child’s physical or mental health. To create a common understanding about what needs to be considered as acceptable or unacceptable methods of RJ practice, standards need to be established and made known to all the different role-players. Hence the RJ Initiative commissioned the drafting of such standards for RJ practice in SA (Frank and Skelton, 2007).

Based on the UN Basic Principles on the Use of RJ Programmes in Criminal Matters (2000, cited in Frank and Skelton, 2007: 6-7), a list of practice standards was developed as a toolkit that should guide RJ practitioners in applying RJ processes within the criminal procedure in SA (see Appendix 3, which outlines these practice standards).

### **2.8.7.1 The family group conference**

- **Timing of a family group conference**

Zehr (1990) asserted that one of the major factors that could influence the success or failure of the RJ encounters (such as FGCs) is their correct timing. In Flaten's (1996) study, it was found that victims of serious crimes felt that a certain period of time, perhaps up to a year, should pass before mediation should be attempted. However, Umbreit and Bradshaw (1997) found strong victim support for holding mediation sessions sooner rather than later. Henderson and Gitchoff's study (1983, cited in Immarigeon, 1999: 319), looked at public opinion about crimes and punishment and not FGC, and provided some insightful findings on the 'timing' variable:

- The time from the occurrence of the crime was important in determining the victim's feelings about the sentence that should be imposed.
- If victims were given information about the offender and the possible sentencing options, victims were more likely to suggest alternatives to incarceration.
- In cases where victims were interviewed twice, once immediately after the crime and again several weeks later, they were generally more amenable to alternatives to incarceration during the second interview.
- Even in single interviews, those who were interviewed directly after the crime were more inclined to favour prison than those who received their initial interview a month or two after the crime had been committed.

- **Facilitation of family group conferences**

Based on the overall conclusions of the studies reviewed with regard to the impact of RJ on crime victims, Immarigeon (1999) noted with regard to the future programme and research implications, that it cannot be assumed that victims and offenders can simply be brought together and reconciled without careful briefing and without proper training of the programme facilitators.

Wood (2003) and Mbambo (2000), subsequent to their respective reviews of RJ programmes in SA, concluded that RJ processes and programmes require highly skilled facilitators and that these programmes unfortunately are only available in limited parts of the country. In the research report titled Development of Minimum Standards for Diversion Programmes in the Child Justice System in SA, Dawes (2004: 33) recommended the following as key indicators for positive RJ processes for children:

- The child should participate actively and as an equal, in a non-punitive supportive environment that does not 'shame' or make him or her feel like a 'bad person';
- The child should agree with conference decisions and complete assigned tasks;
- The child should show remorse;
- The child should show a commitment to changing behaviour;
- Participant satisfaction, and perceived fairness of the process are important; and
- Voluntary participation by the offender and victim increases the likelihood of participant satisfaction and offender commitment to changing behaviour.

Dawes (2004: 33) further proposed the following good practices for RJ processes facilitators:

- Mediators should have appropriate training in the theory and practice of RJ and mediation;
- Children should be carefully screened for participation in RJ processes and their safety ensured;
- Victims' physical and emotional well-being should be ensured;
- All participants should be thoroughly prepared for the RJ process (during offender and victim pre-mediation preparation sessions), and they should be informed of the risks and benefits associated with the process;
- Preparation for mediation should include reality testing so as not to create unreasonable expectations of the process for either the offender or the victim;

- The mediator should be impartial and neutral during the process. Individuals who have an interest in the outcome of the process (who are likely to be biased either against or in favour of the offender or the victim) should not play a mediating role;
- The mediator should promote the confidentiality of the process;
- The consent of parents or guardians of the young offender should be obtained prior to embarking on in the restorative process. Informed assent should be obtained from the young offender before his/her participation in the restorative process; and
- Informed consent of the victim should be obtained prior to their participation in the restorative process.

#### **2.8.8 YOUTH SEX OFFENDERS' PROGRAMMES BASED ON RESTORATIVE JUSTICE**

Dawes (2004) notes that interventions for sexual offenders are a highly specialised area, which requires trained staff, as well as programmes that, address the particular needs of these children. Secondly, children who are enrolled in the YSORDPs are not a homogenous group. It is one diversion group that is classified primarily by the offence rather than by personal characteristics. For instance, children who have engaged in exploratory sexual behaviour can be grouped together alongside those with high risk coercive sexual behavioural traits.

In most sexual abuse cases, the victims and offenders are treated separately. Such an approach does not offer avenues for closure or perceived misattributions about the abusive sexual incident. However, even though direct contact between the offender and the victim could be helpful, Zehr (1990) notes that, mediation is not always appropriate, depending on the nature of an offence, or when there is severe suffering by the victim or when power imbalances are too big to overcome. The victim may be unwilling to participate in RJ processes. The use of surrogate victims was adopted to promote a RJ approach where the 'actual' victim is not willing or where it is inappropriate that they participate. According to Zehr (1990: 206), the use of surrogate victims, pioneered in Canada and England, is a process whereby "offenders meet with victims other than their own as a step toward assuming

responsibility and sharing of information. This can be particularly helpful in emotionally charged situations such as sexual offences”.

Zehr (1990: 207) describes Berea’s three-stage victim-sensitive therapy. The first stage is called the ‘communication switchboard’. This is a point of entry where the therapist contacts the PO concerned, the previous therapists, and sometimes the victims. The point of such contact of the victim is to gain more complete information about the event, to inform the victim that the offender is receiving therapeutic treatment, and to enquire whether the victim’s needs are being met. The second stage of therapy deals with misconceptions the offender might have about the victim and it helps him to accept responsibility for the offence and to understand its consequences. At this stage, the offender is required to write a letter of apology. The third and final stage of therapy focuses on reconciliation. The victim is asked whether they would like to receive the letter of apology written by the offender, or whether they would like a face-to-face meeting with the offender, or whether they would prefer a “no-contact” contract with the offender for the future.

Roseman et al (2008) developed a Sexual Behaviour Intervention Program (SBIP) as an innovative community-based male sex offender treatment programme in the United States of America. The SBIP is a focused, psycho-educational programme rooted in the RJ model. It consists of twelve 90-minute group sessions. Surrogate victims are used in victim impact panels as part of the SBIP’s victim empathy sessions. Lord (1989, cited in Immarigeon, 1999) describes the ‘victim impact panels’ as an innovative process of RJ that was initiated in the USA by mothers against drunk driving.

The victim impact panels are designed to help offenders to individualise and humanise the consequences of their anti-social and criminal behaviour in relation to the victims of that offence, to change their attitudes and behaviours, to deter the criminal behaviour, and to reduce recidivism (Mercer et al, 1994, cited in Immarigeon, 1999; Roseman et al, 2008; Zehr, 1990).

The founders of the SBIP state that they do not want to make any claim about its efficacy beyond the preliminary impressions gathered from end-of-treatment surveys of participants, facilitator observations, debriefing sessions with victims, and anecdotal information from community members. The SBIP has so far reported increased self-esteem, a better understanding of healthy relationships, and an understanding of more varied ways to communicate effectively with others. It is further emphasised that, because this programme is in its infancy, the hybrid nature of the treatment model needs to be more clearly articulated and refined. This will allow for replication and evaluation of its efficacy. A step toward this end is to evaluate the current programme in a formal, systematic way. Included in this evaluation should be a longitudinal study of participants based on criteria that extend beyond recidivism (Roseman et al, 2008).

In some cases the victims may be wary of RJ personal encounter processes due to huge power imbalances between the victim and the offender, particularly in cases of sexual abuse where the victims are children. Consedine (1999) and Liebmann (2007) note that it is especially in such cases that skilful and well-trained facilitators are needed, "given the effect of such crimes and the amount of grief and pain they cause". The secondary victims, such as family and friends, may benefit from participating in FGCs without the primary victim's presence. This will help repair relationships and enable referral to other sources of help where necessary (Consedine, 1999; Liebmann, 2007).

The themes that relate to the application of both direct and indirect RJ processes in working with YSOs, their victims and their families, as discussed above, are explored in greater detail in both Chapters 4 and 5.

### **2.8.9 EFFECTIVENESS OF RESTORATIVE JUSTICE INTERVENTIONS**

There is very little research, if any, either locally or internationally, that has explored or evaluated the effectiveness of residential YSOs treatment programmes that have a RJ component, as was pointed out in Chapter 1. This is partly due to the misconception that RJ is inappropriate for dealing with serious crimes like sexual

offences. Roseman et al (2008: 297) noted that“(h)istorically, incarceration rather than treatment has been society’s preferred method of dealing with sex offenders, regardless of the severity of the offense”. Hence, many courts only considered ‘less’ serious offences for diversion to RJ mediation processes. Dawes (2004) notes that the exclusion of offenders who have perpetrated serious offences, like murder or sexual crimes, has led to a critical shortcoming in the majority of RJ initiatives. This has led to reduced accessibility and the exclusion of a large proportion of offenders who might have benefitted from participation in RJ programmes and processes (Dawes, 2004).

It is further pointed out by Dawes (2004) and Immarigeon (1999) that most RJ programme evaluations in the international literature, such as those by Umbreit et al (2001) and Umbreit and Fercello (1997) have mainly studied variables, such as participants’ satisfaction, ‘restorativeness’ of the processes or programme, victim perceptions of fairness, and the completion of victim compensation or restitution requirements by offenders. Studies by Daly (2005) and Hudson (2002) looked at the appropriateness of RJ as a response to sexual offences. It is argued by Dawes (2004: 32) that, “(a)lthough these studies provide the reader with information about RJ process, they do not tell us anything about the success of these processes in reducing re-offending”. Hence, “(f)ewer evaluations of RJ initiatives have focused on the effects of these interventions on longer-term behavioural outcomes such as recidivism by young offenders” (Dawes, 2004: 32).

Liebmann (2007) asserts that governments and policy makers seem to be mainly concerned about the ability of restorative approaches to reduce offending behaviour. She further states that “(t)here is often an unspoken expectation that offenders who have taken part in RJ processes, and [who] have met their victims, will never re-offend” (Liebmann, 2007: 339). I also believe that it is not enough to preach RJ without empirical evidence to show its effectiveness in the prevention of crime. However, this will require advocates of RJ to engage in rigorous research, both in qualitative and quantitative methods that involve longitudinal follow-up studies and

the use of matched control groups to measure and compare research data outcomes.

## **2.9 CONCLUSION**

This chapter presented a detailed discussion on conceptualising the phenomenon of youth sex offending. It also explored different types of YSOs and some etiological theories on youth sex offending. Studies that were conducted on YSOs and their treatment programmes were explored, with a particular focus on South African studies. Furthermore, the concept of RJ and its approach for dealing with YSOs was discussed in formulating a theoretical framework of the study. The South African policy and legislative framework that informs a RJ approach to dealing with young offenders was also outlined. To illustrate how RJ differs in dealing with the aftermaths of crime, it was distinguished from other approaches to justice. The values and principles underlying RJ, together with the possible benefits of RJ, were explored. Some concerns regarding the application of RJ, of which its practitioners need to be mindful, were discussed. Finally, we looked at studies that have been conducted on the application of RJ in the management of young offenders.

The next chapter deals with various aspects of the research design and methodology that were adopted for this study.

# CHAPTER 3

## RESEARCH DESIGN AND METHODOLOGY

### 3.1 INTRODUCTION

Social research in social work is not only aimed at expanding the knowledge base for this profession but it is also intended to increase the chances of more effective treatment methods. As asserted by Trojanowicz (1978: 305), “meaningful research needs to contribute to the establishment of theoretically sound treatment, prevention, and control programmes ... (which) can be replicated in different environments and communities”. This chapter presents a more detailed discussion than in Chapter 1, of each of the following aspects of research design and methodology, namely: the research design, the population of the study, the sampling strategy, the method of gaining consent for the study, the research tools, the pre-test of research instruments, the data collection strategy and the method of analysing research data.

### 3.2 RESEARCH DESIGN

Mouton (2001) describes research design as a plan or blueprint of how a researcher intends to conduct research once a research problem has been formulated. Research designs can generally be classified as either qualitative or quantitative, or both. Generally, a qualitative research design attempts to collect rich descriptive data in respect of a particular phenomenon or context with the intention of developing an understanding of what is being observed or studied (Nieuwenhuis, 2007). In particular, a qualitative approach here is aimed at exploring how the research participants view and understand the world and construct meaning out of their experiences (Nieuwenhuis, 2007). A quantitative research, in contrast, is defined by Maree and Pietersen (2007: 145) as “a process that is systematic and objective in its ways of using numerical data from only a selected subgroup of a universe (or population) to generalise the findings to the universe that is being studied”. The quantitative approach aims to achieve objectivity, numerical data and generalisability of the research findings (Maree and Pietersen, 2007). Ivankova, et al

(2007) argue that using one research approach in a study might not be sufficient to explain the complexity of the research problem as it may require both qualitative and quantitative approaches.

According to Nieuwenhuis (2007: 70), a researcher will select a research design that is “congruent with her or his philosophical assumptions and most appropriate for generating the kind of data required to answer the research question(s) posed”. Since this study aimed to provide mainly qualitative and some quantitative data, it adopted a research design that combined qualitative and quantitative approaches with a *predominantly qualitative thrust* in gathering, analysing and presenting the data. As pointed out by De Vos (2005: 357) “(a) combined-method study can thus be described as one which the researcher uses multiple methods of data collection and analysis”.

De Vos (2005) states that the concept of triangulation in the literature often refers to a researcher’s conscious combination of quantitative and qualitative methodologies. According to Creswell (1994, cited in De Vos, 2005), the value of methodological triangulation is that it allows the researcher to use multiple and different sources, methods and theories of data collection in order to provide corroborating evidence. Nieuwenhuis (2007) also asserted that a triangulation mixed design is most suited when a researcher wants to collect both qualitative and quantitative data at the same time about a single phenomenon in order to compare and contrast the different findings to produce well-validated conclusions.

Denzin (1989, cited in De Vos, 2005) described four different types of triangulation methods, namely, *data triangulation*, *methodological orientation*, *theory triangulation*, and *investigator or observer triangulation*. Only the first three types of triangulation methods were adopted in this study. De Vos (2005: 361) describes these methods as follows:

- *Data triangulation*: the use of more than one data source (interviews, archival materials, observational data, etc.);

- *Methodological triangulation*: the use of multiple methods to study a single topic;
- *Theory triangulation*: the use of multiple theories or perspectives to interpret a single set of data;
- *Investigator or observer triangulation*: the use of more than one observer or investigator in a single study;

A major component of the study involved the use of the case study approach as part of the overall research design and methodology. Nieuwenhuis (2007) points out that there are multiple definitions and understandings of the concept of case study. According to Creswell (1994, cited in Fouche, 2005: 272), a case study can be regarded as “an exploration or in-depth analysis of a ‘bounded system’ (bounded by time and/or place), or a single or multiple case, over a period of time”. Following on from this, Fouche (2005: 272) argues that “there is little consensus on what should constitute a case or ‘bounded system’. The case being studied may refer to a process, activity, event, programme or individual or multiple individuals”. Three types of case studies are outlined by Fouche (2005: 272), namely, *the intrinsic case study*, *the instrumental case study*, and *the collective case study*. Of relevance to this study is the collective case study, as I wanted to investigate a particular social issue, namely, institution-based diversion programmes for young sexual offenders.

Mouton (2001: 149) asserted that case studies are “...usually qualitative in nature and aim to provide an in-depth description of a small number (less than 50) of cases”. De Vos (2005) also notes that through case studies the researcher is not so much interested in the individual case but rather in the group as a whole, so that comparisons can be made between cases and so that general themes can be extended to understanding the broader type of population being studied. The first set of a sample that was comprised of ex-YSOs and their SOs thus served as a collective case study in the research. This was used to extrapolate research data from research participants who were directly relevant for the research phenomena under investigation.

As pointed out in Chapters 1 and 2, this study is a pioneer South African piece of research that explores the management of YSOs by means of residential diversion within a RJ framework. In light of this, the study did not only aim to explore an area that has never been researched in SA but also to describe the area as well. Therefore, the study can be classified under the sub-type of *exploratory-descriptive research design*. According to Tripodi, et al (1972), exploratory studies help to refine concepts and to articulate questions or possible areas of subsequent investigation.

### **3.3 METHODOLOGY**

#### **3.3.1 Population**

The empirical research data of the study was drawn from three sets of populations. The first set targeted was the ex-YSOs who completed the YSO residential diversion programme at Dyambu Youth Centre (DYC) between 2002 and 2005. The second set was the SOs of the ex-YSOs who participated in the study. The main professional role-players who were dealing directly with YSOs and/or their victims in the metro poles of Gauteng and Western Cape provinces made up the final population set. The professionals who were targeted came from five groups: magistrates, prosecutors, probation officers (POs), secure care centre social workers (SCCSWs) who provide treatment for this type of offenders and community based social services professionals who were involved in the management of YSOs and/or their victims.

The Gauteng and Western Cape provinces were selected mainly for two reasons. Firstly, these provinces played a leading and very influential role in transforming the youth justice system in SA generally. The Child Justice Alliance, which is based in the Western Cape, played a major role in shaping the Child Justice Act (CJA) through its collective civil society engagement with the parliament on the matters that concern youth justice in SA. The Gauteng province was one of the first provinces to pilot a number of youth justice projects, including the Reception, Assessment and Referral (RAR) centres. The first RAR centre was based in Johannesburg court (Gauteng) and staffed by POs who assessed youth offenders soon after their arrest and who made

recommendations to the court on a plan of action that could be followed by the relevant court.

Secondly, these two provinces were selected for the purposes of convenience and feasibility in conducting a study of this magnitude. This took into account my limited time, financial and human resource capacity in carrying out an academic research project. The field work trips that I undertook to Gauteng covered most of the respondents that I had targeted for participation in the study. These respondents included the ex-YSOs, their SOs and some professionals who had engaged with the YSORDP when it was piloted in Gauteng. I also used to stay in Gauteng before relocating to Cape Town and was therefore relatively familiar with that province. Similarly, the professionals from Cape Town who were targeted to participate in the study were easier to access since I resided in Cape Town during the period when the study was conducted.

### **3.3.2 Sampling strategy**

There are two basic approaches to sampling: non-probability sampling and probability sampling (De Vos, 2005). Probability sampling infers that each member of the population has an equal chance of being included in the sample. Non-probability sampling, in contrast, may be based on the availability of a limited number of respondents and may include accidental sampling and convenience or purposive sampling (De Vos, 2005). The study adopted a non-probability purposive sampling method. This sampling strategy depended on the availability and willingness of the targeted research respondents' voluntary participation. Maree and Pietersen (2007) proposed that, in certain special situations, as was the case in this study, the non-probability sampling method can be appropriate, particularly in situations where the population is difficult to find, and where there is not much money and/or time available to conduct the study.

In this study, three sets of samples were purposively targeted. The first two sets were the ex-YSOs and their SOs, whereas the third sets of samples were the main professionals who were involved in the management of YSOs and/or their victims in a variety of settings. Dumont and Sumbulu (2010: 206) state that “(p)urposive sampling is one of the most common sampling techniques used in case studies; (it) is a sampling method in which participants are chosen on purpose”.

As pointed out in Chapter 1, thirty-one (31) ex-YSOs completed the residential diversion programme at DYC. Due to the limited overall population size of ex-YSOs, they were all considered for participation in the study together with those of their SOs, who were willing to participate. As pointed out in Chapter 1, however, I could only trace twenty (20) ex-YSOs out of the thirty-one (31) who had completed the programme as a residential diversion option. Out of the twenty SOs who were targeted for participation in the study, only ten (10) participated in the study. The other ten did not participate in the study for various reasons, which were specified in Chapter 1.

The thirty-one (31) key professional informants who participated in the study served as a third sample set. The key informants, who had a long period of experience in working with YSOs and/or their victims, were targeted because I believed that, by virtue of their experience, such respondents would offer deeper insights into the research focus area. These professionals were drawn from three major cross-sectional clusters of youth justice service providers. The first cluster was the justice sector, which was made up of twelve (12) respondents, consisting of six magistrates and six prosecutors. The second cluster was composed of social workers who operate in the child justice system, made up of six (6) POs, and five (5) SCCSWs. The third cluster was the non-governmental organisations (NGOs) sector, which was composed of eight (8) community based social services professionals.

The last cluster of respondents mainly provides support services to the court and is not directly involved with the child justice system. Some, however, such as those working for organisations like NICRO and the Teddy Bear Clinic, have a direct

connection with the criminal justice system since they often work with youth offenders who are still in the child justice system. They are called 'social services professionals' because they include a wide range of professions, such as social work, child and youth care work, auxiliary social work and volunteers. Some of these professionals were involved in facilitating community based diversion programmes. Of the eight (8) social services professionals who participated in the study, two (2) came from organisations that worked mainly with youth offenders, two (2) from organisations that worked only with the victims of child sexual abuse, and four (4) from organisations that worked with both youth offenders and their victims.

I tried to select proportionally, and thus ensured that at least one or two research respondents were from each organisation and/or a specific government department that operated within the research focus area in Gauteng and the Western Cape. For instance, in Gauteng I was informed by the then Department of Social Development that only two youth secure care centres were offering YSOs' rehabilitation programmes as a residential diversion programme and/or general therapeutic intervention. I targeted the most experienced SCCSWs. When I noticed that most experienced social workers had been promoted to management positions, I had to, in addition to interviewing the senior social worker, also interview those who were still directly involved in the facilitation of the youth rehabilitation programmes, even though they were relatively new staff members (see the profile of professional respondents in Chapter 5).

Respondents' participation in the study was negotiated telephonically and/or directly in person with the prospective respondent or through their respective line managers.

### **3.3.3 Method of gaining consent**

Consent for the study was firstly negotiated with the Gauteng and Western Cape Departments of Social Development, since they are the major gate-keepers for accessing the secure care centres and with POs who were targeted respondents of the study (see Appendices 4 and 5). The permission to conduct the study was granted by both provincial offices (see Appendices 6 and 7).

Secondly, consent was negotiated with DYC to access the files of ex-YOs who formed the first sample set, and to interview some of their social workers. Permission to consult the files of ex-YOs and to interview some of their social workers was granted by the DYC management (see Appendix 8). They did not have any reservations in allowing me access to the files of the ex-YOs, since I had worked at the organisation with the ex-YOs when I facilitated the YORDP. Moreover, I was bound by the ethics of confidentiality as a professional social worker.

Thirdly, consent was negotiated with the targeted ex-YOs and their SOs through a standard letter (see Appendix 2). For those who could not read or understand English, the letter was translated and explained in the language that they understood. It should be noted that the ex-YOs had all reached consenting age and therefore did not need their parents' or guardians' consent to participate in the study.

Finally, individual consent was negotiated with each professional respondent who participated in the study through the same above-mentioned standard letter and through follow-up phone calls.

### **3.3.4 The research tools**

In order to achieve the overall aims and objectives of the study, the research adopted a data triangulation method, which – as noted above – refers to “the use of more than one data source such as interviews, archival materials, etc. in a single study” (Padgett, 1998, cited in De Vos, 2005: 361). The DYC files, and the Johannesburg and Soweto court files on the 31 ex-YOs, were consulted and studied.

Three semi-structured interview schedules were developed in advance and used as tools for data collection with each sample set respectively, viz. the ex-YSOs (see Appendix 9); their SOs (see Appendix 10) and the professionals (see Appendix 11). De Vos et al (2005) state that a semi-structured interview helps to gain a detailed in-depth picture of the participants' beliefs about or perceptions and substantive information on a particular topic. The semi-structured interview method also gave me and the participants much more flexibility to follow up on particular interesting avenues that emerged in the interview, thus allowing the participant to give a fuller picture on a range of issues.

### **3.3.5 Pre-test of research instruments**

A pre-test of the interview schedules was undertaken to determine the clarity and appropriateness of the wording. The interview schedule that was developed for the professionals was administered to two SCCSWs from the Western Cape, two probation officers and one prosecutor from Gauteng. These respondents did not form part of the actual analysis of the interviews for professionals.

The pre-test of the interview schedules, which were prepared for the ex-YSOs in Gauteng, was undertaken with three YRs and their SOs. After the pre-test of the interview schedule and further discussions with both my supervisors, alterations and revision of certain questions were made where necessary. The interview schedule for the ex-YSOs and their SOs did not change significantly, except that they were found to be too long and some of the questions were found to be gaining data that was not in line with the aims and objectives of the study. Therefore, some questions had to be eliminated from the revised interview schedule. However, most of the piloted interviews' research data were relevant and were incorporated as part of the overall research data. The exclusion of the six interviews that were conducted with the ex-YSOs and their SOs during the pre-test of the research instrument would have significantly reduced the sample size, which was already small, as explained above.

### **3.3.6 Data collection strategy**

Strydom and Delport (2005) argue that, whilst interviews and observation are used to collect data, the study of documents is often neglected. They also outline a number of advantages and disadvantages of document study, most of which relate to studies that use document study as the sole method of research enquiry. One of the advantages of document study that they identify and that was relevant to this study, was 'non-reactivity', which is briefly described as follows: "(u)nlike surveys where respondents are aware that they are being studied, producers of documents do not anticipate the analysis of their documents at a later stage" (Strydom and Delport, 2005: 318). One disadvantage of document study they identified, which was relevant to this study, was the lack of availability. In some cases where the researcher wants to do a document study, they can become frustrated because documents are simply not available (Strydom and Delport, 2005); this occasionally occurred in this study. The researcher therefore had to rely on other sources of information, such as the courts' database and/or the parent or guardian of the young person and/or the youth respondent himself.

The data collection in this study began with a document study. The first part of this process involved searching for the DYC files of the 31 ex-YSOs who were targeted for participation in the study. Since not all the files were available at DYC filing cabinets, I approached the courts that referred the ex-YSOs to the YSORDP.

The second part of the process involved a consultation of the ex-YSOs files that were available in the Soweto and Johannesburg magisterial courts. Both courts did not have any ethical reservations, as they were aware that I had worked with the ex-YSOs and they were in full support of the study. Access to the required files was made possible through assistance from some of the senior POs stationed at RAR centres and some senior prosecutors who were familiar with me.

The files of the ex-YSOs were consulted for two main purposes: Firstly, to obtain information that would help me to trace the whereabouts of the 31 targeted ex-YSOs. Secondly, the files kept information on the ex-YSOs, which was cross-checked

with the research data that had been gathered in the personal interviews with the ex-YSOs. This helped to maximise the validity of the research data.

As noted, the primary method of gathering data employed in the study, in line with the research design and the objectives of the study, was in-depth face-to-face interviews. In-depth individual interviews according to May (1997: 109), "...yield rich insights into people's experiences, opinions, aspirations, attitudes and feelings". The youth respondents (YRs) were each interviewed separately from their SOs. This was done because I had specific questions that I wanted to ask the youths and other questions that I wanted to ask specifically of their SOs, based on their individual experiences and perceptions of various variables under investigation. The purpose of separating the interviews was clarified to both the youth research participants and their SOs before beginning the interviews. This helped to assure the ex-YSOs that they were not being 'spied' upon in the interviews that were conducted with their SOs. The interviews that were conducted with the ex-YSOs and their SOs went very well, as I tried to create an environment for them to relax by making the interviews very informal and speaking in a language that they felt comfortable with throughout the research interview.

The other semi-structured interview schedule that was developed in advance was administered face-to-face with each professional research participant. On a few occasions, the interview schedule was administered in conjoint interviews, particularly with some professional respondents who preferred to be interviewed in pairs. It needs to be mentioned that some of the most rich and insightful research data came from some of the conjoint interviews, as will be seen in Chapter 5.

The administration of the semi-structured interview schedules face-to-face with the research participants ensured that the respondents understood the questions. As noted, these interviews were conducted in a language in which the respondents felt comfortable. All interviews with the professionals were conducted entirely in English, so there was no need to translate the questions during the interview. The questions were posed and answered in English. All the interviews went off very well.

My ability to speak different African languages and 'tsotsi taal', which is a street language spoken by most of the young people in the black townships in Gauteng, was a great advantage in the study. I had to translate the questions most of the time, thus enabling the ex-YSOs and their SOs to express themselves in African languages and 'tsotsi taal'. Therefore most of these interviews had to be translated into English when I transcribed them.

It also needs to be noted that some of the ex-YSOs insisted that they preferred English. These were some of the ex-YSOs who had furthered their studies after they had been released from DYC, as will be seen in their different profiles (see Chapter 4). Therefore, I simply transcribed their interviews in the exact words that they used in the interviews, similarly with the professional respondents. I was very impressed with most of the ex-YSOs who expressed themselves in English. They were very articulate and generally spoke the language very well.

#### **3.3.6.1 Tape recording of interviews**

Consent was negotiated with each respondent before beginning each interview for the usage of an audio-digital tape device to record the interview. As proposed by Greeff (2005: 298), "(i)f possible, and if permission is obtained from the participants, the researcher should record the interviews on tape or video". The recording of the interviews, instead of taking notes, allowed me to observe the participants and concentrate on the conversation, which guided me in identifying themes that needed further probing, as they emerged from the interviews (Greeff, 2005).

All the research participants allowed me to record the interviews. There was only one incident where the audio-digital tape could not be used. This occurred when an ex-YSO was interviewed in the court holding cells on the day he was due to appear at court for another offence he had allegedly committed. The police at the court did not allow me to bring any object into the holding cells. I thus had to rely on the few notes taken during the interview. After the interview, I immediately rushed to the car to record the discussions that had been held, whilst they were still fresh in my

memory. As pointed out by Greeff (2005), notes taken during the interview need to be jotted down immediately after the interview, together with any impressions of the interview.

### **3.3.7 Method of data analysis**

The analysis of research data involved bringing order, structure and meaning to the collected data through three concurrent flows of activities, which included data reduction, data display, conclusion and verification (De Vos et al, 2005; Miles and Huberman, 1994). Research data were analysed and presented, mainly qualitatively and occasionally quantitatively, through a method of 'theoretical triangulation', which is "...the use of several frames of reference or perspectives in the analysis of the same data" (Padgett, 1998, cited in De Vos, 2005: 362).

The analysis of research data started with listening to the recorded interviews a number of times even before starting with the process of transcription, as proposed by Agar (1980 cited in De Vos, 2005). This exercise gave me an opportunity to get an overall picture of each interview. It also helped me to recollect the memories of the main themes each respondent emphasised in their different interviews. These themes were noted down in a separate notebook (Agar, 1980, cited in De Vos, 2005). Data were further analysed during the process of transcription of the research interviews. Additional themes and sub-themes were identified and noted down in the notebook. After the process of transcribing the interviews had been completed, the transcriptions were read through a number of times, as suggested by Patton (2002, cited in De Vos, 2005). This gave me an opportunity to familiarise myself with and immerse myself in the research data (Agar, 1980, and Patton, 2002, cited in De Vos, 2005). Respondents' quotes that stood out were marked in the transcriptions and were presented in the discussion of relevant research themes and/or sub-themes in Chapters 4 and 5.

The sub-themes, categories and sub-categories that related to a specific theme were marked in a colour that corresponded with that theme. Different key words symbolising a specific theme were further noted along the margins of a page next to

specific colour-coded sub-themes, categories and sub-categories in the transcriptions, as proposed by Marshall and Rossman (1999, cited in De Vos, 2005). At the end of the entire process of data analysis, I was able to identify patterns and trends, and to generate themes, sub-themes, categories and sub-categories that emerged from the variables in the research data (Mouton, 2001). The final stage involved mapping out and re-grouping the related themes, sub-themes, categories and sub-categories in a sequence in which they are presented and discussed in Chapters 4 and 5.

As noted, some of the research data were quantified and presented in tables, wherever appropriate, so as to help the reader to acquire a composite picture, such as the profiles of the respondents (Browns, et al, 1995). The qualitative research data were synthesised and interpreted in relation to the themes and sub-themes that emerged from the research data analysis, some of which related to the research objectives. Key direct quotes of the respondents and case stories are used in the presentation of the qualitative research data so as to capture the meanings that the respondents attached to various variables under investigation (De Vos, 2005). The findings of the study were further related to existing theoretical frameworks and other studies, showing whether the findings of the study are supported or falsified (Mouton, 2001).

### **3.4 CONCLUSION**

This chapter presented a detailed discussion of the various aspects of the research design and methodology that were followed when this study was conducted. In the discussion of the adopted research design, it was pointed out that, even though it is predominantly qualitative, the study also included some quantitative component. A number of tables and frequency calculations have been used in the presentation of some research data.

During data collection, the ex-YSOs files were consulted as part of the document study. Although I had collected some information on the ex-YSOs, I sought to remain

objective throughout my interviews with them. They were allowed to express whatever they wanted to share in the interviews. Most of the information that the YRs shared was congruent with what their SOs shared and with what I had found in their files. In cases where I found that there was a contradiction between what the young person had said in the interview and what their SO had said and/or what I found in their files, I would gently probe in a non-offensive manner to verify the information. Some themes and/or sub-themes, where there was general agreement and/or disagreement between the YRs and their SOs, were picked up during the extensive process of data analysis, which has been described above. The next chapter presents the research data and findings on the YSOs and their SOs.

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## CHAPTER 4

# PERCEPTIONS OF THE YOUTH RESPONDENTS AND THEIR SIGNIFICANT OTHERS

### 4.1 INTRODUCTION

This chapter is concerned with the presentation, analysis and discussion of research data on the perceptions of the thirty (30) research participants who formed a first sample set, composed of twenty (20) youth respondents (YRs) and ten (10) significant others (SOs). The discussions are presented according to themes and sub-themes that emerged from the analysis of the research data, which flowed from specific objectives of the study relating to a follow-up on YRs and their SOs as outlined in Chapter 1 (see also Appendix 9 and 10). The respondents were given numbers to ensure anonymity. For example, SOYR1 refers to the SO of YR1; SOYR5 refers to the SO of YR5, and so on.

### 4.2 PROFILE OF RESPONDENTS

The first objective, which I set out to achieve with this sample set, was to determine a brief profile of the YRs and the SOs who participated in the study. Their profile is presented in three tables. The first one (Table 2) outlines the YRs' ages, their sex offences, the relationship they had with the victims of their sex offences, their places of residence in proximity to their victims, and their occupation at the time of arrest for their sex offences. The second table (Table 3) outlines some aspects of the YRs' family backgrounds, whilst the third table (Table 4) summarises the profile of the SOs who participated in the study. In order to be able to make sense of some of the discussions that are presented in this chapter, the reader will be occasionally referred to some of these tables.

**Table 2: Youth respondents' ages, occupations, the sex offences, relationship to former victims, and place of residence in proximity to their former victims at the time of arrest**

YR	AGE AT TIME OF ARREST	OCCUPATION	SEX OFFENCE	YR'S RELATIONSHIP TO VICTIM	YR'S PLACE OF RESIDENCE
1	19	Schooling Grade 10.	Rape	Girlfriend	Both stayed in the same neighbourhood
2	15	Schooling Grade 07	Incest Rape	Younger sister	Both stayed with their mother in a rented backyard garage.
3	18	Schooling Grade 10	Rape	Daughter of the tenant	Both stayed in the same yard and victim's parents were renting a backyard shack.
4	15	Schooling Grade 09	Rape	Same age school girl - acquaintance	Both stayed in the same neighbourhood
5	15	Schooling Grade 08	Rape	Younger girl - acquaintance	Both stayed in the same neighbourhood
6	16	Schooling Grade 11	Rape	Younger girl – acquaintance	Stayed at the next-door house
7	15	Schooling Grade 10	Indecent assault	Younger boy – acquaintance	Stayed at the sixth house from the victim's home.
8	19	Staying at home since he dropped out of school in Grade 11.	Rape	Friend's girlfriend	Both stayed in the same neighbourhood
9	15	Schooling Grade 07	Rape	Girlfriend	Both stayed in the same neighbourhood
10	15	Schooling Grade 10	Indecent assault	Younger boy – acquaintance	Both stayed in the same neighbourhood
11	13	Staying at home since he dropped out of school in Grade 11	Rape	Girlfriend	Stays in the nearby neighbourhood
12	19	Schooling Grade 07	Rape	Older woman – acquaintance	Stays in a close by neighbourhood
13	17	Schooling Grade 07	Rape	Same-age girl - acquaintance	Both stayed in the same neighbourhood
14	14	Schooling Grade 09	Rape	Younger girl - acquaintance	Stayed at the next-door house
15	14	Schooling Grade 09	Rape	Same-age girl - acquaintance	Both stayed in the same yard where his mother was renting a shack
16	18	Schooling Grade 11	Rape	Co-accused friend's girlfriend	Stayed in a township next to that of the victim's
17	15	Schooling Grade 06	Rape	Friend's girlfriend also school mate	Both stayed in the same neighbourhood
18	16	Schooling Grade 06	Rape	Girlfriend	Both stayed in the same neighbourhood
19	17	Schooling Grade 10	Rape	Co-accused friend's girlfriend	Both stayed in the same neighbourhood
20	17	Schooling Grade 11	Indecent Assault	Younger boyfriend	Stayed at the next-door house.

#### **4.2.1 Youth respondents' ages at the time of their arrests**

- 12 out of 20 (60%) YRs were between the ages of 15 and 17 years when they were arrested for sex offences.
- The median age of all YRs is 16 years, the highest 19 and the lowest 14 years.
- Five YRs (YR1, YR3, YR8, YR12, and YR16) out of 20 (20%) YRs were above the legal age of 17 to be placed at DYC.

YRs' who were older than 17 years confessed to me when I collected their identifying details at the beginning of the interviews, that they had lied about their age at court during their arrests. They claimed that they had done so because they wanted to be dealt with more leniently by the courts. This pattern of falsifying age shows a similar trend to the one that I found in another study on recidivism that I conducted amongst youth offenders (Gxubane, 2006). In that study, it was found that a significantly high proportion of the respondents (65%) were older than 17 years of age and had successfully managed to manipulate the justice system by lying about their ages, since it meant that they were detained at a youth secure care centre rather than in prison.

It was further pointed out in the study cited above, that the age group of 18 to 21 and even up to 25 years of age seems to be the most neglected group. Such neglect not only applies to young people in conflict with the law but also to those who are 'at risk' in various deprived communities (Gxubane, 2006). According to the Constitution of SA (1996), however, this age group of young people cannot be categorised as children: they are generally considered to be young adults. However, these young people are often not ready for adult roles. They are the most vulnerable population group because they often have to manipulate the social service structures to receive a service for which, under strict age criteria, they would not qualify (Gxubane, 2006). The Child Justice Act 75 of 2008 (CJA) makes some provision for the category of children who are between 18 and 21 years of age and who committed an offence when under 18 years of age. This provision recognises that 18 to 21 year olds are still young and can benefit from the provisions of the CJA.

#### **4.2.2 Youth respondents' sex offences**

- High proportions (85%) of YRs were charged with rape, one of which was sibling incest where a brother raped a younger sister.
- Three out of 20 (15%) YRs had committed indecent assault. This offence refers to male rape, which – as previously noted – used to be referred to as 'sodomy'. This offence is currently referred to as 'rape' in the Sexual Offences and Related Matters Act 32 of 2007.

The research data on youth sex offences in this study supports the findings of studies by Booysen (2003), Dhabicharan (2002), Gallinetti and Kassan (2008), and Wood and Ehlers (2001) who found that the victims of YSOs were both males and females.

#### **4.2.3 Youth respondents' relationships to their victims**

- None of the victims was a complete stranger to their respective YSOs. In fact, all YRs were very familiar and acquainted with their victims.
- Four out 20 (20%) YRs were in a love relationship with their victims, whilst another three out of 20 (15%) victims were friends' girlfriends.

