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**"A NEW APPROACH TO CHILD JUSTICE?" EXPLORING
CHALLENGES AND OPPORTUNITIES FOR RESTORATIVE JUSTICE
IN THE WESTERN CAPE FROM THE PERSPECTIVES OF VICTIMS
AND PERPETRATORS OF YOUTH CRIME**

By

Ashley Fritha Shearar

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the award of the

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(Supervisor – Dr. Roland Graser)

Declaration:

This work has not been previously submitted in whole or in part, for the award of any degree. It is my own work. Each significant contribution to and quotation in this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

Signature:

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Date: 3/9/2005

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- Thanks to the 13 participants in this study for allowing me to discuss and explore sensitive, personal issues with them. I trust that this research is a fair reflection of your experiences and opinions. I hope that your insight can contribute to improvements in the justice system, as I believe that you are in the best position to make recommendations.
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ABSTRACT

As restorative justice finds its way into the South Africa's thinking around improving the criminal justice system, there is little knowledge as to whether the key role players in a restorative justice approach, the victims and perpetrators, would find it desirable or feasible. Concerns around the appropriateness of restorative justice from the perspective of victims and perpetrators were born out of the complex social and historical context in South Africa, which it seemed, could pose challenges to the application of restorative justice. Hence the decision to consult with key role players who have had experience with crime and the existing criminal justice system on how they would perceive the concept of restorative justice as a means of dealing with criminal cases in South Africa. Given that restorative justice has been proposed specifically for youth at this initial stage, the focus of the research was on criminal cases involving perpetrators below the age of 18 years. Through this process of consultation with victims and perpetrators of youth crime, the hope was to unpack some of the challenges and opportunities for restorative justice in South Africa.

A total of six young offenders below the age of 18, and five victims of youth crime were interviewed. In addition to these participants, one adult offender was interviewed who had been a former youth perpetrator, and one child victim of adult crime was also interviewed. The findings from their interviews were included in the analysis, given their value to the research topic.

Sampling was purposive though it relied on convenience for accessibility and willingness of participants. The units of analysis were recruited via justice officials and service providers, including probation officers, assistant probation officers and prosecutors from six magisterial districts in the Western Cape. They were selected according to the purpose of the study.

The research uses a qualitative design according to a phenomenological case studies approach. It includes a participatory research element in that it aims to consult with the subjects on their views on whether restorative justice could be a feasible approach to responding to cases involving young offenders given their experience with crime and the criminal justice system and if so, what recommendations would they suggest for its application. The method chosen to elicit information was in-depth interviews with guided open-ended questions compiled according to the purpose of the investigation.

The findings of this study were divided into three broad categories which emerged from the initial open coding of the data: 'context', 'experience with the criminal justice system' and 'perceptions of restorative justice'.

All victims and perpetrators welcomed the notion of restorative justice as a means of dealing with criminal cases involving young offenders. However, they did not all believe that the approach would be appropriate in their case, or in all cases. Although serious offences were noted by only two perpetrators as not being appropriate for restorative justice, the attitude of the parties, particularly respect and a willingness to make amends were viewed as more determinant of the appropriateness of a restorative justice process.

Proper preparation and facilitation of processes would be cornerstone to the success of the process. Social workers and probation officers were most commonly considered the appropriate role players to prepare parties and to facilitate the restorative justice process. The involvement of support systems, particularly family members, it was believed would be helpful during the negotiations.

Key concepts:

The section below describes some of the key concepts that have been used in this dissertation within the context of this research project.

Child/youth crime: Child and youth crime are used interchangeably in this dissertation. They refer to crimes committed by children below the age of 18 years old, as defined by the United Nations Convention on the Rights of the Child (1989) and adopted by the South African Constitution (1996).

Criminal justice system: The current state run justice system used in South Africa, whereby criminal cases are prosecuted and heard in court, usually through an adversarial approach, by a presiding judge or magistrate who is responsible for deciding on the consequences to the criminal case.

Diversion: Cases that are diverted from trial on the condition that the person being diverted performs a task/programme ordered by the court. A person can only be diverted if s/he has accepted responsibility for the charge, after which the case is withdrawn and there is no criminal record. Diversion is also a means to keep youth out of prison and provide consequences aimed at rehabilitation and reintegration. It is usually offered for first time, less serious offences, although some programmes have been developed to accommodate more serious cases.

Dysfunctional communities: Communities that are characterised by poverty, unemployment, broken homes, children on the streets, violence (including domestic violence and violence in the community such as gangsterism), substance abuse, neglecting parents and a lack of community solidarity.

Interconnectedness: Human connectedness, either in the form of distinct relationships, such as family, friends, neighbours and partners for example, or merely insofar as people share a social milieu which needs to be respected in order to maintain harmony. This is cornerstone to the restorative justice philosophy.

Participants: The subjects interviewed for this research whose experiences and perspectives guided the outcomes and recommendations. They include victims and perpetrators who, together, are considered the key role players in the restorative justice process.

- **Victims:** Subjects selected as key role players in the restorative justice process. In this study they refer to victims of youth/child crime. It is acknowledged that it is often considered more appropriate to refer to victims as 'survivors'. For the purposes of this research, I have chosen to still refer to this category as 'victims' to acknowledge them as affected by crime who need support and attention from the justice system, despite their individual coping mechanisms.
- **Perpetrators:** Perpetrators in this study were also subjects selected as key role players in the restorative justice process. In this study they refer to the perpetrators of youth/child crime, hence those who commit crime below the age of 18.