The research data as reflected above concurs with SA scholars such as Baptista and Wood (2002); and Eliasov (2004) who also found that the victims of the YSOs are often not strangers to them. Zehr (1990) theorised that, even if an offender does not have any relationship with his victim, the offence he has committed against him or her creates a relationship between them, viz. that of a victim and the offender.

#### **4.2.4 The proximity of youth respondents' places of residence to their victims at the time of arrest**

- Almost all (95%) YRs were staying within the same neighbourhood as their victims.
- Of the Eight out of 20 (40%) YRs who stayed in very close proximity to their victims: three out of the 8 stayed in the same yard, another 3 out of the 8 stayed in the immediate next door house, 1 out of the 8 lived in the same

house, and another 1 out of the 8 stayed in the sixth house from his former victim's home.

The research data as described above seems to support Wood's (1998) findings, even though her point of reference was based on a slightly different angle. She found that one of the reasons why the victims and their families did not wish to press charges is the close relationship between the child offender and the victim, either through living in the same community, attending the same school or even sometimes being biologically related (Wood, 1998).

#### **4.2.5 Youth respondents' occupations at the time of arrest for their sex offences**

- Almost all (90%) YRs were schooling when they were arrested.
- Only two (10%) YRs had dropped out of school.

My research data on YRs' occupation during the commission of their sex offences supports some aspect of the profile of YSOs, which was found by other South African scholars. These include Booyesen (2003), Dhabicharan (2002), Gallinetti and Kassan (2008), Wood and Ehlers (2001), and Wood, et al (2000) who found that almost all YSOs were school-going as well as showing poor school performance.

#### **4.2.6 Youth respondents' family backgrounds**

The family backgrounds of YRs in this study seems to resemble to a large extent the family profile of YSOs in SA, as described by Booyesen (2003), Dhabicharan (2002), Gallinetti and Kassan (2008), Wood and Ehlers (2001), and Wood et al (2000). My research data shows the following:

- Most YRs come from lower socio-economic backgrounds.
- Most of their families are problematic and dysfunctional, and households are characterised by overcrowding.
- Most of their families have an absent father and are headed by single mothers or grandparents.

- They have poor parental and family role-models, and in some instances biological parents have criminal histories.

Table 3 below presents YRs' living arrangements, as well as their families' criminal histories at the time they were arrested for sexual offences.

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**Table 3: Youth respondents' living arrangements and their families' criminal histories at the time of arrest for their sex offences**

YR	FAMILY SETUP AT TIME OF ARREST	CRIMINAL HISTORIES OF FAMILY
1	Parents separated & he lived with none of them. He was living with extended family members	FATHER once arrested for smuggling dagga, MOTHER for fraud, PATERNAL UNCLE for smuggling dagga, & PATERNAL AUNTS for shoplifting.
2	Parents separated & he lived with mother & a younger sister	MATERNAL UNCLE once arrested for fraud
3	Parents separated & he lived with mother & large extended family	MATERNAL UNCLE once arrested for assault
4	Parents separated & he lived with mother & siblings.	NONE
5	Parents separated & he lived with mother & siblings	MATERNAL UNCLE once arrested for armed robbery
6	Parents separated & he lived with grandmother & a cousin	NONE
7	Father passed away & he lived with mother & extended family	PATERNAL STEP-BROTHER arrested for armed robberies
8	Parents separated. He lived with maternal grandmother, uncle, & siblings	NONE
9	He lived with both parents & siblings	OLDER BROTHER once arrested for armed robbery
10	He lived with both parents & siblings	NONE
11	Parents separated & he lived with mother, maternal grandmother & extended family members	NONE
12	Parents separated & he lived with mother, maternal grandmother & aunt	MOTHER once arrested for possession of dagga
13	Parents separated and he lived with mother and siblings	ELDER BROTHER once arrested for armed robbery, & YOUNGER BROTHER for possession of dagga
14	Parents separated & he lived with maternal grandmother, siblings & extended family	ELDER BROTHER once arrested for unlicensed fire arm, & MATERNAL UNCLE for armed robbery
15	Parents separated and he lived with mother, step-father & siblings in a shack	NONE
16	He lived with both parents & siblings	NONE
17	Parents separated & he lived with mother & siblings	ELDER BROTHER once arrested, but cannot remember the offence.
18	Parents separated & lived with mother & siblings	ELDEST BROTHER once arrested for rape
19	Parents separated & he lived with mother, siblings & extended family	NONE
20	Parents separated & he lived with paternal uncle.	LATE PATERNAL UNCLE once arrested for drinking on duty and pointing a fire arm

#### **4.2.6.1 Youth respondents' living arrangements with their families at the time of their arrests**

- A significantly high proportion (80%) of the YRs' parents had separated; of these, six lived with their mothers and siblings, seven lived with the mother, siblings and extended families, and three lived only with extended families.
- The significance of the YRs' living arrangements is briefly discussed below, in the summary of this sub-section.

#### **4.2.6.2 Youth respondents' families' criminal histories**

- Just over half (60%) of the YRs had a family member or members who had committed criminal offences prior to the YRs' arrests for sexual offences.
- The offences that had been committed by the family members of the YRs ranged from shoplifting to armed robbery, and rape. In some cases, it was an uncle (25%), a brother (25%), a mother (10%) or a father (5%).

Similarly, the significance of these criminal histories is discussed in Section 4.8 of this Chapter.

Table 4 below presents the SOs' relationships with their respective youth respondents, as well as their religious beliefs and occupations at the time of the research.

**Table 4: Significant others' relationships to the youth respondents, their religions and occupations**

<b>R</b>	<b>RELATIONSHIP</b>	<b>RELIGION</b>	<b>OCCUPATION</b>
SOYR1	Father	Christian	General Firm Worker
SOYR2	Mother	Christian	Full-time Domestic Worker
SOYR3	Mother	Christian	Part-time Domestic jobs
SOYR4	Mother	Christian	Unemployed (Sells baked cakes at home)
SOYR5	Mother	Ancestor worship	Part-time Domestic jobs
SOYR7	Mother	Christian	Self-employed (Transporting school children)
SOYR9	Mother	Christian	Unemployed
SOYR11	Maternal Aunt	Christian	Self-employed (Transporting school children)
SOYR12	Maternal Uncle	None	Unemployed
SOYR19	Father	Christian	Self-employed (Running a liquor take-away small business from home)

#### **4.2.6.3 Significant other's relationship to their respective youth respondent**

- Almost all (8 out of 10 or 80%) SOs were biological parents of YRs;
- A higher proportion (60%) were mothers;
- A lower proportion (20%) were fathers;
- Another two (20%) SOs were guardians to their YRS (one was a maternal aunt and the other a maternal uncle).

#### **4.2.6.4 Significant others' religions**

- Almost all (80%) SOs had Christian religious beliefs;
- With regard to the other two SOs, one believed in ancestral worship, and another one did not have any religious belief.

The significance of religion in the lives and rehabilitation of YRs is discussed in Sections 4.9 and 4.11 of this Chapter.

#### **4.2.6.5 Significant others' occupations**

- Almost a third (30%) of the SOs were unemployed whilst another three (30%) occupied domestic jobs, of which two on a part-time and one on full-time basis.
- Almost a third (30%) occupied some relatively better paying jobs, running their own businesses, with two transporting school children, and one running a liquor take-away small business from home.
- None of the SOs occupied a high status occupation.

#### **Summary**

It is a valid suggestion that family backgrounds, such as absent fathers and overcrowding in homes where the YRs stayed at the time of their arrests, probably played a role in influencing their sexual behaviour. Congested and overcrowded family setups do not provide the parents with privacy. As a result, the children are often exposed to sexual acts at an early age. It will be noted in the discussion that follows that this was one of the contributory factors to youth sex offending in SA, which was cited by many YRs and SOs. It will further be noted in those discussions that there seems to be a strong relationship between poverty and youth sex offending in SA.

### **4.3 YOUTH SEX OFFENDING**

#### **4.3.1 Circumstances surrounding the sex offences**

An important objective of this study was to explore the respondents' perceptions regarding the circumstances surrounding their sex offences. Both SOs and YRs specified a range of factors that they believed led to the YRs' commission of their sex offences or that were associated with it. The two major factors that were cited by most respondents were substance abuse and association with bad friends. .

- **Substance abuse**

Table 5 below presents the research data on the YRs who confessed that they had committed their sex offences under the influence of substances.

**Table 5: Consumption of substances during the commission of their sex offences**

R	SUBSTANCES COMSUMPTION DURING THE COMMISSION OF THE SEX OFFENCE			
	DRUGS	LIQUOR	LIQUOR & DRUGS	NONE
1	✓	-	-	-
2	✓	-	-	-
3	-	-	-	✓
4	-	✓	-	-
5	-	-	-	✓
6	✓	-	-	-
7	-	-	-	✓
8	-	✓	-	-
9	-	-	-	✓
10	-	-	-	✓
11	-	-	✓ -	-
12	-	✓	-	-
13	-	✓	-	-
14	-	-	-	✓
15	-	-	✓	-
16	-	-	✓	-
17	-	-	-	✓
18	✓	-	-	-
19	-	-	✓	-
20	-	-	-	✓
<b>Total %</b>	<b>20%</b>	<b>20%</b>	<b>20%</b>	<b>40%</b>

As shown in Table 5:

- More than half (60%) of the YRs committed their sex offences under the influence of substances; of which four used drugs, four used liquor, and four used both drugs and liquor.
- Less than half (40%) were sober when their sex offences were committed.

The following are some of the statements made by the YRs who confirmed that they were under the influence of one or more substances when they committed their sex offences:

*I was under the influence of 'marijuana' (dagga). I smoked dagga, lots of it (YR6).*

*Yes, I was high. I was abusing drugs a lot. I've used them so much. I was addicted to them (YR16).*

The following is an account of YR19 when he was probed further around his general consumption of illegal substances:

Respondent (R): *We tend to meet wrong people and to look up to them as role models and as a result, we get lost (YR19).*

Thulane (T): What were they doing?

R: *Pills. I thought it was cool because growing up in the environment that we grew up in, whereby something wrong and evil was interpreted as something cool, so I tried it (YR19).*

The findings on high consumption and abuse of alcohol and drugs among young people in general, as reflected in this study, are consistent with those of Muntingh (2001) and the SA Community Epidemiology Network on Drug Use (SACENDU), a research institute that monitors alcohol and drug abuse trends in SA. The SACENDU December 2010 Report indicates that the proportion of patients under 20 years ranged from 18% in the Eastern Cape to 33% in Kwa-Zulu Natal. Over half of the patients in treatment for methamphetamine (MA) use, otherwise known as 'Tik', are younger than 25 years (SACENDU, 2010). Muntingh (2001) also found that, among other recurrent reasons cited by the young offenders in his study on why a further offence was committed, most ex-youth offenders reported that they were under the influence of alcohol. This echoes my own findings.

- **Association with 'bad friends'**

The learning theory, as discussed in Chapter 2, is based on the assumption that human beings learn from others' behaviours and experiences. Hawkes et al (1997) pointed out that social learning is not only confined to home, but is also composed of influences from broader sectors of society. Peer influence plays a significant role in the social learning of adolescents. In some instances, it has even been considered "...the most powerful impetus for sexual aggression outside the home" (Hawkes et

al, 1997: 43). Often acceptance in these groups includes some level of sexual aggression, usually to prove one’s manhood, especially when children “...hear older children boasting of their exploits” (Hawkes et al, 1997: 43). Table 6 shows which YRs committed their offences in the company of friends, possibly suggesting peer pressure.

**Table 6: Co-accused(s) during the commission of their sex offences**

R	CO-ACCUSED OFFENDERS IN THE SEX OFFENCE	
	YES	NONE
1	✓	-
2		✓
3	✓	-
4	✓	-
5	-	✓
6	-	✓
7	-	✓
8	✓	
9	-	✓
10	-	✓
11	-	✓
12	-	✓
13	✓	-
14	-	✓
15	-	✓
16	✓	
17	✓	
18	-	✓
19	✓	
20	-	✓
<b>Total %</b>	<b>40%</b>	<b>60%</b>

Nearly half (40%) of the YRs committed their sex offences together with peers. This seems to support the perception by some SOs who believed that bad company had led their children to become involved in sexual offences. This is reflected in their following statements:

*He got involved with bad friends because if he had good friends, he would have not been in that situation (SOR19).*

*It's to have friends (meaning the young person's friends) who pretend as if they love you but they are making you a fool (SOYR12).*

Similarly, YR3 confirmed that it was bad company that led to his involvement with the offence:

*I was arrested for the company (meaning to be in bad company of friends). My two co-accused (his friends) had sex with her with her consent during the night (YR3).*

Whilst the YRs and their SOs claim that peer pressure and/or substance abuse played a significant role in the YRs' commission of the sex offences, I am even more concerned about those YRs who reported that they committed their sex offences alone, under no peer pressure and in a sober state of mind. These are YRs 5, 7, 9, 10, 14, and 20. They made up 6 out of 20 of YRs, as can be seen in Tables 5 and 6 above. The motives underlying their sexual offending behaviour raise a number of fundamental questions. Could it be that these young people had premeditated intentions to commit the sex offences? Or could it be that they were involved in normal sexual experimentation, typical of adolescents in their stage of human development? The section that looks at the YRs' criminal histories, which is presented later in this chapter, shows that some of the six above-mentioned YRs did reoffend after completion of the YSORDP, yet none of them committed sexual offences again.

Another sub-theme that emerged from the theme of bad company was that of consensual sex sharing.

- **Consensual sex sharing**

Some YRs confessed to having had sex with their friends' girlfriends, with the permission of both their friends and girlfriends. They claim that this pattern of sharing sexual relations amongst themselves was common in their friendships. The story of YR17 illustrates this pattern of consensual sex sharing among YRs:

*On my way back I came across my friend standing with his girlfriend, he called me, I went to them, he told me that his girlfriend does not want to go with him and then he told me to convince her that she must go with him. She agreed so we went to the hill. When we got there, they started having sex. I also have feelings so I told him that when he finishes, I'm next. She did not disagree. While we were still busy, her friend showed up and saw us. After that, she went straight to the girl's parents and told them what she saw. When she got home, her parents already knew what happened and they forced her to go to the police (YR17).*

The concept of sex-sharing is also supported by one parent:

*I think they (the boys) felt that if one of their friends got some, then they also need to get some, not being aware that what they were doing, then they were committing a crime (SOYR4).*

The research data in this study seem to suggest that youth participants who were friends did not only share drugs or alcohol amongst each other, but some also shared girls that they had sex with as friends. They all claimed that they were not aware of the legal implications of their sexual behaviours. However, even those who might have been aware of the legal implications of their sexual behaviour, were willing to participate in such behaviour so as to please their friends. This indicates a strong sense of peer influence and solidarity with their friends. This finding is supported by Muntingh (2001) who also found that reason that they had been 'influenced by friends' was the second major reason presented by 19 youth research participants, when he investigated the variable of why a further offence was committed, in his longitudinal evaluation of diversion programmes.

Drawing on my own experience of working with YSOs it would seem that they often felt pressured to participate in sexual activities when their friends were engaged in it, because of either peer pressure or general loyalty to friends. In this way, they were trying to avoid being perceived as a 'coward', a 'moegoe' (a fool) or a 'moffie'

(a gay man), or as someone who is afraid of women in general. Therefore, in an attempt to prove to their friends that they were none of these things, they would eventually give in to peer pressure. The YSOs who engage in such group sexual behaviour because of peer influence and pressure would be categorised by O'Brien and Bera's (1986) seven category classification of YSOs under *the group influenced typology of juvenile sex offenders*. These scholars point out that the motives of adolescents engaging in sexual behaviour in the company of a peer group revolve around the desire for approval (O'Brien and Bera, 1986).

- **Adolescence stage growth path**

The research data in this study shows that some SOs and YRs believed that the YRs' commission of and/or association with the sex offence was as a result of normal adolescence stage sexual experimentation. Freud's human development theory attempts to explain how young children deal with their immature but powerful sexual urges. He used the term sexual in general to refer to many urges for physical pleasure. These sexual urges shift in focus, as children progress from one stage of development to another. According to Freud (cited in Weiten, 2004), during the adolescent stage, children are focusing their erotic energy on their genitals. Weiten (2004: 384) also notes that, in the process of human development across one's entire life span, there will be developmental norms that "indicate the average age at which individuals display various behaviours and abilities". For example, at the adolescence stage, boys will start to experience wet dreams, which may lead them to experiment to satisfy their sexual desires. SOYR9's response in this regard was that:

*He (her son) did it (sex offence) because ...it seems like they were experimenting (SOYR9).*

This was also confirmed by another YR who stated that:

*I think it was because of stage (meaning normal sexual exploration associated with this stage of human development) (YR2).*

Since children are often at an adolescence stage, it can be very difficult to distinguish normal sex play from sexual abuse. I would argue that such a judgment needs to be informed by an assessment of the sexual history between the two children. If it is a once-off event between teenagers of the same age, it is more likely to be mere experimentation. However, if there is a long sexual history, accompanied by threats, manipulation and a significant age difference between the two children, then it could suggest a possibility of sexual abuse, as proposed by Johnson and Feldmeth (1993) and as discussed in Chapter 2.

- **False accusations**

Most YRs and some SOs argued that the sexual intercourse that took place between the young persons and their 'alleged' victims were not rapes but rather consensual sex, as shown in the following YR1 statement:

*She was my girlfriend so I slept with her ... the fact that she ran away from home so she was sleeping around with all my friends ... it was not a gang rape because we slept with her but in different occasions (YR1).*

The above YR's assertion is supported by his father who stated:

*What I can say is that they were in a relationship. When the girl got home, she was afraid of her father and ... decided to lie, saying that my son took her by force. The father then decided to press charges (SOYR1).*

Another YR who had sex with a younger boy indicated that the sexual engagements he had with his younger lover were consensual. They thought there was nothing illegal about their sexual behaviour, since they were lovers expressing their love for each other:

*I did not know that it was against law to have a relationship with somebody who is younger. I was 16 and he was 14. We were in a love relationship. It was his mother who laid a charge against me (YR20).*

It would seem that most YRs and their 'alleged' victims were under 18 years of age and that some were in a love relationship. They saw nothing wrong or illegal with their sexual behaviour; this is echoed by the much publicised case of consensual sex between high school learners that took place at the Jules High School premises, as discussed in Chapter 1, which evoked mixed public responses.

The research also found an unusual case where an older woman engaged in sexual intercourse with a young person (YR12). The YR gave the following account on the circumstances surrounding their consensual sex offence (see Table 1 for a profile of YR12):

T (Thulane): Tell me more about your victim?

R (Respondent): *She was from the neighbouring township. She passed away last year. She was a lot older than me. The time she had me arrested, she was 30 and I was 19.*

T: What happened?

R: *We used to fool around with each other, just playing and then one day we were both drunk and alone together. Then it started.*

T: Who started?

R: *She did.*

T: How did she start?

R: *She said I should come and sleep with her because I was the only one she had her eyes on and I said that is alright. We got used to doing it, so one day her boyfriend caught us having sex as usual, and he had me arrested, saying that I raped his girlfriend.*

YR12's account of the sexual activities as described above shows some confusion as to who exactly is the abuser and who is being abused, since the alleged 'victim' is older than the 'young perpetrator'. According to YR12's version of the story, the sexual intercourse was consensual and mutual; this would make the older woman the abuser. There seems to be a general tendency for young boys who are sexually abused not to report such incidents to the police. I suppose these are the very same

dynamics and circumstances surrounding the above-quoted young person's sex offence that made the court decide not to proceed with prosecution and opt for diversion instead.

It is uncertain whether the above-mentioned case is an isolated incident or an emerging trend in the township. For instance, in the City Press newspaper of 22 April 2012, Du Plessis (2012) reports a story of two teenage girls aged 17 and 18, who were arrested for raping a 17-year-old mentally handicapped boy from White City in Soweto. In the same newspaper article, Du Plessis (2012) also reports that police were investigating three incidents in Soweto where three ladies who drive a BMW car pretending to be lost and only ask men for directions. When a man gets into their car, they produce a gun and threaten him and force him to take a sexual performance-enhancing drug and then they take turns raping him.

### **Summary**

The research data in this study has shown that the YRs and their SOs believe that mainly three factors have led to the young people's involvement or commission of the sex offences, namely: substance abuse, association with bad friends, and the normal adolescence stage of growing up. The research data has also shown that a significant number of ex-YOs committed their sexual offences alone and some did so when they were not under the influence of drugs or alcohol. A recurrent theme that was emphasised by YRs and many SOs was that of 'consensual sex'. The respondents pointed out that, in many instances, it was the parents or family members of the victim who would force the 'alleged victim' to press sexual offence charges against the 'alleged perpetrator'. The victims would comply with their parents' or family's demands but some would later confess that the sexual intercourse was consensual. This trend was similar even in the case where the 'victim' was much older than the 'young offender'. It would seem that these very circumstances persuade courts to decide to divert these cases.

#### **4.3.2 Respondents' perceptions regarding youth sex offending generally**

Another objective of this study was to explore the respondents' perceptions regarding factors that they considered as contributing significantly to youth sex offending behaviour generally in SA. The intention of this objective was to broaden the scope of understanding the etiological factors of youth sex offending beyond those that related to the specific YRs who participated in this study.

The YRs and their SOs mentioned a number of drivers that they thought generally contributed significantly to youth sex offending in SA. Drivers that were cited, some of which have been already discussed, included: *the influence of alcohol and drugs, peer pressure, false accusations, parents' failure to discuss sex with their children, media, false accusation, experimentation, girls' provocative dressing style and dancing, lack of sexual knowledge, lack of social skills*, and so on. It should be noted that, in reality, these drivers do not work in isolation, but that they are often inter-linked, as will be seen in some of the case scenarios that will be presented in this section.

It will also be noted from the discussion of the research data that some of the drivers were mainly perceived as a major issue for the parents and the guardians, with some agreement by some YRs and vice versa. For example, one of the issues cited by most YRs regarding the commission of their sex offences was their parents' failure to warn them and talk to them about sex. Conversely, the parents put the blame squarely on their children, insisting that the children were unwilling to listen to them. Moreover, they argued that they could not even punish the children because they have too many rights.

The drivers that were specified by the respondents were similar to the ones that have already been discussed, namely, *peer pressure, false accusations, and influence of drugs and alcohol*. Therefore, these will not be discussed again. The discussion will focus instead on additional drivers to youth sex offending that were mentioned by the respondents. These included *victimisation, strong media influence, provocation*

*by girls, lack of social skills, greediness, lack of discipline at school, and family background and upbringing.*

- **Victimisation**

Classical conditioning learning theory, as discussed in Chapter 2, argues that the perpetrators of sexual offences have themselves been victims of sexual abuse at some stage. It is thus argued that the abusive sexual behaviour is a learned, conditioned reaction, based on their childhood victimisation (Becker and Kavoussi, 1989; Hawkes et al, 1997; Hunter and Lexier, 1998; Ryan, 1997). The following responses seem to support this classical learning theory:

*When I was still in DYC, I was doing volunteer peer counselling, and guys used to come to me and open up their deepest secrets to me. Some of them even shocked me especially the guys involved in sodomy. I listened to them and I found out that it did not start with them, but it started with someone who is a family member to the guy in terms of maybe his uncle did it to him (YR19).*

*Children who have been sexually abused are likely to sexually abuse other children as well. They think it is the right thing to do because it was done by an older person to them (YR20).*

A major critique of this theory is the question as to why not all people who have been sexually abused as children turn out to be abusers when they are grown-ups. Drawing from my practical experience in working with YSOs, those who have been sexually abused as children are often reluctant to talk about it in counselling, unless it comes out unintentionally in the process of working with the client. Therefore, practitioners should be careful about sex offenders who are upfront about their own sexual victimisation to justify their abusive sexual behaviour.

- **Strong media influence**

The role that the media plays in shaping the behaviour, particularly of young people, emerged strongly from the research data. This theme can be closely associated with Bandura's learning theory, which argues that children acquire considerable knowledge and skills not only through direct experience but also through hearing and observing other people, as discussed in Chapter 2. Hearing stories of sexual encounters, seeing other young people or parents engaging in sexual behaviour, watching pornography and so on, may encourage the young person to emulate this sexual behaviour. Some of the YRs' perceptions on what contributes significantly to youth sex offending in SA seem to support Bandura's learning theory:

*TV programmes such as Emmanuelle and pornographic magazines (YR5).*

*Look at the media ...it has a huge influence... what we see on TVs, soapies, movies and the internet. Teenage sex is everywhere. Some young people who watch soapy, they choose role models and they want to be like them (YR12).*

Some of the parents shared similar views, as expressed above by the YRs on the major influence of media:

*There is also a lot of sex that they see on TV when the parents are not there when they are alone after school (SOYR1).*

*They watch the late night movies. Parents are not open to their children and again the children want to experience what they see on TVs (SOYR4).*

- **Provocation by girls**

It would seem that some YRs subscribe to certain cultural views that prescribe how women should dress and behave so as to avoid causing men to be sexually attracted to them. In some cultures, this cultural norm is often embedded in the socialisation process of boys. The following statement by YR7 supports this line of thinking:

R: *Miniskirts, sexy provoking dances, the parties and when the girls get drunk, they end up being raped*

T: Tell me a little more about mini-skirts?

R: *The way she dresses especially at night and their sexy and revealing style of dancing. You see, as they dance, you see the mini-skirt will reveal the panty. That time the guys are not even focusing on her dance, they are concentrating on the panty and what is behind it. When she is too drunk, they see her as an easy target (YR7).*

One parent supported this view that girls behaved provocatively:

*The girls of this generation are too lazy. They drink alcohol, they smoke, they are stubborn and they are free.... all they do is running after boys.... I blame the girls (SOYR11).*

- **Lack of social skills**

At the adolescence stage, some young men are not able to socialise effectively and to establish intimate relationships with girls. According to Totten (2000), these adolescents are often socially isolated, rejected and unable to adapt easily to any social milieu where peers start engaging in dating relationships. It would seem that their inability to date and find a girlfriend, whilst still having normal sexual urges, may lead them to abuse others sexually. They would either force non-consenting victims, or project their desires onto younger children who are less questioning or resistant. YR13's response speaks directly to this challenge:

*Some boys lack communication and social skills. If a boy proposes to a girl and the girl refuses, I really don't see why the boy has to force himself on a girl (YR13).*

- **Lack of discipline at school**

Some of the parents blamed the teachers for their children's lack of discipline at school. They insisted that it is a teacher's responsibility to instill discipline and control of children whilst they are at school, as indicated in the statement below:

*There is absolutely no order and discipline in the township schools. You will see the learners loitering around the street during school hours. They do all sorts of things like smoking in front of older people. They do not care a damn (SOYR1).*

The next group of drivers to youth sex offending, as identified by the research participants, relates mainly to family background.

- **Upbringing in the family**

Drivers to youth sex offending, which relate to family upbringing, were mentioned repeatedly by the research respondents. These drivers included *poverty, exposure to adults engaging in sex, neglect and failure of parents to talk to their children about sex*. As clear from the quotes below, all these drivers are interrelated and seem to emanate from the common theme of *poverty*.

- **Poverty**

The relationship between poverty and exposure to adults engaging in sex, as reflected in the research responses below, points to the harmful effects of poverty, such as a lack of housing in this instance. This lack of housing leads to overcrowding and congestion, where a family has to share either one shack or a rented backyard room or a garage, as is the case of SOYR1, which is described in his response below:

*It is poverty. Look, now I don't have a house. I live in a garage. You will find that I now have to deprive myself and I cannot have sex the way I want, because I constantly have to think about my children, as we are sharing the same space. You might think that they are asleep, so you can do it and to find that one child wakes up in the middle of the night because they want to go*

*and pee. Then they end up seeing what the parents are doing. This sends a certain message to the child because they will also try to experiment it (SOYR1).*

The kind of living arrangement, as described above, does not give parents any privacy. Consequently children are exposed to their parents' sexual activities, as discussed in the next section.

- **Exposure to adults engaging in sex**

The following responses from YRs support the relationship between poverty and lack of housing, which leads to a lack of privacy for the parents:

*Children see what the parents are doing in the bedroom and they want to do it and see how it feels (YR12).*

*Children who have witnessed their parents doing it will try it on other children when they are playing (YR5).*

*The family does play a role, for instance, when my sister is bathing in front of me and to find that I have never slept with a girl. Remember there are a lot of influences from friends when I keep seeing her private parts, I'll end up thinking of having a taste of what I see but in a wrong way (YR18).*

The lack of privacy, as reflected in the above responses, seems to be an ongoing challenge and a topical issue, particularly given the pervasive poverty in SA. Rampedi (2011) reports a major story in the main news section of City Press, a SA weekend newspaper, on Phineus Pilusa, a 64-year-old father who was sharing a one-roomed mud house with his wife and two children for more than a decade. In this newspaper article, Rampedi uses the story of Pilusa to illustrate the devastating effects of poverty that have resulted from the slow pace of social services delivery, particularly with regard to housing. It is reported that in Mawa, the area under discussion, there is rampant unemployment and poverty. Hence Phineus Pilusa "(u)nlike many other

adults, the 64-year old former farm worker has not known privacy nor peace of mind” (Rampedi, City Press newspaper 17 July 2011: 6).

The other two drivers relating to family upbringing, which have been mentioned above, are *neglect from the parents*, and *failure of parents to talk to their children about sex*. Both of these are also closely related to *poverty*.

- **Neglect**

The research data suggest that whilst parents, often single mothers, as shown in Table 4, seem to be mainly concerned with matters of basic survival, such as finding piece jobs to ensure that there is something to eat at home. Children may perceive this as neglect, as shown in the following responses from YRs:

*It is the issue of neglect. The family does not care about your whereabouts. You do all the crazy things that people do. You do them because no one is there to guide you or to stop you (YR20).*

*Parents don't pay attention to their children's lives and the games they play, even in obscured places such as behind back yard shacks. Parents need to be vigilant and monitor their children throughout, even when they are playing (YR5).*

Similarly, SOYR5 stated:

*Sometimes we mothers are careless whereby a mother is pre-occupied trying to make a living for herself and does not care about what the child is doing (SOYR5).*

- **Failure of parents to talk to children about sex**

All YRs and SOs reported that they have never had any discussion about sex as captured in the following response:

*Our parents do not talk to us about sex. We need to be advised, that if you do this at a certain age it is an offence. I think we're trying to find out in a wrong way. We try to impress other people and I also did it because of peer pressure (YR10).*

It would seem that, for some young people, sex education by the parents or any adult person in the family would have helped to prevent their sexual offences. However, parents had great difficulties in talking to their children about sex. This emergent sub-theme was further explored with the research participants.

The parents raised a number of factors that make it difficult for them to talk to their children about sex. These included statements such as, *they do not want to lead children to sex, children do not listen, and children have too many rights.*

- **Do not want to lead children to sex**

*Sometimes talking about sex to children can help, but sometimes I feel like as a parent once you start talking about sex to children, it is like you are opening their eyes that there is something like this, even if they were not aware. It is like you are pushing them to go and do it (SOYR7).*

The above parent's perception is echoed by two YRs who said:

*I think my parents thought that if they were going to open up to me, they will be leading me to doing it and that is why I think they were scared to talk about it (YR10).*

*I know it is not easy for parents because it would seem for them, when they talk about such things, they will be teaching you to engage in sexual behavior. On the other hand, when you get it from friends, it is often wrong information (YR5).*

It is not very clear to me whether the reason that has been discussed above could be a genuine one to explain why parents do not want to talk to their children about sex. I believe it is an unfounded fear and that it suggests a lack of skills in dealing with the issue. In my view, parents could find creative ways to initiate a discussion about sex, which could also encourage the children to abstain from engaging in sexual activities. After all, the risk is that, if the parents do not talk to their children about sex, their peers will.

- **Children do not listen**

*We can talk to them but today's children don't listen to their parents. They think they know better. They will tell you that now it's their time. In addition, I think they have too many rights (SOYR9).*

The perception as expressed above by one parent is also supported by YR7 and YR14, who stated:

*These days are tough especially in the manner that children and parents relate. When a child is 15 years old, he or she no longer listens to their parents. They do as they please (YR7).*

*Parents don't know how to talk to their children because, even when they try to talk to their children, the children talk back at them. They say things like 'ungangitsheli mina bengingekho ebusheni bakho' (common Zulu phrase meaning 'please leave me alone I did not interfere with your youth days when you were growing up and so do not interfere with mine'). Then most decide to just keep quiet (YR14).*

- **Too many rights**

*The family can't do anything. It is this government who gives them too many rights. If you tell a child they can't walk on the streets during the night, they tell you that they have rights and they'll have you arrested for child abuse (SOYR12).*

*Today, when you discipline a child, they say its child abuse and they have rights (SOYR11).*

The above-discussed reasons, like those that have been discussed previously, seem to be very pessimistic and over-generalising. The SOs' responses suggest that they have lost control over their children. Whilst their reasons may be genuine, the SOs are sending a message that says, 'Why bother, the children will not listen anyway'. It is understandably difficult to talk to children who are in the adolescence stage because of strong media and peer influences. However, parents need to understand that the social order has changed. Democratic societies are governed by human rights principles, especially when it comes to children. It is therefore imperative for parents to adapt to the changing social order rather than to resist it. One can understand that it may not be an easy process for some, but they need to be aware that help is available, for instance from professionals. Ultimately, it remains the parents' primary responsibility to guide their children, particularly when it relates to sexual behaviour, firstly so that their children do not find themselves in conflict with the law, and secondly so that they do not contract chronic sexually transmitted diseases, such as HIV.

The next section discusses the role that the parents need to play in helping to prevent youth sex offending.

#### **4.3.3 The role of family in preventing youth sex offending**

It was mentioned by many research participants that the parents or elder family members have the responsibility to talk to their children about sex. This is reflected in the statements below.

- **Parents need to give sex education to children**

*When a child reaches the adolescent stage, the parents should give their children extensive talks about sex. When that is not done, there is a problem, because the children will want to go and experiment (YR6).*

*The family can prevent such things by talking to their kids because kids are exposed to all forms of technology, such as internet, cell phone etc and forms of media such as TV, magazines that stimulate sexual desire in kids (YR16).*

The YRs' views were shared by one parent who stated that:

*Parents should talk to their children and be open to them because these days, these kinds of things are shown on TVs (SOYR5).*

- **Appropriate age for parents to talk to their children about sex**

The respondents were further probed as to what age they considered appropriate for parents to sit down with their children and talk to them about sex. The respondents had varied perceptions with regard to this sub-theme:

**12 years**

*They should start talking at the age of 12 because things are happening very fast. Not to wait until a later stage because the time they will be waking up, it would be too late (YR16).*

**7 years**

*The child of seven years is watching all of these programmes on TV, so the younger, the better. At that age, they are already exploring, even with their bodies (YR10).*

**2 years**

One parent felt it needed to start much earlier, at the age of two; she explained why:

*As young as two because by then you tell them bed time stories and if you could slowly tell them that children are not supposed to do what old people do. Slowly break it down to them and clarify in order for them to have it in their mindset that sex is only for grown-ups. So that even if they indulge in*

*such behavior they will have lots of guilt because the parent would have warned them about such behaviour (SOYR4).*

- **Strict time curfews**

It was felt by some respondents that, in addition to talking to children about sex, it would be important for parents to be strict and upfront about rules pertaining to lock-up times at home:

*Young people can go to the parties but parents should set ground rules and times whereby the child must come home (YR13).*

### **Summary**

The research data shows that there is a wide range of interwoven drivers of youth sex offending in SA generally. Four categories of drivers are cited in this research, namely: those that pertain to the young person himself, the peers, the family, and the society in general. The societal drivers were discussed in great detail, but perhaps the most controversial one, which was specified by YRs, is that of provocation by the girls. The provocation by the girls may be perceived by some as the problem of the young person himself. In other words, it is his failure to control his sexual impulses rather than the problem of society. Conversely, it was pointed out on a number of occasions by YRs that the kinds of messages that are communicated by society in general through the media have a powerful influence on young people. This would include what is often depicted in TV commercials and on advertising billboards, which often show ladies in very short (above the knees) and revealing mini-skirts and dresses. It would seem moreover that, when young men are under the influence of drugs, they easily become sexually aroused by women who are dressed in revealing clothes. In this regard, YR1 said:

*We are a gang chilling in a corner minding our own business; a woman passes by wearing a very short skirt; dark at night and we're under the influence of drugs. When the short skirt passes, we look at each other in the eyes. Maybe*

*we are near a school, one says she must fall, we grab her, drag her to the back of the school and gang rape her (YR1).*

#### **4.4 THE YOUTH SEX OFFENDERS' RESIDENTIAL DIVERSION PROGRAMME**

##### **4.4.1 Experiences of the programme**

Most of the participating YRs had fond memories about the programme, particularly with regard to the atmosphere that characterised most of the group sessions. Others linked their memories to specific topics that were dealt with in the group sessions. They clearly remembered discussions around the themes of *abstinence, sexual impulse control and social relation skills*. Others remembered the visual *human physiology charts* that were shown during some of the sessions. Others admitted *honestly that they tried to bury the memories about DYC*. These YRs clarified that they had nothing against the programme but the only memories that came to their minds were memories about DYC, and these memories were associated with hardships they had experienced during their stay at DYC. These are discussed below, in the section that looks at the negative impact of the programme.

The following statements capture some of the YRs' memories:

*I remember the structure of the vagina and the penis. How pregnancy takes place. If a boy inserts your penis without a condom, his sperm might break the woman's egg cell and the girl will fall pregnant (YR12).*

*I remember learning how to behave yourself even when you feel tempted to do wrong things (YR5).*

*I remember that the group used to meet Fridays. We used to share in a group about our challenges and how to overcome our individual challenges. For an example, when you would feel like you have sexual urges, don't force yourself*

*on anyone just find yourself a private place and 'skomora' (masturbate) and you will be relieved and stay out of trouble (YR7).*

*Yes, in the group we would talk about sexual intercourse and how to abstain from it and what can be done in a situation where you want sex but you cannot get it (YR10).*

- **Learning acquired from the programme**

When I probed the YRs and SOs about what they thought the young ex-offenders had learned from the programme, they gave the following self-explanatory responses:

*It helped me understand myself better and think before I do anything (YR20).  
Life skills really helped me in terms of learning how to be patient whereby if I want something I have to wait for it (YR18).*

*I learned that when you are still growing up there are so many things that will influence you, such as pornography, fantasies, etc and how to avoid them (YR5).*

*That one should not force oneself on another person. If the other person does not want, that person has got be respected and left alone (YR4).*

*Sleeping (meaning having sexual intercourse) with one girl as friends is not allowed, even if the girl agrees to it; according to the law it is rape (i.e. statutory rape) (YR17).*

- **Respondents' perceived impact of the programme as a whole**

The research data suggests that the YRs benefitted a great deal from the programme, although some had to deal with negative peer influences and/or they had negative experiences at DYC. At first glance it may seem as though the ex-YOs' positive responses were intended to impress me. I carefully considered what Stern

(1979, cited in Mouton, 2001: 107) refers to as 'social desirability effects', an error in research data collection, meaning "(t)he subject may be saying what he feels he should 'believe' or what he feels will please the interviewer rather than what he actually believes". Data triangulation was used to verify the responses of YRs by further probing of SOs who mostly validated the YRs' positive feedback about the programme.

Besides the self-report positive feedback about the programme, what was most encouraging to me was the fact that most of the ex-YOs had not reoffended at all (12 out of 20) and even for those who did (8 out of 20) (see Table 9), they did not re-offend sexually. In addition, I managed to access most of the ex-YOs, since they had not been incarcerated for committing any other offence during the period of the research. Therefore, even though such a change of behaviour may not entirely be attributed to the impact of the programme, it does seem that it did make some difference in their lives, particularly with regard to their sexual conduct. The perceived impact of the programme on the YRs can be divided into positive and negative impacts.

- **Positive impact**

The following are three statements from the SOs' regarding the perceived positive impact of the programme on the ex-YOs:

*I think the programme helped him to differentiate between what is right and what is wrong. Look, his behavior has changed and is very respectful now (SOYR2).*

*I can say it (the programme) has tried. Look, now he never got arrested again. Although I think he is still too much into girls (SOYR9).*

*I support the residential programme because; imagine if they were outside, they wouldn't have seen that they had done wrong. Remember before there was corporal punishment... but now it's not allowed. So residential*

*programme is the new way of corporal punishment because they need to understand that they have done wrong (SOYR4).*

SOYR4's statement above seems to suggest that such a programme can have a positive impact on young offenders in general. Often there are additional variables that come into play when ex-offenders re-offend, as YR4 did, and that does not necessarily mean the programme did not have any positive impact.

- **Negative impact**

The negative impact as perceived by some respondents cannot be ignored, even though this did not relate to the programme but rather the centre where the programme was offered. The other related to breach of confidentiality, which was a group norm. The following were some of the perceived negative impacts of the programme:

*The naughty boys who were always trying to escape (from DYC) for no reason (YR3).*

*When you're sleeping, the guys could come and bother you or fight with you; I had a fight with one of the guys in there...It's because of jealousy, you know, when you get a visit...they insisted that I must sell my stuff to them...I get aggressive and start fighting (YR15).*

The above-stated perceived negative impacts of the programme are beyond the scope of the programme and the facilitator. It has to be remembered that the developmental stage of the young people who are kept at these institutions is typical of any boys or girls who are kept in similar institutions, like boarding schools. Nonetheless, it is important for the staff and the management of such centres to take precautions and measures to ensure that the stay of youth inmates in such institutions can be as favourable as possible to learning and acquiring good behaviour as possible.

#### 4.4.2 Perceptions regarding the structure of youth sex offenders' residential diversion programmes

The first aspect of the structure, which is often hotly debated in the field of diversion practice, especially in working with YSOs, relates to two schools of thoughts. One firmly believes that in working with YSOs one-to-one counselling is much more effective than the group work method of intervention. The other school of thought believes the contrary. One of the objectives that this study set out to explore was to ascertain the thoughts and responses of research participants, based on their experiences with both methods of intervention in the YSORDP (see Table 7 below).

**Table 7: Youth respondents' preferred form of counselling**

YR	PREFERRED FORM OF COUNSELLING			
	INDIVIDUAL	GROUP	BOTH	NOT DISCUSSED
1	✓			
2	✓			
3		✓		
4		✓		
5	✓			
6	✓			
7		✓		
8	✓			
9		✓		
10			✓	
11				✓
12		✓		
13	✓			
14	✓			
15	✓			
16				✓
17		✓		
18				✓
19		✓		
20			✓	
<b>100 %</b>	<b>40%</b>	<b>35%</b>	<b>10%</b>	<b>15%</b>

- **Individual counselling**

Table 7 shows that YRs' highest preference (40%) was individual counselling, pointing to a need for privacy in counselling. Although they were very aware of the value of group work, they also insisted that it is imperative for any social worker who

wants to get through to them to see them individually too, as shown in the statements below, which highlight the themes of privacy and embarrassment:

- **Privacy**

*I preferred individual sessions because some issues are very private and personal (YR8).*

*I preferred individual because sometimes when I am in the group I don't feel comfortable talking about certain things around other people. I like privacy (YR14).*

*I prefer the one-on-one because I'm a private person. I suppose this links to the way I grew up (YR6).*

Practitioners thus should be careful about the kind of information members share in a group. Group members are more likely to share superficial issues in a group session. They would rather discuss in greater detail an issue that arose in a group session in an individual session. Yet this has to be respected, as they have a choice as to what they feel comfortable about sharing or not sharing in the group.

- **Embarrassment**

Linked to the above sub-theme of privacy is that of embarrassment. It would seem that most YRs preferred individual counselling, as they were concerned about and conscious of what others would think of them, if they shared certain information in the group setting. They were afraid of embarrassing themselves and being laughed at by their peers, as expressed in the following statements:

*Some other issues are too sensitive to be spoken (about) in groups. Kind of embarrassing to disclose the details about your rape ... because others will laugh at you (YR1).*

*Individual counselling because ... in a group there some of the things you'll feel like if you disclose them the group is going to laugh at you (YR13).*

*I preferred the individual sessions because I could open up and speak out. You were the first person I felt comfortable to even openly talk honestly about what happened about the "saak" (case). I did not always feel comfortable in the group ...sometimes other group members will laugh at you when you try to open up and can make you feel stupid (YR6).*

Practitioners need to be aware that being laughed at by other boys is a huge issue, particularly for adolescent boys. It is often seen as an attack on their manhood and therefore affects their self-esteem. This is one of the factors that often triggered a physical fight between the boys at the youth secure care centre where I once worked. Despite the oath of confidentiality that all members in the group were expected to take, some of the members acted 'macho' in the public domain at the expense of others by consistently ridiculing group members who might have shared something about themselves in the group. The responses of those YRs who preferred individual counselling prompted me to probe if there were any particular negative group experiences that they had encountered in the group programme.

Such probing revealed that almost all (19 out of 20) of the YRs reported that there were no negative group experiences, except one who mentioned a breach of confidentiality:

*One day a friend of a group member walked up to me and said a handsome guy like you, how could you do something as stupid as that? I felt humiliated. It really hurt me as you know at DYC no one will know about your case except the staff or the people you tell. I had not told anyone. It was only group members who knew about my offence. I felt betrayed by the group and this made me feel like not coming to the group again (YR6).*

Such negative experiences must be carefully considered by both diversion programme facilitators and service providers. As discussed in Chapter 2, one of the challenges faced, when the SAYStOP programme was piloted in Bonnytown, was that some boys felt labeled and stigmatised within the institution as a result of attending the SAYStOP programme. Even though this may be inevitable, attempts can be made to minimize its negative effects. I concur with Wood and Ehlers (2001) who propose that facilitators need to ensure that confidentiality with regard to the youth's criminal offence is protected and that they are vigilant that attendance of the programme does not lead to stigmatisation.

- **Group counselling**

Thirty-five percent of YRs preferred group counselling (see Table 7). In this regard, Wood and Ehlers (2001) found that groups provide a supportive and less threatening atmosphere whilst the interaction of group members effectively confronts secretiveness, denial and shame around the sex offences committed. Baptista and Wood (2002) also found that all the boys who participated in their study, although a very small sample of six respondents, expressed satisfaction with the programme that had been facilitated in a group setting. The reasons which were stated by the participants who preferred group counseling included the following:

*I preferred the group, as we learn more from each other in terms of different group members raising different questions and we all get an understanding on that issue (YR4).*

*Sometimes we think what we did was abnormal... but if you get involved in a group, there are people who talk about the very same things that you've experienced. Then you start to relate and feel that you're not the only one with this issue (YR19).*

*I prefer group sessions... if one chooses an individual session, then he will not gain much knowledge as compared to the group session, because in a group*

*there'll be different individuals with interesting comments and questions that you can learn from each other (YR9).*

- **Both individual and group counselling**

Two YRs preferred both forms of counselling, indicating that each served a particular and different purpose. The insightful and rich motivations the YRs provided, as articulated in their responses below, reflect a good understanding of what social work practitioners seek to achieve through employing both methods of interventions:

*I prefer both, because at the end of the day, in an individual session it is only two people but in a group it is three or more You express yourself and you get different comments from different people... where you can help yourself, so it is better to talk in a group, but I also prefer a one-on-one for much deeper issues (YR10).*

*I preferred more individual because you can share a lot more sensitive stuff to one person. However, both forms of counselling are good, as each will serve a particular purpose, as I have also explained how the group helped me (YR20).*

The inference that can be made from the research data is that both methods of interventions are important and that each has an important role to play in rehabilitation. The decision as to which method would be the most appropriate at a given time will depend on the particular practitioner's continuous assessment of the client's needs and presenting problems.

#### **4.4.3 Perceptions regarding topics that need to be covered in the programme**

The respondents proposed a wide range of topics that they felt should be covered in such programmes. Some of the topics seemed more important to the YRs, whilst others seemed more important to the significant others, as will be seen in some of their responses that are presented below.

- **Drug rehabilitation**

Some research participants, mostly SOs, felt that substance abuse should be the first point of intervention, since it is a problem for many young people and YSOs are no exception. These respondents felt that nothing much can be achieved in the rehabilitation of YSOs, if they are still addicted to particular substances:

*You should teach them to stop using these drugs they are using because it is these drugs which make them to do what they do..... I insist... nothing much... you can achieve in rehabilitating these young offenders if you do not start helping them to leave these drugs (SOYR12).*

*The programme needs to cover everything all the factors that contribute to their unlawful behavior ... including drug abuse and alcohol abuse (SOYR4).*

YR4 shared a similar view with his SO4 above:

*Young people smoke this thing called 'nyaope' (mix of cocaine and dagga) and when they're done smoking it; I do not know what it does to their heads. They end up doing all the wrong things like sex (YR4).*

The research data as presented above seems to support a conclusion that I reached in another study on recidivism amongst young offenders, which proposed that drug and alcohol abuse rehabilitation programmes should form a major part of early treatment and intervention in the services provided for young people in conflict with the law. Association with drugs and alcohol often results in participation in criminal activities (Gxubane, 2006).

- **Assessment of individual background history**

Some SOs felt that YSOs need to be firstly given individual attention, where the social worker conducts a thorough assessment of each youth offender. This will allow the social worker to understand the psycho-social history and to identify the individual problems of each YSO:

*I think the offender should be asked individually how they ended up in such a place...first before they discuss it in a group in order for the social worker to identify their individual problems. Sometimes you will realise that it was in fact not a rape. When the girl is threatened by her parents, she turns around and says it is a rape (SOYR11).*

The above perception is also shared by YR1 who stated that:

*I think they (social workers) must first find out the cause because sometimes we don't have to blame it on drugs or any addiction because there are people who don't drink or use any drugs but do commit such crimes. It's these sisters from the community, the way they dress they are provoking us (YR1).*

The research data as presented above seems to support the importance of individual counselling prior and/or concurrently with group sessions. It is essential for practitioners to identify the problems and the needs of each youth offender, and to decide which problems and/or needs can be dealt with in the individual sessions and which ones can be carried over into the group. This would form part of a working agreement between the practitioner and each YSO.

With regard to the sequencing of topics in the programme, there was no agreement amongst the respondents. One YR suggested two topics that he felt should be addressed in YSORDPs, which could help young people to take responsibility for their criminal behaviour:

*The first topic should be for the young offenders to understand why they are where they find themselves at that time. What did I do wrong? Secondly, it is acknowledging and taking responsibility for one's behavior (YR20).*

- **Warning about possible negative influences at the centre**

Some YRs felt strongly that the first sessions of the programme needs to be focused more on warning and preparing the newly enlisted members of the programme about possible negative influences that they may anticipate during their stay at the centre and how to deal with them. This was encapsulated in the following YR's response:

*How to conduct oneself whilst in the centre.... because other juveniles can make fun of you if they can get to know what you have been arrested for (YR20).*

The above perception is also shared by one SO who stated that:

*The centre... should ensure that children who are admitted... are truly the age they claim to be. Otherwise you will find those who are older... lied about their age will want to turn the centre to a prison. This will work against the rehabilitation efforts which are provided to the young children (SOYR1).*

The above suggestion by former youth inmates is helpful, because it is often taken for granted that such tasks would have been covered by the child and youth care workers during the youth offenders' intake and orientation at the centre. However, based on my working experience with YSOs in a residential setting, it is a very important point since it has a direct bearing on the young offender's final report to the referring court and may influence the court's decision on the YR's case.

- **Incorporation of games**

YR10 cautioned against over-emphasis on sex matters in the programme:

*Discussion about sex offences and sex issues should be there only as a reminder that you did this and it is wrong. There should be other activities like soccer cricket or artwork that will keep you busy and not to think of what happened (YR10).*

The YRs' suggestion as presented above is not a topic but rather a suggestion with regard to a better way of presenting these programmes. It is very important to consider the stage of development of the YRs, and to realise that they have a very limited attention span. In order for the group programme facilitators to be able to keep the group members' attention throughout the group session, they need to be creative and to make the discussion interesting. Some physical games could be played and linked to some topics of the programme.

### **Summary**

Most of the topics that were raised by the research participants are common to many themes of YSOs' programmes; they include sex education, empathy training, conflict resolution, social and life skills training, cognitive restructuring, and acknowledgement of behaviour, acknowledgement of positives, impulse control, and relapse prevention (Baptista and Wood, 2002; Booysen, 2003; Ehlers and van der Sandt, 2002; Wood and Ehlers, 2001; Eliasov, 2004; Lyell, 1999; Meys, 1999). Some topics, such as 'warning on how the youth inmates need to behave whilst at the centre', seem to be specific to residential programmes. Other content suggestions are not necessarily topics but instead are suggestions for the programmes, such as the use of in-depth 'individual assessment of each youth offender' and the 'mixture of sex discussion with physical activities'.

#### **4.4.4 Perceptions regarding the facilitation of the programmes**

Facilitation of youth diversion group programmes has always been a highly contested issue in the area of diversion practice in SA. On the one hand, some diversion service providers maintain that diversion programmes need to be facilitated by professionals, such as social workers and psychologists, particularly when it comes to YSOs. On the other hand, some diversion service providers believe that trained volunteers and para-professionals, such as auxiliary social workers, assistant probation officers, and child and youth care workers, are equally capable.

The research data in this study seems to suggest a consensus amongst respondents that the facilitators need to be very knowledgeable, with some experience in this

field and preferably professional social workers. The respondents generally agreed that the facilitators would need competent skills to be able to make the group achieve its goals through effective communication and facilitation skills. In addition to necessary knowledge and skills, the research participants emphasised the importance of the right attitude, as reflected in the following self-explanatory quotes.

- **Appropriate attitude, knowledge and skills**

*The chances are if you are not able to listen attentively to the young offenders, they will also not listen to you. Communication skills, for instance, if in a group one member is hyper-active, you should be careful that you do not neglect other group members and focus entirely on that member. Another important skill or character is that the person has to be full of energy and come across (YR13).*

*It should be professional people because you share with them very personal stuff especially sexual offences. Professionals will keep it confidential...Care workers and volunteer workers cannot be suitable people because they hang around a lot with other juveniles and they talk freely (YR20).*

Some of the resolutions that were proposed at the UNDP Child Justice Project (2002) workshop, as discussed in Chapter 2, in relation to what kind of people should facilitate YSORDPs, were that working with child sex offenders requires a special kind of person and that such individuals need to be selected carefully, to be trained rigorously, and to receive ongoing support. Moreover, relationship is a critical aspect in working with child sex offenders.

- **Friendly personality**

Many youth research participants were very specific about the types of the people who would be suitable for facilitating such programmes, especially the group sessions. The importance of appropriate characteristics over and above the suitable knowledge and skills the professionals working with offenders need to possess, has

been emphasised by prominent South African scholars in this field such as Graser (2006, cited in Gxubane, 2008: 13) who asserted:

Apart from occupation specific training, a Probation Officer requires certain personal qualities that are more important even than academic training and these include personal maturity and emotional strength; firm and realistic; sound judgment; and, warmth and understanding.

The respondents specified a number of characteristics that they feel facilitators of such programmes need to possess to ensure effective interventions with young offenders. The following are some of the respondents' statements:

*I would say you have to be ten different people in one because you have to be sociable, make people comfortable to open up, dependable and reliable. A person you can trust (YR10).*

*Someone who has tolerance, patience and understanding. A person who does not get irritated easily (YR6).*

- **A sense of humour is a necessary quality**

Detention is often stressful and frustrating. The following responses seem to suggest that facilitators of these residential diversion programmes need to be creative in helping the group members to ease tension by using humour:

*Someone who can relax members of the group, ease the tension and make jokes as we go along with the group session. The more we laugh a bit is the more we become comfortable in a group (YR7).*

- **Rehabilitated ex-youth sex offenders as co-facilitators**

Some YRs suggested that rehabilitated former YSOs should be invited as co-facilitators or guest facilitators in the group programme. The rationale behind this suggestion is that young offenders are more likely to relate to and to be easily

influenced by a young person of their age who successfully went through a similar experience:

*I think the facilitator should be someone who will understand, someone who has been there before and out of that situation (YR1).*

*Inmates don't relate to anyone but people who've been where they are. Facilitators should invite people who have been through such experience... that alone will inspire others who are feeling hopeless and thinking it is the end of the road (YR19).*

It was encouraging that some former young offenders are inspired to try their hands at facilitating such group sessions, based on their observation of me when I used to facilitate the group sessions. However, they knew little of the amount of effort that is involved in preparing for each group session:

*Even myself I think I could do it as I have an experience of being a member of the group and I know what is required in the facilitation of the group (YR7).*

Practitioners are warned by scholars such as Barday and Gallinetti (2002) about the peer based counselling of other young offenders in residential settings, which had been proposed by some YRs in this study. These scholars state that “while this might seem a useful type of approach for young sex offenders in incarceration environments, extreme caution must be exercised without substantive research having been done on the effectiveness of this approach in South Africa” (Barday and Gallinetti, 2002: 34).

#### **4.4.5. Perceptions regarding the duration of the programme**

There was a mix of responses around the respondents' perceived appropriate duration of youth residential diversion programmes. Some research participants felt that the duration of such programmes need to be 3 months at the minimum. Others felt that these types of programmes need to run for a period of between 4-7

months. Most of the respondents felt that such programmes need to be at least one year or longer. The following are research participants' direct quotes on proposed time frames and their motivations for them:

- **3 months minimum**

*Minimum of three month will be fine. It will be assessed whether he shows any remorse and how he is responding to the rehabilitation programmes (SOYR11).*

- **4 to 7 months**

*I can say the duration needs to be around four to six months because "a leopard does not change its spots overnight"... at the beginning I did not enjoy the programme. It was only as we progressed with the group programme that I found the topics fascinating and informative (YR6).*

*Six to seven months and when released they should attend some programmes at NICRO and do some community service at NICRO. In addition to completing the programme (YR4).*

- **1 year**

The following responses are totally opposed to the three months period and instead propose a longer stay of between six months and a year:

*I think they should stay for one year or six months (YR16).*

*I think the minimum should be six months, if they don't understand and are not responding well within six months, then they can stay to a year. I understand at DYC there are various skills workshops such as computer literacy such that even if they stay there longer by the time they come out they would have acquired some sort of a skill (SOYR4).*

*A longer stay will send a clear message to the young people that what they did was wrong (YR10).*

## **Summary**

It would seem that many research participants, both YRs and SOs, favoured a lengthy duration of YSORDPs so long as it would serve the purpose of rehabilitation. This is common to international practice standards, as pointed out by Barday and Gallinetti, (2002: 35), namely, that the average length of stay for the offenders is between 12 to 18 months (e.g. those who are referred to the Briar Wood Treatment Services Residential Programme for young male sex offenders in the United States of America). This fits well with the CJA provisions on level 2 (residential) diversion, which states that, if any time period is applicable, it may not exceed 24 months in case of children under 14; and 48 months for older children.

The next section looks at the research participants' suggestions on how the programme needs to be structured post-release of youth offenders.

### **4.4.6 Perceptions regarding the post-release structure of the programme**

The research data seems to suggest that, whilst one year can be spent in the institution for the programme, another year should be spent in the community as part of the programme. The Briar Wood Treatment Services Residential Programme for male sex offenders mentioned above offers some creative ways in which post-residential programme could be structured, as discussed in Chapter 2. The respondents in this study offered the following rich insights on how the lengthy diversion programmes for YSOs could be structured post-release:

- **Follow-ups**

Follow-ups upon completion of the programme are imperative, as indicated in the following response:

*I want to suggest that it is important for the social workers that have helped him (young sex offender) whilst he was at DYC to do a follow-up, because we*

*do not know if he is going to repeat the crimes or do what he has been taught at DYC (SOYR2).*

- **Referral to NGO as part of the programme**

It was felt by some YRs that it would help ex-YSOs, once they have been released into the community, to be linked to NGOs like NICRO, which can help them to establish support groups of ex-YSOs:

*Six to seven months and when released they should attend some programmes at NICRO and do some community service at NICRO. In addition to completing the programme (YR4).*

#### **4.4.7 Additional suggestions on the programme structure**

When questioned further, the research respondents grasped the opportunity to make additional suggestions for improvements to the programme structure. They added some new points and emphasised some that had already been mentioned.

- **In favour of residential programmes**

One of the logistical challenges encountered by Wood and Ehlers (2001) in piloting of SAYStOP YSOs programme was that some of the participants could not afford the costs involved in using public transport to attend the group sessions. This is likely to be experienced by many young people and their families, given the poor socio-economic background of many of the participants. Their parents would further be burdened with extra financial costs when they are already in difficult financial positions. Therefore, the residential diversion, where appropriate, could be a viable option to overcome such challenges. Most of the research participants, both youth and parents, were thus in favour of residential diversion programmes:

*Yes I think it is a good idea that they go inside and stay at the centre so they can learn (SOYR9).*

*I think they should be in custody in order for them to realise and feel that I am here because I have done a wrong thing, because if they are around the family they don't feel anything. He must be incarcerated for some time, so he can feel the punishment whilst he gets rehabilitation (SOYR11).*

- **Schooling**

Section 55(1) (c) of the CJA stipulates that diversion options, in keeping with the objectives of diversion, must be structured in such a way that they do not interfere with the child's schooling. This is a challenge for both government and service providers, in view of the financial and human resources that would be required to ensure that residential diversion programmes comply with the schooling minimum standard of diversion. Many SOs, whilst supporting longer residential programmes, also emphasised that such programmes should incorporate mainstream formal education component so that schooling is not compromised, as reflected in the following SOs' responses:

*I also believe education is very important in rehabilitating a young offender. Hence such centres should ensure that they provide formal education for these children whilst they are kept there for the programme (SOYR1).*

*I think we will also need to think about schooling say in case he was still schooling so that he cannot be disturbed with his schooling. Such programmes should ensure that they continue with schooling or should have schools located in the premises (SOYR11).*

Formal schooling was not offered at DYC where I used to facilitate the YSORDP. As a result, the YSORDP interfered with the schooling of the YSOs who were still at school at the time. This is definitely against one of the minimum standards applicable to diversion.

Given the importance of schooling, the centres that provide YSORDPs need to ensure that formal schooling is made available to youth inmates within or outside the

facility. Schooling is compulsory in SA and most of the youth inmates that are enrolled at the youth secure care centres are (or should be) at school-going age and thus should be attending school. If schooling is not available, the youth inmates would tend to develop a negative attitude towards schooling, which would become exacerbated by the lengthy stay at the youth secure care centres. Eventually, they may lose interest in returning to school once they are released from the facility as the research data of this study shows. This will be discussed further below in the section that looks at the occupation of ex-YSOs subsequent to their release from the programme.

- **Enhancement of self-esteem**

The issue of self-esteem was emphasised by some respondents, which is in line with what scholars like Brendtro et al (1990) have theorised. These scholars believe that fostering self-esteem amongst the young people should be a primary goal in working with children and youth at risk (Brendtro et al, 1990). They maintain that “(w)ithout a sense of worth, a young person from any cultural or family background is vulnerable to a host of social, psychological and learning problems (Brendtro et al, 1990: 35)”. Similarly some research participants shared the same view with regard to boosting the self-esteem of the youth offenders as reflected in the response below:

*They should make them aware that they are still humans, who make mistakes regardless that they are behind bars they should not repeat the same mistake again, and it does not mean that it's the end of the world for them (SOYR19).*

### **Summary**

The research data indicate that the participants, both YRs and their SOs, do understand the purpose of residential diversion, and that they fully support it. However, they also pointed out that they support it on condition that it will not interfere with the formal schooling of the youth. The research participants particularly the SOs support scholars who theorised that youth offenders often suffer from low self-esteem. Therefore, as pointed out by Brendtro et al (1990), if we want to ‘transform’ the youth offenders and not ‘change’ them, we need to start

working on their self-esteem. Fine (1996) distinguishes between the processes of 'changing' and 'transformation' of a young person at risk. For him, change is superficial and usually yields short-term results because it is an external phenomenon. On the other hand, transformation provides young people with an opportunity to alter the way in which they see themselves and the world around them. Therefore, transformation is more of an internal phenomenon. Hence it is more likely to produce long-term results that are sustainable which can transform the manner in which the young people see themselves and the in manner they live their lives (Fine, 1996).

#### **4.5 FAMILY GROUP CONFERENCES**

This section explores one of the objectives of the study, namely, whether a FGC was convened in each YR's case or not and what consequences it had. FGCs need to be carefully considered before bringing the different stakeholders around the table for discussion, since it may not always be ideal or possible at a given time or it may even be inappropriate for a number of reasons. Some of the reasons are outlined in the YRs' responses where the FGCs were not convened. FGC is a form of RJ process convened by a social worker to promote dialogue, reconciliation and closure, wherever possible, between the offender, his or her victim, and their respective social support systems.

##### **4.5.1 Cases where a family group conference was not convened**

Most YRs and their SOs stated that no FGC was convened between them and their victims together with their families during their enrollment in the programme at DYC. They attributed this to a number of reasons. Although these reasons are acknowledged, the main reason for not convening FGCs, even where it was appropriate and possible, related mainly to individual job-descriptions at the centre where the programme was offered. The management of the centre, for instance, did not regard FGCs, which required field trips, as part of their job description. Hence in many cases the FGCs were not convened.

When the research participants were asked why a FGC was not convened, most YRs indicated that they were interested in meeting with their victims partly due to their own unanswered questions, which they hoped would be answered in the FGC. They felt that a FGC would help to clear the tension between them and the family of the victim, particularly as they stayed in close proximity with each other. Some of the victims and their families were willing to meet with the offender and to discuss the case. Other families were not cooperative and unwilling to engage with either the offender or his family.

According to Zehr (1990), one of the major factors that could influence the success or failure of the RJ encounters like FGCs, is their correct timing. The YRs' responses below seem to indicate that the timing was not appropriate for a FGC, since both parties still had intense emotions:

*The time was not appropriate for us to have such a meeting (YR9).*

R: *In my case I think I was not ready to reconcile because I was still angry and I was asking myself why they would do this to me. (YR7).*

T: Angry for?

R: *These people were not willing to engage in discussion with us. They were not even willing to sit down and get my story (YR7).*

One SO mentioned a very important issue, which relates to how the victim's family would perceive a FGC initiative from the offender's side:

*Perhaps the social worker was afraid that such an encounter would undermine the victim's feelings and rights and perhaps come across as if we are defending my child. They may also think that I want to pursue them to drop the charges (SOYR5).*

Some of the speculations that were made by the respondents as stated above reveal numerous feelings and issues that they were grappling with soon after they had

been arrested for the sex offences they had 'allegedly' committed. When the YRs were probed further as to whether they had an interest in meeting with their victim and/ or with his or her family, most of them affirmed that they did, giving the following reasons:

*Yes, as the offence I had committed used to bother me a lot during the time of my detention at DYC. Especially thinking that I committed an offence I thought I would never commit in my life and to suddenly find myself in that kind of a situation (YR4).*

*Yes, I did in fact I had an interest in meeting with them immediately when I got out. Unfortunately that did not happen. I wanted to let her know how sorry I was (YR16).*

*Yes, it would have been a great thing to happen. I wanted some reconciliation with the victim and his family since they live close by my place. It was kind of awkward for me each time I see any member of his family (YR20).*

#### **4.5.2 Cases where a 'semi'- family group conference convened**

Within the RJ practice, a victim takes on a central role in the FGC processes. I have used the term 'semi' in the heading to refer to RJ processes that are convened without the presence of the actual victim. According to Consedine (1999) and Liebmann (2007), secondary victims such as family and friends may fruitfully participate in FGCs without the primary victim's presence.

During the period when the YSORDP was facilitated by me, there were times when it was not possible to have a full FGC for various genuine reasons. The FGC would then be convened with the offender and parents of both parties.

The research data show that, in the case where a semi-FGC was held, YR14 was partly pleased with the outcome, even though he did not reconcile with the victim. He stated that his major concern was satisfactorily addressed by the gathering of the

two families. The case of YR14 as presented below illustrates a 'semi'-FGC case scenario:

T: Who was present at the FGC?

R: *Myself, my social worker, my mother and the security from NYC, the victim's parents. The victim was not there. She was at school.*

T: What were you feeling at that time?

R: *I was afraid, thinking of how they will react when they see me.*

T: How did the process of FGC unfold?

R: *It really helped me because we gave each other time to talk and we respected each other.*

T: What was the outcome of the FGC?

R: *It turned out fine which was not what I was expecting. Even though I did something wrong to their child; what I wanted was for them to just to talk to me even though they don't want anything to do with me.*

T: How did the meeting benefit you?

R: *It's a good thing because it would not be fine if the families don't get along; at least they would be in talking terms. So there can be peace between the families.*

#### **4.5.3 Cases where a family group conference was convened**

The first FGC that was arranged in the case of YR2 and his younger sister, who was the victim and their mother, was when they were invited to the centre, but it did not materialise. Whilst much work had already been done with the young offender to prepare him for the FGC, nothing had been done with the victim. She had not received any counselling whatsoever that would prepare her for the FGC. When she came to the centre for the FGC, she broke down and cried uncontrollably. I therefore could not proceed with the FGC. The focus then shifted to helping to contain the victim. The FGC therefore had to be postponed until such time that she had received some counselling and preparation for the FGC encounter. The victim was referred to a community based organisation for counselling. Finally, when the victim was ready, an FGC was convened and it became very successful. The youth ex-offender and his mother describe below how they independently experienced the FGC processes:

T: Do you think you were prepared well by the social worker for the meeting?

YR2: *I think I was prepared well but it would seem that my sister was not prepared. Remember she broke down into tears when she saw me. It was very emotional for both of us.*

SOYR2: *I will say that we were not prepared from our side particularly my daughter. We were just called for the family counselling. It was not explained to us about what was going to happen. Hence she cried when she saw him the day we were going to have that joint counselling session (FGC) and we did not proceed with it.*

T: Were there any other persons that you felt needed to form part of the FGC meeting and they were not present?

YR2: *It was only my sister, my mother and the social worker. I think it was a good idea that there were no other people present when we met.*

SOYR2: *I think only the parents of the affected parties.*

T: How did the FGC meeting unfold?

YR2: *Fine.*

SOYR2: *I think the second joint counselling went off relatively well. The emotions had subsided a bit, as we all had an opportunity to talk and agree on the way forward.*

*Pre-conferencing preparation* is therefore essential for both parties, since it will affect the outcomes of an FGC process. None of the parties should be forced to participate against their will.

Steyn (2005), after reviewing the FGC programme of the Restorative Justice Centre as discussed in Chapter 2, emphasised that preparation of both parties is one of the most critical elements in the successful implementation of the FGC. The importance of assessing the needs of all participants in the FGC process is essential, given the fact that its success will largely depend on the cooperation of everyone who was affected by or had a stake in the offence.

#### **4.6 CLOSURE AND RECONCILIATION WITH FORMER VICTIMS**

Zehr (1990), as noted in Chapter 2, argued that crime needs to be conceived as an injury and a violation of people and relationships, rather than as a violation of the state's laws, as is the case in the retributive justice system. Our approach to dealing with offenders needs to promote healing and repairing harms that have been caused by crime, particularly the relationship between the victim and the offender. If left unresolved, as pointed out by Zehr (1990), a hostile relationship will in turn affect the well-being of the victim, the offender, their families and community in general. As pointed out in Chapter 2, the RJ approach promotes fostering of respect, healing and reconciliation between the offenders, the victims of crime and their respective families and the community in general.

As will be seen below, the research data on closure and reconciliation between the YRs and their former victims suggests that the youth offenders who had engaged in some sort of dialogue with their victims managed to find at least some reconciliation with their victims and closure to the sex incident. Conversely, those who had not engaged with their former victims reported that they had not achieved any reconciliation with their former victims, and that they had to find their own way of putting the incident behind them. Nonetheless, as noted above, most of them confessed that, ideally, they would have liked to have been given an opportunity to discuss the offence and perhaps apologise to their former victims and their families.

- **Reconciled with former victim and found closure**

The research data shows that the YRs who were able to talk to their former victims and/or their families, with or without the help of a social worker, managed to reconcile with their former victims. According to the YRs, the forgiveness that they had received from their former victims helped them to find closure.

- **Family group conference enabled reconciliation**

The following mini-story of YR2, who committed sibling incest, with whom two FGCs were convened describes the social encounters he had with his sister at home upon his release from the centre:

R: *Yes it was tense the first time we saw each other. But eventually we spoke to each other and now we get along very well with each other.*

T: Did you apologise to her?

R: *Yes I did ask for apology from my sister because I could see that what I did to her was wrong.*

T: Who inspired you to apologise?

R: *The DYC social worker encouraged me to do so.*

T: If you did apologise, how did you feel after the apology?

R: *I felt free.*

T: Do you think young people who commit sexual offences should apologise to their victims?

R: *Yes, because they have no idea about what they are doing when they commit these sexual crimes.*

T: Who should facilitate the process?

R: *DYC social worker because he already knows a lot about you and your family, as you have been receiving counselling from him.*

T: How do you presently relate with your sister and the family?

R: *We all relate well in our family.*

When the mother of YR2 was probed with regard to closure and reconciliation between her children, she YR2's above. She stated as follows:

T: Do you think they have forgiven each other?

R: *Yes. They talk normally like a brother and a sister. They have put this thing behind them.*

T: What do you think helped them to reconcile?

R: *I think the counselling sessions we had with the DYC social worker.*

T: How?

R: *We were all able to speak and understand where the problem came from and that it will not happen again. Now he has his own room as well.*

The above case story illustrates an ideal kind of a situation where FGCs mediation processes, which were held by the social worker between the youth offenders and his victim together with their mother, helped to facilitate the process of reconciliation. It would seem that the FGC was helpful in enabling reconciliation, even though it was still not easy for both the youth offender and his victim, since they stayed in the same house. It would therefore seem that it would have been better had they not stayed in the same house. This is probably why the family resorted to different living arrangements, where the mother arranged a separate room for YR2.

- **Dialogue enabled reconciliation**

The mini-story of YR1 that follows describes another unusual case of reconciliation without any third party mediation (YR1 and his friends were arrested for raping YR1's girlfriend):

T: Have you ever met with your former victim since you were released?

R: *Yes. We smiled at each other and hugged and we apologized to each other.*

T: Did you apologise to her?

R: *Yes, when I was released. I told her that if I caused her any harm I am so sorry.*

T: Who inspired you to apologise?

R: *Some of the programmes at DYC inspired me, made me realise that it is important for me to go back and apologise.*

T: If you did apologise, how did you feel after the apology?

R: *I felt peace within myself.*

T: Do you think young people who commit sexual offences should apologise to their victims?

R: *Yes, I think they must swallow their pride and apologise not to the victims only but also to the family with elders leading them.*

T: Who should facilitate the process and why?

R: *I think the same social worker who runs the programmes. He is one of the people who understands and can be able to reach out to both families so bring them to reconciliation.*

T: How do you presently relate with the victim and her family?

R: *The relationship is good, to such a point that the victim visited me but that only happened once.*

T: How does your family relate with the family of the victim, and why?

R: *They relate very well, because I told my family that she was my girlfriend and we should forget about the past.*

The father of YR1 confirmed his son's reports about reconciliation and closure:

T: Has he ever seen the victim since his release?

R: *I think they saw each other and my child apologised. It seems like they have forgiven each other.*

T: How did your family relate to the family of the victim during the period of his immediate release?

R: *I had known that family especially the father. Yes we greet each other but there are no changes. You know, as parents it's not easy. I thank God for changing my son.*

In some cases, then, as a result of the nature of the relationship that the ex-YSO had with his former victim, they were able to reconcile, despite what they went through, as they still loved each other. Secondly, the YR had abandoned his criminal life style to become a pastor, which was his occupation at the time this study was conducted.

- **No reconciliation with the former victim**

Most of the YRs reported that they had not reconciled with their victims and families, partly because they had never met them to talk about the incident. They described their situation as being characterised by tension; they were not on talking terms with their former victims. It was noted earlier that FGCs were not convened with most of the YRs and their victims while they were enrolled in the programme,

primarily because the FGCs were not considered as part of the programme nor were they considered a necessary key performance area of social workers at DYC.

- **Tension and not on talking terms with the former victim**

The following two scenarios illustrate situations where there was no reconciliation between the YRs and their former victims. YR12 described his first social encounter with his former victim in the following ways:

R: *When I was out the first time she saw me going to my grandmother's house and she said you are back home if you ever do it again you will shit.... she started talking nonsense, busy provoking me and I realised that none of this makes sense (YR12).*

T: Have you forgiven each other?

R: *I did not speak to her, I just ignored her and whenever she sees me she would greet me but I would just keep quiet. I just tell myself that it has passed and that chapter is closed (YR12).*

YR20, who was arrested for male rape, gave the following account:

R: *I think I saw my victim after three days I was back in the community. He stays in the fourth house from home. There is no reconciliation between myself and my former victim. When we saw each other, we just looked at each other. It was tense. We do not talk to each other (YR20).*

T: Were you still angry with him?

R: *Quite frankly I was very angry with my victim. He knows that I was not supposed to be arrested for what happened. He should have defended me. But as I came to understand how the law works, he would not have been able to do it himself. I guess I am still angry (YR20).*

T: Have you found closure to the incident?

R: *Yes, I can say that I have found closure. The early days are too hard, but as time goes on, you accept the situation and who you are. You acknowledge that you have made a mistake and that you are not going to do that mistake again. People can say*

*you are a bad person. It is their opinion of you. You know yourself that you are not a bad person (YR20).*

- **Closure without reconciliation with the former victim**

Most YRs reported that they had found closure and they had moved on with their lives without the victim's forgiveness, even though some felt they would have appreciated reconciliation with the victims. DYC's religious programme seems to have played an influential role in YR19's reconciliation and attainment of closure, as shown in the statements below:

R: *I have not met the victim but I have found closure (YR19).*

T: How?

R: *I have accepted that I can't change what happened but I can control my future. What happened has happened. I'm sorry for what I did and even though I did not even have an opportunity to meet the victim (YR19).*

T: What helped you to find closure?

R: *I don't think I could have managed to find closure and peace if it was not for God. The word of God says whatever that I've done to fellow men I've done it to him, but if I ask for forgiveness from him, he will obviously forgive me (YR19).*

### **Summary**

The research data as presented above shows that there are still hostile feelings and relationships between many ex-YSOs and their victims and between their respective families. Some YRs believed that they had found closure even though they were still avoiding any contact with their former victims. One wonders how genuine the closure is, if the former victim and the offender have not had an opportunity to talk about the sex offence and perhaps to forgive each other. Some of the ex-YSOs reported that they had to re-arrange their lives, e.g. by using specific routes to travel from one place to another, in order to avoid contact with the victim and his/her family. This suggests that the closure that the ex-YSOs claim to have found is relatively superficial, as there are still many unresolved issues between them and their former victims. However, although I am questioning the level of closure, it also

seems that the respondents were happy with what they had achieved, with regard to making peace with themselves and moving on with their lives.

The next section explores the YRs' level of reintegration into their families and communities subsequent to their release from the programme.

#### **4.7 REINTEGRATION OF YOUNG SEX OFFENDERS**

One of the research objectives of the study was to explore the YRs' reintegration subsequent to their release from NYC. This included, firstly, an investigation of whether the YRs returned to school to complete their formal high school education, or whether they dropped out to pursue other career options. Secondly, their ages and occupations at the time of this study were ascertained to establish whether their occupations showed a progression or not in their careers since their release from NYC. The following table presents YRs' occupations subsequent to release from NYC, as well as their ages and occupations at the time of research.