Probation officers: Professionals in the Department of Social Services responsible for fulfilling the powers and duties of a probation officer as stipulated in the Probation Services Act 116 of 1991 and the Probation Services Amendment Act 35 of 2002. The latter includes facilitating restorative justice processes such as 'family group conferences' and 'victim offender mediations'. They are responsible for assessing the accused and making recommendations to the court in the form of pre-trial and pre-sentence reports. These can include diverting the case to a restorative justice processes. They should not be confused with 'probationers' who are offenders sentenced to correctional supervision.

Rehabilitation: A process a perpetrator of crime undergoes to alter the behaviour that led him/her to commit crime, which is aimed at preventing re-offending. It is usually aimed at assisting with the reintegration of the offender into the community, helping him/her to abide by social norms.

Reintegration: Reintegration refers to a process of reacceptance by families and communities of perpetrators of crime. It means that the person who perpetrates crime is no longer involved in criminal behaviour and has learned to adapt to social

norms. As such, s/he is not judged by former criminal acts, but is able to develop as a law abiding citizen in his/her community.

Restorative justice: An approach to justice that seeks to repair the harm caused by crime by allowing those directly involved in and affected by an offence (i.e. victims, perpetrators and members of the community) the opportunity to resolve their case through a process of dialogue aimed at making amends. This process fundamentally includes 1) acceptance of responsibility by the offender 2) reconciliation following a description and acknowledgement of the circumstances around the offence and its impact on all sides, 3) restitution to compensate for the damage caused by the offence, and 4) reintegration of the offender into the community.

- **Restorative justice approaches:** Approaches to justice used that encompass the restorative justice philosophy such as 'victim offender mediation' or 'family group conferences'.

Family group conference (FGC): A process which allows victims and offenders to face each other with their respective supporters from their families and communities following the offence. The forum offers the victim a chance to express the impact of the offence on him/her as well as to define the restitution that would repair the harm. It also offers the offender a chance to explain the reasons for his/her actions and to accept responsibility. This process of open dialogue is also supposed to encourage the restoration of relationships, not only between the victim and the offender but also with relatives, which may have also been disrupted through the offence. It creates a stage to empower the families on both sides, and hopefully reintegrate the young offender into his/her community.

Victim offender mediation (VOM): Victim offender mediations are similar to family group conferences although they do not include the support parties on both sides. Instead, the dialogue and negotiation takes place only between the victim and offender without the input or support from other family members. Both processes are convened and facilitated by a neutral mediator.

- **Restorative justice processes:** The process that takes place during a restorative justice approach including the encounter between key role players, discussions, negotiations, restitution and reconciliation.
- **Restorative justice encounters:** encounters between key role players in a restorative justice process, particularly victims and perpetrators, and which can

include support parties on both sides, aimed at discussing the criminal case and finding solutions in the form of negotiated outcomes. They usually refer to 'face-to-face' encounters, but may include other indirect encounters such as through letter writing.

- **Restorative justice outcomes:** Negotiated outcomes of a restorative justice encounter to resolve the criminal case and restore the balance.

Ubuntu: A collectivist notion of community solidarity, which literally means "I am a person through other people". This concept historically defined the guiding principles for African life, including justice, mostly for people living in close proximity to each other.

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CHAPTER 1

INTRODUCTION

"Ironically, those communities most in need of holistic, restorative-based justice programs that encourage community residents to become involved in the disposition and sanctioning process are often precisely those communities that are the most dysfunctional and may have only limited interest in and/or capacity for such involvement. Specific attention must be given to the development of strategies for empowering communities and recruiting and retaining the participation of community residents."

(Bazemore & Griffiths: 1997)

1. Motivation for the study

According to Zehr & Mika (1997) "Crime is fundamentally a violation of people and interpersonal relationships" and should therefore be addressed accordingly. It is on this basis that the idea to test more restorative approaches to justice, particularly with regard to youth, has been suggested by various criminal justice advocates in South Africa.

On June 16, 1995, South Africa ratified the United Nations Convention on the Rights of the Child (1989). In so doing, it became accountable to its principles, including two articles particularly relevant to child justice. These are articles 37 and 40. Both call for alternatives to detention for children, and consequences to crime that ensure the best interest of the child by promoting his/her development and reintegration in the community. This includes taking responsibility for their actions and respecting fellow members of society, both key concepts in the restorative justice philosophy. These commitments became part of the Bill of Rights in South Africa's Constitution in 1996.

Despite the push by concerned members of government and civil society to find theoretical and philosophical justifications for promoting restorative justice in South Africa, with emphasis on young offenders below the age of 18, there has been little direct consultation with the main parties who will ultimately be responsible for the

content of the process: the victims, perpetrators and members of the general community.

1.1 Personal background & interest:

Being raised a South African during the Apartheid years laid a foundation for my consciousness around social injustice. In 1995, the year following the first democratic election in South Africa, I started working as a humanitarian aid worker in war torn countries including southern Sudan, south Lebanon, Indonesia and Sierra Leone. My focus during that time was on community mental health and psychosocial well being in the face of adversity. I grappled with questions around the human condition, particularly with regard to the potential for brutality and inhumanity which could result in extensive human suffering. More fascinating though, was the human capacity for resilience, hope, forgiveness and reconciliation.

I was away during South Africa's "Truth and Reconciliation" years, which aimed at creating a process of healing and restoration following generations of political struggle and deep rooted pain and loss. However, before returning home I spent two years in Sierra Leone, a country which became synonymous with some of the worst human rights violations during its ten year war. I was fortunate though, to have been there to witness the end of the war, and the transition to peace. One of the greatest challenges at that time was for ordinary citizens to re-accept the former rebels into their communities and their lives. Most of these soldiers had been indoctrinated to rape, kill, loot and maim members of their own community-often members of their own family. Many of them were children.