**Table 8: Youth respondents' occupations subsequent to release from DYC, and their ages and occupations at the time of research**

YR	OCCUPATIONS SUBSEQUENT TO RELEASE FROM DYC	AT THE TIME OF RESEARCH	
		AGE	OCCUPATION
1	Drama activities and volunteering in community activities	25	Dropped out school & employed as a pastor
2	Went back to school	20	Dropped out school & repairs electrical appliances to earn a living
3	Started a car wash business with friends and stopped since then he never managed to find any job.	25	Dropped out of school, unemployed & job hunting
4	Went back to school	22	Dropped out of school, unemployed & job hunting
5	Went back to school	22	Matriculated, unemployed, & job hunting
6	Went back to school	25	Studying at University of Technology
7	Went back to school	22	Matriculated & employed in a factory as an artisan
8	Drama activities and volunteering in community activities	26	Employed in a firm as a general worker
9	Did not specify	21	Dropped out of school, unemployed & job hunting
10	Went back to school	22	Dropped out of school, unemployed & job hunting
11	Went back to school	19	Unemployed & in custody awaiting trial for another offence
12	Tried to go back to school but was refused due to age	26	Dropped out of school, unemployed, & works part time jobs for the church
13	Started job hunting but could not find a job	25	Dropped out of school & employed as a pastor
14	Went back to school	20	Dropped out of school, unemployed & job hunting
15	Worked on electrical appliances repairs piece-jobs with father	19	Dropped out of school, unemployed & job hunting
16	Joined a community youth drama group	26	Dropped out of school & works as an actor in a community theatre group
17	Went back to school	23	Dropped out of school, unemployed & job hunting
18	Went back to do more criminal activities	23	Dropped out of school, unemployed & Job hunting
19	Started job hunting and found a job	24	Dropped out of school, & employed as an office assistant
20	Went back to school	25	Dropped out of school & job hunting

Table 8 shows that 10 of the 20 YRs (50%) returned to school after their release from the programme at DYC, whilst the other half did not.

#### 4.7.1 Occupations subsequent to release from DYC

- **Refused admission due to age**

Whilst many YRs lost interest in schooling after being released, some did not. Unfortunately, some of those who wanted to continue with schooling faced an unexpected challenge with regard to their age:

*I tried to go back to school but they would not take me back because I was too old so I thought I should start my own business.... I had difficulties getting my ID and if that was not the case maybe I would be having a job now (YR12).*

*I tried to go back to school but they would not take me back because I was too old so I thought I should start my own business (YR3).*

T: How old were you when you got out?

R: *I was 20 to 21 (YR3).*

The above youth response was confirmed by his mother who said:

*When he came back, they said he was too old, he was about 23. He wanted to make a living through fine art but because of difficulty in getting sponsorship he could not (SOYR3).*

Hence YR3 began a car wash business with his friends, but this never materialised (see Table 8).

- **Lack of financial support**

Some YRs furthermore were reluctant to return to school, because they were fearful that they would struggle to cope with the school requirements as well as with the costs:

T: Did you think about going back to school?

R: *Yes, but there was this thing that said if I go back to school what am I going to eat? Even the school fees money where will it come from? (YR13).*

- **Occupations other than schooling**

Eight of the 20 YRs who had dropped out of school re-offended; some of them did so more than twice after their release from the YSORDP. This research data seems to support what the Californian Department of Youth Authority (cited in Eldefonso and Hartinger, 1976: 85) discovered about persistent juvenile delinquents, namely, that they “display a negative attitude toward school, with poor achievement records and frequent involvement in school misconduct”.

Whilst some research participants cited genuine reasons for not being able to go back to school, such as a lack of financial support or being refused acceptance at school because they were too old, it would seem that some ex-YSOs were simply no longer interested in schooling. This could partly be attributed to their long stay at DYC, which meant that they missed much school work.

- **Lack of interest in schooling**

The reasons given by the YRs as to why they dropped out of school indicate that they had lost interest in formal schooling for various reasons, as reflected in YR2’s comment below:

*I went back to school. Dropped out of school in 2007 in Grade 11. I felt that I was given (meaning talented) technically and I was good at using my hands. This is still what makes me generate some income (YR2).*

- **Interest in pursuing further criminal activities**

Even though YR1 claimed that he was involved with drama and volunteering in community activities after his release from DYC, as shown in Table 8 above, his father told a different story, which showed that the YR had lost interest in schooling:

*He was still bad. Generally he was still involved with bad friends. I tried to sit down with him to knock some sense into his brain. We had an agreement that I will find him a school and buy him stationery, pay the school fees for him only to find out after some time that he is not attending school (SOYR1).*

Clearly, YR1 was not interested in returning to school but instead wanted to pursue a criminal career: he re-offended and was arrested a few more times after his release from DYC. Similarly, YR15 lost interest in schooling because he had intentions to pursue a criminal career:

T: Did you have any other offence before the rape case?

R: *The rape case was the first one.*

T: Subsequent to it?

R: *Two other cases. The second was the cell phone and the third was for shoplifting at Shoprite supermarket. I was also acquitted for the shoplifting charge. I awaited trial at DYC for one year six months for the cell phone case and then I was acquitted (YR15).*

- **Pursued a career in dramatic performance art**

Although some ex-YSOs had lost interest in schooling and could not find jobs, not all of them resorted to crime. Instead, some pursued a career in dramatic performance art. These were YRs whose acting talents were discovered during their stay at the centre, where they participated in drama workshops, which I also used to facilitate at DYC:

*I used to do drama when I was detained at DYC and I continued with it when I was outside at church and I joined another drama group where we used to rehearse at the community centre (YR16).*

*Volunteering and drama as a member of a youth group. I am currently employed full-time and I have got one child (YR8).*

The above YRs' career options indicate that it is useful for staff at youth secure care centres to identify and nurture potentials of different youth inmates. Whilst schooling is ideal, some youth are talented in other careers, such as the arts, drama, dance, fine art, and so on.

YR19 had also lost interest in schooling but did not consider crime as an option. Instead he went job hunting and was fortunate to find a job:

*What helped me was to get a job, which took me away from the streets. I started looking for a job. I had a few contacts, so I started making some calls. I called another company and I was told I should come up. Fortunately they gave the job to me (YR19).*

#### **4.7.2 Youth respondents' occupations and ages at the time of research**

- According to Table 8, only a low proportion (15%) of YRs had matriculated.
- Significantly, a high (65%) proportion of the YRs were unemployed and job-hunting, and three were only working in part-time jobs.
- Only a quarter of YRs (5 out of 20) were full-time employed.
- Only one was studying at an institute of higher learning, whilst another one was arrested and awaiting trial for another offence.
- Most YRs (85%) had dropped out of school – including the half who went back to school after their release from DYC.

The ages of the YRs at the time of research ranged between 19 to 26 years. The overall average age of the YRs was 23 years. This shows that most of them were older than 21 years, which is considered the early adulthood stage of development. At this stage, according to Erikson's psychosocial human development theory, YRs would be faced with typical developmental challenges such as career development and finding a life partner (cited in Weiten, 2004).

#### **Summary**

The research data as presented above seems to affirm the concern that was raised earlier by the SOs regarding schooling. It can be inferred that the interruption in schooling when enrolled in the YSORDP affects their attitude towards schooling. Therefore, institutions that offer YSORDPs need to ensure they allow YRs to continue

with their formal mainstream schooling; the YSORDP sessions could be conducted in the afternoons when the young offenders are not at school.

The youth inmates who are enrolled in the YSORDP need to be encouraged to complete their high school education, so they are able to further their education at tertiary institutions with the help of government's national loan and bursary scheme. Otherwise, their chances of finding employment are very slim, as the labour market is very competitive and very sensitive when it comes to the employment of ex-offenders. On the positive side, some YRs managed to occupy themselves with constructive social activities and careers in the performing arts.

The next section looks at YRs' processes of reintegration, an issue that is closely related to the foregoing discussion on the ex-YOs' occupations after release from NYC. In other words, a youth who finds a job immediately upon his release from NYC is likely to be able to manage the reintegration process much better than the one who also has to deal with the additional challenge of finding a job.

#### **4.7.3 Process of reintegration back to the community**

Gallinetti, Muntingh and Skelton (2004) proposed that, in order to ensure the successful reintegration of youth offenders and to enable them to function successfully in society, the institutional programmes need to develop their abilities to deal with risk factors. Some of these risk factors include: social and economic exclusion; individual characteristics; relationships with individuals and the family; and stigmatisation.

The ex-YOs reported mixed responses regarding the evaluation of their reintegration into the community. The challenges they cited can be divided into five groups, namely: the young person himself, their own families, the victim and his or her family, the school and the community in general. The challenge relating to the school has already been discussed in great detail above and will not be repeated here.

#### 4.7.4 Challenges experienced during the reintegration process

The YRs raised the following challenges that made the reintegration to the community process difficult:

- **Isolation and self-shame by the young person himself**

A number of YRs reported that they were very skeptical about the kind of response they anticipated from the community after their release from DYC. They said that they felt embarrassed about the nature of the offence that they had committed. They were aware about the labeling that often accompanies such an offence in communities. Hence some YRs isolated themselves, withdrawing from any contact with community members. The following quotes from three YRs describe a similar trend:

*The first month was hard... I started isolating myself I... thinking what people will say about me, things like I'm a rapist (YR6).*

*I used to stay in the house because I did not want to hear when some people would talk about me when I'm walking down the street (YR5).*

*When I came back...I was always indoors because I was nervous of how people will look at me (YR19).*

- **Stigmatisation and/or rejection by own family**

The following YRs' responses indicate the hardships that they had to deal with after being released back into their extended families. Rejection and stigmatisation from the people who were supposed to offer support to the ex-YSOs, like their families, seemed particularly devastating.

When YR3 was asked who made their reintegration into the community difficult, he responded:

*My uncle, we do not get along well and he is always undermining my mother (YR3).*

The challenge raised by YR3 above was confirmed by his mother who mentioned that:

*His sister and I were very supportive to him....encouraged him to live positively. Only one person tried to make his life difficult.... it was his uncle... fortunately he had learnt to ignore his negative attitude (SOYR3).*

Similarly, the two following responses reflect a profound sense of rejection, which can often lead the youth to leave home to stay with friends or on the streets:

*My grandmother gave me a hard time always pulling me down saying ... things like you're back you did not learn your lesson. She would say all that when she's drunk (YR5).*

*Even at home when we are just sitting or maybe it is time for bed they would pick on me and say all the terrible things about me, like you are a rapist and we don't want to sleep anywhere near you (YR14).*

YR14, who is quoted above, was staying with friends during the time of research (see Table 2). He probably could not deal with the rejection and labeling he suffered from his extended family members.

- **Stigmatisation and/or rejection by former victim and/or his or her family**

Some of the families of the YRs' former victims seem to have made the reintegration process of some ex-YSOs into the community very difficult:

*The only difficulty I experienced after my release related to the former victim's family (rejection) because they lived in the same street. I would use a long*

*alternative route just to avoid going past that house. It was really difficult and inconveniencing for me (YR7).*

- **Stigmatisation and/or rejection by community**

Some YRs suffered stigmatisation in the community, as pointed out by some of their SOs:

*It was hard because he also knew that he was guilty, so if a person could come across him he would want to walk the other way in order to avoid the community and he used different routes for some time (SOYR4).*

Some YRs reported that the manner in which the community related to them seemed to assume that they were hardened criminals:

*In the community some thought since I was an inmate I might have adopted prison mentality.... some people thought 'bengishaya inombolo' (prison language meaning he was a prison gang member) (YR7).*

- **Combination of factors**

The case story that is presented below illustrates the various difficulties of reintegration into the community. The ex-YOs who did not have much social support but who did not resort to reoffending need to be commended. A good example in this study is YR20 whose story, told below, shows how a combination of factors made his reintegration to the community extremely difficult. Things became so bad, that he even contemplated committing suicide. Ex-offenders such as YR20 show a profound sense of resilience, however, which is very rare among the offender population in general. The following is YR20's description of his reintegration process:

*Going back to the community was the hardest thing I ever had to deal with. You know people label you... judge you... even though they do not say it, you can feel that you are being judged... it is like when they look at you they are*

*saying, how can you do such a thing? I tried to go back to school but it was difficult. What made my life a whole lot difficult was the finances. I had to fend for myself whilst trying to attend school in the evening. It was difficult trying to do those two things at the same time. Then I decided to concentrate on finding a job. I left school. No one was there to help me and support me through all the struggles I was going through when I was back in the community. It was very hard. I often thought of committing suicide just to find a way out of my miseries.*

T: Why did you not do it?

R: *I was afraid of doing it.*

### **Summary**

Whilst some of the ex-YSOs received good social support and encouragement from different people, most YRs described their reintegration process back into the community in a very negative light. The factors that they cited are similar to those I found in the research I had conducted on recidivism amongst male awaiting trial youth, mentioned earlier (Gxubane, 2006). The participants of that study mentioned “the lack of a stable source of income, denial of re-admission to school, rejection by family and friends, and the lack of stable accommodation” (Gxubane, 2006: 322). These factors would need to be considered as the primary focus of rehabilitation and after-care services, in order to reduce recidivism amongst young offenders. For instance, YR19 mentioned above that what helped him to cope with the difficult reintegration process was the job that he found soon after his release from DYC.

#### **4.7.5 Sources of social support in coping with reintegration challenges**

The research indicates that moral and social support from different members of their families and the community helped the ex-YSOs to cope and deal with the reintegration challenges. As time passed, the ex-YSOs were motivated to face and deal with any rejection and stigmatisation that they would come across in the community from others who criticised or denigrated them. The research data on the social support received by some YRs came from a wide range of people.

- **Own strength**

Some YRs reported that they had to pull themselves together to be able to face the community, as shown in YR6's statement below:

*I realised that... if I'm going to lock myself in my room I will be confirming exactly what people will be thinking about me. I decided to go out and meet people... I told myself whoever will approach me with a question regarding my rape case... I will not be defensive, I will talk openly.... It happened and it won't change and I'm going to live with it for the rest of my life (YR6).*

- **Social support from different people**

The participants in this study reported that, during their reintegration process, some received social support from family members, others from extended family members, others from neighbours, and still others from helping professionals, as shown in their responses below:

*It was easy to like move on with my life. My mother and my sisters, they did not want me to give up on me (YR3).*

*Three people who were very supportive were my grandmother, my mother and my psychologist (YR6).*

*My uncle was supportive when I came back (YR12).*

*The most supportive person was my high school principal. He is the one who advised me and told me that what happened to me does not have to bring me down (YR7).*

*Mr. X, my next door neighbour, was very supportive to me. He cared for me (YR14).*

## Summary

The sources of social support that the YRs specified illustrate a very important dynamic for practitioners working with youth offenders. It is assumed that family members or extended family members will be a good social support system. However, the research data has shown that, whilst this is true in some cases, in others, it is not. The family and/or extended family members can also be a source of misery for ex-YOs. A significant number of YRs mentioned that their sources of social support came from non-family members.

### 4.7.6 Respondents' suggestions to ease the reintegration process

Based on their experiences of the reintegration process, the research participants were requested to share their perceptions on what needs to be done to help ease the reintegration challenges. They emphasised a need for social support and encouragement rather than rejection and stigmatisation. One of the main concerns mentioned was 'acceptance' by their families and the communities in general. Forms of social support, which were suggested by the respondents, were the following:

- **Emotional support and encouragement**

*We the parents and the church are the people who should give them all the support they need when they come back to the society (SOYR9).*

- **Follow-up by social workers**

*It is important that social workers monitor and provide social support for a young person when they leave DYC (YR2).*

- **Support groups at NICRO**

*Ex-offenders should join support groups and talk to social workers at NICRO (YR4).*

## Summary

The importance of social support for young offenders towards their re-integration in the community has best been described by Shearar and Graser (2005). They assert

that “(y)outh stigmatized by their past offences feel that, if they are not accepted in the community, crime is their only option. Communities ultimately put themselves more at risk if they are not involved in providing proper guidance for children” (Shearar and Graser, 2005: 161). This notion is confirmed by YR13, who stated that it is the constant rejection and labeling from the family and/or the community that often makes young people decide “Ngiyobangena futhi” (Zulu language meaning: I will offend them again).

#### **4.8 RECIDIVISM AMONGST YOUTH RESPONDENTS**

Another objective of the study was to explore YRs’ recidivism subsequent to their completion of the residential diversion programme within the broader context of their criminal histories. Table 9 below summarises their criminal histories.

**Table 9: Youth respondents' criminal histories**

YR	Offences prior to residential diversion programme		Offences post residential diversion programme	
	OFFENCES	OUTCOME	OFFENCES	OUTCOME
1	2 of House-breaking & Theft (HB&T)	Cases were withdrawn by the court	1of HB&T	Prison sentence of 3 years
2	NONE	-	NONE	-
3	1 of shoplifting & theft (S&T)	Diverted to NICRO	NONE	-
4	NONE	-	1 Possession of stolen goods  1 HB&T	Acquitted  Prison sentence of 3 years & served 1 yr & was serving 8 months on correctional supervision (CS) at the time of research
5	NONE	-	NONE	-
6	NONE	-	NONE	-
7	NONE	-	NONE	-
8	NONE	-	NONE	-
9	NONE	-	NONE	-
10	NONE	-	NONE	-
11	NONE	-	1 of Robbery (R)  1 of HB&T:	Prison sentence of 2 yrs and served 6 months in prison & remainder as community service;  Was awaiting at the time of research
12	NONE	-	NONE	-
13	2of S&T	Acquitted on both charges	1 of armed robbery (AR) & unlicensed fire arm (UFA)	Prison sentence of 7 yrs & only served 5 yrs and was given parole to do CS.
14	NONE	-	1 of Common Assault	Case withdrawn by the court.
15	NONE	-	1 of S&T 1 for theft of a cell phone	Acquitted Prison sentence of 1 yr & 6 months, served 1 year & was given parole to serve 6 months on CS
16	NONE	-	NONE	-
17	NONE	-	1 of AR. 1 assault, & 1 assault with grievous bodily harm (GBH):	Acquitted on all
18	1 HB & T &	Withdrawn by court	1 AR & sentenced	Prison sentence of 15 yrs. Served 7 yrs & was on CS parole at the time of research
19	NONE	-	NONE	-
20	NONE	-	NONE	-

The above table shows that:

- Eight out of twenty (40%) YRs re-offended after they had completed the residential diversion programme. Their reasons for doing so are discussed below.
- None of the ex-YOs had re-offended sexually.

- **Specialisation vs. Progression**

Three-quarters (75%) of the YRs did not have previous criminal offences prior to their arrest for their sex offences. Of the YRs who did have previous offences, none were sex offences. This was the first sex offence that all YRs had been arrested for in their lives. Barlow and Ferdinand (1992) identified 'progression' and 'specialisation' as two issues of concern in understanding persistent youth offending behaviour. It is generally assumed that youth offenders do not start out committing serious offences but, rather, start off with minor offences and progress to serious offences, as they extend their criminal activities. In addition, youth offenders may tend to specialise in certain kind of offences, as they develop their criminal activities.

The findings in this study support the concept of progression. Most YRs began their criminal careers with minor offences, such as shoplifting and theft, but had progressed to serious offences by the time of this research. For example, YR13 (see Table 9) began with two cases of shoplifting and theft and later progressed to serious crimes, such as armed robbery and being in possession of an unlicensed firearm.

The inference that can be made is that YOs are not primarily sex offenders, but rather general offenders. As discussed in Chapter 2, Baptista and Wood (2002) who conducted a follow-up evaluative study on the SAYStOP diversion programme found that none of the children they interviewed reported any sexual re-offending subsequent to their completion of the programme. This supports Weinrott's assertion (cited in Baptista and Wood, 2002) that relatively few juvenile sex offenders are charged with a subsequent sex offence.

- **Criminality in the family**

A significantly high proportion (75%) of the YRs who re-offended post release from residential diversion programme had one or more family members who had criminal histories (see Tables 3 and 9). Barlow and Ferdinand (1992) proposed that young offenders are more likely to persist with criminal activities when their primary socialising agents are committing crimes. The family is one of the primary socialisation agencies and a 'laboratory', where children learn through modeling and reinforcement (Leone, 1990). Therefore, children who are socialised in "criminogenic" families tend to have parents and relatives who are criminal role models (Haskell and Yabonsky, 1988). The research data in this study seems to suggest a fairly close relationship between youth persistent criminal behaviour and a criminal family background.

#### **4.9 NON-RECIDIVISM POST-RESIDENTIAL DIVERSION PROGRAMME**

The research data in this study (see Table 9) indicates that over half (60%) YRs did not re-offend again post the YSORDP for the following reasons:

- **Application of life skills learnt from the programme**

*My experience at DYC opened my eyes because through the social worker helping me with counselling and programmes, I realised that I've got a privilege and an honor being in such an environment where people can learn (YR10).*

*I learnt a lot when I was at DYC and I realised that being arrested is not a right thing for my future. That is why I decided to do something different and constructive about my life (YR2).*

This is confirmed by the mother of the above YR who stated that:

*I think the programme helped him to differentiate between what is right and what is wrong. Look his behavior has changed and he is very respectful now (SOYR2).*

- **Lesson learnt**

*Looking back at the consequences of that case and making a decision that I do not want to go through that again (YR16).*

*I told myself that the experience of being arrested and detained is something I don't want to experience again (YR8).*

*I had told myself that this will never happen again. I was thinking about my future and not wanting to end up as a hardened criminal stealing other people's cars (YR7).*

- **Conversion to Christian religion**

*I used to do drugs generally. In NYC I only smoked dagga. One day I decided to quit dagga. I was in church and I was also high with dagga. There were people from outside who came to the centre to motivate us and bring back the hope. As one of the repented guys spoke to us and as I was listening to him, I think that was the day God spoke to me. I decided that day that I want quit all substances including dagga. It was not easy; in fact it was the hardest thing I ever did... I thought if I continue with this life where will it lead me to and I chose God. I was high on dagga that day. I just sobered at that moment. Since then I never looked back (YR1).*

Confirming YR1's change of behaviour, his father said:

*NYC was the first place to open his eyes and it had lots of positive impact on him. I think he would not have been where he is today if it were not for NYC. I think that is where he found God (SOYR1).*

The reasons YR1 identified as the main influences that helped him to abandon a criminal lifestyle seem genuine. Moreover, not only was it confirmed by his father but it was also congruent with his occupation at the time of research (see Table 8).

## **4.10 RESIDENTIAL DIVERSION WITHIN A RESTORATIVE JUSTICE APPROACH**

### **4.10.1 Possible benefits of the approach**

The research data indicates an overwhelming support for a RJ approach to dealing with YSOs. The benefits identified by the respondents included: giving victims a platform to be heard, reconciliation, healing, closure, promoting alternative to ineffective prison, peace and forgiveness. These benefits are reflected in the following respondents' self-explanatory statements:

*Yes, because if you keep throwing young people in jail, even it is for the first offence... you don't find a solution; instead in prison they become hardened criminals so rather try to rehabilitate them and see where they went wrong (YR10).*

*I think it is a very good idea because it would be focusing on both parties. If both parties cannot benefit, at least one party will benefit (YR16).*

*I also think the current law is not right because, if the offender gets sentenced (to prison) that makes the families to hate each other... there is tension.... the new approach is good because it will bring peace to the families because both the victim and the offender are still kids... families were not there when it happened (SOYR11).*

Such responses show that the YRs and their SOs were yearning for the RJ processes to work effectively in order to get answers for the questions that they had for their victims. Unfortunately, for most of them, their questions still remain unanswered. This is one of the repercussions of the retributive justice system, which was described by Zehr (1990). Conversely, practitioners should be aware that the RJ processes should not only aim at satisfying the needs of the offender they are meant to benefit all the parties.

The next section looks at the respondents' perceived challenges, which can be anticipated in the implementation of YSORDPs within the RJ approach in the management of YSOs in SA.

#### **4.10.2 Possible challenges of the approach**

- **Unwillingness of victim**

The victim's unwillingness to participate in the RJ process was cited by many as one of the challenges that is likely to be encountered, as reflected in the following responses:

*I anticipate that some of the victims' parents will not be willing to participate in such discussions (YR14).*

*The victim will feel that the restorative justice is in favor of the offenders..... As a result, the victims will not easily accept restorative justice (YR13).*

The following are some of the respondents' perception on what needs to be done in dealing with a victim who is unwilling to participate in RJ processes:

- **Families can meet without the victim**

R: *The victim might refuse to participate (YR19).*

T: *What should we do if the victim refuses?*

R: *I think it might be easy for the family to meet (YR19).*

- **Victim cannot be forced**

The following YRs insisted that nothing could be done if the victim was unwilling to participate:

*If the victim is not willing to forgive then nothing can be done to change that person and should not be forced (YR8).*

*If the victim is not willing, there is nothing you can do as an offender. You need to forgive yourself as an offender because you have acknowledged the wrong-doing. You have taken full responsibility of your offence (YR20).*

It has been argued by some scholars, as pointed out in Chapter 2, that, if the court considers the offence appropriate for RJ, coercion may be necessary if the victim is unwilling to participate in RJ processes, even though it is antithetical to RJ. For instance, Van Ness and Strong (2002: 181) argue that “the government should have the authority (as it does today) to subpoena the victim as a witness”. However, this should be handled in as protective and supportive manner as possible.

I believe that victims need to be given time and appropriate support, such as counselling. As will be seen in the next chapter, some social workers who work with offenders mentioned that they often persuade the victims to participate after a reasonable period has passed. The timing must be appropriate before contact with the victim is initiated and before a FGC is convened.

- **Entrenched conception of justice as retribution**

Another challenge that was raised by many respondents related to the general societal attitude and mindset about what is considered ‘justice’. They felt that the RJ approach was perceived as a lenient way of dealing with offenders. Many will struggle to accept it because society strongly believes that justice needs to show that offenders are being punished for the offence, so that the victim, their family and the community in general feel satisfied. This view was also expressed by some YRs:

*Other parents will not understand especially the victim’s parents, and will not tolerate or participate in it; they just want justice. This whole thing of meeting with the offender and discuss, some will not consider that as justice (YR14).*

*Families are not the same some will understand and will agree to meet with the offender and work things out, but other families don’t even want anything*

*to do with the offender. They just want to see justice being served... they think prison solves (YR17).*

- **Perceptions that restorative justice processes are offender oriented**

One anticipated challenge that was raised, and which is also hotly debated in the field of RJ, particularly in the field of victimology, is a belief that RJ processes are offender oriented and only seek to address the needs of the offender without necessarily having the needs of the victims at heart. This is a valid critique for which I can testify, based on my practice experience as a novice practitioner in the field of RJ. It can even sometimes happen unintentionally that the needs of the victims are ignored by going ahead with FGCs, even when the victim has never been prepared for the encounter. Such an encounter may even trigger painful memories about the sex offence and re-traumatise the victim. When the respondents were asked whether FGCs should be victim initiated or offender initiated, there were mixed responses. The following response reflects a view that *RJ processes need start with the victim*:

*It must start from the victim. The social worker needs to get the story from the victim first and then come to get the story from us, the offender's side. The social worker then needs to go back to the victim and ask them if they would be willing to meet with the offender face to face so they can talk about the incident (YR4).*

In a research that explored challenges and opportunities for RJ in the Western Cape from the perspectives of both victims and perpetrators of youth crime, Shearar (2005) found that most victims and perpetrators welcomed the notion of RJ as a means of dealing with criminal cases involving young offenders.

In contrast, some respondents felt that *RJ processes should start from the offenders' side*. That is, if an offender is remorseful and realises that they were wrong and are willing to take responsibility for their wrongdoing, then they need to approach the victim and ask for forgiveness. The following responses reflect this line of thinking:

*I think it should start from the offender because if he feels he is the one who was wrong, he should be the one who must try to fix things. The social worker may need to approach and persuade the victim for a number of times and not just once. It can take even a year (SOYR11).*

*If an offender is ready to meet the victim, it means that he or she wants to apologise and wants to work things out. If it is initiated by the victim, it can turn out that the offender is still angry (SOYR20).*

I strongly support the view that RJ needs to be initiated by the offenders. However, this does not mean that if the offender has asked for forgiveness from the victim the case should be dismissed. The court proceedings may continue as normal except where the case is diverted to a RJ process. Even then, the court may only finalise a case based on the offender's compliance with the agreements at a RJ conference.

- **Skills and compassion of helping professionals**

The skills of professionals who are charged with facilitating RJ processes competently were raised as one of the perceived challenges. It was felt that some social workers lacked commitment and passion in their work. If not skillfully managed, the RJ process could do more harm than good. This finding supports one of the major concerns that have been raised by Immarigeon (1999) around skills development in the practical implementation of RJ. This is even more so because the successes of the RJ processes are partly dependent on effective facilitation by the professional practitioner, as stated in the following response:

*It could work and it could not work. It should be analysed before the chances of the families meeting (FGC) to become successful or not. Of importance it depends on the social workers.... once you have put the two families together in front of you, you need to know that you will be dealing with different kinds of people at the same time. It needs to be done with care and skill and not just as a job (SOYR4).*

Maxwell and Morris (1993) are correct to caution facilitators of RJ processes, who assume that victims and offenders can simply be brought together and reconciled without careful preparation of both parties first. They argue that such an assumption is a mistake but one that can be remedied through considerable training of the facilitators of such programmes.

- **Monetary reparation to the victim's family**

Another anticipated challenge in the approach, which was raised by some respondents and that is linked mostly to poverty, is that some families may perceive RJ initiatives as an opportunity to generate some sort of financial gains:

*I remember one time one of the family members confronted me and proposed a deal, saying how about if they drop the charges in return of me giving them money. I said no let the law deal with it. I realised that they were trying to extort money from me. I even thought about taking them to court for doing such a thing but then again I thought it would be a waste of time because that case would take a long time (SOYR7).*

The matter of compensation needs to be approached with caution. The RJ practitioners need to ask themselves, 'who has been harmed and who will benefit from the compensation?' 'Whose money will be used in the payment of the compensation?' If it will not contribute towards the process of healing for a person who has been directly harmed, then it needs to be discouraged. The money that is paid needs to come from the actual offender and payment from parents on behalf of the offender needs to be discouraged, because it does not help in making the offenders accountable for their wrong doing.

- **Uncooperative NGOs**

It was felt by some respondents that there are no adequate services that are aimed at helping the victims of crime, as pointed out in the following response:

*I was not satisfied with the social worker we were referred to in the community. We only went there once for counselling. When we went there for the second appointment, she was not there. She did not keep her appointment. We stopped going there because she was always not available hence... my child did not receive proper counselling (SOYR2).*

The above SO's response refers to the social worker to whom I had referred the victim of YR2 (who had raped his younger sister) for counselling after the first FGC session did not work out. It was only later brought to my attention that the girl had never received any counselling. It would seem there are insufficient services for victims of youth sex offences in the NGO sector. This is also coupled with high staff turnover amongst social workers in the NGO sector, which has been attributed to low salaries. This issue is a huge concern because, if we adopt a RJ approach as stipulated in the CJA, we need to ensure that victims become one of our main concerns. Linked to this challenge was the lack of cooperation from the NGO sector. These themes are explored further in the next chapter.

- **Possible manipulation of the RJ processes by offenders**

Another challenge that was raised by a number of respondents is the possible manipulation of the RJ processes by some offenders. A major concern is that some offenders may fake remorse in the RJ encounters, just to get through the process, even though their attitude and behaviour towards crime in general has not changed. Such individuals may continue to engage in sexual offences or other crimes.

Immarigeon (1999: 318) states that the "skeptics about restorative justice ...argue that offenders participate (in RJ processes) only for selfish or self-aggrandizing reasons". As discussed in Chapter 2, it is believed by some scholars that the goal of RJ is not necessarily to rehabilitate the offender but rather to allow the victim and the offender an opportunity to meet and talk about the offence that they would never have been able to under the retributive justice system:

*Offenders have to be sincere if they want to ask for forgiveness and not do it to impress other people, for an example, just to impress social workers (YR7).*

*I don't think it's a good idea because people would take advantage of it, thinking when they get caught; they will be forgiven, if they ask for forgiveness and freed (YR17).*

*I can forgive someone who has offended me but I will not be sure if he has really changed. What if he goes around the corner and robs someone else again (YR18).*

The issue discussed above is a genuine concern and relates directly to some of the key debates in the field of RJ. In my years of working with youth offenders, I have realised that they are some of the best actors. Therefore practitioners need to be sure that the youth offenders understand the far-reaching consequences of their behaviour and recommend court orders that can hold the youth offenders accountable. Young offenders should by no means be allowed to feel that they have been let off the hook.

#### **4.10.3 Respondents' suggestions on overcoming the identified challenges**

The findings show that the respondents were generally positive and hopeful about the possible benefits of the RJ approach in managing and reducing youth sex offending in SA. They have, however, identified a number of possible challenges in the application of this approach. The sub-sections below look at some of their suggestions on dealing with these challenges.

- **Raising of awareness and education about restorative justice**

Creating awareness and education around RJ was identified by the respondents as one of the important task that needs to be carried out in tackling fears and reducing ignorance among members of society with regard to RJ:

*I think it could work if they introduce and create awareness about such programmes to the communities even through the radios before practicing it in terms letting them know what the suspect will be doing while still in custody in terms of the programmes (YR14).*

In another paper, I provide some guidelines on how POs can give effect to RJ (Gxubane, 2010). I proposed that, since RJ is generally perceived as a lenient approach in dealing with offenders, an essential starting point at the macro-level would be to challenge such misconceptions and mindsets. This would include developing workshops and awareness campaigns in the community, clarifying why the retributive justice system has failed and why a new approach to combating crime is needed, and amplifying the potential benefits of RJ (Gxubane, 2010).

- **Persuasion of victims to participate**

Scholars such as Van Ness and Strong (2002) (see Chapter 2) recommended that victims should be persuaded to participate, which was supported by some respondents too:

*R: I think the social workers should intervene because they know how to and I know it might not be easy for the victims but if you are a person you need to let it go and move on (SOYR11).*

T: After how long do you think it should happen?

*R: It really depends on the person because we are not the same; for some it takes time to forgive and for some forgive fast. The victims will need to be contacted occasionally to check if they are ready or not (SOYR11).*

Although subtle coercion may be necessary, according to Van Ness and Strong (2002), it should be avoided whenever possible.

- **Meeting among parents before FGC**

Some respondents support the idea that parents could meet for a FGC without the presence of the child victim:

*Only if we as the parents of those children can talk about it and sort it out without the presence of the children first, then the children can now follow (SOYR9).*

- **Timing of FGC**

The correct timing of the FGC is crucial in increasing the likelihood of its success. Flaten (1996) proposed that victims of serious offences need time; perhaps up to a year should pass before mediation is attempted. Umbreit and Bradshaw (1997), however, insist that they have found strong victim support for holding mediation sessions sooner rather than later. Henderson and Gitchoff (cited in Immarigeon, 1999) found that victims are likely to respond differently (usually less positively) if they are approached immediately after the occurrence of crime than they would several weeks later.

Many YRs reported that, even for them as offenders, it took time for their anger towards their victims and their victims' families to dissipate, particularly if they felt wrongly accused. Similarly, the victims also need sufficient time to recover. The respondents' perceptions regarding the appropriate time for the convening of the FGC were mixed. Some believed that only after the feelings of anger had dissipated in both parties should the victims be approached to participate in the RJ processes:

*After one year, when the anger has simmered down a bit (YR8).*

*It should not take place immediately after the offence. The scars are still fresh. The victim and/or his family are still angry. It should be held after a little while, after the scars have healed a bit. Say after a year or two (YR1).*

Whilst many respondents were in favour of the FGCs being convened a while after the offence, there were others – though few - who felt that FGCs should be held immediately after the offence:

*I think it should be done immediately. We do not know what will happen as time go on. For people to be able to talk, the earlier the better (YR16).*

#### **4.11 ADDITIONAL COMMENTS & SUGGESTIONS REGARDING THE RESEARCH TOPIC**

At the end of each interview, the research participants were asked to make any additional comments or suggestions with regard to the research subject matter, raising any issues that they felt were not covered in the interview. The following were some of the additional themes and associated comments and suggestions made:

- **False accusations**

A recurrent theme was that not all sex offences that are reported as rape are in fact 'rapes':

*Sometimes we as parents overreact, only to find out the children had consensual sex. These girls are quick to wake up the next day saying that they have been raped just because they want to look good to their parents (SOYR5).*

Most YRs and their SOs felt that most of the victims did not have intentions to press charges against their 'alleged' young offenders because they knew they were not raped, but that they felt compelled to do so because of pressure from their families. Hence, for those cases that proceeded to trial, the YRs would often be vindicated by their alleged victims, who would turn against their parents and confess in court that the sexual intercourse had been mutual and consensual.

- **Sex offenders are different**

Some YRs were concerned that they would be treated like any other 'rapist', forgetting that there were unique circumstances in each case:

*I want to end by saying that not all sex offenders are behind bars because they want to. Often they are there because they had a relationship with the*

*victim. The sexual incident occurs within the relationship. Offenders need to be differentiated (YR20).*

It can be inferred that since YSOs differ, they also require an individualised approach. In the practice of diversion, there seems to be a preference for a group work method even in dealing with YSOs. Whilst the group method is helpful in achieving certain aims of the programme, it can also mask some of the individual needs and problems of each child.

- **Integration of religion into rehabilitation**

The additional point about the integration of religion into rehabilitation has recently received some attention in the field of counselling. Ross (2010: 334) argued that, in a country such as SA, which has diverse multicultural and religious beliefs “understanding the religious and spiritual context of the client... can potentially enable practitioners to render more sensitive and appropriate interventions”.

YR13 below described, in great detail, the perceived relationship between religion and rehabilitation. At first glance, he may sound as though he is giving a sermon, but a closer look reveals that he is making an important point about the power of religion in rehabilitation:

*I will share with you about my personal experience. You see when you attend these rehabilitation programmes and you have been introduced to God. You are no longer undergoing these programmes to impress so you can get a good report but it is now between you and God. Somebody that I cannot bluff... cannot tell lie to.... I cannot cheat. Somebody who sees me whatever I do where I go. This brings about real change. In a sense that I will know that what I am doing I am doing it for God. He will reward me at the end of the day. When you fear God, you are likely to change forever because you fear God and you know that you cannot cheat God. I will tell you that even when I was at NYC, I attended all these different rehabilitation programmes but I was still doing all the wrong things like smoking dagga, taking drugs, etc. My old*

*ways of life were still with me. I would advise you that in all these rehabilitation programmes there need to be a space for our Jehovah. I am telling you, you will see wonders (YR13).*

#### **4.12 OVERALL CONCLUSION**

The dynamic circumstances surrounding the YRs' sex offences differ from the traditional views of rape. Most YRs had some sort of a social relationship with their victims, and they claimed that their sexual encounters with them were often consensual.

It needs to be pointed out that, the notion of consensual sex within some sort of a love relationship as claimed by some YRs, needs to be accepted with caution as it is a highly contested issue in the literature. For an example, since most of the victims of the YRs were children, Peacock and Booyens (2007) argues that the participation by children under the age of consent in sexual activities with adults or older children even if there was no force used may appear as consensual. The victims' advocates acknowledge that in reality the child may be a victim of "an abusive family life (physical, sexual, emotional) suffers low self-esteem, lacks economic alternatives...(Kreston, 2004 cited in Peacock and Booyens, 2007: 180).

The circumstances surrounding their sex offences often suggest that they did not use violence to force their 'victims' to engage in these sexual encounters. It would seem that these are some of the dynamics that motivated the prosecutors dealing with these youth sexual 'offences' to divert them to a residential programme.