After the war, these young rebels had to reintegrate into their homes, whilst gaining consciousness of the damage they had caused. Reintegration of the rebels had to take place swiftly and on a large scale. In order for this to happen, forgiveness was promoted communally to pave the way for prosperity. In this spirit, negotiations took place between the ex-combatants and members of the community, which were aimed at repairing the harm and commence the healing of relationships for reintegration and peace building. During these negotiations, former rebels had to acknowledge the damage they had caused and show remorse. There was also a forum for them to express their own suffering during the war, including how they became involved in committing atrocities, which was often as a result of acts of violence committed against them, as well as the trauma resulting from their actions as combatants. In one of the most unlikely situations, victims and perpetrators

came together to resolve the damages of the past, heal relationships and reconcile. In order to compensate for the damage as well as reposition themselves in the community, the former rebels became involved in various reconstruction projects, such as building homes in destroyed villages and neighbourhoods. It was a process of restoration.

I returned to South Africa in November 2002 with the intention to continue my studies and to get involved in an area where I could use some of the skills and knowledge I had acquired in humanitarian aid. My sense was that a comparable area would be in the field of resolving the problem of crime. Although I was aware of the high and violent crime rate in South Africa, I was not aware of the transformations taking place in the criminal justice system, particularly with regard to youth.

After applying to the University of Cape Town's Department of Social Development's Probation and Correctional Practice Programme, I met with the coordinator, Dr. Graser, to discuss the programme content. He explained some of the developments in youth justice in South Africa, and asked me whether I had ever heard of 'restorative justice'. Though the phrase was unfamiliar to me, the concept which he described was so similar to the process of restoration I had just experienced in Sierra Leone that I was immediately drawn to it.

Whilst following the programme in Probation and Correctional Practice, I started volunteering with various NGO's to get a first hand perspective of what was happening in the field. This included:

- Facilitating life-skills diversion programmes with youth in trouble with the law run by the National Institute for Crime Prevention and Reintegration of Offenders (NICRO)
- Facilitating life-skills rehabilitation programmes in Pollsmoor Prison with sentenced males between 18-21 and sentenced females between 14-21 with Creative Education for Youth at Risk (CRED).
- Conducting assessments and organizing placements for pre-trial community service, a diversion option for first time offenders of any age, also run by NICRO.
- Assisting at Open Society Foundations's Criminal Justice Initiative, which gave me more exposure to civil society's criminal justice movement in South Africa, and how it was influencing policy shifts.

The practical work gave me insight into the reality of the criminal justice system, both in terms of the positive steps being taken, as well as the overwhelming shortcomings of the existing system, and challenges for effective transformation. It gave me direct contact with people passing through the system, and the problems they faced from the time of arrest, irrespective of the eventual outcomes of their cases. As most of the people I was in contact with were the perpetrators, I became conscious of the destructive environments they generally emerge from, which reflect an ongoing, and seemingly insurmountable state of social injustice that they have been struggling with in the form of domestic and community violence, often fueled by substance abuse. I also realized that given their backgrounds and the circumstances they were faced with in the criminal justice system, they were often more preoccupied with the injustices against them, than with feeling remorse, or acknowledging the harm that they may have caused, even though they may have pleaded guilty or accepted responsibility for their crimes.

Although my practical work did not put me in contact with the victims, I was aware of the attitudes towards crime in South Africa as presented by the media. After all, the media is the tool for disseminating information and forming public opinion. It also reflects social phenomena. Although some of the media have tried to highlight the plight of prisoners and the need for more community based alternatives and strategies for rehabilitation, the reality being reported generally reflects the frustration and anger towards perpetrators of crime, who are often met with violent reactions from the community. Furthermore, there did not seem to be a sense of lenience in public opinion towards young offenders. Therefore, my belief was that the general public seemed unforgiving of criminals, and would not be open to the prospect of reconciliation and restoration through a process of interaction and negotiation. Rather, my impression was that there was more of an inclination towards increasing the severity of punishment and retribution. This sense raised my initial concerns around the 'general public's' willingness to accept restorative justice in South Africa. However, it did not address my curiosity around the willingness of actual victims of crime to resolve their cases directly with their perpetrators, nor of perpetrators with their victims.

1.2 Concerns around the acceptance of restorative justice in South Africa

Restorative justice is essentially an approach which requires the willful participation of the key parties directly involved in crime in order for it to be

effective. It would therefore seem that the promotion of restorative justice should look beyond gaining community acceptance of the idea and its proposed approaches. It needs the community to take ownership of the philosophy and to mold it into something appropriate for its context. Rather than speaking of 'raising awareness' and getting 'community buy-in', which suggests a strategy that tries to convince the community that it is really what they want, I felt that perhaps we needed to take a step back and begin by proposing the idea to members of the community who are exposed to the effects and threat of crime. From there, we could explore their perceptions of restorative justice, as well as their suggestions as to how it could work in their environment, if at all.

Given that applying restorative justice approaches has been considered more specifically for young offenders in South Africa, I wondered if the youthfulness of perpetrators would have any significance with regard to the victims of juvenile offenders, and if so what. According to the key international instrument which determines the age of a child, the United Nations Convention on the Rights of the Child (UNCRC) (1989), a child is any person below the age of 18 years. This benchmark has informed the South African Constitution (1996), following the ratification of the UNCRC in 1995.

Most importantly though, as restorative justice is a suggested improvement to the existing criminal justice system, I was curious as to how victims and perpetrators regard this proposed change. I wondered how they perceived the criminal justice experience particularly in light of their role in the incident and their expectations of justice. I also wanted to explore what improvements to the criminal justice system they felt could stem from their own cases and direct insight. Did they indeed experience or perceive shortcomings in the existing criminal justice system, and if so, would they consider restorative justice the answer to the constraints? It was from these questions that the rationale for this study emerged.

2. Refining the research topic from preliminary reading

According to United Nations Commission on Crime Prevention and Criminal Justice Report on the eleventh session (16-25 April 2002) Economic and Social Council Official Records, 2002:

"Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. The results of research and evaluation should guide further policy and programme development."

Whilst assisting at the Open Society Foundation's Criminal Justice Initiative prior to embarking on this research journey, I was tasked with conducting a literature search on maintaining standards of human rights in restorative justice processes. Until that point, I had found the presentation of the philosophy of restorative justice essentially positive, with few evident pitfalls. However, during these initial readings on restorative justice, I was struck by the concerns and considerations for the protection of victims, perpetrators and the community in its application. This was specifically notable in research findings from practical experiences in other parts of the world.

A theme that seemed prominent was power imbalances during encounters between victims and perpetrators in particular. It was noted that these could be based on a number of factors, including race, gender, anger and resentment as well as a lack of respect and remorse: circumstances and feelings that could be experienced by all sides. It was evident that such power dynamics could severely skew the process and outcomes, and undermine the fundamental principles of restorative justice.

Secondly, there appeared to be concerns around involuntary participation and coercion. This diluted the important element of readiness to negotiate and to meet, not in the spirit of vengeance, but in the hopes to treat and be treated with respect and dignity in order to repair the harm and restore harmony.

The fact that crime seems to have infiltrated every South African's psyche, influencing life-styles, coupled with South Africa's historical power imbalances, which are currently in a transformative state of flux, ignited my curiosity around the readiness to accommodate restorative justice in South Africa. Concerned about the possibility that this form of justice may be imposed on those affected by or involved in crime, rather than embraced and desired by them, my preliminary readings reiterated my instinct that we need to explore the experiences and perceptions of those who have been directly affected by crime and have passed through the

criminal justice system, to know whether restorative justice processes, whereby affected parties interact to resolve their cases, would be a desirable approach to justice in South Africa.

3. Research goals and objectives

Research goal:

To explore whether a restorative justice approach that includes interaction between victims and perpetrators to resolve their criminal cases is a feasible strategy for responding to crimes committed by youth in the Western Cape.

Research objectives:

- 1- To explore the experiences of both victims and perpetrators of crime and the existing criminal justice.
- 2- To explore the perceptions of victims and perpetrators of youth crime towards the notion of restorative justice as an approach to criminal justice in light of their experiences with crime and the criminal justice system
- 3- To explore whether victims and perpetrators of youth crime would find a restorative justice approach desirable or feasible, either in their case or in other cases in South Africa.
- 4- To make recommendations to key service providers on the application of restorative justice for dealing with youth in trouble with the law, inspired by victims and perpetrators with direct experience with crime and the criminal justice system.

The research is an inductive study using a qualitative design from a phenomenological case studies approach. It includes a participatory approach in that it aims to consult with the subjects on their views on whether restorative justice could be a feasible approach to responding to cases involving young offenders and if so, what recommendations would they suggest for its application. The methodology comprised of semi-structured, open-ended, in-depth interviews with victims and perpetrators of youth crime who had experience with the existing criminal justice system. Participants for the research are from six districts of the Western Cape in South Africa.

4. Outline of the dissertation

This dissertation explores the potential for restorative justice processes to respond to crimes committed by young offenders in the complex context of crime in South Africa. Chapter 2 provides a theoretical framework for the investigation. It unpacks the concept of restorative justice in light of the various components of its definition, and critically analyses its viability for South Africa, based on the elaborate social dynamics contributing to high levels of crime and the general public's punitive mindset. It also considers the benefits and concerns reflected in various studies of the application of restorative justice processes elsewhere. These are contrasted with the existing approach to criminal justice. The theoretical framework underscores the research design, which is revealed in depth in Chapter 3, including a description of the research experience, such as the sampling process and the methodology. This section also indicates the constraints in the research process, and how these may have affected the outcomes. The following section discusses the findings, based on the themes that emerge during the research. These themes are discussed critically in light of the challenges and opportunities they may pose for restorative justice in light of the findings in the literature review. Eventually, a conclusion is given, and recommendations are provided, based on the suggestions made by the participants themselves during the study, as well as on the more general findings from the study, informed by the experiences of the participants.

CHAPTER 2

LITERATURE REVIEW

According to its basic definition, restorative justice seeks to repair the harm caused by crime by allowing those directly involved in and affected by an offence (i.e. victims, perpetrators and members of the community) the opportunity to resolve their case through a process of dialogue aimed at making amends. This process fundamentally includes 1) acceptance of responsibility by the offender 2) reconciliation following a description and acknowledgement of the circumstances around the offence and its impact on all sides, 3) restitution to compensate for the damage caused by the offence, and 4) reintegration of the offender into the community.

Howard Zehr (2002:24) states that "restorative justice is constructed upon three simple elements or pillars: Harms and related needs...; obligations that have resulted from (and given rise to) this harm...; and engagement of those who have a legitimate stake in the offense and its resolution (victims, offenders and community members)."