Most factors that were identified as contributing significantly to youth sex offending in SA seem to point to the devastating effects of poverty. It was shown that most YRs come from overcrowded, criminogenic and poor economic family backgrounds. The importance of parents and guardians to provide sex education to their children was acknowledged by both YRs and their SOs. However, all SOs confessed that they

found it very difficult to talk to their children about sex. As a result, sex education is left to peers, which leads to experimentation, as pointed out by some YRs.

The research data showed that FGCs were only convened with very few YRs who believed that they helped them to find closure and to achieve reconciliation with their victims. In cases where FGCs were not convened, respondents believed that it would have helped them to find closure and reconciliation. These YRs reported that their relationships with their former victims and/or their families were often characterised by tension and hatred for each other. This pointed to a need for a restorative approach to dealing with youth offending and thus to promote healthy social relationships, which would ultimately contribute to peaceful communities.

The criminal histories of the YRs showed that this was the first sex offence for all YRs. The research data seems to suggest that the YSORDP helped to deter the youth from engaging in further sexual offending behaviour, as none of the YRs who reoffended, engaged in sexual offences, though they did engage in other criminal activities. The reintegration processes of the YRs, as described in this study, showed that they needed enormous amounts of support in their transitions back to the community, although most did not receive such support. It was found that, if such social support is not provided, the interventions that were done with the youth are more likely to have been wasted, since they were likely to reoffend in other non-sexual areas.

The research participants provided very insightful recommendations regarding the structure, content, facilitation, and duration of YSORDPs, based on their experiences with the DYC youth sex offenders' programme. This also applies to the possible benefits and challenges that can be anticipated in the application of YSORDPs within the RJ framework in managing YSOs in SA. These will be considered again in Chapter 6 when overall conclusions and recommendations are discussed.

The next chapter presents the research data from the professionals dealing with YSOs and/or their victims.

## **CHAPTER 5**

# **PERCEPTIONS OF PROFESSIONALS DEALING WITH YOUTH SEX OFFENDERS AND/OR VICTIMS**

### **5.1 INTRODUCTION**

This chapter analyses and discusses the perceptions of the thirty-one (31) key professional informants who were interviewed as a third sample set. They were surveyed to explore the practice related research variables in relation to the implementation of YSORDP within a RJ framework.

The research data is presented according to three major clusters of youth justice service providers. The first cluster of interviewees from the justice sector is made up of twelve (12) respondents: six magistrates and six prosecutors. The justice sector has been divided into two groups because the magistrates and the prosecutors perform different functions in the administration of justice. The magistrates are expected to be impartial, whilst prosecutors are expected to build cases against the offenders throughout the criminal justice procedure. The second cluster was composed of social workers who operate in the child justice system (CJS); more specifically, it was made up of six (6) probation officers (POs) and five (5) social workers working in the youth secure care centres (SCCSWs). The third cluster was the NGO sector composed of eight (8) community based social services professionals, some of whom were involved in the facilitation of community based diversion programmes. Of the eight (8) NGO social services professionals, two (2) were from organisations that worked mainly with youth offenders, two (2) came from organisations that worked only with the victims of child sexual abuse, and four (4) were from organisations that worked with both youth offenders and the victims.

The discussion of each research variable will only focus on the relevant professional category of role-players who are involved in a specific area of practice under discussion. For an example, decision-making in diverting YSOs will only be based on the perceptions of the magistrates and prosecutors since they are the only role-players vested with the power to authorise diversion.

However, certain variables were explored with all three sets of samples. This was to determine if the respondents shared similar perceptions on certain research variables or whether these perceptions differed according to their roles in the administration of youth justice in SA. The discussion of the research data is presented in the sequence in which the objectives of the study that relate to the professionals have been outlined in Section 1.7 of Chapter 1.

## **5.2 PROFILE OF THE PROFESSIONAL RESPONDENTS**

Table 10 below presents a profile of the respondents to give the reader an overview and composite picture of the professionals who formed the third sample set. This is followed by a brief discussion of the profiles of the various groups of respondents. The research participants and their respective organisations were assigned numbers so as to ensure anonymity for their participation in the study.

**Table 10: Respondents' gender, current occupations, & years of experience in current jobs**

R	GENDER	CURRENT OCCUPATION	YEARS OF EXPERIENCE IN CURRENT JOB
<b>JUSTICE CLUSTER</b>			
<b>MAGISTRATES (MAG)</b>			
1	Female	Magistrate	6-years
2	Male	Magistrate	17-years
3	Male	Magistrate	20-years
4	Male	Senior Magistrate	10-years
5	Female	Chief Magistrate	9-years
6	Female	Magistrate	8-years
<b>PROSECUTORS (PROS)</b>			
1	Female	Control Prosecutor	10-years
2	Female	Control Prosecutor (Sexual Offences)	9-years
3	Female	Senior Prosecutor	20-years
4	Male	Senior Prosecutor	10-years
5	Female	Control Prosecutor	21-years
6	Male	Senior Prosecutor	10-years
<b>SOCIAL WORKERS IN THE CHILD JUSTICE SYSTEM CLUSTER</b>			
<b>PROBATION OFFICERS (PO)</b>			
1	Female	Senior Probation Officer	6-years
2	Female	Probation Officer	7-years
3	Female	Probation Officer	23-years
4	Female	Provincial Manager (Probation Services)	13 years
5	Female	Probation Officer	6-years
6	Female	Probation Officer	22-years
<b>SECURE CARE CENTRE SOCIAL WORKERS (SCCSW)</b>			
1	Female	Chief Social Worker & Child and Youth Care Worker	16-years
2	Female	Social Worker	8-years
3	Male	Social Worker	2-years
4	Female	Social Worker	1-year & 3-months.
5	Female	Social Worker	7-years
<b>C. NGO CLUSTER</b>			
<b>NGO RESPONDENTS WORKING MAINLY WITH OFFENDERS (NGO-O)</b>			
1	Male	Facilitator and Manager of Peacemaking and Restorative Justice Dept	12-years
2	Female	Social Worker	4-years
<b>NGO RESPONDENTS WORKING MAINLY WITH VICTIMS (NGO-V)</b>			
1	Female	Social Worker & a Play Therapist	10-years
2	Female	Social Worker & Masters Degree Student in Social Justice	1-year
<b>7. NGO RESPONDENTS WORKING WITH BOTH VICTIMS &amp; OFFENDERS (NGO-B)</b>			
1	Male	Intake Worker & Programme Facilitator	7-years and 6-months
2	Male	Social Worker	3-years
3	Female	Manager of VOM & Diversion Programmes	5-years
4	Female	Social Worker	17-years

## **Gender**

- With regard to the overall gender representation amongst the professional respondents, 71% (22 out of 31) were females and 29% (9 out of 31) were males.
- The justice sector shows an equal gender ratio representation, male to female, of 1 to 1. The social services sector gender representation shows a male to female ratio of 1 to 4.

## **Current occupations**

- Thirteen out of 31, almost half (42%) of the respondents occupied senior positions in their current jobs.
- In the justice sector, all the prosecutors were either senior or control prosecutors. One magistrate was a Chief magistrate, whilst another one was a senior magistrate.
- The social workers who operated in the child justice system, one was a senior PO, one was a provincial probation services manager and one was a Chief social worker in the secure care centre.
- In the NGO sector, two were managers in their different departments in addition to their respective therapeutic roles.

## **Years of experience in their current jobs**

- The highest number of years of experience a respondent had in his or her respective occupation at the time of research was 23 years (a PO), whilst the lowest number of years of experience a respondent had in the current occupation was 1 year (NGO social services professional).
- The overall average number of years of experience the respondents had in their occupations during the period of this study was 10 years. The lengthy period of experience many respondents had in their current jobs was in line with the type of key informants that I targeted, since I believed they would bring rich insights to the study.
- The justice sector and the POs' median years of experience in their current jobs were above the median of 10 years, at 12.5 and 12.8 years respectively. The

SCCSWs and the NGO sector social services professionals fell below the median of 10 years at 6.8; and 7.3 years respectively.

## **5.3 MANAGEMENT OF YOUTH SEX OFFENDERS THROUGH DIVERSION**

### **5.3.1 Decision-making in diverting youth sex offenders**

The study was conducted at a very exciting time in the field of child justice in SA. There was much anxiety amongst justice officials and other role-players about their different roles in the new child justice legislation (CJA). For instance, in the past, the prosecutor had the prerogative to divert and finalise youth offences. The CJA brought in a new approach to diversion, as discussed in Chapter 1.

#### **Magistrates**

The magistrates who responded cited the following as factors that informed their decisions to divert:

- **The severity of the sex offence**

*I think we have to look at the severity of the offence and assess the case on its merits (MAG3).*

- **Joint decision based on the assessment of each youth offender**

The response that follows is based on one of the interviews conducted prior to the implementation of CJA. Some magistrates were aware of the changes the new legislation was bringing to the area of decision making to divert. For instance, each youth offender needs to be assessed individually, and a joint decision needs to be taken:

*If the prosecutor says this child needs to be diverted I will divert ... but with the new law coming from the 1st of April, all is going to change, because the magistrate is going to be sitting with the prosecutor, the social services people, people from secure care centre, probation officer, the guardian... we*

*will be making a decision of that child's future come together and they are going to evaluate that child (MAG1).*

MAG1's response illustrates a good understanding of the provisions of the CJA around the purpose of assessment and preliminary enquiry. As stated earlier, the CJA was in its infancy stage at the time when this study was conducted.

- **Views of the victim**

Consultation with a victim prior to finalisation of a decision to divert was one of the very important aspects in this area of practice, which was raised by one magistrate:

*Diversion can only be of use if the views of the victim have been taken into account and whether it's practical to do so (MAG6).*

The views of the victims as raised by the justice officials as one of the important considerations that they have to make when diverting any youth offender is in line with the RJ philosophical framework, which is a completely different approach from the one used in the past. Previously, youth offenders would be diverted and the cases would be withdrawn without the victim's awareness. Although the new approach to diversion, as stipulated in the CJA, seems plausible, it brings with it a number of challenges. A major one relates to the victim's cooperation: even if decision makers may be convinced that a case is suitable for diversion, the victim and/or his or her family may not share the same views. This emergent research theme was further explored with other respondents.

- **If unwillingness is unfounded, will proceed with diversion**

MAG6 was asked whether she would continue with diversion even when the victim disapproved. She was very clear that she would proceed with diversion, if the victim's reasons for disapproval were not justified:

It depends; sometimes the unwillingness is unfounded, then I would still (proceed). But if the victim is not willing because there are real fears, then of course I would not (proceed) (MAG6).

MAG6's assertion raises questions for both advocates and skeptics of RJ. Skeptics would argue that such an approach serves only the interests of the youth offender, while neglecting those of the victim. Conversely, advocates of RJ may argue that such a decision is against the principles of RJ. In other words, this would be seen as a neglect of some of the initial intentions of diversion, which relate to the promotion of RJ responses to the management of youth offenders. I explored this interesting research theme further with some prosecutors, as will be seen in the next subsection.

### **Prosecutors**

The research data on the factors that most prosecutors cited as influential in helping them to decide to divert included the following:

- **Consultation with the victim**

PROS6 felt that the views of the victim were important and that he would not proceed with diversion if the victim did not agree:

*No, you cannot divert the offender and exclude the victim. For the offender to be rehabilitated, the victim must have consented, and the victim must have received an apology. It is very vital for both parties, especially if they come from the same community (PROS6).*

PROS6's view is contrary to that of MAG6, presented earlier. It would seem most of the victims, similar to society in general, do not understand diversion and how it can have long-term benefits for all the stakeholders. Neither victims nor society in general are likely to approve of diversion, particularly if they are consulted immediately after the offence has occurred, when emotions are still running high. Therefore, a number of deserving youth offenders may not benefit from diversion.

- **Dependent on the age and assessment of the youth offender**

The responses from many of the prosecutorial respondents on the diversion criteria seem to reflect a punitive approach to dealing with youth offenders, as can be observed below. The obsession about age categorisation of child offenders as a criterion discriminates against older children who, according to the Constitution of this country, as long as they are under 18 years of age, are still children. The circumstances surrounding the offence need to be studied closely in making a decision to divert rather than focusing primarily on the age of the child offender. Even though the importance of assessment has been noted by the justice officials, there is still a strong pre-occupation with age as a determining factor regarding the decision on whether to divert or not:

*One needs to look at different factors, but if you only look at the age factor, I would not go over the age of 15 years. One needs to understand that we get hardened criminals at the age of 16 and 17. But even with the 16 and 17 year olds, it also depends on personal circumstances (PROS1).*

- **Victim's loss of interest in the case**

The CJA states that diversion involves the referral of cases away from the formal criminal justice system in cases where there is strong enough evidence for prosecution. The CJA states that diversion should be preceded by the child's acknowledgement of guilt. Gallinetti, Muntingh and Skelton (2004: 33) point out that it is "imperative that children are not diverted to a programme ... if the state does not have sufficient evidence to prosecute. It cannot resort to diverting a child as a 'second prize'." The responses from PROS3 as presented below raise a very contentious issue, which illustrates one of the dangers of giving only a single professional role-player the prerogative to divert, e.g. when a victim has lost interest in pursuing the case:

T: What would you do in cases where the victim has lost interest in the case?

R: *It's bad for us because I can't go on trial because if the victim is required to testify he or she will testify badly. If the victim does not want to testify, I would send the accused child for diversion in any event (PROS3).*

T: Even if he does not admit?

R: *I will still send him to diversion because I can't prosecute him. Rather for me instead of withdrawing the case and he walks free; I would rather send him to diversion where he will learn something (PROS3).*

Arendse (2007) and Wood (2003) also believed that, if prosecutors are given wide discretionary power to divert offenders, as was the case in the past, it can result in different forms of prejudices against some young offenders. The new approach to diversion decisions, as stipulated in the CJA, is thus an attempt to curb the wide discretionary powers of some role-players, as had been the case in the past.

- **Diversion non-applicable to re-offenders**

The responses from the justice sector seem to suggest that diversion should not be considered at all for youth re-offenders. When PROS6 was asked about this, he replied:

T: What do you do in case of youth re-offenders? Would you consider diversion of a youth re-offender?

R: *No, it's only for first offenders.*

T: Would you then not consider other circumstances surrounding the offence like you said you would in the first offence?

R: *No, no, no (expressed in a strong voice tone and disapproving facial expression). We continue with the case if it is a second offence. Other factors will be considered as mitigating (PROS6).*

PROS4 and PROS5, who were interviewed simultaneously in a con-joint interview on the applicability of diversion to re-offenders, responded as follows:

T: So you think re-offenders are not suitable for diversion?

R: *I don't think so.... it depends on certain offences. But the main thing, I have talked to a lot of prosecutors, they say we gave this guy already a chance (PROS4).*

Both Rs: (In unison voice) *It's a once-off thing (PROS4 and PROS5).*

R: *It creates a perception with juveniles that if they are under a certain age and they commit crime, they will be given a chance to go on diversion. That is why we make it very clear that it's a once off thing. If you don't comply or if you re-offend sorry this is the end of the story (PROS5).*

### **Summary**

The responses from the prosecutors seem inconsistent and contradictory. They had stated earlier that assessment is important in helping to decide which way to proceed with each youth offence, and yet, assessment is irrelevant when the child is a re-offender. This indicates a clear punishment oriented approach. This approach was reflected in the re-drafted Child Justice Bill (CJB) of 2007, which introduced a diversion register as one of the features of the new child justice system.

### **5.3.2 Referral of youth sex offenders to the residential diversion programme**

The main youth justice service providers that are involved in the referral system to YSORDPs are POs and SCCSWs. The CJA clearly outlines the processes and protocol that need to be followed by the different role-players whether to a community based or a residential diversion programme. Most of the respondents were indeed familiar with the referral processes on paper but in practice, it was a different story. As pertaining to the referral system of YSOs to YSORDPs the respondents identified major loopholes that have a negative ripple effect on other spheres of practice. These include reporting to the court and after-care services for the ex-YSOs, once they have completed the programme and once they are released back into the community. The challenges that were identified by the POs and SCCSWs included the following.

- **Lack of close working relationship between different role-players**

PO4 was concerned by a lack of a cohesive and coordinated approach to youth justice service delivery:

*The new Act (CJA) states that all children would be first and foremost referred for assessment. So the first critical role is that of assessment by the probation officer. The probation officer would make recommendation to the other role-players as to what will be most appropriate for the child. So the other role-players we're talking about are justice officials, service providers. There is a need for close working relationship because we're targeting the child, and if we can all join our skills and make sure that this child does not reoffend, by that I think we will have achieved our goal (PO4).*

- **Lack of communication and feedback between role-players**

The challenge identified by PO4 above was supported by PO2 who was very frustrated with the consequences of ineffective referral system of YSOs:

*R: Right now the POs are the ones who play a main role in the referrals of the child... and working together with the residential care.... now there must be communication between us and them about the referrals (PO2).*

When PO2 was probed further on this, she replied:

*T: Do you think that is happening now?*

*R: Not as much as we wish to. For instance we see a child who is a sexual offender but then when we get to court, the feedback never comes back to the PO as to what happened with the child, even if the PO has recommended the diversion programme. Nobody comes back to say it has been approved or not. Whether the child went to the recommended center for the recommended diversion programme, so the diversion is not properly administered (PO2).*

*T: So would you say there needs to be a close communication between all those who are involved?*

*R: Yes, because we end up sitting with a question mark. You started to see the child before he went to court so then you are left with these questions for some time, what*

*happened to that child? Did he go to the centre? Did he attend the programme? Did he complete the programme? If there's any change... so the communication is important (PO2).*

T: Anything you do in your part to make a follow up?

R: *Yes, in our part we can go to court on the very same day when we just saw the child and to check in the afternoon as to what happened to the child. Is the child in the residential care as we recommended? If we see that yes, he is there, then now you liaise with the centre maybe on weekly bases in terms of phoning them every week and they must also send us a written report (PO2).*

- **Secure care centre internal referrals to the residential diversion programme**

The complications surrounding the referral system of YSOs to YSORDPs, as pointed out by a SCCSW, is the fact that some referrals are recommended by SCCSWs from the secure care facilities:

*We also do our internal referrals of which for me that's where it works better because if a child was not diverted in court and then he comes and we find a lot of information as residential social workers and we must be able to divert them (SCCSW3).*

It would seem SCCSWs are more likely to gain more collateral information on the child offender and the circumstances surrounding the offence than the POs at court, since they are likely to spend more time with the child whilst he or she is awaiting trial at the centre. However, as was pointed out by some POs, if such recommendation is accepted by the prosecutor and the child is indeed enrolled in the YSORDP, then that process simply by-passes the PO, who should be acting as a case manager for the child.

- **Overcoming the communications gaps**

When the communication gap emerged as a recurrent challenge the respondents were probed further on how they could overcome it. They made several suggestions:

report writing, telephonic contacts for updates on the progress of the child, and commitment from probation officers as case managers:

T: What can be done to overcome the communications gaps you have identified?

R: *It goes back to the communication, which can be done telephonically and report writing. We can phone them and ask how is the child doing? Also they need to send us the progress reports from the first one up to the final one of how the child is doing. They must never just send us the first reports but you never get the final one. This leaves you with questions, whether did the child attend all the other sessions or what? It requires report writing and telephonic contacts for updates on the progress of the child and commitment from you as a probation officer to really facilitate that communication (PO2).*

T: So you say that residential social workers must send the reports to you rather than to the court?

R: *Yes, because that is the other problem like I said earlier that we see the child now. We refer the child and after that we never hear anything but only to find that he is attending the programme and the reports are sent directly to court. You are completely left out and having no clue (PO2).*

### **Summary**

The responses from both from the POs and the SCCSWs suggest that there are huge challenges in the implementation of the referral system of YSOs to the residential diversion programme. An uncoordinated referral system can contribute towards general recidivism amongst youth offenders. Firstly, the POs are hardly ever informed by the court officials whether their residential diversion recommendation was accepted by the court. Secondly, the SCCSW's report goes directly to the court when the child has completed the diversion programme rather than to the PO who should be the case manager. The children thus fall through the cracks due to an ineffective referral system.

### 5.3.3 Facilitation of the residential diversion programmes

There were varied responses amongst research participants on this research variable, and the following some sub-themes emerged:

- **Incorporation of both individual and group is imperative**

Diversion programmes are mostly offered in groups. Most respondents reported that they were not content with the exclusively group-based method of facilitating diversion programmes. They preferred a combination of both individual and group processes:

*I think the combination of both individual and group counselling ... because there might be very personal intimate things that the child wants to share but will not share in a group discussion. Group you're just dealing with basic information. If it's one-on-one where you're talking counselling, you would definitely need one-on-one (MAG6).*

PROS4 mentioned his frustration with the exclusive group method approach, arguing that this delays the system and that it may discourage justice officials to make use of diversion even where suitable:

*What happens in some of these processes is that they tell you now they say we can't start the programme because we can't do it for just one person. They say they need five or ten so they can start the programme. So everything is a mess... it's a group programme that requires a certain number of young offenders so they can start the programme. So that all delays the system (PROS4).*

It would seem the justice respondents were not in favour of unnecessary delays for enrolling the offenders to a programme and felt that the child could be seen individually in the meantime. This could serve as an opportunity for in-depth individual therapy. When the child is eventually enrolled in the group programme, it would better serve the group related programme objectives.

- **Opposition to the use of volunteers**

Due to the shortage of social workers in SA, coupled with funding challenges, some NGOs have opted to train volunteers to facilitate the diversion programmes. Others make use of auxiliary social workers to facilitate the diversion programmes. However, the facilitation of diversion programmes by non-professionals has raised a serious concern amongst other role-players. They are concerned about the quality and the effectiveness of such an approach, as reflected in the following two responses:

*Their (volunteers) hearts might be in a right place but they might not have the necessary skills to be able to assist (MAG6).*

*They (volunteers) have the compassion and they are enthusiastic but it's not that we say they don't play a role, but they still have to be trained and study for the degree (PROS5).*

Such responses indicate that, even though the volunteers might have the desire to help, this on its own is not sufficient, particularly in working with YSOs. This perception is shared by another prosecutor who also seems vehemently opposed to the use of volunteers:

*My problem with volunteers, they start many years sort of helping out with cases and at the end of the day, they do more damage than good because they don't have the skills. They don't have the knowledge and they don't have the experience. Sexual offenders programme should be done by professionals. At the end of the day they are volunteers ... they will never be experts because they do not have training... if the guy goes to training for two weeks and now this guy becomes an expert. No ways (PROS4).*

- **Volunteers have other roles to play**

Once I realised that the respondents were very opposed to the use of volunteers in facilitating the YSORDPs, I probed whether there was in fact a place for volunteers in

the area of practice under discussion. The two areas that were identified as possible places where volunteers could contribute were: offering social support and monitoring youth sex offenders; and presenting educational components of the programme, as shown in the following two responses:

*Visiting to see how the child lives make sure that the child attends and find out why he did not attend if he did not. You can use extra help of volunteers for those kinds of things (PROS4).*

*Volunteers should do the educational stuff. They can be seen individually by professionals and in a group by the volunteers (PO5).*

- **Social workers since they have skills of working with individuals and groups**

It was felt by some respondents that social workers are suitable to facilitate the YSORDPs since they are trained in both individual and group methods of interventions. Part of the justification was that, if an issue emerges in a group session that warrants individual attention, social workers would be in a position to follow up on it rather than having to refer it to another professional to deal with it:

*Definitely a social worker. Someone with therapeutic skills because in a group session maybe it can come out that a boy says that he was sexually victimised. Then you need to deal with that. So definitely the facilitator must have skills to do a one-on-one counselling as well, because say for example you do the group but now you find out that Bonga was sexually abused by his father and now you refer him to me. I don't know Bonga and you have already established a good relationship with Bonga, which can also be ruined when you refer him to another person (SCCSW5).*

It would seem most of the respondents believe that the facilitation of YSORDPs, whether individually or in a group, should only be handled by professionals. People who are not trained in social group work may not be effective even in presenting the educational material to the group. Group work is employed in social work to achieve

a number of purposes. A person who is not trained in group work might not be able to manage group dynamics and to help the group to achieve its goals. Group work with YSOs can further be complicated by a number of developmental challenges the youths would be going through because of the human developmental stage that they are in at the time.

- **Essentiality of family involvement in the residential diversion programmes**

There seems to be a tendency amongst some helping professionals to provide counselling for YSOs without involving their families. As discussed in Chapter 2, the family systems theory considers family experiences important in shaping and maintaining abusive sexual behaviour. This was precisely captured by SCCSW4 who said:

*R: Firstly, the family of the child needs to be there. Most of the children are first time offenders. Secondly, referring a child to any specific service you also need to address the needs of the family so that there should be a fit. Remember it is a system. If the child has a problem, it affects the rest of the family. In addressing the child, you also need to address the other members of the family because they are a unit (SCCSW4).*

T: Are you saying to me most of the helping professionals are so occupied in working with the child that they end up doing nothing with the family?

*R: Yes you are right. I think the family needs to be engaged in the process of rehabilitating the child. That is why I experience problems so much about working with children from outside our province. We do get referrals from other provinces. You need a probation officer to help you. You can't reach them.*

T: Can't you go there?

*R: Ah... I don't know. Yes we could go. That would be an extra mile. That would not happen under normal circumstances. Remember we are residential social workers. You will find that a PO has the access. I think it's in their job description to go to the family to make an assessment and even speak to the victim. So what I'm saying is if you have a PO that is why they must be your link with the family (SCCSW4).*

It is clear that SCCSW4 understands the importance of the involvement of the family when working with a child offender to be able to make meaningful interventions. However, she is not prepared to go the extra mile to advocate for this form of intervention in the organisation where she is employed.

- **Necessity of case-conferencing with other professional role-players**

The research data from the professionals generally suggests that there are no case conferences amongst different professionals. The response from NGO-V2, as presented below, shows that the services that are offered in the diversion of YSOs are fragmented and focused on short-term goals. Even though practitioners working in this field appear to be aware that they should be working with each other, none of them is prepared to take the initiative even to organise a case conference.

NGO-V2, who worked with the victims further on case-conferencing, responded as follows to probing questions:

T: Do you consult with other role-players like for instance the social worker who might be working with the offender of the victim that you are working with?

R: *We don't get to it but I think it would be a brilliant idea. I have a few cases where I would have liked to sit with the statutory social worker or the police officer or whoever to discuss... but it does not happen. I do blame the statutory social worker (NGO-V2).*

T: Just for clarity, are you referring to POs?

R: *We don't deal with the POs but then there are other statutory social workers from the DSD (Department of Social Development) in terms of sexual offences (NGO-V2).*

The approach to working with victims and offenders as described by NGO-V2 above does not reflect long-term benefits for the young offenders, their victims or the community in general. social workers have the professional responsibility of translating the constitutional mandate into policy and professional practice (Gxubane, 2010), but they are falling short in this regard.

- **Necessity of extra training in addition to a social work degree**

The general belief that social workers are well trained to be able to deal with YSOs was challenged by many respondents, most of whom are social workers themselves. They insisted that a social work qualification on its own is not sufficient and that it does not necessarily make a person skilled in working with sex offenders. They felt that working with YSOs is a specialised field. Even social workers would need additional training to expand their knowledge and skills to be able to intervene effectively in working with YSOs, as reflected in the following response:

*I think it needs certain expertise, you can't say because I'm a social worker I can do that. You must get extra training on that in terms of knowledge, attitude and skill (PO2).*

The above perception is supported by SCCSW4:

*It's not a simple diversion programme to run. Do not put someone because they have a social work degree. To run such programmes you need additional skills and knowledge (SCCSW4).*

- **Trained auxiliary social workers are capable**

As mentioned earlier, due to a shortage of social workers in SA, the trend in the government and the NGO sector has been to make use of trained auxiliary social workers to facilitate the diversion programmes. This was supported by a PO1 who held a senior position in a government department (see Table 10):

*In some rural areas they had only one social worker who was not coping. Today they have four auxiliary social workers who are capacitated by the in-service training that they received. We can use people who have got experience and not necessarily qualifications. The programmes can be classified according to which ones can be facilitated by the professionals, those that have a therapeutic component and which ones by the non-professionals (PO1).*

Almost all the professional respondents in this study pointed out that working with YSOs requires an advanced level of knowledge and skills, and that not even a social work degree is sufficient.

### **Summary**

The research data amongst participants indicates an overwhelming support for professionals to facilitate the YSORDPs. The respondents expressed vehement disapproval of the use of volunteers, whether trained or not, although some felt that volunteers can play a role in this practice area, such as monitoring and providing moral support to the YSOs.

The research data also indicated that social workers working in the area of rehabilitation of YSOs need additional training to their generic social work qualification but not in the form of in-service training and short-courses. The respondents felt that work with sex offenders was a specialised area of practice and that it needed expertise. However none of the respondents specified the level of training that would be required for such competency.

### **5.3.4 Family group conference**

As mentioned in Chapter 2, FGC is one method that practitioners apply as a RJ process particularly with youth offenders. There are disagreements in the field of RJ regarding the suitable time for convening of a FGC. This sub-section presents respondents' perceptions with regard to the time they consider appropriate for convening a FGC as part of the YSORDP:

- **Delayed convening of a FGC**

Most of the respondents felt that a FGC needed to be convened a while later because both parties need preparation; high emotions will inhibit effective communication; cooling-off period after the offence has occurred is necessary; and, the victim's readiness will indicate a need for such an encounter.

PROS3 argued that a FGC needed to be convened some time after the incident had occurred:

*There was another case I dealt with of a child who committed culpable homicide. His mother wanted to see the parents of the other child right after the death of that child. I don't think its good idea to do it immediately. I would wait a while and maybe after the funeral because even if you go there after the incident the people will still be very angry. They are not going to hear what you would try to tell them (PROS3).*

PROS3 was supported by PO2:

*Not immediately while the emotions are still high from the victim's part. I don't think it will be effective. I think there must be a cooling-off period but I don't know how long because people differ (PO2).*

A respondent from the NGO sector working with the victims who also supported the idea that FGCs need to be held a while after the incident, justified her belief by linking it to the goal the practitioners want to achieve through convening a FGC:

*You have to wait quite a long period after the offence has been committed. If the objective is healing for the victim and others, you have to wait until they are prepared psychologically and emotionally to be able to have a dialogue (NGO-V1).*

Whilst most of the respondents acknowledged the importance of preparation and readiness from the victim's perspective, it is interesting that one respondent said that these were necessary from both parties. This respondent also pointed out insightfully the value of convening an FGC both at an early stage, and a while after the offence had occurred:

*I believe that before restorative justice process... there needs to be a preparation for the two sides.... when this thing has just happened is not so*

*good because emotions may still be in high and not allow effective communication. On the other hand, it may be good in a sense that it allows people to express what they feel and we should not run away from an opportunity to express emotions but they should be well managed so long as we are clear about the purpose of why we are allowing them to do it at that time (PO4).*

- **Convening of FGC immediately after the offence**

PO3 held a totally different view from many and believed that FGCs need to be convened immediately after the offence. This respondent linked her perception to how African culture approaches RJ processes:

*A lot of offenders you find that in the African community they almost immediately engage (PO3).*

### **Summary**

Most respondents preferred the FGC to be convened a while after the offence, but this should not be assumed to be standard practice. The timing of a FGC needs to be informed by a number of factors, such as the goal that the practitioners want to achieve. FGCs are an important part of giving effect to RJ, which can be integrated as part of the YSORDP. They therefore place a great responsibility on the social workers who are working with both the offender and the victim to liaise and assess the possible value and timing for such an encounter.

### **5.3.5 Victim vs. offender initiated RJ process**

The research data on the respondents' perceptions, as to whether the victim or the offender needs to initiate the RJ process, showed mixed responses. Most respondents felt that it would be against the ethos and philosophy of RJ if the process was initiated by the offender. They felt strongly that, according to the principles and values of RJ, it could only be initiated by the victim who had suffered the harm directly. Conversely, some respondents felt that it should be offender

initiated, because if it is not, the victim is unlikely to initiate it. In such cases, there would be no RJ response to dealing with the effects of crime.

- **RJ process needs to be offender initiated**

It was felt by some respondents that offenders who are honestly remorseful need to be encouraged to approach the victims to ask for forgiveness:

*The offender must take the first step and of course with our guidance and showing him the right way of approaching the family. The offender has to be genuinely feeling sorry. It should not be the issue of you must do it. We also need to be careful because the victim might not be ready (PO1).*

The respondents who were in favour of offender initiated RJ process felt that there was nothing wrong with the process being initiated by the offender. They further pointed out that they were constantly working on getting offenders to the stage where they were ready to meet and apologise to the victim, as described in the following response:

*You must get him to a point where he can go to the victim or we can set up this meeting where he can at a later stage apologise for what he's done ... but before that both of them get prepared. We work with the offender but.... we also work with the victim ... needs to be facilitated properly (NGO-O2).*

- **Needs to be victim initiated**

In contrast to the above, those respondents who felt that the RJ process needed to be initiated by the victim based their argument on the centrality of the victim as a core principle of RJ. This is reflected in the following response:

R: *It starts with the victim; I think they must phone the victim and ask if they are willing to talk and I think the willingness should come from the victim (PO5).*

T: From your experience are most victims willing?

R: *Most of them are not (PO5).*

- **FGCs are offender oriented**

Closely related to the question of whether RJ processes should be victim or offender initiated is a general belief, as noted above, that RJ processes are in fact offender oriented. The research data shows that most respondents believe that FGCs are offender oriented and that this needs to be changed:

T: People who are against RJ say that it is only offender oriented. What is your take?

R: *I think it's sad what you are saying because it's true though. I think that is where social workers play a vital role because we can't allow for a victim to be further offended (NGO-O2).*

- **Equal consideration for both offender and victim orientation**

A respondent from an organisation working with offenders believed that RJ processes can be either victim or offender oriented. He had looked at different countries in the world which would exclusively adopt either victim or offender orientation and only apply it throughout:

*There is a belief that restorative justice should be victim centered and also victim initiated. Which means that nothing happens until the victim is ready. In the US, they will not accept cases where the offender is the one making an initiative for the fear of re-victimisation and re-traumatisation of the victim. In Canada, you have a more 50/50 situation. In South Africa, we have a tendency where most cases are initiated by the offender because we have NGOs that are working in the prisons committed to rehabilitation of offenders. Here you have an approach that often goes against the belief of a lot of restorative justice practitioners that restorative justice should be more focused on the victims. My belief is that restorative justice approaches should give equal consideration for both the offenders and the victims. It can be initiated by either side (NGO-O1).*

- **Parallel oriented approach**

Herman (2004), though an advocate of RJ, asserted that neither RJ nor the conventional criminal justice system fully meets the needs of the victims. To address this shortcoming, Herman proposed a parallel system of justice. That is, two separate but related responses to crime, one focused on the offender and one focused on the victim. This line of thinking is that for RJ processes to be fair, they need to address the needs of both victims and offenders simultaneously, so as to increase the chances of their willingness to meet for an FGC. The following responses reflect this line of thinking:

*When the offender goes to diversion programme we must make sure that the victim also goes through counselling. It is parallel. We should accept that people do not heal the same time (PO1).*

NGO-O2, who was working mainly with offenders, responded to questioning on this research variable:

T: So you said that one social worker will work with the victim extensively and one will work with the offender extensively in your organisation?

R: *Yes, then we'll have case conferences as social workers to establish where is your client at and where is my client at... so when they are ready we come and they can bring somebody with say for instance she wants support from the reverend or whoever that is okay it's a support system... so we will bring them together and facilitate that process (NGO-O2).*

### **Summary**

The research data shows that there are differing views amongst the respondents as to whether RJ processes should be victim or offender initiated. Even though respondents were aware that RJ processes needed to serve the interests of both victims and offenders, most perceived FGCs as offender oriented. There seemed to be some consensus amongst respondents that practitioners need to be able to work with both the victim and the offender and encourage them to see the long-term

benefits of a RJ process. Therefore the process needs to be gradually encouraged in both parties, but not imposed.

### **5.3.6 Court reporting procedures**

The main youth justice service providers who are involved in the area of reporting on the outcome of a residential diversion programme to the court are the POs and SCCSWs. All the respondents in this study agreed that there are huge challenges in reporting after the YSOs have completed the residential diversion programme. The challenges experienced in the reporting procedures to court are similar to the ineffective referral system that was discussed earlier. The ineffective reporting procedures have a direct and negative effect on the services that are rendered to the youth in conflict with the law. The main challenges that were of major concern to the respondents as identified in the research data are presented below, according to the different professional groupings.

#### **Justice sector concerns**

- **A huge gap in reporting to court**

The research data seems to suggest that, once the youth offender has been referred to a programme, the court hardly ever receives a comprehensive report. As a result, they are left in the dark, as to whether the young person has indeed benefitted from the programme; this is reflected in MAG4's response:

*I think once a child goes to an institution from our point of view as the court, we look into the child we don't know what happened to the child. We are sitting in that court two years down the line, the very same child comes back with a different offence. Reporting on the progress of the child has been a huge gap that has always been worrying me. We need a detailed report that will inform the court whether the child has completed the diversion programme successfully or not. Whether the child has benefitted from the programme or not? Are there still any outstanding issues the court needs to be aware of? (MAG4).*

The concern that has been raised above seems to suggest a lack of accountability and unacceptable standards of practice amongst POs and SCCSWs. The court will often accept a recommendation for a child to attend a programme based on an understanding that they will be given a comprehensive report on whether the programme has benefitted the child or not.

- **Poor standards of probation officers' reports**

The concern for poor standards of POs' reports is closely linked to the poor accountability and standards of court reports, as described MAG6:

*The reports (from POs) must be of a decent standard and some deadlines have to be set. I think with the new Child Justice Act is a move I think towards accountability and reporting... there should be accountability in every sphere in each department in order to make sure that the objectives of the Act and of diversion can be achieved (MAG6).*

The concerns that are discussed above were also raised by Graser and de Smidt (cited in Gxubane, 2008: 13) who found that “magistrates frequently complain about the poor quality of, and gaps in, some probation officers pre-sentencing reports”. They attributed their findings to insufficient training of social workers who are appointed to act as POs. In a study that investigated the training needs of POs in the Western Cape, it was found that a profound lack of self-esteem among POs was due to an inadequately delivered probation service, particularly the pre-sentence reports. These scholars concluded that this is directly linked to social workers' lack of adequate training in probation work. In SA, any person registered with the South African Council of Social Services Professions as a social worker can be employed as a PO. Yet Graser (2006 cited in Gxubane, 2008: 13)) asserts that “probation work is a specialised field of service that requires much specialised knowledge, skills and qualities in the person who performs it. Training in social work alone does not necessarily qualify a person to act as a PO”.

- **Formulation of a basic standardised pro-forma report**

MAG6 felt that the pre-sentence reports that are presented to court by some POs do not meet the minimum standards as expected by the courts. She further recommended that perhaps a formulation of a standard pro-forma guideline would help the POs when they are required to compile pre-sentence report.

When MAG6 was probed further, she explained:

T: You mentioned decent reports, what do you think needs to be done to improve the standards of the reports?

R: *I think one has to maybe design a basic standardised report so that you have certain sub-headings that have to be answered in some way or another. It might be very extensive pro forma report but the format has to be... developed if it has to be used as a base then you should not have a problem (MAG6).*

Poor standards of court reports lead to other professional role-players in the child justice system developing a poor regard for the profession of social work in general. Once this attitude has been entrenched, it is difficult to change and re-gain the confidence of other justice professional role-players.