1. Demarcation of literature covered

The literature review for this study will illustrate that despite the obvious appeal of this simple presentation of restorative justice described above, it is a complex concept, which has to be viewed in light of the complicated context of:

- crime
- punishment
- justice
- social attitude and experience
- the formal criminal justice system

These will be considered in their broad theoretical constructions, and then regarded more specifically in the South African context, particularly with regard to youth justice. As each of these dimensions could constitute a field of study

themselves, this literature review will merely provide portals to their relevance to the concept of restorative justice.

As the central concern around the viability of restorative justice is its acceptance and applicability, this area shall be explored in light of its general benefits and shortcomings, proposed ideas for implementation in South Africa, and the key players. Part of this endeavour is to unpack how it compares, contrasts and arguably could merge with the existing criminal justice system.

In order to create a theoretical framework for this research, a range of sources were consulted, through which the above described complexity thematically emerged in the writings and presentations of the various authors (Mouton, 2001). The authors included academics, practitioners, researchers and advocates in the field of criminal justice.

2. Discussion of literature

2.1. Background of restorative justice

"In a mere quarter century restorative justice has grown from a few scattered experimental projects into a social movement, and then into an identifiable field of practice and study." (Zehr & Toews, 2004: vi)

Although the notion of bringing victims, perpetrators and key community members together to repair harm caused by criminal behaviour may indeed be a relatively new concept in the modern Western thinking around criminal justice, it has been practiced by indigenous communities around the world for centuries. Evidence of this can be found at least in Australia, New Zealand, Africa and North America. Howard Zehr in his pioneering book, Changing Lenses (1990), refers to its humble beginnings in a more Western judicial context in the mid 1970's in Ontario when a judge passed a sentence on two young men to meet their victims, whose property they had vandalized, in order to discuss possible restitution.

However, restorative justice as an expanding movement is primarily based on the successful application of the concept originally developed in New Zealand, where it has been used to address cases involving young offenders. There, the concept grew out of traditional Maori approaches to customary law where the affected parties would come together to resolve their problems. It has since been used in cross-cultural and inter-community cases, and has become entrenched in their national

laws in the Child, Young Persons and their Families Act (1989). The success of restorative justice in New Zealand has subsequently become a blue print for other countries wishing to adopt this approach, such as Australia, Canada, the United States, England and even South Africa.

2.2. Values, principles and description of restorative justice

To begin the discussion on values, principles and the description of restorative justice, I shall turn to one of its central characteristics in practice: the unique nature of each case. Although the requirements of the restorative justice process have crystallised, there are no clear or strict guidelines or benchmarks for restitution and healing, nor for the process of reconciliation and reintegration. The experience and outcome of each process is as individual and unique as the experience of crime (Zehr & Toews, 2004; Warner Roberts, 2004). Each person involved or affected by crime experiences it subjectively, and the dialogue of the restorative justice process invites that subjectivity of the key players to direct it (Morris & Maxwell, 1999). As a result, Wonshe (2004:258) explains that, "restorative justice accepts ambiguity and paradox and requires diversity" due to its special regard for context. It acknowledges and makes allowances for disparity in cultural understandings of justice, whether they be inter or intra cultural (Julich, 2003; New Zealand Ministry of Justice, 2004). This in turn means a degree of flexibility and creativity for facilitators, who must assist the process whilst tapping into the numerous and various underlying dynamics of each setting and situation (Warner Roberts, 2004).

On a broader level, the very application of restorative justice has to develop out of the needs of the community as a whole, as they should feel satisfied and protected by the justice system that is in place to protect them as well. Community input is essential in the decision to adopt restorative justice as a system, and in informing relevance of the approaches (Zehr, 2002; Zehr, 2004).

Although this adaptability may be welcomed by some, it understandably causes unease for the sceptics, who need some clearer guidelines if restorative justice is to become an entrenched form of justice. In response, promoters of this approach define the guidelines in terms of its underlying values (Bowen et. al., 2004). The value that is generally agreed on to underpin the entire theory is 'respect' (Zehr in Sharpe, 2004; Sharpe, 2004; Walgrave, 2004): "I learned that restorative justice begins with respect, that it asks for respect and recognition of our common humanity

and that it challenges us to understand and stay true to its philosophy and principles” (Wonshe, 2004:254). It is within the overarching value of respect that other important guiding values are couched, such as “....democracy, responsibility, reparation, safety, healing and reintegration” (Sharpe, 2004:24). At a recent conference in New Zealand, in his opening address as a key note speaker, Howard Zehr summarized the values of restorative justice as: respect, humility, and wonder or awe, which he described as “the unknowing experienced as pleasure” (2004)

The second guide to restorative justice is the principles which it has emerged from. As ‘respect’ is considered the overarching value, so ‘human interconnectedness’ is considered the overarching principle (Sullivan & Tifft, 2004; Zehr & Toews, 2004). This interconnectedness does not necessarily assume a well-defined relationship between the victim and the offender prior to an offence, but rather that we are connected by mere virtue of the fact that we share a social milieu. This then acknowledges a range of relationships: universal, communal, familial, neighbourly, professional, friendly, amorous etc. However, it also includes the interconnectedness which crime creates between victims and offenders. It is this disturbed state that needs to be addressed in the process of healing on both sides (Sullivan and Tifft, 2004).

Susan Sharpe (2004) has described this state of interconnectedness in light of John Rawles political philosophy on the social contract. This is understood as a tacit contract which offers freedom to all people so long as that freedom does not infringe on the freedom of others and harm them in anyway. Essentially, it is a basic social code that when adhered to, allows for a state of peace. Crime, then, refers to the acts which harm people and society thereby upsetting the balance of social harmony. Justice would therefore be the process of repairing the damage and restoring the balance. Restorative justice is thus principled on what it would take to reinstate a sense of harmony, both among the key people affected by the crime and in society in general, as it receives the ripples of each individual case (Mc Cold & Wachtel, 1998). In this way, Sharpe argues that “restorative justice can be viewed as a forum in which the people affected by the violation of a social contract can consider and decide together how to restore justice” (2004:24).

As this would seem an acceptable interpretation of justice, one would then question what exactly is being restored. Does restoration refer only to the compensation in the form of agreed upon actual or symbolic restitution, or should it encompass a much broader level of repair? Braithwaite (2002:435) listed a variety

of types of restoration that could be included in the understanding of restorative justice. He based these on various "human rights agreements:

- *Restoration of human dignity*
- *Restoration of property loss*
- *Restoration of injury to the person or health*
- *Restoration of damaged human relationships*
- *Restoration of communities*
- *Restoration of the environment*
- *Emotional restoration*
- *Restoration of compassion or caring*
- *Restoration of peace*
- *Restoration of empowerment or self determination*
- *Restoration of a sense of duty as a citizen"*

To include all these levels of restoration in each process would certainly be a tall order. However, what they do is give a sense of the ways in which people can be harmed through crime. The restoration of human dignity is frequently referred to as the corner stone of restorative justice, possibly because the dignity of everyone involved is affected by criminal behaviour: victim, offender and society alike (Swart, 2000). Restorative justice calls for the active participation of those affected (Bowen et. al., 2004, Braithwaite, 2000; Sullivan & Tifft, 2004; Zehr, 2002). It is this participation that guides the framework for restoration and hence the outcomes of each process.

In light of this, accepting responsibility by offenders and a genuine show of remorse and empathy for the suffering of their victims is seen as an important part of the process (Johnstone, 2004; Zehr, 2002). Directly hearing and witnessing the effects that one's actions had on another is the catalyst for empathy, and often remorse results (Strang, 2004). At the same time, in order for this to happen, offenders need to feel that they matter and have a place in society, which then in turn is part of reintegration.

Nevertheless, victims' needs remain central to the outcome (Herman, 2004; Zehr, 2002). Outcomes should preferably be positive rather than punitive and benefit all involved, whilst overcoming the pain of the past, repairing the present damage and building on the outcome in the future (Bowen et. al. 2004; Maxwell, 2004). Johnstone (2004: 9-10) states that "...restorative justice is done not when something

negative is done to the offender but when something positive is done to meet the needs of people harmed by the crime". Forgiveness is desirable, particularly as it is believed to aid victims in their recovery process, (Consedine, 2004).

In order for a productive restorative justice process to take place, it is considered ideal for victims and offenders, specifically to "...meet face to face and engage in constructive, respectful dialogue with them" (Johnstone, 2004:6). Beyond this, others who are related to these key players or are affected by the crime may be included to participate in the process, such as family members, friends, neighbours and respected members of the community.

The two most common models for applying restorative justice are the 'family group conference' (FGC) and 'victim offender mediation' (VOM). FGC's are a process which allows victims and offenders to face each other with their respective supporters from their families and communities following the offence. The forum offers the victim a chance to express the impact of the offence on him/her as well as to define the restitution that would repair the harm, and the offender a chance to explain the reasons for his/her actions and accept responsibility. This process of openness is also supposed to encourage the restoration of relationships, not only between the victim and the offender but also with relatives, which may have also been disrupted through the offence. (Braithwaite, 1996:6) It creates a stage to empower the families on both sides, and hopefully reintegrate the young offender into his/her community (Alder & Wunderitz ,1994:16) VOM's are similar to FGC's, though they do not include relatives of victims and perpetrators in the encounter. Instead the dialogue and negotiation takes place only between the victim and offender without the input or support from other family members. Both processes are convened by a neutral mediator.

Although FGC's and VOM's are well recognized models for the application of restorative justice, a number of creative and or indigenous practices have been used in line with the principles of restorative justice. The fact that restorative justice is considered a process that adheres to principles rather than strict guidelines allows for flexibility and innovation in procedures, as noted above. Indirect contact has also been effective, such as through letter writing, where the parties can express themselves and seek ways to resolve their problems, without necessarily coming face to face.

2.3. Restorative Justice in South Africa

The sense that restorative justice would be suitable in the South African context was based on its cultural concept of *ubuntu*, a collectivist notion of community solidarity, which literally means "I am a person through other people". This concept historically defined the guiding principles for African life, mostly for people living in close proximity to each other. Since then, there have been various attempts to expand this notion to promote a feeling of national unity which should transcend race and culture as part of the nation building process (Makhathini, 1996). In principle this philosophy would seem appropriate particularly in disadvantaged areas, given the history in which the spirit of customary law was approached, looking to communities to resolve conflicts among the main parties involved (Makhathini, 1996; Skelton, 2002). Skelton (2002:496) recognizes that, "the concept of *ubuntu* has underpinned societal harmony in Africa for many years and guided traditional conflict resolution." According to the Restorative Justice Center's submission to the Portfolio Committee for Justice and Constitutional Development in February 2003, "...the South African way of dealing with the offending children has traditionally included mechanisms that encouraged them to take responsibility for their own actions through apology, restitution and to restore relationships between the offender and the victim".