- **Training on assessment and identification of risk factors**

The theory on 'What works', as discussed in Chapter 2, is based on the principle of risk assessment, which has been found by Andrews et al (1990) and McGuire and Priestley (1995) to be effective in reducing recidivism. The principle of risk implies the assessment of risk and the prediction of recidivism, and it should determine the nature of social treatment to be rendered to the offender. Intensive services should be offered to a child who is assessed to be a high risk for re-offending, whereas a child assessed to be a low risk of recidivism should receive minimal intervention.

NGO-O2 concurred with the principle of risk assessment. This respondent felt that a good report needed to cover all the risk factors about each offender and that social workers often fail to cover this important part of a report on an offender. Therefore social workers need to be trained in correct risk assessment:

R: *I really think we need to train our social workers especially on a specialised field like this... when we write that recommendation and we really need to educate for identifying specific risk factors (NGO-O2).*

T: What are the risk factors? How do you determine that because, yes, know there are no guarantees on the person's behavior because we are human beings.

R: *Yes, we're unpredictable to a certain extent but there are red flags we need to be aware of so we can make more appropriate recommendations and be able to say, yes, that guy poses a risk. We can't put him in a residential diversion because he is going to be a risk to other children (NGO-O2).*

T: What would you consider as high risk factors?

R: *I think when we determine the level of risk we've got a specialised standardised assessment tool (form). In that tool there are themes you need look at to determine, especially where there is no victim empathy and no regret, you can know that he is going to do it again because there is no insight and no regret. Where there is all that thinking errors such as victim blaming justifications and not just normal anger and you can know because then he is telling you that I'm not sorry because it was not wrong. I would say a person like that needs to go to prison where he can't pose risk to the society. But on the other hand, you have another guy who committed still a very serious offence but you can see there is insight. Victim empathy and sincere regret I would say people like those can really benefit by going to such a programme, which can focus on rehabilitating and addressing the need within themselves to get that second chance in life (NGO-O2).*

Risk assessment needs to be understood as a process that the practitioner needs to engage with consciously in an attempt to comprehend fully the characteristics of an offender and his or her social environment rather than completing a tick-tick check list. The dangers of 'a tick-tick check list' could lead to inaccurate and deterministic perceptions of offenders, which seek to fit offenders into boxes.

- **Probation officers are overworked**

MAG6 who was unhappy about the quality of POs' reports was also sympathetic to the POs' failure to meet their court reporting deadlines and the poor quality of their reports:

*Everyone has to be mindful of the probation officers that they have big caseload and it's so difficult; I really feel for them, especially now with the preliminary enquiries, the reports that they have got to compile, and so on (MAG6).*

Whilst there is admittedly a shortage of social workers who can act as POs in SA, poor standards of reports cannot be justified, since they have a direct bearing on the image of the probation profession generally.

#### **Probation officers' issues**

The research data from most POs reflect a complete lack of clarity, unfamiliarity and confusion regarding the reporting structure and procedures in the area of residential diversion. The following response from a PO illustrates this observation:

- **Lack of clarity and confusion**

Probing PO6 in detail about the reporting procedures to court:

T: Explain to me how does the reporting to the court processes and procedures work?

R: *I haven't done residential diversion of a child yet. If I understand the CJA correctly, if it's a diversion then the court appoints a monitor. That monitor can normally be the APO (Assistant Probation Officer). So the child goes away to the residential treatment programme and when he comes back, feedback is then given to... I have not seen the centres (meaning SCCSWs) at court that did diversion. One of my colleagues that did this I'm not sure if they're going to appoint.....* (Noticing that the respondent is stumbling and battling to come up with a response I then re-phrased the question)

T: But what I'm interested to know is what would be your ideal way?

*R: I think the ideal way would be a PO or an APO is responsible for that because we're also going to do the aftercare and the monitoring after the child is released from the residential care programme. So it would be best if the report comes back to the PO or the APO or both. Then they can go back to the facility, have the discussion with them and then report to the court that this part of the programme was completed and the child is now outside (PO6).*

Once the youth offender has been through the programme and they are required to appear at court, they need to be accompanied by a progress or final report on the outcome of the diversion programme. In practice, however, SCCSWs do not inform the PO who initially made the recommendation and the report often by-passes the PO and goes directly to the court. When the child has successfully completed the programme, the court then releases the child without informing the PO, who is meant to be a case manager. As a result, the PO concerned will not be able to provide follow-up and after-care services, since they would not know the whereabouts of the child.

The confusing situation in practice is evident from the following extract from the interview with PO6:

*T: What happens when the PO sometimes loses the case if the report from the residential social worker goes directly to the court?*

*R: I am not sure what really happens. Look if a child is just sent for residential programme I'm not sure if we're talking about sexual offence.....ah...gee.... but I think we should.....if that is a diversion the residential programme then the facility can give feedback to the court when the child is done (PO6).*

*T: Who should do a follow up because if the PO is not aware that the child has come back to the court?*

*R: If the residential programme is say three months and the matter is diverted and the child is in place under supervision and guidance order. Say we will ask for nine months or for a year. Then obviously if you asked for a supervision and guidance order and on condition that the child also goes to the residential diversion programme. The PO and APO will be the person to get the feedback (PO6).*

T: Who should do the follow up?

R: *It should be the PO* (Expressed in a low and unsure voice tone) (PO6).

T: Do you think it is working?

R: *I don't think so because it's still very new. I have not personally done something like that. But I think if you look clearly at the residential youth sexual offenders' programme I think yes we're definitely going to need... but then the PO would have done your initial diversion order. The reports would have had to be written in such a way that the residential programme was not going to be the end of it. We will have to do that because if we write the recommendation for the diversion that the residential programme is going to be the end, the probation officer is not going to have any leg to stand on in terms of monitoring, as soon as the child is released from the residential programme. So then we will have to write that up as the supervision and guidance order* (PO6).

### **Secure care centre social workers' issues**

Whilst most diversion decisions take place at court, some of the diversion recommendations are proposed by SCCSWs. During my years of practice, it was found that some of the children that were sent to the youth secure centre to await trial were in fact suitable candidates for diversion. In such cases, a recommendation for diversion would be negotiated with the referring court's prosecutor. In the case of sex offences, it would be negotiated directly with and approved by the control prosecutor. I had one such case of a young person who had sexually offended against his younger sister. The POs would not know about these kinds of diversion arrangements. However, even in cases where the diversion was a PO's recommended, they are often left out by both the court and the secure care social workers, as the final report goes directly to the referring court's prosecutor.

- **Confusion and lack of clarity**

The research data from the SCCSWs reflected a similar pattern of confusion and lack of clarity, as described by POs:

R: *As the social worker in the residential care, I will run the programme and report back to the multidisciplinary team about the progress of the people you are working*

*with, and that should be considered important, because these are the same people who sent the child for diversion. So those people need report back (SCCSW3).*

T: Do you report back to the PO who recommended the residential diversion or to the magistrate or to both of them?

R: *That is one of the confusions we have had for some time. You will find that the child was referred by the probation officer but everything goes back to the magistrate and the prosecutor and then the probation officers are left out. That is why I say communication is very important but if the probation officer refers a child to a residential facility that probation officer needs to then communicate with those role-players at that residential care. This will ensure a flow of communication (SCCSW3).*

### **Summary**

The research data on reporting structure and procedures leaves much to be desired in the field of residential diversion. The confusion amongst social workers and passing of the buck has a direct impact on the after-care services that need to be rendered to the ex-YSOs upon release from the secure care centres. The children eventually fall through the cracks and hence, without support and after-care services, the chances of recidivism are very high.

### **5.3.7 Transition and after-care services for youth sex offenders**

The phase during which ex-YSOs are in transition from the secure care centre to after-care in the community is a very important one, because if it is not managed well, it could easily lead to recidivism. The research data showed similar confusion and passing of the buck between the POs and the SCCSWs with regard to after-care services. As a result, it seems that children do not receive any post-release support or after-care services. When the respondents were questioned with regard to who is responsible for the after-care services, they offered the following answers:

- **PO who made the initial residential diversion recommendation**

Some POs confirmed that the transition phase and rendering of after-care services to the ex-YSOs and their families is in fact their responsibility:

*We manage the case until it's out of the system. It is the probation officer who recommended the in-house diversion. So when he comes out we can take the child under home-based supervision for after-care services, meaning we have to do six months after-care service. As well as a follow-up and to observe as well as giving support to the family (PO1).*

*It's very crucial that the probation officer does not lose the child. I know that reality is they have a lot of children that they deal with on a daily basis but we have tried as a province to rekindle that value of a child having a case manager. Once, when you have assessed the child, you remain a case manager even if the child goes to an institution; we keep in touch with the institution to know what is happening because, if we don't make that follow-up and we don't know how the child is doing. It is true after the child has been released, there is often a lack of monitoring and unfortunately, that is the way children relapse. At the moment we have assistant probation officers who can also assist us with after-care (PO4).*

The perception that POs are the ones responsible for the transition and after-care phases was also shared by some SCCSWs:

*There would be a need for a follow-up in terms of looking at the family situation and the schooling of the child. That needs to be done by a Probation Officer, not by me: I am a residential social worker. Unfortunately, when a child leaves the centre, we close the file. There needs to be a clarification as to who should do what when the child is released from our care (SCCSW4).*

Some respondents from the NGO sector also believed that it was the POs' responsibility to manage the transition and after-care phase once the young person had been released back into the community, as argued by NGO-B2 below:

R: *Services need to be rendered to those children who have been released from the secure care environment. Remember in a secure care their freedom is restricted. Now they go outside and they have freedom of movement. We still need to see follow-up once or twice a month to guide them through for a period of six months. If there is no alternative diversion programme, it might lead the child to re-offend. That is why I said two years is an ideal period. They can spend six months or a year in a residential facility and the other part of the programme could be completed as post-release services (NGO-B2).*

T: Who should do that?

R: *If I recommend it's up to me to take responsibility again and to communicate with those people that facilitate that process. It is not their responsibility for them to make a communication with me because I am the one who recommended the diversion. I'm the middle man between the prosecutor and the secure care centre. It is up to us stake-holders to communicate to make our work a lot easier. Let's have a forum of everyone that has dealt with the child. Let's have a stakeholder's meeting about what should happen next to the child (NGO-B2).*

The research data showed that most respondents believed that the PO was the professional role-player responsible for after-care services of ex-YSOs who have been released from the youth secure care centre on completion of their residential diversion programme. Drawing from my own experience having worked in a secure care facility, an assumption existed amongst social workers working in the secure care centres that it was not a worthwhile exercise to inform the POs about the release of youth offenders because they did not follow up to render after-care services anyway.

Whilst some SCCSWs believe that the transition phase and after-care services were the responsibility of a PO, as reflected in the above responses, a significant number felt that it was the responsibility of SCCSWs. This pattern of shifting responsibilities between POs and SCCSWs could perhaps be attributed to the volume of work that is involved in the transition and after-care services.

- **Secure care centre social workers who worked extensively with the child**

A significant number of respondents felt that the SCCSW who had worked extensively with the child whilst he was enrolled in the programme at the centre needed to be the one responsible for the transition phase and after-care services. Whilst some SCCSWs believed that the transition phase and after-care services were the responsibility of the POs, the POs believed the contrary:

*I think the social worker at the residential care before submitting a final report ... they must also be working with the family in order to prepare the family of the victim as well as the offender's family so the final report is written, it must include that the two families have prepared (PO2).*

*Our service providers (secure care centres some of which are non-governmental and outsourced) should work into their programmes some element of after-care such that even after release from the residential programme there should be some kind of after-care... so we don't lose the impact and efforts that we have put into the child (PO4).*

- **Community-based NGOs**

Both POs and secure care centres seem to further shift the responsibility of the transition phase and after-care services to the NGO sector as shown in their responses below:

*I think maybe the residential care facilities can link them with the organisation or resources that are there in the community in terms of follow up to go back and check on how the child is doing (PO2).*

*In terms of continuum of care I think that is very important that if you are releasing a child... I think there are other organisations outside, which must come in and help so that when the child goes out, they can continue with the services (SCCSW3).*

- **Department of Social Development social workers working in that area**

The research data shows a recurrent pattern of responsibility shifting by both POs and SCCSWs, between each others' professions, as well as to social workers employed by DSD:

*I think on release the secure care social workers need to refer the case to the field social workers who are operating in that area so they can make follow-ups in terms of the after-care services to monitor the progress of the child and the family (PO5).*

*Boys that are released here also need support from DSD just to pop in and say hi, how are you? Are you holding up? Do you need anything, that emotional support as well (SCCSW5).*

- **Volunteers**

It was felt by some respondents that, since there was not enough manpower, volunteers and/or community members could be helpful:

*One has to maybe look at volunteers who relate with DSD. It might be just a student as part of a degree or studies built in a component into a curriculum entails that you assist in after-care (MAG6).*

- **Community members**

Some respondents came up with creative solutions to ensure that ex-YSOs received support when they were released back into the community:

*Someone with a good standing in the community. It might be a teacher or a pastor; it might even be the police. I'm just saying look at what you have and get people involved (MAG6).*

## **Summary**

Most respondents and some POs believed that it was the responsibility of the POs to facilitate the transition phase and to render the after-care services to ex-YSOs who had been enrolled in residential diversion programmes. However, the SCCSWs who facilitate residential diversion programmes were the ones who developed stronger relationships with the youth offenders and their parents during their stay at secure care facilities. It was thus felt by a significant number of respondents that they should do more to facilitate the transition and rendering of after-care services.

### **5.3.8 Reintegration of youth ex- offenders into the community**

The research data on this study seems to suggest that there is a huge gap when it comes to the provision of reintegration services. This concurs with my own findings in another study that investigated recidivism amongst male youth offenders. It was found that a lack of reintegration services for the ex-YSOs contributed significantly to their persistent re-offending (Gxubane, 2006). Reintegration of ex-offenders does not seem to be a priority for all the government departments that are responsible for the management of youth offenders generally. Hence Gallinetti, Muntingh and Skelton (2004: 34) asserted that “(re) integration programmes should not be seen as ‘add-on’ after the punishment has been meted out, but as the overall purpose of a justice system”. I further recommended in the study mentioned above that reintegration and after-care services for young ex-offenders should form an integral part of probation and social work service delivery (Gxubane, 2006).

Four sub-themes emerged from the analysis of the research data in relation to the respondents’ perceptions regarding the reintegration of ex-YSOs into the community.

- **Family involvement is essential throughout**

The first theme was the involvement of the family throughout the different phases of rehabilitation and support services to the youth offenders. Some respondents perceived this as essential for the young person’s effective transition from the secure care centre back to the family and community:

*It is easy to remove a child, work with the child wherever you're going to work with the child. The child comes back with the very same situation at home and ideally one should really at some point begin to work with the whole unit of the family and not just a child because one tends to forget that the very root of the child's problem was in the home where he comes from (MAG6).*

- **Social support groups**

PROS4 suggested the support groups as one way that could help with the reintegration of ex-offenders. This view is in line with what some of the YRs suggested in Chapter 4 on what could ease the reintegration process of ex-offenders into the community:

*The prisoner will be released on parole and you find that nobody looks after him. There are no supportive groups for these offenders. I never heard about any support groups from state resources but I still think there still needs to be a support group (PROS4).*

- **Reintegration services as part of programme and a court order**

With regard to the third theme, NGO-V1 had the following to say about after-care services for the ex-YSOs:

*R: Reintegration services must slowly flow in as part of that programme that the child has gone through. The DSD needs to look into something like that in cohesion with justice system. Once the programme is done, the child goes back home. Nobody cares. I don't think they do follow-ups to see if the child has integrated. When they see the child again, is when the child is back in the justice system (NGO-V1).*

T: But you said that the court needs to make this part of an order.

*R: Yes, but I think that order needs to be part of that programme and that programme needs to include that integration; whoever is going to do it they need to decide. Integration needs to be part of the programme ordered by the court (NGO-V1).*

- **Reintegration services are not funded**

The fourth theme relates to funding. A respondent from the secure care centre (SCCSW5) admitted that after-care services were essential, hence some staff did it on a voluntarily basis, even though it is not funded:

T: Who should do that? Is it the DSD or the secure care social workers that has already built a relationship with the boy?

R: *Again that makes it difficult, as we only work in institutions. We don't work in the community. Yes, I think it would be nice if the social workers in the center can go on like we're in an after-care services but that is a whole different story again of funding and transport.*

T: Tell me more about funding, as one of the challenges as you just mentioned it.

R: *It is not funded. I know the after-care services that we render is generally the staff members who know the boys from the community that will go to the house of the boy and say maybe hi, how are you doing and welcome back. But there is no formal thing like a business plan exclusively for after-care services (SCCSW5).*

Although the SCCSW5 concurred that after-care services are vital to minimise the risk of youth re-offending, it would seem that their organisations was not willing to cater for it because they were not funded for it.

### **Summary**

All the respondents agreed that the ex-YSOs needed to be helped in various ways to reintegrate into the community. The research data suggests that, as a result of no clear role clarification services aimed at helping ex-YSOs with transitions, reintegration and after-care services are not rendered. There seems to be a common understanding amongst some respondents that, in order to ensure that reintegration and after-care and services were rendered, these need to be made part of the programme through a court order, since such services are often perceived as 'add-ons' and not central to the rehabilitation process.

## 5.4 MANAGEMENT OF THE YOUTH SEX OFFENDERS' VICTIMS

### 5.4.1 Victims' referral system to counselling services

The referral system as a research variable was also explored from the victims' perspective in keeping with the RJ framework of the study. Counselling services for the victims are mainly provided by the NGOs and would often be arranged by the families and concerned individuals from the community for the fortunate ones. The research data on the referral system pertaining to victims of YSOs is based on feedback from the two social workers from the NGO sector who worked with the victims and who participated in the study (please note that the victims themselves did not participate in this study). The research data from these respondents seem to indicate that they were equally frustrated with the referral system of the victims of YSOs. They described the referral system in a very negative light, highlighting the following issues.

- **Insufficient referrals from the courts**

The first issue raised concerned insufficient referrals from the courts. NGO-V1, working with the victims on their referral procedures, explained this:

T: Who sends you referrals at court?

R: *Nobody in the criminal justice system in South Africa. There is nobody (with emphasis) who sends us referrals. As NGOs we are doing it at the moment because DSD is paying us money to do assessments to see whether this child is ready to testify.*

T: I do know with offenders there is a probation officer who has to assess the young perpetrator of sexual offences within twenty-four hours after arrest but does that happen with the victim?

R: *No, but if they can bump into the hands of somebody who can make that appropriate referral.*

T: The police?

R: *No, they are supposed to. What happens is once the victim has been identified, if the case has been laid, a policeman or an investigating officer would be appointed to*

*that specific case and that investigating officer must make sure that child would be picked up to be taken to court. No, they never make referrals for counselling.*

- **Children only helped with giving testimony in court**

Another issue is that children are only helped with giving testimony in court, and no further assistance is given to child victims. NGO-V1 explained this in further detail:

T: At what stage does your organisation come in?

R: *We've got a child witness project situated at the court. This means we work with the child when a child comes to the court to testify. We make sure that the child has something to eat and make them comfortable because at the court structures the victim and the perpetrator sit in the same hall before the child testifies. It is absurd!* (With exaggerated facial expression) *We take the child to a child friendly room where there are toys to play with and we have trained lay counselors to do court preparations with these kids. Just to inform what procedures they will go through at court because these kids some of them don't know what is a court and they don't even know why they are here?*

T: So you only see the child when the court proceedings are at the stage when the court wants to hear the child?

R: *Yes, that is one of our projects. Another project we've got where I'm working at the moment is in Lavender Hill. It's in just in one community at this stage. It's a pilot project where we serve different school sites.*

T: Where do you get your referrals?

R: *Just from the specific schools. As I said, it is a pilot project; we only have four designated schools and we only take referrals from those four designated schools because we don't have the capacity to open our doors for the whole community, because we'll have long queues for kids to come for counselling.*

T: What is your take in the manner that our current criminal justice system deals with the victims of youth sexual offences?

R: (With exaggerated facial expression) *I'm going to be brutally honest because I've worked in the court before. I don't think they look into what would be in the best interest of the child. Oh NO!!* (With emphasis). *I think the justice system they are struggling with the amount of cases in the court roll... the lack of prosecutors. I think*

*they tend to forget that they are working with the child... that is not cognitively fully developed.... Some of the kids that come there can't even spell their own names and now you want to go and ask them questions on things that happened (With emphasis) .... I can't even begin to say where these kids are emotionally when they walk into the court room... and then these kids would be sitting next to the perpetrator and... testify against the person that raped them. I don't think there is any regard towards children (NGO-V1).*

The above respondent paints a very gloomy picture about the referral system of the victims; she is clearly very frustrated with the manner in which the victims are treated by the criminal justice system generally. NGO-V1 also seems to have a different focus in the work that she and her organisation do with the victims of sexual abuse. Their organisation seems to be mainly involved in the area of court preparation work with children who are victims of sexual abuse rather than providing therapeutic counselling. The latter seems to be the focus area of NGO-V2's organisation. When NGO-V2 was probed on the same research variable, she responded as follows:

*R: Most of the referrals we get them from the court, the family and child unit and from the police, the forensic social workers would do the referral (NGO-V2).*

T: Kindly sketch out for me how does your referral system work?

*R: Say the offence has been committed, the child will go to the police and the police will take the statement. Then the police will take the child to district surgeon for medical investigations and the police would then take the child back to the police station and then the referral would be made to us.*

T: In terms of the percentage of children who are victims of sexual abuse in your area, what percentage of children do you get for referrals?

*R: So currently we have about 90 children in the waiting list for counselling ... who are sexually abused? (NGO-V2).*

## Summary

The responses from both social workers working with the victims of sexual abuse reflect two contrary referral systems. Whereas the first respondent battles with receiving referrals, this is not the case with the second respondent. NGO-V2 and her organisation seem to be receiving more referrals than they can cope with in terms of human capacity. It would seem that such uneven numbers of referrals between the two respondents and their organisations could be linked with their approaches to social networking and building of partnerships with other role-players. In other words, if a social services agency offers good quality services, which they market very well through social networks and different forums, then they are more likely to build up a good reputation. This is more likely to result in an increased number of client referrals. Conversely, if an organisation fails to establish good social networking relationships and forming partnerships with other role-players, they are not likely to receive a sufficient number of clients' referrals.

### 5.4.2 Victims' services post-release of ex-YSOs

The research data on services rendered to the victims, after the ex-YSOs have been released, show that they are as neglected as ex-YSOs. They too are not prepared for the time when the ex-YSOs are released back into the community. I noted that when the research participants responded to the question around after-care services, none of them mentioned the victims in their responses. Their responses only focused on the reintegration process of the ex-YSOs. I thus had to probe on what should happen to the victim when the offender was released back to the community so as to get a balanced view, in line with the RJ frame of reference. The research sub-themes that were identified included the following.

- **Victims need to receive similar attention as the youth sex offenders**

Whilst a few respondents made reference to the victims in certain parts of the interview, most of them only talked about them when they were asked a question about them. Ironically, though, most respondents believed that the victims needed to receive attention throughout the process of the rehabilitation of their offenders. This line of thinking is reflected in the following two responses:

*Similarly, victims should get support and counselling; it has to be an ongoing thing so it's almost like you're winding it off, so it might be a weekly session. It might turn into a bi-weekly, and then monthly, then quarterly and then annually and so on just to see where the victim is at (MAG6).*

*I think the same process, just as the sexual offender goes to the diversion programme and the victim needs to go to a therapeutic process. The same also re-integration services and informing and helping the family (NGO-V1).*

- **Victims need preparation to face the offender when he is back in the community**

The PO's response presented below seems to suggest that the victims need to be prepared only for the relevant offender's release rather than throughout the period of rehabilitation, subsequent to the occurrence of the sex offence:

*The main thing for the victim is the preparation of facing the offender when he is released back into the community but obviously to convince the victim that this is what has been done with that person. He might be a different person but I think also the support group will be helpful for the victim (PO2).*

- **Victims are completely neglected because of staff shortages**

The response from another PO seems to suggest that, even though they are aware that the victims need support services, due to a lack of manpower, the victims continue to be badly neglected:

T: What happens to the victim?

R: *You know we are supposed to render some services to them (Embarrassingly). I think we should be giving them counselling too but we've been neglecting them, so far nothing has been done (PO1).*

PO1's response above confirms that the preoccupation with offenders and the neglect of victims is in fact an injustice to the victims. It would seem this suggests that there is still a long way to go for the role-players to start bringing the victim into the picture, if they want to promote a RJ approach in the child justice system in SA.

- **Victims are not the focus in some NGOs.**

Probing NGO-O2 in this regard, since I was under the impression that their organisation also rendered victim support services:

T: I thought your organisation also had victim support programme as well?

R: *Our organisation actually shifted a while back, I think more or less 5 years back. Our main focus is with the offender currently. If the victims are in need, we can assist them, but we prefer to refer them to other specialised organisations since we are focusing on the offender (NGO-O2).*

The fact that this organisation, which had previously rendered services and support programmes to the victims, has also discontinued these services, illustrates a pre-occupation with offenders. This is the case with most of the organisations, and seems to be associated with the targets expected by the funders, as was pointed earlier by some respondents.

- **Victims could be supported by a restorative justice community forum.**

NGO-B2's responses were as follows when he was probed further on the research theme under discussion:

T: So what happens then to the victim?

R: *If we have a strong restorative justice forum where everyone is represented, even the community through community forum representatives, as well as the professionals that dealt with the offender and the victim as well as the parents of both parties' parents to discuss what can be done now the offender is going to be released. The community and the victim will feel important because, remember, you have involved them pre- and post- residential diversion programme. In addition to*

*professionals' guidance, they are likely to come up with other helpful suggestion as the way forward that will take care of the interests of all the parties.*

T: You speak well of the restorative justice forum. Who should coordinate it?

R: *It's between the people that refer and those who receive services. I think a community member representative needs to be part of the coordination because that person knows the offender and the victim well. An agreement has got to be made in writing and even in the report that will go to the court about how the child offender will be assisted with re-integration into the community. It should also include a commitment from the child himself that he will not do it again. It should also state that if the child does it again, he will be punished harsher and will not be given a second chance that involve restorative justice processes (NGO-B2).*

NGO-B2's response suggests some useful ways in which the community could become involved in victim support programmes. Whilst this sounds like a good idea in theory, the question is how it would work in practice.

### **Summary**

The research data seem to suggest that most of the government departments and community based service providers offer little or no victim empowerment and support programmes. Some respondents have pointed out that DSD is the government department that needs to provide such a service either directly through social workers like POs that they employ or through NGOs with whom they partner in social services delivery. The blame for lack of services to the victims has been squarely attributed to the lack of manpower.

### **5.4.3 Perceptions of social workers working with victims of youth sex offenders**

It was pointed out in Chapter 1 that, it would have been ideal to incorporate the perceptions of the direct victims of the YSOs who participated in this study, since this study uses a RJ theoretical framework. However, it was also noted that such an exercise would have been unethical, since it could have re-traumatised the victims to request them to think about the sex offence when they had perhaps moved on with their lives. Such re-traumatisation is even more likely, if the victims have not

received any proper counselling. Therefore an alternative was to solicit such perceptions from the social workers who worked closely with the victims of similar youth sex offences generally.

The research data showed that the professionals who provided counselling to the victims were in fact more supportive and concerned about the YSOs than the victims, and that they were also not punitive towards the offenders. The themes that emerged from their responses included these: many child sexual offenders may have also been sexually abused; more money is needed for better programmes to help the child sexual offenders; and the South African criminal justice system is not trustworthy.

NGO-V1 revealed what she believed should happen to YSOs:

T: Some youth offenders are sentenced to prison and some are referred to a diversion programme, depending on the circumstances of the sexual offence. What's your take on that?

R: *I think we need to go and look at the quality of these programmes and the sustainability of the programmes. I think a lot of child sexual offenders are people who have been exposed to terrible circumstances, maybe also sexually abused themselves, and that is why they are being abuse reactive. You have to look at the human rights and I think it's not fair to put these children in prison with older people, because I don't think you're helping them at all. You have to look at the child's developmental stage and see what they can understand and what they don't understand. I think more money should be given for better programmes to help these kids because they can be rehabilitated if it is done appropriately (NGO-V1).*

T: The way that our criminal justice system deals with youth sexual offences in SA, do you think it favors offenders or the victims?

R: *All I know is that our criminal justice system is not up to the standard it is supposed to be. I think our courts are over full and cases are not being dealt with properly... well now look at the news what happened, with our magistrates half-drunk at work. I think that is appalling (with exaggerated facial expression of utter disgust). I don't*

*trust our justice system, if that's what you're asking me* (Expressed in utter disgust) (NGO-V1).

### **Summary**

The research data, based on the interview with NGO-V1 suggests that she is in favour of the YSOs receiving rehabilitation rather than being sent to prison. This is in line with Leggett's (2005) findings that victims consider the rehabilitation for the offenders as important because this is one way of addressing the problem of safety and preventing future wrongdoings.

## **5.5 RESIDENTIAL DIVERSION PROGRAMMES FOR YOUTH SEX OFFENDERS' WITHIN A RESTORATIVE JUSTICE FRAMEWORK**

This section looks at different aspects of the envisaged multi-disciplinary YSORDPs within a RJ framework. This practice framework requires different professionals who work with the YSOs, their victims, their families and the community in general to work together in promoting a RJ approach in their work.

### **5.5.1 Perceived benefits of the envisaged practice approach**

Most research participants were excited about this approach and felt that it had great unexplored potential, although it does need some work for it to be effective. It needs to be pointed out that the proposed approach to the management of YSOs through mainstreaming RJ is a radical move away from the conventional criminal justice system. This proposed RJ approach hopes to offer all the parties that have a stake in the offence an opportunity to participate in the justice process, which they would not have had under the conventional criminal justice system. In Chapter 2, the RJ approach was contrasted to other justice approaches to illustrate the possible benefits of the restorative approach.

The respondents in this study identified a number of possible benefits of the envisaged residential diversion within a RJ framework approach in the management of YSOs in SA. It will be noted from their responses that most of these benefits

overlapped with each other and are inter-linked, since some have a ripple effect on others generally. The perceived benefits that were identified by the respondents included the following:

- **Quicker way of processing youth sex offences cases**

*There are lots of benefits because these types of cases take years before they even go on trial. These children have to go to school and there is a court case hanging over them for years. Obviously that must affect their school activities (PROS3).*

- **It will empower youth to be future leaders**

*We need some leaders in the community. If you give these young people a structure and support, they can be leaders of tomorrow (PROS6).*

- **Possibility of healing for both victim and offender**

*The kind of offences that they commit and the age that they are in... something is wrong. If we go restorative justice way, there will be proper healing to both victim and offender (PO1).*

- **Second chance and avoidance of a criminal record**

*It emphasises the need for children to own up to what they have done. If a child can learn that what I've have done is wrong and come to a position where they want to rectify. For us that would be an achievement (PO4).*

- **Promotes the culture of rights and responsibilities amongst youth offenders**

*It's not just a crime the boy is punished and is left there. As we said, you've got rights and responsibilities, and I think restorative justice just takes that step further, accepting your responsibilities and work with it and work through it (SCCSW5).*

- **Opportunity for the victims to understand the offenders**

*If you use that restorative justice way maybe if you talk to the victim, open the victim's eyes, they'll see because the victim is asking what did I do wrong. Then they will see that it's not me but the situation where the perpetrator comes from (SCCSW5).*

- **Promotes the involvement of other peoples**

*I think we'll have more people to assist the trained social workers so they could then be freed up to do other cases (MAG6).*

### **Summary**

The research data seems to suggest that most respondents across all professional groupings could see the potential benefits of the envisaged approach in the management of YSOs. Whilst most of these perceived benefits are in line with the objectives of RJ, such as providing healing for both victim and offender, I am concerned by some of the perceived benefits particularly from the justice sector, which include that the RJ approach is a quicker way to process cases relating to youth sex offences. The danger of this is that the justice officials may start using a residential diversion option even for the YSOs who may not be suitable candidates as a way to reduce the number of cases on their court rolls.

The next section presents the research participants' perceived roles in relation to the envisaged practice approach.

### **5.5.2 Perceived roles in relation to the envisaged practice approach**

#### **Magistrates**

Most of the magistrates who were interviewed before the enactment of the CJA felt that their role only began at the stage where convicted youth offenders need to be sentenced. They did not see themselves as directly involved in the area of diversion. Fortunately, however, some magistrates were aware of the changes in the area of diversion that have been brought about by the CJA, as reflected in the following magistrate's response:

*The magistrate does not make a decision (meaning regarding diversion); we rely on the prosecutor, if the prosecutor says this child needs to be diverted. But with the new law that is coming from the 1st of April, all is going to change (MAG1).*

MAG6 was very optimistic about the proposed model of intervention. This magistrate was also aware that the implementation of multi-disciplinary residential diversion programmes within a RJ practice framework would not be easy, but felt that the proposed approach would work if all the role-players were willing to cooperate:

*I think we must panel beat it to the needs of the child and yes multi-disciplinary is good but sometimes people do not need all of what is being offered, some people might need one, two,..... The ideal thing would be to really figure out what went wrong and base whatever you're going to do on correcting that or filling in the gaps (MAG6).*

### **Prosecutors**

The responses from the prosecutors indicated a mixed and sometimes contradictory understanding of their role in the proposed multi-disciplinary residential diversion programmes within a RJ practice framework. They perceived their roles to be the following:

- **Finalisation of diversion cases**

It would seem some prosecutors still perceived their role to be the same as it has been in the past in the area of diversion, namely, to keep the case on the court roll until the child has successfully completed the programme or has failed to comply:

*I would keep the case on the court roll and depending on how the child progresses on the programme. If the child complies and completes the programme, then the matter can be struck off the court-roll (PROS2).*

- **No role to play in the finalisation of diversion cases**

Some prosecutors felt that with the introduction of the CJA the role that they have had always played has been taken away from them:

*Prosecutors are not going to have a role to play (with a very sad tone of voice of expression). The magistrate is going to play a role. He's going to get a (PO) report and he's going to make a decision on that report at the end of the day (PROS4).*

- **Finding creative ways to help young offenders**

Some prosecutors, even when they were aware that they had all the powers to apply laws in punishing young offenders they, nonetheless perceived their role to involve out-of-the-box thinking when dealing with youth offenders. They were willing to give a second chance to the deserving youth offenders in creative ways that would nonetheless hold them accountable for their unlawful behaviour:

*The book says where an offence has been committed, there must be punishment, but we are deviating from that. We explore different ways of dealing with each case, based on the circumstances surrounding the offence and the age of the offender. Young offenders are in tender age; we try and deal with them the other way so that they learn from their behaviour (PROS6).*

When PROS6 was probed further on how he would deal with youth who have re-offended, the respondent gave a response that indicates punishment orientation. This is contrary to what he had just said about the importance of assessing the circumstance surrounding the offence rather than just viewing the young person only as a second offender:

T: Would you consider a diverting a youth re-offender?

R: No, it's only for first offenders.

T: Would you then not consider other circumstances surrounding the offence like you said you would in the first offence?

R: *No, no, no* (with strong vocal and facial expression); *we continue if it is a second offence. Other factors will be considered as mitigating* (PROS6).

The latter responses from PROS6 seem to suggest that there is still a strong punishment orientation in some prosecutors. Even though they claim to understand the concept of assessment, they do not really appreciate the value of assessments, which are designed to help the court find alternative means of dealing with each youth offender. It is unfortunate that, if the prosecutors and the magistrates continue to operate according to the book, they would have not aligned their approach to the management of young offenders, as reflected in the objectives of the CJA.

### **Probation Officers**

The research data on POs' perceived role in the envisaged approach shows that there is some agreement amongst these respondents. They felt that their roles included: assessments, and acting as a case manager.

In addition to Probation Services Acts of 1996 and 2002 as amended, Chapter 5 Sections 33 to 34 of the CJA makes detailed provision on assessments and the central role POs need to play in the administration of the child justice. Some POs took cognisance of their very important fundamental and critical role in the child justice system, as indicated in the following two responses:

*All the children would be first and foremost be referred for assessment so the first critical role is that of assessment by the probation officer* (PO4).

*I have to make sure that the rest of the role-players understand the background of this young person. Why and where does he come from?* (PO6).

- **Case manager**

Linked to the role of assessments is that POs need to follow-up and trace all the children they have previously assessed to ensure that all the intervention strategies that have been decided upon with regard to each child are actually followed through, as stated in the following two POs' responses:

*Once when you have assessed the child you remain a case manager; even if the child goes to an institution, we keep in touch with the institution to know what is happening (PO4).*

*As a Probation Officer I see myself more as a case manager (PO6).*

### **Secure Care Centre Social Workers**

The responses from SCCSWs showed agreement regarding their role, which is to facilitate the YSORDPs, as described in their responses:

*As the social worker in the residential care I will run the programme and report back to the multidisciplinary team about the progress to the people you are working with and that is important because these are the same people who sent the child for diversion (SCCSW3).*

*Mainly I'm the advocate for the children here (at the youth secure care centre). So obviously beforehand I will have sessions with the youth, educate them especially about sex education and also the restorative justice (SCCSW5).*

### **NGOs working with youth offenders**

The respondents from the NGOs working with youth offenders perceived their roles as revolving mainly around the rehabilitation of the offenders, promoting offenders' rights and giving them support.

Some of the research participants from the NGO sector failed to comprehend the RJ theoretical and practice framework of the study. Their responses were thus not located within the envisaged residential option of diversion within a RJ framework:

*I would say we can come in the rehabilitation part of the offender because our organisation wants to focus on the offenders. As you know, we work with them in the community (NGO-2).*

- **Promote offenders' rights and give them support**

Similarly, NGO-O1's response fails to identify how their organisation could fit in with the envisaged practice approach:

*Our organisation deals with the offender's right from the community level and right through the court level to incarceration and reintegration level. We have many ex-offenders that we put in programmes where we assist them into finding work and to be a support for them (NGO-O1).*

It would seem the above responses from the research participants who worked with the offenders did not take into account the envisaged RJ practice framework of the study.

### **NGOs working with the victims**

Similar to the respondents who work with offenders the responses from working with victims were only focused on their specific area of practice and did not take into account the envisaged multi-disciplinary and RJ practice approach. It would seem the respondents working with victims only perceived their role as providing therapy for the victims:

### **Therapy for the victims**

*Providing individual and group therapy for the victims and their families (NGO-V1).*

It was only when I probed further that the respondents realised that they could contribute far more in the envisaged approach in this study. They identified their role as including the preparation of the victim if they want to go for a restorative justice process such as a FGC.

- **Preparation of victims if they want to go for a Family group conference**

The following is an extract from the interview with NGO-V2 when she was probed further in this regard:

T: Say I'm a social worker working at X youth secure care centre and I phone you and say I have been dealing with offender X and he is soon to be released. I will soon be writing a report to the court. I would like to invite the victim for a conference with the perpetrator. Would you encourage the victim to consider it or you'd never do it until the victim says so?

R: *I would mention it to the victim because it's her life and she has the right to know, but it's still her decision to make. I would give her possible benefits to it and I would give her possible negatives to it as well, and then it would be her decision to make.*

T: Yes, but would you prepare her?

R: *Yes, I would prepare her if she decides to go with it.*

T: Would you then accompany her to meet the perpetrator?