The promotion of restorative justice has taken root in two notable pieces of South African legislation and draft legislation, namely the Probation Services Amendment Act 35 of 2002¹, and the Child Justice Bill 49 of 2002. Central to this Bill is the promotion of restorative justice which aims to "entrench the notion ... in respect of children". This endeavour was given emphasis by making it one of the objects of the draft legislation (Bill 49 of 2002, S 2.iii).²

In both the Probation Services Amendment Act 35 of 2002 and the Child Justice Bill 49 of 2002 VOM's and FGC's have been suggested methods of applying restorative justice to deal with young offenders following the piloting of these procedures by the Inter-ministerial Committee for Young People at Risk (IMC) in the

¹ Section 3(d) now includes "mediation in respect of victims of crime", and Section 3(k) has been added to provide "early intervention including family group conferencing" as well as Section 3(l) which considers "restorative justice as part of appropriate sentencing and diversion options".

² "Restorative Justice" as defined by the Child Justice Bill is the "promotion of reconciliation, restitution and responsibility through the involvement of a child, the child's parent, the child's family members, victims and communities" (Bill 49[2002], Definitions).

late 1990's. Probation officers are the proposed mediators of these conferences. However, the Child Justice Bill also opens itself up to any culturally preferred approach which endorses the values and principles of restorative justice due to the diversity of the South African context.

Both 'victim offender mediation' and 'family group conferences' are being practiced informally through various non-governmental organisations, such as the National Institute for Crime Prevention and Reintegration of Offenders (Nicro) and the Restorative Justice Centre. In some instances, probation officers are already taking the initiative to attempt these processes, but very slowly, and often on their own whim. The Restorative Justice Initiative conducted a 'Victim Offender Conferencing Project' in four sites (Alexandra, Odi, Westbury and West Rand) whereby the process and outcomes were evaluated by the Center for the Study of Violence and Reconciliation (CSVVR). This project included 139 cases, mostly for serious cases and cases of domestic violence. The findings state that "the VOC process assisted parties in the majority of cases to resolve their disputes and come to an agreement suitable to both parties" (Dissel, 2004:14). Most participants in this pilot project were adults.

Restorative justice in practice is slowly but surely infiltrating South African society, particularly since the end of Apartheid. According to Heinrich Augustyn from the Department of Justice and Constitutional Development (2004), evidence of this can be found "to some extent" in:

- *The Truth and Reconciliation Commission (TRC)*
- *The Victim Empowerment Programme (VEP)*
- *Diversion*
- *Alternative sentencing options*
- *The Child Justice Bill*

It is important to note that these initiatives only reflect restorative justice, as Augustyn (2004) states, "to some extent". Although, it is sometimes argued, they may reflect a restorative mindset, rather than punitive or retributive, they do not in and of themselves include all the facets of a restorative justice process, particularly with regard to involving all parties in negotiating solutions, or reparation to undo the

harm. However, it is stated in the Victim Empowerment Programme³ and the Child Justice Bill that restorative justice processes such as FGC's and VOM's may contribute to justice or victim empowerment, by giving relevance to victims' voices, which can influence outcomes and determine the healing process.

With regard to diversion and alternative sentencing, these options do not inherently 'restore justice' though they may sometimes be referred to as restorative approaches. Although they may include aspects of restorative justice processes such as encouraging perpetrators to take responsibility for their actions, as well as creating possibilities for rehabilitation and community reintegration, currently most diversion and alternative sentencing options exclude victim involvement. Therefore, not only do they continue to sideline the victim, who should be central to the process, they also lack the essential process of dialogue, negotiated outcomes based on reparation of harm and reconciliation. As Muntingh acknowledges in his discussion around alternative sentencing (2005:105) "...sentencing cannot by definition be restorative, as the decision making power does not rest with the victim and the offender but with the magistrate or judge". The same could be said of most diversion programmes where the prosecutor remains *dominus litus* in the decision to divert a child, for example to a life skills programme or to do community service, after the perpetrator has accepted responsibility for a charge prior to proceeding to trial. However, as noted above, restorative justice processes such as VOM's and FGC's have been included among the options for diversion in both the Child Justice Bill in Chapter 6 and the Probation Services Amendment Act 35 of 2002 (Mbambo, 2005). Therefore, if VOM's or FGC's are selected either for diversion or to assist magistrates in their process of sentencing, then these options would indeed be considered restorative justice approaches.

Aspects of restorative justice are also available in the Criminal Procedure Act 51 of 1977. For example, there are opportunities for creative sentencing options to enhance rehabilitation and reintegration, particularly when including conditions for correctional supervision in Sections 276(i) and (h), as well as for suspended or postponed sentences in Section 297. Section 300 provides for victim compensation. Nevertheless, again, though these various provisions in the Criminal Procedure Act may include restorative elements, they still do not emerge from a restorative justice process of negotiated resolution among the key players.

³ The Victim Empowerment Programme (VEP) was proposed as part of the National Crime Prevention Strategy to ensure that services such as material, medical and psychological services were available to victims through either the government or NGO sector, and included approaches to victim empowerment.

The Department of Justice and Constitutional Development demonstrated its commitment to the promotion of restorative justice by calling a "restorative justice week" from the 17 – 24 November, 2004 in order to raise awareness and gain acceptance and buy in from key role players. They have also developed a series of booklets to distribute in the communities with illustrations and dialogues explaining the concept of restorative justice.

2.4. Common perceptions of crime and punishment

Despite the "wonder and awe" which restorative justice claims to offer, the fact that it tries to maximize on the input of the key people involved in the case being resolved implies that these players have to accept, support and want to promote this form of justice in their communities. One key challenge at this level is encouraging community acceptance and hopefully ownership of the approach given common perceptions of crime and punishment.