R: *I would, the problem is we don't always have the capacity for the social workers to go out there (NGO-V2).*

### **NGOs working with both victims and offenders**

Unlike the respondents who worked only with either victims or offenders in the community, some of those who worked with both were able to grasp the concept of a multi-disciplinary RJ model of residential diversion. One of the roles that they identified was the importance of networking with other NGOs and secure care centres:

- **Importance of networking with other NGOs and secure care centres**

*For me I can say I'm still working in isolation. I still have to invite other people to work with me to a similar programme that we run. I'm not sure how other*

*NGOs run theirs. I think there are lots contributions that we can make to one another so that residential diversion programme can also be part of one standardised diversion programmes for our young sexual offenders (NGO-V2).*

### **Summary**

The research data from different professionals' groupings in respect of their perceived roles in the proposed multi-disciplinary RJ practice framework shows that, whilst some respondents were able to recognize how they could contribute, others could not. The latter failed to see beyond their respective areas of practice. This could be attributed to the tendency amongst different professionals to work in isolation, as identified by one respondent from the NGO sector.

### **5.5.3 Perceived challenges regarding the envisaged practice approach and respondents' suggestions to overcome them**

This section presents the research data on the challenges perceived by the respondents, which they felt should be anticipated in applying the envisaged approach in the management of YSOs in SA. The suggestions that were proposed by the respondents in overcoming the challenges are also presented, following each major challenge that is outlined. The challenges are listed separately for the sake of outlining them. However, in reality, these challenges overlap with each other and have a ripple effect on the nature of services that will be rendered to YSOs, their victims and their families as a whole.

- **Lack of commitment from child justice administrators**

Some of the research data from the justice respondents suggests that there is a lack of motivation amongst different role-players involved in the administration of child justice in SA, particularly with the police:

*My experience as I already mentioned from the police is that they are not interested. The biggest problem lies with the police (MAG5).*

- **Failure of probation officers to submit reports to court**

The justice sector respondents felt that POs had lacked compassion and skills in their work. However, some respondents from the justice sector also attributed the poor work standards of POs to the shortage of social workers in SA. As pointed out by some respondents, this challenge often links to the excessive workload of POs, which has a direct bearing on the quality of work that they are able to perform. The following were some of the magistrates' and prosecutors' perceptions about the work done by POs and SCCSWs with regard to reporting:

*It's frustrating; the child sits there for two months, sometimes three months, waiting for the probation officer to conduct the pre-sentencing report. It's pathetic. The probation officers need to be committed. I also think probation officers need specialised skills and interest in working with the children (MAG4).*

R: *We already have the problem to get the report back from social workers regarding the outcome of diversion (PROS4).*

T: You mean the residential one?

R: *Whatever it is. We need the report back saying, yes, this guy has attended and whatever, whatever. We need someone who's been through with this child throughout to write a detailed report about the child's response and participation in the programme. We need right information as much as possible, because we need to make a decision at the end of the day on what are we going to do with this child (PROS4).*

T: I was not aware that some social workers don't submit reports.

R: *We have to ask them for reports. We have to push for the reports (PROS4).*

- **Difficulties with the Child Justice Act**

Another challenge that frustrates some POs is the lack of familiarity with the CJA. The research data suggests a definite need for training of all role-players with regard to the CJA:

T: You spoke about the CJA saying it's a nightmare, tell me more about that.

R: *It came to us very suddenly. None of us were really prepared for its impact. We were very fortunate that we have a magistrate here in our X court that was also involved and responsible for the training of magistrates. I think he took leave just before the Act was promulgated and he really studied the Act. He really went twelve thousand extra miles and then basically what happened is that he trained us. If you have a problem or something, you'll go to him and you'll say, Mr. X, I really don't know what I must do here. He'll say, let's look at the Act (PO6).*

T: Do you find that it is only him because he has a particular interest in the child justice?

R: *For us it's only him, because he also trained some of the magistrates in our X court. Unfortunately some of the magistrates just said, sorry, hands-off I am not going to touch this Act.... I think it will take a while still because we work with the police. Not all of them were trained. What happens in these trainings is that you have the commanders of the station and the brigadiers, the colonels, all those big people but the police on the ground that do the actual arrest, they don't get that information (PO6)*

PO6's response above seems to explain MAG5's response, which was presented earlier on police de-motivation. The response from POR6 suggests that the police who are doing the groundwork are often sidelined, and that most of the training is offered to police in senior positions. As a result, as pointed out by MAG5, the police will appear to be disinterested.

The main suggestion made by respondents to overcome such challenges is to provide more training:

*We need to educate the social workers; all social workers working in this field... particularly the probation officers, since in terms of the new legislation (CJA), they are always going to be the people who will be making the recommendations (MAG6).*

- **Lack of time and human resources**

*I think restorative justice processes involve and require a lot of time... of preparatory work that needs to go into it. Time and human resources are the biggest challenges (PO4).*

- **Prosecutors facilitate restorative justice processes**

Two prosecutors who were interviewed in a conjoint interview had the following to say regarding their attempts to deal with the lack of social workers to facilitate the RJ processes:

*Our problem is that because there is nobody else who does this, our prosecutors end up having to do it. We get the parties together and we sit down and talk (PROS4).*

*We don't have the manpower. Restorative justice that we're talking about is something that we do because we have so many cases on the court roll, and we can't cope with all of them through the normal system, so we try and use some alternatives dispute resolutions by getting parties together (PROS5).*

When a decision is made to divert a case, whether minor or serious, to RJ processes that are facilitated by prosecutors, the victim's and/or the offender's process rights could be compromised. They might perceive the mediation as a court order and feel duly obliged to participate in it, even if they do not agree with it. The prosecutors are generally presumed to have authority due to their position in court and the power vested in them. One wonders how a mediation process that may be imposed could meet the needs of both victim and offender.

Respondents' main suggestion to overcome the above challenge was to train non-social-work professionals:

*Training other professionals to build capacity like your educators, psychologists who are willing to undergo training on the facilitation of*

*restorative justice processes... rather than just looking at probation officers (PO4).*

- **Negative attitude amongst some youth justice administrators**

As pointed out in Chapter 1, the study was conducted during an exciting time in the field of child justice in SA. There was much anxiety about the new roles the CJA introduced, however, as reflected in the following prosecutors' responses. Firstly, prosecutors remarked on the re-distribution of diversion powers in terms of the new CJA:

*Prosecutors must make a decision... yes it's a suitable case for diversion and then it must go to diversion. Now they have taken the prosecutor out of it (in a lamenting voice) because they think that prosecutors either are not like a magistrate groomed to be youth offender friendly (PROS4).*

*The biggest challenge that we have is that according to the schedule three offences like rape the DPP (Director of Public Prosecution) must make a decision, not the senior prosecutor. There is going to be a lot of delays... which will defeat the purpose of diversion (PROSR4).*

*Most senior prosecutors these days have more experience than the people at the DPP. So they might as well be allowed to make the decision (to divert) (PROS5).*

These responses suggest a power struggle between different role-players and amongst the prosecutors themselves. Their frustration about the new CJA does not only seem to be a source of frustration for POs and police but for prosecutors as well. It would seem that the prosecutorial respondents feel that the prerogative of diversion power that they had monopolised in the past, that is, decisions to divert and to finalise diversion cases, will henceforth be shared with other role-players.

- **Resistance from some justice officials**

The new approach to diversion as stipulated in the CJA seeks to guard against the personal biases of some professionals in dealing with youth offenders, as reflected in the following response from a prosecutor:

*Well, you are going to get prosecutors who will not buy into it, especially in very serious cases. Even myself I will not do it in a serious case because to the victim it will be unfair for him (the offender) not to go to jail (PROS3).*

The above response illustrates a strong personal orientation towards punishment. It has been argued by a number of scholars, including me, that the assessment to determine whether a case is suitable for invoking RJ options should not only focus on the seriousness of the offence but also on the circumstances surrounding the offence (Batley, 2005; Gxubane, 2010; Skelton and Batley, 2006). Cases in which there is an identifiable victim are all suitable for RJ (Skelton and Batley, 2006).

- **Breaking away from old ways of thinking**

Experimentation with the RJ approach requires a mind shift and a different way to think about crime and the response to it. There is a need for a drastic movement away from the conventional ways in which justice has been applied, as captured in PO1's response below:

*It should have an educative purpose and we should be open-minded about it but we don't. We tend to become more authoritative. We do things by the book. We do not become innovative. For me, restorative justice wants us to think out of the box. But if we go on with the old school magistrates and thinking, we will not achieve it (PO1).*

MAG2 made this suggestion to overcome the above challenge:

*Marketing the approach to justice officials (MAG2).*

The above response implies that, in order for the justice officials to buy into this approach they need to be convinced that it will work.

- **Possible resistance from the communities**

It was pointed out by some respondents that the concept of RJ may not easily be accepted in many communities because that is not the way justice has been conceptualised in the past, as shown in the following two responses:

*From my experience the family just wants to see justice and they define justice in terms of retributive justice. They come here to see that the person (offender) goes to jail. So that is still what the perception of the community is (NGO-V2).*

*I think there might be some resistance from the community as well. Some may think it's a lenient approach towards dealing with the offender (NGO-B2).*

Respondent's suggestion to overcome the above challenge is to sensitise the community on the possible benefits of RJ:

*We can overcome some of these challenges by means of communicating and sensitising the community in general about the benefits of this approach through newspapers, community radio stations, schools, and churches. We need to sell the idea to the community by giving examples or even bringing the people who were helped by this approach so that people can see it is working (SCCSW1).*

Another suggestion is to *create community awareness programmes on restorative justice:*

*The public should be made aware of all the benefits so that, where we decide to follow this option during the actual court case, they do not view it as lenient and taking the side of the child who is seen as a criminal (MAG2).*

The suggestions specified by the respondents above seem to be very much in line with some of the guidelines I proposed in another article, which looked at how POs could help in giving effect to RJ at a macro-level (Gxubane, 2010).

- **Children who do not have guardians**

Some respondents felt that some of the criteria for a child to qualify for diversion are sometimes a challenge. One of the requirements, according to the CJA, for a child to be considered for diversion is that the child must have a parent or guardian or an appropriate adult who is responsible for the child. However, this discriminates against a number of children, particularly those who are living on the streets, because they would not meet this criterion of diversion:

*The problem is that some children don't have guardians. Some are illegally in the country. Some ran away from their homes. I think it is unfair that a child who has a guardian gets the benefit of diversion and the child who does not have a guardian cannot get the benefit of diversion (PROS2).*

Respondents' suggestion to overcome the above challenge was to *recruit responsible community members to act as guardians for these children:*

*I think it is upon the secure care facilities and the investigating officer to try and ensure that they get guardians for these children because they can end up staying longer at these facilities (PROS2).*

- **After-care services in light of the lack of manpower**

The failure to render after-care services in helping the ex-YOs to reintegrate into the community by both POs and SCCSWs, which has already been discussed in great detail in other parts of this chapter, was raised as another challenge:

*What if we put this child in a programme for two years and the family relocates to an area out of my jurisdiction. Who's going to take responsibility for that child? (PROS4)*

Respondents made two suggestions to overcome the above challenge; the first is to build capacity in the community through training:

*I think that your faith-based organisations would be a good place to find resources, but I think that whoever you use must have also gone through a certain programme. Must be accredited in some way... answerable to a particular body in some way because otherwise people might run wild (MAG6).*

The second suggestion is to *delegate after-care services to APOs*:

*If it's a diversion programme it would probably be APO (assistant probation officer). What we do here it would be an APO and if there is a problem, if there is a hiccup, the APO will bring it to the attention of the probation officer (PO6).*

- **The unwilling victim**

After I realised that the respondents did not mention the unwilling victim as a possible challenge, I decided to explore their perceptions on it. There were mixed responses regarding the respondents' perceptions on how to deal with a victim who is unwilling to participate in RJ processes.

- **Victims should not be forced to participate**

*I think the victim should not be forced to participate. As part of preparation they need to be enlightened about possible benefits for them. As I said earlier that it should be voluntary. Even for the offender it should be voluntary (PO4)*

- **Work with the youth perpetrator must be continued**

T: What happens if the victim is unwilling to participate?

R: *Definitely we need to respect the victim's wish (SSCSW3).*

T: Would you still work restoratively without them?

R: *Then I don't think restorative justice can apply because we need both parties.*

T: So do you take the case back to court?

R: *But still then we will not be fair to the offender, if the offender is willing to apologise and is remorseful, I would suggest that if the victim is not coming in, then let's work with the offender by trying to assist him as best as we can. However, we still need to respect the victim's wish. But we need to continue working with the perpetrator (SSCSW3).*

- **Victims need assurance that the offender will not repeat the offence**

A respondent working with the victims raised a very important concern that often discourages the victims from participating in RJ processes in general. They are often suspicious about the offender's intentions and whether the RJ encounter will help the offender to see the harm they caused others and discontinue with their offending behaviour. When NGO-V1, who was working with the victims, was questioned, he replied:

T: From the victim's side, what is it that they find difficult to forgive?

R: *I think the main thing of a sexually abused victim is the fact that something has been done to them without them have any control over it. Part of their dignity has been taken away from them for life. I don't know if it can be restored even if the offender says he is sorry, and what not and what not.*

T: But is there anything the offenders can do to make up from your perspective?

R: *A lot of victims in their heads know they are doing this and disclose this abuse because they are scared that he is going to do it to somebody else. So once the victim has got this closure of this person he is not going to do it again (NGO-V1).*

- **Persuasion of the victims**

One of the main principles of RJ is the centrality of the victim of crime in all the attempts that are aimed at repairing the harm that has been caused by the offence.

Hence the participation of the victim is essential in such processes. There are differing views amongst scholars and practitioners in the field of RJ. Some feel that, when the victim does not want to participate in a RJ process, their decision needs to be respected. Other scholars and practitioners believe that the victims who are not willing to participate need to be given time and be persuaded gradually to participate in RJ processes. The two responses from the research participants seem to subscribe to the latter approach in dealing with an unwilling victim:

*I think the facilitator needs to try to convince them. Use tactics to convince them. I know it can take longer because some people are stubborn, and we're talking about a person who's hurt, but I think we need to really persuade them or beg them to participate. I think the main thing is that we must emphasise how they are going to benefit from that (PO2).*

*When we make contact with the victim to try to set up a restorative (process)... so if somebody tells us no we will set up a meeting with that person to understand and to get behind the no, also to start to work on a relationship between us as social workers and that victim. Then we will use skills like motivational interviewing skills and we'll help them and guide them through the process where they can see the benefit it can have for themselves on and their own healing process. So we'll not just leave them we will work with them to try to help them in the process to get to that stage (NGO-O2).*

The research data suggests that victims need to be given emotional support and counselling so they can recover from the offence. Yes, they will often be unwilling and resistant soon after the offence has occurred. However, some victims, particularly those who want answers from their offenders, may be willing to engage with the offender to receive such answers. Other victims who were unwilling may change their minds if they are persuaded and made to see how the RJ would help them as well.

- **Integration of victim support programmes in the justice system**

It was pointed out in the earlier discussion that victims of YSOs are generally neglected. It was suggested by some respondents that, in order for victims' services to be taken seriously by service providers; they needed to be made part of the court order and part of the diversion programme. The response from MAG2 below seems to follow the same line of thinking:

T: From the government's side, which department should take the responsibility for victims' services?

R: *It is a responsibility of the Department of Justice. It should be built into appropriate forms of legal division for the victims. I would prefer that the person who should be paying for that victim should be the accused, even if that person is a child, but in this regard maybe that person is made to pay later in some way or the other (MAG2).*

- **Difficulty of working with victims who are small children**

I noted that, since most of the YSOs' victims are children, there seems to be a perception by some respondents that the RJ approach could not be applicable, as pointed out in the following magistrate's response:

*I think sometimes that is very difficult when the victims are small children and the family is involved, people have a lot of anger (MAG3).*

Respondents made two suggestions to overcome the above challenge; the first was the use of *play therapy*:

- **Play therapy**

*I think in those kinds of cases we really need people who are trained as experts in play therapy.... that can be helpful. I know the psychologists do the play therapy, but I think to use certain techniques to get the information from the child, even though the child is not verbally or not matured in terms of the mind, but yes, play therapy will be helpful (PO2).*

- **Work with the parents**

*I think we would involve parents and guardians but perhaps we need to go down to their level and just understand what do they understanding in terms of what has happened, even the little task of saying sorry (PO4).*

- **Victims not consulted and/or informed about the diversion**

It was felt by some respondents that one of the reasons that victims are often bitter is that they are not consulted before their offenders are diverted:

*I think one challenge for us in the criminal justice is when the victim opens the case and when the case is diverted and no one goes back in the most formal way to the victim (NGO-B2).*

Linked to the above-mentioned concern is the challenge is that families of the victims are not consulted or informed that the youth offender has been diverted. This would often create tension between the family of the victim and that of the youth offender.

Respondents' suggestions to overcome the above challenge were *to ensure that the community understands the process of diversion and that it participates in RJ forums:*

*We need to ensure that communities understand diversion and that they are made part of the diversion programmes and restorative justice forums so that they can in the end take ownership of these programmes. This will help in the re-integration of youth offenders and also looking into the needs of the victims and the community in general (NGO-B2).*

- **Lack of cooperation from offenders' families**

The research data that were presented earlier revealed that the involvement of the family is essential throughout the process of rehabilitating the youth offender through diversion programmes. Some respondents felt that the families of the offenders do not always cooperate with social workers:

*It is the first time I hear about residential diversion, maybe the challenges will be the shortage of the social workers and also maybe if the families of the offenders don't want to co-operate with the social workers working in that area (PO5).*

It may come across as if the families are unwilling to cooperate with social workers regarding the diversion programmes. Professionals often assume that people understand diversion and what it means.

Respondents suggested that the above challenge could be overcome by running empowerment and support programmes concurrently for the parents:

*My experience, 95% of the juvenile offenders who are getting caught, the problem lie with their parents. We should not only run programmes but together different programmes for the parents as well (MAG5).*

*I do also feel that the parents of all children that are diverted they also need to attend and support the children and not go only once but as many times as they can .... Programmes for parents of children who are victims. Programmes for parents of the children who are offenders (PO1).*

- **Lack of specialisation in courts**

Some social workers identified the rotation of magistrates and the lack of youth justice specialisation in courts as a major challenge that has a negative effect on their work. Some social work respondents felt that youth justice is a specialised area of work and therefore the justice officials working in this area also need to be specialised:

*Not all courts understand the complexities of youth sex offending. We will need specialised courts to deal with youth sexual offenders (SCCSW1).*

*Other magistrates deal with crime in an old fashioned way and do not understand how we social workers work and the purpose of juvenile court and how it is supposed to work. It takes time for them to understand our role, how we work, where we come from and where we are going? Each time they bring a new one, we have to start from scratch, orientating them, fighting for the rights of the children over and over again. It is frustrating! (PO1).*

The issue of specialisation in some courts in dealing with certain kinds of offences like sex offences seems to have received some consideration in SA, even though it is not applicable to all magisterial districts. Similarly in the field of probation, there has been an ongoing debate for some years about whether probation needs to be considered a profession in its own right or a specialisation in social work.

- **Lack of youth sex offenders' diversion programmes**

In an attempt to deal with the challenge of lack of youth diversion programmes PROS4 and PROS5 reported with pride in their conjoint interview that they tried to find creative ways to overcome this challenge:

*The other problem that we have is, there are no specific programmes for specific offences of a specific child. There is a general programme (PROS4).*

PROS5 barges in:

*So if one of the children who are involved in crime... if the assessment is done and they are candidate for ... diversion ... there is a situation that the programmes are not being done here... Do you punish the parents because they already don't have money? Now we have to be innovative and find a middle way to satisfy the accused and his complainant. We can't just withdraw the charges. So we then do a kind of a community service where I will phone the principal or send him letters and they will come up and say ok I will make him work in a garden or clean the bathrooms or classrooms of the school for his community work hours (PROS5).*

Whilst the prosecutors' creative attempts to overcome the challenge of lack of diversion programmes in certain areas are commendable, such approaches, even though they have good intentions, need careful consideration because they could be violating even the basic rights of the children in conflict with the law. Cleaning of bathrooms particularly seems to be a clear humiliation of the child, even more so if it will be done in the presence of other learners.

- **Interruption of schooling**

The schooling concern has been raised by a number of respondents in the study. It is also stipulated in the CJA that diversion should not interfere with schooling of the children who are referred to the diversion programmes:

*My problem is what happens to their schooling. But the child is kept for two years only for diversion what will happen to his education? Education is very important... it's all about educating the nation (MAG1).*

- **Funding for victim support programmes**

It would seem most respondents were beginning to realise that, for a RJ approach to be effective, there needs to be an equal focus on both offenders' and victims' programmes. The respondents were also aware that one of the challenges that are likely to be encountered in promoting the establishment of victim empowerment programmes is funding. They suggested that funders were more focused on offender rehabilitation and less interested in victim support programmes:

*R: I think that we should not forget about rehabilitating the victims as well. There are times when I think some of the diversion programmes are completely wrong in terms of a lot of tax payers money is spent to rehabilitate the offenders, which is fine but nothing is spent into rehabilitating the victims (MAG2).*

T: Who should do that?

*R: That is not balanced and we move to an unbalanced society if we continue like that. I'm not saying that one should get priority over the other (MAG2).*

T: Most of the NGOs would tell you they are only funded for rehabilitation of the offenders, who do you think should rehabilitate the victims?

R: *It's very difficult especially in South Africa. There is money to only fund the programmes of rehabilitation of criminals and none is spent on the rehabilitation of victims. Sooner than later not only government but NGOs as we need to come up with more victims support programmes (MAG2).*

SCCSW3's response is in support of MAG2:

*What I have seen at the moment. I mean currently is that the victims are not getting any services. Out of nowhere we want to call them in for restoring with an offender who has wronged them. Perhaps if they were receiving counselling and support services then they would be able to participate and be prepared about what they would face and expect in the FGC meeting. Now you are saying we must call the victim in, which is unfair. The perpetrator knows what is going on and has been prepared, but the victim has not been prepared and does not know what to expect. Hence I say there needs to be services outside available for the victims as well (SCCSW3).*

## **5.6 RESPONDENTS' GENERAL CONCLUDING COMMENTS AND SUGGESTIONS**

When the respondents were requested to make additional comments at the end of each interview, some of them used the opportunity to emphasise certain points within the research topic area that they felt needed to be highlighted. The additional points raised revealed other aspects relating to the research area which I would have not been aware of otherwise, and which I had hence not covered in the research interviews.

Most respondents commended me for exploring the research topic area. They felt it was a worthwhile study that promises to offer some solutions to the challenges that they face in their daily practice. Those who are working with victims also used the opportunity to highlight the plight of victims of sexual abuse and their frustration in working within an uncaring and ineffective child justice system in SA. In summary,

the main additional points of emphasis that were highlighted by the respondents were the following:

- *The envisaged approach brings hope because it targets sex offenders when they are still young;*
- *Different role-players in the child justice sector need to work together and complement one another;*
- *The envisaged approach has a potential to heal, as most people are in pain emotionally and unfortunately the parents and the criminal justice system does not address these;*
- *The youth sex offenders are not a homogenous group and some of them deserve a second chance;*
- *The envisaged approach will assist in dealing with the root causes of youth sex offences, instead of just responding to the symptomatic sexualised criminal behaviour; and*
- *There will always be a need for a retributive justice system for none-remorseful youth offenders who do not deserve the restorative justice approach.*

The above-sub-themes are drawn from the following research participants' additional comments:

*There is such a big need out there really, if one looks at the victim and if one looks at the offender, and one has to realise that we're dealing with the lives of young people. I'm always open to giving second chances but, most importantly, the underlying factors that sparked off the offence needs to be dealt with as early as possible (MAG1).*

*There are so many role-players when it comes to children. We're not only looking at the courts, we're looking at the faith-based organisations, Department of Social Services, there is a range of role-players that are coming to practice and the Department of Education and really we need to somehow*

*dovetail and compliment each other's work in order to make a difference in the community (MAG6).*

*There is a lot of crime, a lot of people are in pain emotionally and unfortunately the parents and the criminal justice do not address those. In that approach, I foresee a lot of positive spin coming for us (PO4).*

*The society generalises that all sexual offender must be sent away and locked up. However, some of us believe there are those who can be granted a second chance for rehabilitation (SCCSW2).*

*I would really hope in the deepest part of my heart that something like this would happen because I think it is much needed (NGO-V1).*

*There must still be an element of punishment somehow if needs be, because I'm really scared that not all of them (YSOs) would be remorseful and take responsibility (NGO-V2).*

## **5.7 OVERALL CONCLUSION**

This chapter presented and discussed research data on a number of structural aspects of the YSORDPs. The theme of decision-making in diverting YSOs showed that there are some personal biases in this area of practice. If this area of practice is not scrutinized properly, it can be open to the abuse of power. The research data on diversion without the victim's approval showed that this is a complex and sensitive aspect of practice. Given attitudes towards sex offences in general, most victims and their families may not readily approve the diversion of YSOs. However, an assessment of the circumstances surrounding the sex offence may prove that the offence is suitable for diversion. Hence some justice respondents believed that, if the victim and his or her family did not have genuine reasons to disapprove of diversion, they would divert the young offender. By so doing, they believed they would be considering what would be in the best interests of the young offender as well.

The referral system of YSOs to the residential diversion programmes and that of their victims to counselling has shown that this area of practice needs much more attention and role clarification. The perceptions of respondents working with victims of YSOs have shown that they do not have a negative attitude towards YSOs. They believed that a number of factors may lead youth to commit sexual offences and that YSOs need help just as much as their victims do.

Most professionals believed that the facilitation of YSORDPs needed to be left to the professionals. This perception concurs with that of the YRs and their SOs. Most professionals, like the YRs and their SOs, believed that FGCs need to be convened some time after the offence has occurred, though some felt such conferences should be convened immediately afterwards. The respondents who believed that FGCs need to be convened soon after the offence considered this move to be in line with the African philosophy of justice. This approach to justice communicates remorse and a willingness from the offenders' side to find an amicable solution to deal with the aftermaths of the offence. This variable is related to that of victim versus offender initiated RJ processes. Whilst some respondents believed that RJ should be initiated by the victim in line with the principles of RJ, some believed that this approach would not promote RJ response to dealing with crime. Hence the latter group believed that offenders who were genuinely sorry should be encouraged to approach their victims and his or her family to ask for forgiveness.

The variables of court reporting procedures, transition and after-care services for ex-YSOs, and reintegration of YSOs to the community post-release from the residential programme have shown that not much attention has been given to these very important areas of practice. These areas of work need to be strengthened if youth justice service providers need to sustain and consolidate their work with YSOs. The research data also showed that no services and support were provided to the victims after the ex-YSOs had been released.

Finally, the respondents highlighted some challenges but also provided insightful suggestions that could ensure the success and efficacy of the proposed multi-

disciplinary YSODPS within a RJ framework in the management of YSOs and their victims in SA.

The next chapter identifies the main conclusions and makes recommendations on the research data that were presented in Chapters 4 and 5.

## CHAPTER 6

# SUMMARY OF KEY FINDINGS, MAIN CONCLUSIONS AND RECOMMENDATIONS

### 6.1 INTRODUCTION

The overall aim of the study was to explore a residential option of diversion within a RJ framework in the management of YSOs in SA. This chapter presents the key findings, main conclusions and recommendations of the study, in relation to the specific objectives of the study, as outlined in Chapter 1. The proposed recommendations are presented in bullet-format and *italicised* so as to ensure that they stand out from other general discussions, which are presented in this chapter.

### 6.2 PROFILE OF THE YOUTH RESPONDENTS

The findings show that the victims of YSOs are both males and females. Even though the figures show a low proportion of male rape as compared to female rape, this needs to be understood within the context of the broad gender stereotypes in the society and not necessarily within the context of the sample size. Although it is difficult for both boys and girls who have been sexually abused to disclose their abuse, it is even more difficult and often considered taboo for boys to do so. As a result, boys will often carry much unresolved trauma and anger relating to their sexual abuse, which they would often act out. As was pointed out by social workers working with the victims, some of the male YSOs may have been sexually abused themselves and that is why they become abuse reactive.

The figures may thus suggest that an increasing number of boys and/or their parents or guardians are prepared to report such sexual abuse of boys. It is therefore recommended that:

- *Diversion programme facilitators should create an enabling individual and/or group counselling environment for YSOs to disclose experiences of sexual abuse, which are affecting their social and/or sexual functioning. Such disclosures need to be dealt with carefully and sensitively.*

The findings show that most youth respondents' (YRs) formal schooling was interrupted by their arrest and their enrolment in the residential diversion programme. It would also seem that in many cases, this interruption ultimately led to their loss of interest in schooling, even after their release from DYC. During my employment as a social worker at DYC, formal mainstream schooling was not offered at the centre (see Chapter 4). However, Section 55(1) (c) of the Child Justice Act stipulates that diversion options, in keeping with the objectives of diversion, must be structured in such a way that they do not interfere with the child's schooling. This was one of the major challenges identified by many interviewed parents and guardians regarding the residential diversion programmes generally. It is therefore recommended that:

- *All residential diversion programme service providers must cater for the provision of formal mainstream schooling for the youth inmates.*

The 18 to 25 years age group is generally neglected, because they fall outside the parameters of the CJA. In fact, these youngsters sometimes lie about their age, not only to avoid going to prison but also to be able receive a service that they would not qualify for, if strict age criteria were enforced. The CJA does make provision for children up to the age of 21 years, but who committed an offence when under 18 years of age. This provision recognises that 18 to 21 year olds are still young, and that they can benefit from the provisions of the CJA. It is therefore recommended that:

- *Similar youth sex offenders' programmes should be offered to the older youth (18-25) by social workers in youth correctional facilities.*

The findings indicate that most of the youth offenders had a close relationship with their victims prior to the sexual offence and that they came from the same family and/or immediate neighbourhood. It is therefore recommended that:

- *All social work and statutory interventions with YSOs also need to focus on mending the broken social relationships wherever appropriate and desirable.*

The restoration of relationships that have been harmed by an offence is one of the core principles of a RJ approach in dealing with crime. RJ is a fundamental philosophical framework and the cornerstone of the CJA.

The YRs' family backgrounds were often characterised by overcrowding, absent fathers, single mothers or grandparents, poor parental and family role-models.

Therefore it is recommended that:

- *All interventions that are designed to help the youth offenders also need to focus on their families, since these family backgrounds shaped their social behaviour. More importantly, the youth will be returned to the same families when they are released from residential facilities, and so it is important to help the families too.*

The findings regarding the religion of the YRs' parents and guardians indicate that the majority are Christians, although other minority religions are also represented.

Therefore it is recommended that:

- *Diversion service providers and all intervention programmes need to take cognisance of different religious beliefs and ensure that they are accommodated.*

## 6.3 YOUTH SEX OFFENDING

### 6.3.1 Circumstances surrounding youths' sex offences

The findings in this study seem to suggest that substance abuse does play a significant role in the ex-YSOs' involvement and/or association with their sex offences. Therefore it is recommended that:

- *It is important for all residential diversion service providers to screen all YSOs so as to determine the possibility and/or severity of drug and/or alcohol addiction.*

It is further suggested that very little can be achieved therapeutically with youth offenders who might have serious drug and/or alcohol problems. It is recommended that:

- *Medical screening for substance abuse would need to be made a first point of assessment and intervention, even before the youth offenders are enrolled in the residential diversion programme.*

The themes relating to 'consensual sex' and 'false accusation' seem to suggest that many of the ex-YSOs were honestly not aware of the legal implications of their sexual behaviour. This perhaps explains the sexual conduct of some YRs who committed their 'alleged' sex offences when they were sober, not under the influence of any drugs, nor under the influence of their peers. The Sexual Offences and Related Matters Act 32 of 2007 makes sexual intercourse between two young people, who are under 16 years of age, illegal, whether with or without consent. It is recommended that:

- *The national department of justice and constitutional development through the use of their trained staff need to engage in rigorous awareness raising campaigns about the Sexual Offences and Related Matters Amendment Act 32 of 2007.*

Similarly, it is also recommended that:

- *The YSOs' diversion programme facilitators need to raise awareness and provide basic information regarding the Sexual Offences and Related Matters Amendment Act 32 of 2007 and Child Justice Act 75 of 2008, as these have an impact on young people in general.*

### **6.3.2 Major contributing factors to youth sex offending generally**

The findings showed that a wide mix of factors contribute to youth sex offending behaviour. Some of the factors, such as exposure to adults engaging in sex, parental neglect, lack of supervision, difficulties of parents and/or guardians in talking about sex to the children, could be attributed to the effects of poverty.

Most drivers of youth sex offending, which were cited by the respondents, seemed to be linked to family and societal lifestyles in general, and could be understood in terms of learning theories such as classical conditioning, operant conditioning, social learning theory, family systems theory, and developmental theory, all of which have been discussed in detail in Chapter 2. Therefore it is recommended that:

- *All interventions that are aimed at preventing or reducing youth sex offending should not only focus on the rehabilitation of YSOs in isolation but also target their families and society wherever possible and appropriate.*

### **6.3.3 The role of a family in the prevention of youth sex offending**

The findings indicate that the main role that the family can play in the prevention of youth sex offending is to provide sex education to the children. However, the findings show that talking to children about sex is not only a difficulty associated with a cultural taboo, but most parents and guardians do not have time for such activities, because they face major challenges in meeting their families' basic survival needs. Therefore, it is recommended that:

- *Social workers working with the youth offenders need to link the parents and guardians of the YSOs or refer them to companies or social services agencies that could provide them with opportunities to generate income.*

The aim of this would be to improve the socio-economic well-being and better the living conditions of these families. Nonetheless, I am aware that some facilitators and service providers of diversion programmes may fail to see the bigger picture and consider such interventions as beyond their scope of service delivery.

## **6.4 YOUTH SEX OFFENDERS' RESIDENTIAL DIVERSION PROGRAMME**

### **6.4.1 Experiences of the programme**

The findings suggest that a pleasant group atmosphere can go a long way in influencing and shaping the attitude of group participants towards their attendance and participation in the group sessions. Youths need to look forward to the group sessions. Therefore it is recommended that:

- *Programme facilitators need to use their skills and a range of activities creatively, such as using visuals, to capture the minds of the participants and keep them attentive as much as possible in the group sessions.*

The bullying that was reportedly experienced by some YRs during their stay at DYC definitely needs to receive attention. This is where the role of the child and youth care workers can be valuable as part of the multi-disciplinary professional team. Child and youth care workers need to ensure that young inmates are always protected and cared for around the clock. Therefore it is recommended that:

- *When bullying has been identified by the staff, intervention plans need to be formulated to ensure that it is addressed immediately and effectively by the child and youth care workers.*

## 6.4.2 The structure of the residential diversion programmes

### 6.4.2.1 Facilitation of the programmes

#### *Individual versus group method of counselling*

The study found that some YRs preferred individual counselling, some preferred group counselling, whilst others preferred a combination of both (see the respondents' motivations as expressed in Chapter 4). It can be inferred that both methods are important and that each can play an important role in rehabilitating the youth offenders. Therefore, it is recommended that:

- *Whilst the group approach has its merits, the facilitators also need to ensure that each group member receives individual attention too. The choice as to which method is most appropriate at a given time will depend on the practitioner's continuous assessment of the youngster's needs and presenting problems. This will help in identifying treatment themes that may be specific to each young offender's deviant thinking pattern and cycle of sexual abuse.*

The above proposed recommendation is in line with one of the professional respondents' perception regarding the facilitation of YSOs programme. The respondents preferred the YSORDPs to be facilitated by social workers rather than volunteers or para-professionals. I concur with the YRs who emphasised that the appropriate personality and passion for working with YSOs is even more important than the appropriate skills and knowledge. Therefore it is recommended that:

- *When diversion service providers are recruiting social workers who will facilitate the youth sex offenders' diversion programmes, they need to appoint those who have the right personality and passion for working with youth offenders and who feel comfortable in working with sex offenders.*

The professionals in the sample unanimously agreed that a generic social work degree does not fully prepare one for working with sex offenders. They took it a step further and proposed that a post-graduate diploma or a Masters Degree qualification would be required for such an occupation. I agree that working with sex

offenders is a specialised field of work, but I do not believe that it needs to be made a stand-alone post-graduate diploma or degree. It is recommended that:

- *Such specialised training could be offered as one or two modules in a Masters Degree programme rather than as a stand-alone qualification. It could be located within the Masters Degree in probation and correctional practice programme.*

#### **6.4.2.2 Family involvement is essential throughout**

The findings indicate that the active involvement of the family or SOs is important throughout the programme because the family will eventually need to help in the reintegration of the youth in the community. I support the importance of working with the families of the YRs as partners, because not only may they be a source of a problem in some situations, but they will also be needed to support the young offender both during and after the programme. It was noted in Chapter 4 that most professionals continue to focus on rehabilitating the young person without involving the family, even though they were aware of the value of working with the families. They considered interventions with the families as beyond their line of duty, since they were employed as residential social workers. Such an approach was strongly criticised in Chapter 4. It is recommended that:

- *It is important that YSOs are understood within the context of the family where they come from and that the interventions are targeted at modifying the behaviour in the family, particularly if it contributes to the maintenance of the young person's sexual abusive behaviour.*

#### **6.4.2.3 Case-conferencing**

The findings of the study also pointed to the necessity of case-conferencing with other professional role-players during the facilitation of residential diversion programmes. It was found that almost all professionals were working in isolation, even if they were working with the same child at different stages of the criminal justice procedure. This also applied to social workers who rendered therapeutic

services to the victims of the YSOs. There was no multi-disciplinary team approach in their work. It is recommended that:

- *It is imperative for different professionals working with YSOs, their victims and their families to work together through case-conferencing so they are able to provide holistic services.*

#### **6.4.2.4 Co-facilitation with rehabilitated ex-youth sex offender**

I support the suggestion that was proposed by some YRs for rehabilitated ex-YSOs to be invited to the group sessions to inspire other youth group members. However, I want to caution that this needs to be carefully implemented because the invited young person might have the right attitude but they might not have the necessary facilitation skills. It is therefore recommended that:

- *Instead of ex-YSOs participating in the group sessions as co-facilitators, they should rather be invited as guest speakers in one or two sessions of the group programme.*
- *The guest ex-YSO should be guided by the programme facilitator regarding the structure and the manner in which the presentation should be pitched. This is vitally important to avoid sending a wrong message to group members and causing embarrassment to the programme facilitator.*

#### **6.4.2.5 Content of the programmes**

The respondents proposed the inclusion of a wide range of topics, which they felt must be covered in such diversion programmes. Most of the topics that were suggested are common to those that were proposed by other South African scholars, such as Baptista and Wood (2002), Booysen (2003), Dhabicharan (2002), Ehlers and van der Sandt (2002), Wood and Ehlers (2001), Eliasov (2004), Lyell (1999), and Meys (1999), as outlined in Chapters 2 and 4. However, what is equally important is their sequencing in line with the recommendation which was proposed earlier in the first bullet-point of Section 6.3.1 of this chapter.

*The programme facilitator needs to ensure that the group has developed trust in each other and in the facilitator so that it can be easy to cover topics, such as masturbation, sexual intercourse, social identity, sexual orientation, and so on. It is recommended that:*

- *Group programmes facilitators need to be open and direct and to 'call a spade a spade'. This kind of behaviour modeling from the facilitator in the early stages of the group development will help to empower group members also to talk openly and directly in the group.*

It is important that facilitators of such groups to be comfortable in discussing sexually related matters openly and directly.

Some YRs also raised a very important aspect in working with young people, namely the importance of having a good sense of humour and incorporating physical activities into the sessions. I agree with this and therefore recommend that:

- *It would help if group facilitators mixed talks with some humour and physical activities such as games.*

I further recommend that:

- *Diversion programme facilitators need to choose group programme activities creatively such that, wherever possible, they are used as an ice-breaker leading to one or more topics of the programme. Without physical engagement, the facilitator is likely to lose the youth's attention, since they tend to have a short concentration span.*

#### **6.4.2.6 Duration of the programme**

The respondents had varied views regarding the appropriate time-frame for residential diversion programmes. Some felt that they needed to be 3 months at the minimum. Others felt that they needed to run for a period of between 4-7 months.

Most of the respondents felt that they needed to be at least one year or longer. The findings showed that many research participants, both youth and SOs were in favour of such a lengthy duration, because they understood that it takes time to rehabilitate an offender. As pointed out in Chapter 4, the respondents' proposed time-frames were in line with the duration periods, as proposed in the CJA as discussed above.

The respondents made several good suggestions, which I endorse and propose here as recommendations, namely:

- *Whilst one-year can be spent in the institutions for the residential YSOs programme, another year could be spent in the community as part of the programme.*
- *The YSOs' behaviour and progress needs to be followed-up, monitored and supported by community based organisations.*

It is further recommended that:

- *NGOs involved in the reintegration and after-care services of ex-YSOs need to help them to establish support groups for the newly released ex-offenders.*
- *The other part of diversion programme that will be spent in the community will need to be formalised through a court order by the referring magistrate.*
- *The PO as a case manager will then need to work closely with the social worker from the NGO that is involved in the reintegration service delivery.*
- *The PO who is a case manager will be responsible for providing the referring court with a youth offender's progress report.*

## **6.5 FAMILY GROUP CONFERENCING**

The study found that, even though almost all YSOs would have preferred a FGC so that they could reconcile with their victims and find closure, FGCs were not convened with most of them and hence there was still tension between them and

their former victims. I believe that, even though most of the professionals in the study were in favour of a FGC to be convened some time after the offence, this should not be assumed as a standard practice. It is however recommended that:

- *FGCs need to be approached with caution since their success will depend to a large extent on both parties' willingness and readiness to participate in such restorative justice processes.*

FGCs need to form an integral part of the YSORDP, so as to enable YSOs to enter into dialogue with their victims to promote closure and reconciliation wherever possible and desirable. This is even more important if the youth respondents had some sort of a social relationship with their alleged victims or if they came from the same family and/or neighbourhood.

Implementation of the above recommendations will go a long way in helping to ease the reintegration process of both the youth ex-offender and his victim in the community.

#### **6.5.1 Victim vs. Offender initiated restorative justice process**

The study found that most respondents were aware that RJ processes needed to serve the interests of both victims and offenders; in practice, however, most FGCs are offender-oriented. It is recommended that:

- *Practitioners need to be able to work with both the victim and the offender and get them to see the long-term benefits of a RJ process.*
- *The RJ process needs to be gradually built in and encouraged throughout the counselling processes of both the victim and the offender, but it should never be imposed.*

## 6.6 CLOSURE AND RECONCILIATION POST RELEASE OF YOUTH SEX OFFENDERS

The study found that almost all YRs, except for two, believed that they had found closure with regard to the sex offence incident and that they had moved on with their lives without reconciling with their victims, even though some felt they would have appreciated such reconciliation. They claimed that they had found closure in their own ways. As pointed out in Chapter 4, the concept of closure is subjective and it differs according to each person. Most of the YRs indicated that there were still hostile relationships between them and their victims and their families. This confirms the research findings, which showed that FGCs, which might have helped to promote reconciliation, were not convened with most of the youth offenders and their victims during the period of their enrollment in the programme.

The inference that can be made from the case scenario, which was presented in Chapter 4, where a victim was invited to participate in a FGC at DYC, is that RJ processes should never be imposed. It is recommended that:

- *Programme facilitators who wish to apply FGCs need to do so with caution and careful consideration of its timing, the venue where FGC is convened and the readiness of both parties to engage in such a social gathering.*

Another case scenario, which was presented in Chapter 4, illustrated how the application of a RJ process can be pursued without a victim, which I termed 'semi-FGC'. The semi-FGC managed to restore the relationship between the two families. As discussed in Chapter 2, Skelton and Batley (2006) also noted that, whilst it is desirable for all parties that have a stake in the offence to be present and to participate in a RJ process, sometimes it is not always possible or even desirable. It is therefore recommended that:

- *In cases where all the parties are not able to participate in a RJ process, the diversion programme facilitators need to consider various creative ways in which the RJ agenda could be pursued wherever possible and desirable.*

## **6.7 REINTEGRATION OF SEX OFFENDERS INTO THE COMMUNITY**

The YRs' immediate occupation after DYC was the first sub-theme that was explored as part of the broader theme of reintegration to the community.

### **6.7.1 Occupations subsequent to release from DYC**

The YRs' careers after they left DYC showed that, whilst half of them continued their schooling, in the other half, those who were talented in other careers such as drama, dance, fine art, and so on, decided to pursue these instead. Therefore it is recommended that:

- *Staff members at youth secure care centres that design and facilitate programme activities, need to identify and nurture potentials of different youth inmates.*

Whilst some YRs' reasons for not being able to go back to school sounded genuine, such as a lack of financial support or being refused acceptance at school because they were too old, others had completely lost interest in schooling. A further recommendation is thus that:

- *Residential diversion programme sessions could be conducted in the afternoons when the young offenders come back from school.*

Most YRs did not complete their high school and, as a result, they could not further their studies in institutes of higher learning, which would have provided them with a qualification to be able to compete in the job market. As pointed out in Chapter 4, without any skills and qualification, the chances of getting a job would be slim.

Hence, most YRs were unemployed and job-hunting. It is therefore recommended that:

- *Ex-YSOs who are released from the residential diversion programme should be helped by the Department of Social Development (DSD), in partnership with youth secure care centres such as DYC, with the reintegration process. They should be encouraged to complete school. Those who are not interested in going back to school, need to be helped to find jobs, so that they do not wander around idle, which might expose them to further criminal behaviour.*

### **6.7.2 Process of reintegration to the community**

The findings in respect of the varied sources of social support that the YRs received illustrate a very important intervention area, which practitioners working with youth offenders need to be aware of. It is assumed that family members or extended family members are a potentially good social support system. However, it was found that, in some cases the family or/and extended family members were actually a source of problems for the young people. For an example, some YRs reported that when they were released from DYC they were constantly humiliated and reminded by their family members about the sexual offence. A significant number of YRs received social support from non-family members. It is recommended that:

- *Social workers working with youth offenders need to identify and verify, in consultation with the young offenders, those people with whom they have a good relationship. These people may not only be valuable for FGC processes, but also to provide social support on their release and reintegration back to the community.*

The YRs offered some suggestions that they felt would help to ease the reintegration challenges often faced by ex-youth offenders. As mentioned in Chapter 4, acceptance by their families and the communities in general was the main challenge. They also made the following suggestions, which I also recommend for fostering social support for ex-YSOs:

- *Ex-YSOs need to receive follow-up and monitoring by social workers from the organisation that rendered the residential diversion programme.*
- *Support groups need to be established by community based NGOs which work in the areas of offender rehabilitation and reintegration services.*

### **6.7.3 Transition stage and after-care services for youth sex offenders**

The transition stage from a residential diversion programme to after-care services was identified as one of the challenges that can be anticipated in the implementation of residential YSOs' diversion programmes, particularly given the manpower shortage in social work and related services. The recommendations that were proposed by the respondents and which I also support were that:

- *Government departments such as Social Development needs to build capacity in the community by offering training to individuals and organisations that have an interest in helping ex-YSOs in being reintegrated into the community.*
- *If the social workers or probation officers cannot cope with after-care services, such services could be delegated to assistant probation officers.*

The findings on this theme, viz. the transition and after-care services for YSOs, are a cause for concern, since they reflect a major gap and a weakness in the SA child justice system. This weakness needs to be efficiently dealt with, if the professionals are serious about helping the youth offenders and reducing the risk of recidivism. It was pointed out by some professional respondents that, if there is no clear role definition and distinction between POs and SCCSWs about whose responsibility it is to assist youth offenders with transition and after-care, these services would not be rendered. In other words, the YSOs would simply fall through the cracks.

Different individuals, NGOs, and professionals should play a role in the transition stage and after-care services for YSOs, as suggested by different respondents in the study. It is recommended that:

- *A protocol needs to be developed and incorporated in the CJA regulations, specifying which professional (e.g. the POs or SCCSWs) needs to coordinate various efforts in helping the youth ex-offender with the transition stage and after-care services for YSOs. This will ensure that ex-YSOs do not fall through the cracks. They should receive coordinated and holistic services aimed at supporting them with after-care services once they are back in their different communities.*

I believe that the chances of recidivism amongst ex-YSOs could be significantly minimised by after-care and reintegration support services. Therefore it is recommended that:

- *If the POs and/or APOs and DSD field social workers are not in a position to render after-care and reintegration services, the youth care centre and the practitioners that have worked extensively with the youth need to be funded and tasked to render the after-care services.*

## **6.8 RECIDIVISM AMONGST YOUTH RESPONDENTS**

The study found that none of the YRs who participated in this study reoffended sexually. It can therefore be inferred that the residential sex offenders' programme seems to have made an impact in their lives. The findings suggest that the experience of being deprived of their personal freedom had a deterring effect on some. It was also found that the religious influences that the youth were exposed to whilst at NYC often helped to change their attitude towards criminal behaviour. Since some of the YRs' behaviour change was indeed influenced by their religious conversion at the centre, it is therefore recommended that:

- *Residential diversion service providers need to provide various spiritual programmes at the centre in addition to diversion programmes.*

The YRs' criminal histories have shown patterns of non-specialisation and progression from minor to serious offences. It is therefore recommended that:

- *YSOs' residential programme, in addition to sexually related themes, needs to cover life skills and broader general themes relating to the impact and consequences of other forms of crime in general.*

## **6.9 MANAGEMENT OF YOUTH SEX OFFENDERS THROUGH RESIDENTIAL DIVERSION**

### **6.9.1 Decision-making in diverting youth sex offenders**

The study found that the views of the victim and the PO's assessment report are some of the main factors that are considered when deciding whether or not to divert a YSO. It was noted with appreciation that the justice officials were beginning to recognise the victim as an important role-player in the administration of justice. The assessments of YSOs and the circumstances surrounding their offences prior to the court's decision-making also affirms the important role that POs play in the administration of child justice in South Africa. It is therefore recommended that:

- *POs need to be supported through continued training and proper supervision and it needs to be ensured that they render good and proper assessments of youth offenders.*

The above recommendation is important because, if POs' assessments are perceived to be inadequate and/or poor, the courts are not likely to accept their proposed recommendations in the reports that they submit to the courts. This will in turn lead to great frustration amongst POs, which may lead to their abandonment of their work.

The findings also show that a diversion register is one of the tools that could influence the justice role-players when deciding whether to divert a youngster or not. Whilst it is important to check if the child has a diversion record, that on its own

should not be a deciding factor to disqualify a child for another diversion opportunity. As pointed out in Chapter 4, this thinking seems to be informed by a punishment orientation, rather than a consideration of what would be in the best interests of the child. International instruments, such as the Convention on the Rights of the Child, the Beijing Rules and the Constitution of SA, all state clearly that the best interests of the child need to be considered in all decisions that are made regarding the child offender. Therefore the recommendation of assessment as discussed above is further emphasised.

### **6.9.2 Referral of youth sex offenders to the residential diversion programme**

The findings suggest that there is huge frustration and role confusion regarding the referral system of the YSOs to the residential diversion programmes. This finding suggests that the referral system needs closer scrutiny and structuring so as to ensure effective administration of residential diversion practice in managing YSOs. To ensure that the POs and SCCSWs take an active role in coming up with a solution to the challenges they have identified, they need to be involved in a process that is aimed at finding such a solution. It is therefore recommended that:

- *A consultative workshop needs to be convened by DSD for POs and SCCSWs so as to develop a clear protocol that must be followed as a blue print and guideline in the referral system of youth sex offenders to the residential diversion programme. This protocol needs to be incorporated in the CJA regulations.*

Referral of alleged YSOs to a residential diversion programme as an alternative where the victim loses interest in a case of youth sex offence and/or when the state does not have sufficient evidence to prosecute is not fair. This pattern of practice was common even during my facilitation of the YSORDP. Some referrals to the diversion programme were received at a later stage, before the alleged youth offenders went on trial. These would be instances where prosecutors sensed that they did not have a sufficiently strong case to proceed with trial. They would argue

that they would refer an alleged youth offender to a diversion programme so that he could learn about the far-reaching consequences of his alleged criminal behaviour. Even though such practice is done in good faith, it is in fact illegal. It does not comply with the legal requirements of diversion, as stipulated in the CJA. It is therefore recommended that:

- *All decisions to divert are kept on record so that they can be reviewed to determine whether they were in line with the provisions of the CJA or not. Where it is found that they were not, the justice official who authorised it would need to be brought before a disciplinary hearing for corrective measures.*

### **6.9.3 Court reporting procedure**

As is the case with the ineffective referral system that has been discussed above, the challenges experienced in the reporting procedures to court have a direct effect on the services that need to be rendered to the youth in conflict with the law. At the same time, the credibility of probation services and social work practice standards are in question. The reporting structure and procedure seems to be one of the priority areas that need to be sorted out. This will help to eradicate confusion amongst the role-players and hopefully help to avoid children falling through the cracks. Therefore it is recommended that:

- *A consultative workshop needs to be convened for POs and SCCSWs so as to develop a clear protocol that must be followed as a blue print and guideline in the court reporting structure and procedure. This protocol needs to be incorporated in the CJA regulations.*

Non-compliance would mean that the PO and/or SCCSW concerned should be brought before a disciplinary hearing for corrective measures.

## **6.10 MANAGEMENT OF THE YOUTH SEX OFFENDERS' VICTIMS**

### **6.10.1 Victims' referral system to counselling services**

The findings of this study showed that the social workers from the NGO sector working with the victims were equally frustrated with the referral system of the victims of YSOs as their counterparts who work with the youth offenders. In order to overcome the above challenge, it is recommended that:

- *Since the PO is directly involved in the process of diverting YSOs, he or she also needs to facilitate the referral of the victims to counselling services. This is in line with the provision of the Probation Services Act 116 of 1991, which states that POs need to render victim support services to the victims of crime.*

POs may not be able to render such services because of high caseloads. However, they need to at least facilitate the referral of victims to the DSD social workers who will in turn facilitate the referral to NGOs that can provide such a service. The PO will need to do a follow up to ensure that, whilst the YSO is receiving rehabilitation in the diversion programme, the victim is also undergoing counselling. This is in line with Herman's (2004) proposed parallel approach to justice systems, which does not only meet the needs of the offenders but those of the victims and society as well (see Chapter 2).

### **6.10.2 Victims' services post-release of youth sex offenders**

The findings of this study indicate that victims of YSOs often suffer injustice because, whilst some efforts are made to reintegrate the YSOs back into the community, the victims of these offenders are often completely neglected. In taking into account the challenge that SA is facing regarding the shortage of social workers, some respondents proposed a recommendation, which I endorse, that:

- *POs and/or APOs need to help establish community restorative justice forums, which could help in reintegrating both the victim and the offender back into the community.*

- *To ensure that after-care services are rendered to both the victims and the offenders, these must be enforced by law through a court order as part of the residential diversion programme.*

### **6.10.3 Perceptions of social workers working with victims of youth sex offenders**

The study found that the professionals who provide counselling to the victims of YSOs were more supportive and concerned about the YSOs than punitive. They felt that some youth who sexually abuse younger children or other youth might be acting out their unresolved anger. This indicates that the government and society in general need to invest in treating survivors of child sexual abuse to be able to interrupt this cycle of abuse. It is recommended that:

- *Youth sex offenders' diversion programme facilitators need to dig deep and provide an enabling counselling environment for YSOs enrolled in their programmes to be able to disclose any experiences of child sexual abuse.*

If some diversion programme participants disclose such abuse, it will be important for the social worker to dedicate some time to see the youth offender concerned individually. If they do not have time for such individual attention, they will need to negotiate with the youth offender concerned for a referral to a therapist who is an expert in dealing with the survivors of child sexual abuse.

The above recommended interventions are necessary because very little change of offending behaviour can be achieved through diversion programmes if the root causes of the behaviour have not been dealt with.

## **6.11 PERCEIVED BENEFITS OF RESIDENTIAL DIVERSION WITHIN A RESTORATIVE JUSTICE APPROACH**

The study found that most research participants generally perceived the proposed model of residential diversion within the RJ framework in a very positive light. The perceived benefits, which were identified by the respondents, were discussed in great detail in Chapters 4 and 5. It was cautioned in Chapter 5 that, whilst it was encouraging to note that most professional respondents' perceived benefits seemed to be in line with the objectives of RJ, such as providing healing for both victim and offender, a concern was raised about the perceived benefits, such as 'a quicker way to process cases relating to youth sex offences', which came from the justice sector. The danger of this is that justice officials may abuse the residential option of diversion by diverting YSOs who may not be suitable candidates for this level of diversion, as a way to reduce their heavy court rolls.

## **6.12 PERCEIVED ROLES IN RELATION TO RESIDENTIAL DIVERSION WITHIN A RESTORATIVE JUSTICE APPROACH**

The study found that some professionals, mainly from the justice sector and some from social services, did not have a good understanding of their roles as prescribed by the CJA and in the envisaged approach in this study. It is recommended that:

- *All role-players in the child justice system need to undergo training in the CJA so they become familiar with the different provisions of the CJA and what is required from them in promoting the aims and objectives of the CJA.*

As indicated above, some respondents failed to see the bigger picture relating to the multi-disciplinary approach. As speculated in Chapter 5, this could be attributed to the tendency amongst different professionals to work in isolation. Only one respondent from the SCCSWs showed an impressive level of understanding of their perceived role, which reflected a bigger picture. The respondent understood that she needed to give a comprehensive report to the multidisciplinary team about the

progress the child is making at the secure care centre and in the residential diversion programme.

I believe that a lot can be achieved when different professionals work together in consultation rather than in isolation. Such an approach can also help to make good use of limited human resources and avoid duplication of services. It is therefore recommended that:

- *Different role-players in the administration of child justice, including those working with the victims, need to host consultative workshops whereby the concept of a multi-disciplinary approach could be unpacked, adopted and mainstreamed throughout their different interventions.*

### **6.13 PERCEIVED CHALLENGES IN RELATION TO RESIDENTIAL DIVERSION WITHIN A RESTORATIVE JUSTICE APPROACH AND RESPONDENTS' SUGGESTION TO OVERCOMING THEM**

The challenges that can be anticipated and respondents' suggestions to overcoming them were two research variables that received the highest response rates from all sets of respondents when compared to other research variables. This suggested that the respondents were enthusiastic and hopeful about the benefits of the RJ approach in managing YSOs in South Africa generally. Moreover, the respondents not only identified the perceived challenges, but also shared how these could be overcome.

As pointed out in Chapter 5, the challenges are listed separately for the sake of highlighting them. However, in reality, they overlap with each other and have a ripple effect on the nature of services that will be rendered to the YSOs, their victims and their families in SA.

The respondents' suggestions are considered vital because even though some do not relate directly to the practical implementation of the envisaged multi-disciplinary

model of intervention, they can help to change the societal mindset to RJ. Some of these interventions will advocate for change in policies and legislating frameworks, which are necessary in creating an enabling environment for a RJ approach to residential diversion. Since all the challenges that were identified by the respondents and the suggestions that they proposed were discussed in great detail in Chapters 4 and 5, they will not be repeated here. All the suggestions proposed by the respondents are important and thus will be considered and integrated in the proposed multi-disciplinary practice guidelines that are presented in the next chapter.

#### **6.14 OVERALL CONCLUSION**

The study found that a number of interwoven factors contribute to youth sex offending and how the use of residential diversion within a RJ approach could help in managing and preventing this social problem. Most youth sex offences that were described in the study do not fit the stereotype of violent sexual offences that are often publicised in the media. Most YSOs who participated in the study insisted that the sexual encounters that they had with their former 'victims' were consensual, and hence their sex 'offences' did not involve any form of violence. It would seem likely that this is why the courts decided to divert rather than to prosecute these young offenders.

The values and principles of the CJA provided the legislative context for the study and my proposed approach to dealing with YSOs, their victims, and their families. The study highlighted a number of potential benefits and challenges that could be anticipated in my proposed approach, namely: the application of RJ within a residential option of diversion.

The study showed that there is much confusion and a widespread lack of understanding amongst the professionals on a number of practice related issues, coupled with a lack of understanding of the Child Justice Act. This is likely to have a negative impact on the nature of the services that are rendered to the YSOs, their

victims, their families and the community in general. The professional respondents pointed to a need for further training in the Child Justice Act so they are able to perform their duties with confidence. The next chapter offers some practice guidelines, which will hopefully help to clarify the roles and responsibilities of the different professionals, paraprofessionals and the community in promoting good practice in the area of diversion.

University of Cape Town

## CHAPTER 7

# PROPOSED PRACTICE GUIDELINES FOR YOUTH SEX OFFENDERS' RESIDENTIAL DIVERSION PROGRAMMES

### 7.1 INTRODUCTION

This chapter presents my proposed multi-disciplinary practice guidelines, based on the findings, conclusions, and recommendations of the study. The evaluation study by Kingi and Robertson (2007) of the Te Poutama Ārahi Rangatahi residential treatment programme for adolescent males in New Zealand, which was discussed in Chapter 2, offers a useful best practice framework in developing effective youth offenders' residential diversion programmes. Their practice model has been selected partly because it proposes pre-treatment and post-treatment phases of the programme, which I believe are important phases in programme development. Their practice frame of reference is based on a New Zealand study, one of the countries that are leading in theory and practice of RJ generally. Hence, their practice framework has been adopted and modified accordingly for the South African context.

Kingi and Robertson (2007) outlined key features, which they believed need to be addressed, these include: *programme design; pre-treatment interventions; treatment phase; staffing; the residence; determining progress effectiveness; and post-treatment follow-up*. These features will be discussed in the sub-sections that follow.

## **7.2 PROGRAMME DESIGN**

### **7.2.1 Consultation with other role-players in the designing of the programme**

If the envisaged approach is to be effective, it will require the involvement of a number of professionals, paraprofessionals, volunteers and communities in general. Therefore, service providers and programme implementers will need to develop a YSORDP in consultation with other major stakeholders in the field of youth justice. Even though the implementers might have a plan in mind, they will need to present it as 'work-in-progress' to allow other role-players to contribute to the programme and to feel that their contributions are valued. This will hopefully make other role-players feel part of the programme and thus more willing to take ownership of it. This step is very important because some role-players may not make use of the YSORDP if they do not understand it. They may even feel that the programme has been imposed on them, and they may not understand their own roles and responsibilities nor those of other role-players in the envisaged programme.

Subsequent to the commission of the youth sex offence and the arrest of the youth, the envisaged facets of the programme will include:

### **7.2.2 At court**

- The probation officer (PO) who conducts an initial assessment of the youth sex offender (YSO) needs to consult the diversion register to check if the youth offender has been diverted in the past. However, the information that will be gathered from the diversion register should not compromise the objective assessment of the youth offender.
- If it is found that the youth has been diverted before, the PO needs to bring this to the attention of the YSO towards the end of the interview and ask probing questions around the outcome of previous diversion(s), particularly if there was non-compliance with the court orders. This information is important because it will help the PO to motivate for another diversion if the youth has been previously diverted. The PO needs to bear in mind that other

justice role-players would have checked the diversion register too, and that they will probably raise questions and/or concerns if another diversion is recommended.

- Once the residential diversion has been approved, the prosecutor needs to inform the victim and his or her family directly about the diversion decision.
- The prosecutor needs to keep the case on the court roll for quarterly reviews and monitoring of the youth's progress in a diversion programme.
- The PO needs to follow up on the victim and his or her family to ensure that they are informed about the diversion decision and to encourage them to seek counselling services from a local NGO, if they so wish, and to facilitate their referral where necessary.
- The PO needs to consult with a secure care social worker (SCCSW) or the manager of the centre regarding the availability of a place in the YSORDP and a possible referral.
- The PO's copy of the assessment report needs to spell out clearly the name of the PO who is the case-manager and their contact details. The copy of this report also needs to accompany the YSO to the residential facility.

## **7.3 PRE-TREATMENT INTERVENTIONS**

### **7.3.1 Creating awareness and marketing of programme**

- The SCCSW and the management of the centre where the residential diversion programme is offered consciously and continuously need to create awareness and market the programme to the community in general and amongst other role-players in the field of child justice in SA.
- The diversion service providers need to create awareness amongst justice role-players regarding the option of residential diversion programme that

could be considered as *an alternative to imprisonment and/or a community based diversion programme.*

- The residential diversion programme can also be considered and used as *a court order for suspended or postponed sentencing options for convicted YSOs.*

### **7.3.2 At a residential facility**

- The residential medical practitioner and the SCCSW need to screen all YSOs for drug and/or alcohol addiction as a first point of intervention before the youth offenders are enrolled in the diversion programme.
- Where it is found that the young person needs detoxification and intense drug rehabilitation, the residential medical practitioner needs to inform the SCCSW who will in turn inform the PO, who is a case manager, who in turn will inform the referring court through a report. The magistrate will then be required to authorise the placement of the young offender in a drug rehabilitation programme, if it is offered in the centre or any other organisation that offers in-house drug and/or alcohol rehabilitation services. The youth will then be placed in the sex offenders' programme, once he or she has completed their drug rehabilitation.
- The period for which the youth has stayed at a drug rehabilitation centre will need to be considered when they are eventually referred back to the centre for the YSORDP.
- The SCCSW needs to conduct an in-depth individual assessment of all youth offenders who are charged with sex offences whether diverted or not, in order to understand the circumstances surrounding each youth sex offence. If the youth has not been diverted at court and if he/she is found to be a

suitable candidate for YSORDP, the SCCSW will need to have a case conference with the PO, who is the case manager as soon as possible.

- If there is consensus between the SCCSW and the PO about the appropriateness of diversion of the youth to the YSORDP, this will be recorded in a report. The report will need to be sent to the referring magistrate and/or prosecutor who, if they accept the recommendation, will further finalise the diversion order in line with the provisions of the Child Justice Act (CJA).
- Further assessments of the YSO needs to explore family relationships and social relationships that have been harmed by the sex offence. In consultation with the youth offender, the SCCSW needs to identify social relationships that will need to be mended through a family conference (FC) or family group conference (FGC).
- The SCCSW and/or occupational therapist (OT) need to assess the appropriateness and the possibility of placing the youth offender back into formal schooling.
- Those who do not wish to go back to school also need to be assessed for sports, religious activities, interests and literacy levels with a view of placing them in an appropriate Adult Basic Education Training (ABET) and one or two skills training workshops offered at the centre.
- The SCCSW needs to formulate an Individual Development Plan (IDP) for the YSO in partnership with his family, the PO who is a case manager, the assistant probation officer (APO), the youth's child and youth care worker (CYCW) and his workshop instructor(s) or educator(s) at the centre or any other significant person in the child's life.

- The enrolment of the child in the diversion programme will need to form part of the child's IDP. The involvement of other role-players as partners, together with his enrolment in different sports and religious activities during his stay at the centre, seeks to promote a holistic and multi-disciplinary approach to working with the child and his family.

## **7.4 TREATMENT PHASE**

### **7.4.1 Structure**

#### ***Individual and group methods***

- Due to the offence that has been committed by the young person, he or she will need to be given counselling, both individually and in a group.
- Individual sessions need to address the youth offender's unique therapeutic counselling needs, as well as issues that emerge from the group programme and that need to be followed-up on a one-to-one level.
- The group programme needs to address and prioritise the educational component of the sex offenders' programme.
- The group needs to ensure that all its activities are geared towards achieving the group's educational and therapeutic goals.

#### ***Working concurrently with the families***

- Through family conferences, the SCCSW needs to assess the family dynamics because YSOs need to be understood within the context of the family. The SCCSW needs to facilitate the referral of the family to a NGO, which can help them, particularly if the family dynamics are in fact contributing to maintaining the youth's abusive sexual behaviour.
- The SCCSW needs to work more closely with the families of the youth offenders as partners, and to encourage the families to provide social

support through regular visits, during the youth offender's period of detention and during their reintegration into the community.

- The SCCSWs may need to establish support groups for the parents and guardians of the YSOs, wherever possible and necessary.

### ***Family group conferences***

- FGCs need to form an integral part of the residential diversion programme and of the SCCSW job description where appropriate.
- It was noted earlier that FCs and FGCs go a long way in helping to ease the reintegration of both the youth ex-offender and his former victim back into the community.
- The PO as a case manager needs to liaise with the social worker working with the victim and/or his or her family at least once a month to determine the victim's counselling progress.
- The SCCSW needs to liaise with the PO who is the case manager, at least after the first three months the youth offender has been enrolled in the programme, so as to determine the status of the victim and the possibility of convening a FGC with the victim and his or her family.
- The SCCSW needs to approach FGCs with great sensitivity, taking into account the victim's readiness in order to decide on the appropriate timing to participate in these RJ processes, since their success will depend to a large extent on both parties' willingness and readiness to participate.

### ***Semi-family group conferences***

- The SCCSW and the POs need to consider various creative ways, such as semi-FGCs, victim-impact panels, surrogate victims, etc, which are discussed

in Chapters 2 and 4 to promote the RJ agenda, if the victim is unable or unwilling to participate in RJ processes.

- The SCCSW, escorted by residential security guards and/or child and youth care workers if necessary, needs to reach out to the victim and his or her family to conduct the FGC or semi-FGC at their homes when they have agreed and indicated readiness to participate.

### ***Case-conferencing***

- The SCCSW and the PO need to hold case-conferences at least quarterly to discuss the progress of the YSO, which needs to be reported to the court by the PO subsequent to the case-conference.
- It is imperative for the SCCSWs and the POs and different professionals from the NGO sector in the area of working with YSOs, their victims and their families to work together through case-conferencing so they are able to provide holistic services.

## **7.4.2 Facilitation of the programme**

### ***Programme facilitation skills***

- The programmes need to be facilitated by professional social workers and not by volunteers, because the former are trained in both casework and group work.
- Auxiliary social workers and APOs may co-facilitate group programmes together with professional social workers.

### ***Invitation of rehabilitated youth ex-offender***

- It is proposed that, instead of ex-YSOs partaking in the group sessions as co-facilitators, they should rather be invited as guest speakers in one or two sessions of the group programme.

- The guest youth should also be guided by the programme facilitator regarding the structure and the manner in which the presentation could be pitched.

### ***Language of facilitators***

- The facilitators should not use social work professional jargon when they converse with the YSOs individually or in a group.
- They need to use the language(s) that the youth group members are conversant with to ensure that they are able to reach them.
- They also need to be able to relate to the youth at their level.

### ***Facilitators' gender***

- The male programme facilitator should be paired with a female facilitator wherever possible. This will be useful in helping the youth who are male to de-bunk any gender-based stereotypes, myths and taboos regarding male and female human sexuality.

### ***Programme activities***

- The facilitators will creatively need to blend group discussions with physical activities and/or games, using these wherever possible as ice-breakers to lead to one or more topics of the programme. The facilitators need to be aware that, without active physical engagement, they are likely to lose the youth's attention, since most of them have a short concentration span.
- Counselling activities need to foster victim empathy amongst YSOs wherever possible and appropriate. This could be achieved through indirect forms of RJ processes such as letters, victim-impact panels and surrogate victims, etc as discussed in Chapter 2.

### 7.4.3 Content

The content of the programme needs therapeutic and educational focus at an individual and group level. The topics that will need to be covered in the group sessions will be based on the aims and objectives that the programme facilitators will set out to achieve. At a casework level of intervention, these will vary according to the individual youth sex offender's social diagnosis. At a group level of intervention, most topics that have been discussed in Chapter 2 and 4 will be relevant, since group members have different therapeutic and sex related educational needs. Some of the broad objectives, which could be proposed for the group programme, could amongst others include helping the YSOs:

- to take responsibility for their anti-social sexual behaviour
- to develop empathy for their victims
- to acquire basic education with regard to human sexuality, and
- to acquire life skills so as to be able to develop personal competency and prevention of relapse.

The themes/topics may amongst others include: *communication and inter-personal social relation skills, peer pressure, leadership skills, myths and facts about human sexuality, sex education, sexual orientation, social and sexual identity, sexual intercourse, masturbation, victim-empathy, conflict resolution, challenging of cognitive distortions, taking responsibility for sexual behaviour, impulse control, relapse prevention, understanding the Child Justice Act and Sexual Offences and Related Matters Amendment Act.*

### 7.4.4 Duration

- The YSORDP could be divided into two components:
  - One year can be spent in the institutions.
  - The magistrate will need to make a ruling that the other year be part of the programme, which would need to be spent in the community.
- The YSOs' behaviour and progress need to be followed up, monitored and supported by community based organisations.

- These periods need to be continuously reviewed in case-conferences in line with the progress the youth is making in the rehabilitation programmes. If satisfactory progress is made the youth could be released earlier and where the progress is unsatisfactory the residential component could be extended.

## **7.5 STAFFING**

### **7.5.1 Recruit and appointment of programme facilitators**

- Diversion service providers need to recruit and appoint social workers who have the right personality and passion for working with youth offenders.
- The programme facilitators should be comfortable to talk about sex and related matters with young people.

### **7.5.2 Supervision of programme facilitators**

- Social workers in the child justice system need to be supported through continued training, adequate and proper supervision and to promote best practice.

### **7.5.3 Necessary educational requirements**

- Social workers in the child justice system who want to specialise in working with the sex offenders and/or those who want to specialise in restorative justice would need to acquire such specialised knowledge as part of the Masters Degree in probation and correctional practice qualification.
- Supervisors of social workers in the child justice system would need specialised training at a Masters Degree level, which would make them specialists in their area of practice.

## **7.6 THE RESIDENCE (facility offering the diversion programme)**

The diverted youth offenders are more likely to be accommodated in either youth secure centres with trial awaiting youth (as was the case when I facilitated the YSORDP) or in child and youth care centres with sentenced youth. The former would be a better option. I would discourage the latter option because youth offenders on diversion should not be exposed to hardened youth criminals who could influence them negatively. This would have an adverse impact on the outcome of their diversion. During the writing of this thesis, there was talk that the Department of Correctional Services (DCS) was intending to build halfway houses to help with the reintegration of youth offenders who have been released from prison. These halfway houses could also be a preferred residential facility for diversion programmes. However, this option is likely to pose a challenge because diverted youth offenders would be the responsibility of DSD and not DCS. Inter-departmental cooperation and partnership would be vital to deal with these challenges.

- It would be ideal for DSD to establish a stand-alone youth facility that would accommodate youth offenders enrolled in the YSORDP. However, this may not be feasible, considering that there are often a number of DSD programmes competing for limited state funding.
- The CYCW would need to provide a good and comprehensive orientation programme, which would include, amongst others, communication channels for raising grievances at the centre.
- The code of conduct needs to highlight clearly the incentives for good behaviour and the consequences of bad behaviour.
- The youth will need to be made aware right from the beginning that, if they behave well and complete the diversion programme, their cases may be withdrawn and they will not have a criminal record. If they conduct

themselves badly and attempt to escape, however, this would be immediately reported to the court, and their diversion will be withdrawn.

- The management and staff at these institutions need to bear in mind that these youths are in a diversion programme and not serving a sentence.
- It was recommended earlier that the youth could spend one year of the programme in the institutions and the other year in the community under close supervision and monitoring by APO.
- These institutions need to ensure that they comply with the rights of children in residential care, as provided by the Constitution of the country, and the minimum standards, as prescribed by the SA child and youth care system of the Inter-Ministerial Committee (IMC) policy for Young People at Risk (1998).
- Since the residential diversion programmes are a new phenomenon in SA, the youth facilities that offer these programmes will need to be assessed in a developmental approach by DSD through the Developmental Quality Assurance Practice Standards Policy (2000) at least after the first two years.
- The personnel at these centres, particularly the CYCWs, need to ensure that the youth offenders and their families have access to a range of differentiated services on a continuum of care according to their individual needs, as stipulated by the IMC on young people at risk (1998).
- The SCCSWs and the CYCWs need to ensure that the youth offenders keep close contact and telephonic ties with their loved ones, families and communities in general, wherever possible.

- The youth will also need to be taken out by the SCCSWs and CYCWs for home visits and community events, wherever possible and appropriate. The “bridge” between the institution and the community is of crucial importance.
- The SCCSW and CYCWs will need to assess and determine risk factors associated with taking the youth out to the community.
- Home visits and participation in communal social events would help to ensure that the youngsters do not sever their ties with their families and communities. This will hopefully help to reduce or eliminate temptation to escape from the institutions and ease their reintegration when they are eventually released back into the community.

## **7.7 DETERMINING PROGRESS EFFECTIVENESS**

- The SCCSW needs to convene a multi-disciplinary case-review at least quarterly with different role-players (CYCW, OT, PO, APO, the youth offender, his family, etc), whoever was involved in developing the youth’s IDP as well as the SCCSW facilitating the YSORDP, (if it is a different one) to discuss the youth’s behavioural and scholastic progress, and his therapeutic progress in the programme.
- The SCCSW needs to keep notes in the youth’s file, which will inform the PO’s progress report to court.
- After two or three multi-disciplinary case reviews, it may be decided by the multi-disciplinary team that the youth has made sufficient progress and that he could safely be released to serve the outstanding period of diversion in the community.

- The case reviews need to ensure that the child's schooling is not interrupted in any way before the end of the last school term. The referring court will need to be informed about this recommendation and may or may not accept it. If it is accepted, the prosecutor needs to continue to keep the case on the court roll for quarterly review.
- The PO will need to inform the court about the APO who has been involved with the youth and delegated to monitor the youth's behaviour and compliance with court orders in the community.
- The PO and the APO will need to present a clear plan with regard to the monitoring of the reintegration process and the court orders, and with regard to the issuing of follow-up reports by the PO to the court.
- The after-care support services and reintegration plans of the youth offender will need to be made court orders to ensure that they are adhered to by all the specific individuals and/organisations concerned.

## **7.8 POST-TREATMENT FOLLOW-UP**

It is hoped that the SCCSW and the PO would have identified individuals with whom the youth had a good relationship, before they are released back into the community, so that these people can be encouraged to provide social support to the young person during their reintegration.

- The PO may need to facilitate the youth's referral to NGOs, such as NICRO, KHULISA, REALISTIC, etc, to help with the monitoring of the youth through reporting orders, establishment of ex-YOs support groups and/or income generating projects, particularly if the youth does not want to go back to school. Alternatively, residential facilities that offer YSORDP could be funded by DSD to render post-release after-care and reintegration services to the ex-YOs. The CYCWs would be ideal for this role, since they would have worked

extensively with the ex-YSO and his family during his or her stay at the centre.

- Whoever renders the after-care services will need to compile progress reports and submit them to the PO as the case manager.
- When the youth ex-offender has completed the community-based component of diversion, the PO will need to compile a final report to court. If the youth's behaviour is satisfactory, the PO may recommend a withdrawal of the case. The PO may also recommend an extension of the community based component of the programme or a return to the residential facility, if the youth's conduct has been extremely unacceptable.
- The court may or may not accept the PO's final recommendation. Where it does not, it will need to put the reasons on record and propose alternative recommendations to those of the PO who is the case manager.
- In accordance with the espoused RJ framework, it is hoped that, by the time that the ex-YSOs are released back into the community, a FGC would have been convened. If not, FGCs could still be convened whenever possible and appropriate as part of the youth offender's pre-release and transition phase. It is important that the victim be informed about the release of the youth-ex-offender back to the community.
- The APO or CYCW, with the help of POs, would have helped to establish community restorative justice forums, which could help with the reconciliation process with the victim and with the reintegration process with the offender into the community.
- Finally, after-care services to both YSOs and their victims would need to be enforced by law through a court order as part of the diversion programme.

Therefore, whoever is offering the YSORDP will need to factor in such services in the YSORDP's budget when application is made for funding from the government and/or private funders.

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