As Mc Cold (2004:157) points out, "the macro-community is more concerned with the cumulative effects of crime on neighbourhoods or society, and a resulting loss of a sense of public safety." Often, coupled with a sense of insecurity is a sense of resentment, as even an individual disturbance in a community can rupture a thread which maintains social harmony⁴.

In South Africa, crime has remained high since at least 1996, with violent crimes such as rape and murder committed in often incomprehensibly brutal ways (Swart, 2000). As a result, the general consensus seems to be that tougher measures need to be taken, generally in the form of stricter and more extreme forms of punishment. The retributive and deterrent attitudes towards punishment appear to be dominant in the South African public. In the 2004 national election campaign in South Africa, a selling point for many parties (excluding the ANC however) was the promise to reinstate the death penalty.

These trends in attitudes of community members towards perpetrators of crime raises concern about the openness of South African's to accept the concept of restorative justice. Rather than seeing an increased willingness to reaccept offenders into society and to become involved in processes of rehabilitation and reintegration, "children suspected of crimes in South African communities are sometimes violently victimised by communities that are angry about crime" (Frank & Skelton, 2004:207).

⁴ As suggested in Kahil Gibran's views on crime in "The Prophet".

Vigilante responses to crime, including crimes committed by youth, seem to be increasing. As one angry citizen told the *Cape Times* (1998)⁵ after the beating and naked parading of criminals around Khayalitsha, "these youngsters are terrorizing us in every way and they must be taught a lesson for everyone to see". Minaar (1999:6) described another case in Ivory Park squatter camp where members from a local people's court "captured, sentenced, stoned and set alight" a youth who had killed a pregnant woman, which he states received the "...full backing of the community". It is not only in the case of violent crime that the community has responded with these extreme measures. Even petty crimes like cell-phone thefts have seen perpetrators beaten to death (Ajam, 2004), illustrating a level of community intolerance towards perpetrators of all forms of crime. Vigilantism tends to gain public support when the crime rate remains high and state response is often inadequate or inappropriate (Sekhanyane, M. & Louw, A. 2002:16).

Sir Michael Hardie Boys (in Maxwell & Morris, 1999:4) turned the tables on the community that lashes out at young offenders by highlighting "...public reluctance to accept that youth offending is a community problem, calling for community involvement in the measures needed to deal with it". Therefore he holds the community partly responsible for the behaviour of the youth. It also implies that the community is also responsible for the well-being of their youth. In the next section we shall explore this in more detail, but just to make a mention of it here, one should not undermine the experience of victimization of offenders themselves (Zehr, 2002; New Zealand Ministry of Justice, 2004; Toews & Katounas, 2004) and the fact that "punishment often reinforces victimization" (Zehr, 2002:31).

Despite the often vicious and retributive response of the community towards perpetrators, research findings "in at least three continents" (Strang, 2004:96) on victims have found that when asked they have stated the following as what they want:

- *A less formal process where their views count*
- *Participation in their case*
- *More information about the processing and outcome of their case*
- *Respectful and fair treatment*
- *Material restoration*
- *Emotional restoration, including an apology*

⁵ Please note that this article was a photocopy without an exact date. I was not able to trace the original article.

According to a study conducted by Sessar (in Walgrave, 2004:52), "systematic surveys of public preferences for ways of responding to crime undoubtedly conclude that making good what was wrong is preferred over punishing".

With the constant reminders of the extreme levels of crime in South Africa and the need to enhance punitive, retributive and deterrent responses, one would automatically assume that this would permeate the minds of victims of crime. However, a victim survey conducted in Johannesburg inner city in 2002 discovered that among its sample, despite general public polls demanding harsher punishment, actual victims of violent crime had different needs resulting from their experiences. More important to them than the suffering of their perpetrators was the reconstruction of their lives following the damage of the offence (Leggett, 2005). Thus it would seem that victims directly harmed by crime would prefer restorative consequences and outcomes in their cases, in contrast to the general public, according to these various research findings.⁶

2.5. Theory on the causes of child crime

"At four years of age, Wayne's chances of a drug free or jail free life were already minimal. His models of adult behaviour all involved violence, drugs, alcohol, unemployment and struggle. While there were brief periods of real stability and joy in his life, they were few and far between" (Consadine, 1999:15)

Despite the rage and animosity that criminal behaviour incites in the general public, almost every study on delinquency among youth refers to the dire context in which the majority of children who commit crimes are raised. Bishop Tutu (in Consadine, 1999:7) describes crime as "...a complex issue involving family background, employment opportunities, education levels, economic and social positions as well as individual personal choice." Morris & Maxwell's study on *Understanding re-offending* (1999) found that these elements impacted clearly on the causes of offending, particularly in homes and communities where violence, neglect, substance abuse, poverty and crime become an entrenched understanding of the world (Tutu in Consadine, 1999; Consadine, 1999; Mc Cold, 2004; Hardie in

⁶ However, the Johannesburg study did reveal that in the sample, choices of restorative or retributive responses did seem to depend on the type of offence. Leggett (2005:47) stated that "...victims of robbery were quite retributive, victims of burglary strongly valued the return of their property, and victims of assault favoured restoring relationships."

Morris & Maxwell, 1999, New Zealand Ministry of Social Development, 2004, Cred, 2000, de Ridder, 1994, Skelton in Banfield, 1993). This mix of factors makes the unpacking and understanding of the causes of criminal behaviour in each individual case a complicated endeavour. It also points to the advantage of examining the context of each case individually, as the restorative justice process endorses.

The work of James Gilligan, a forensic psychiatrist who spent at least thirty years researching the causes of criminal behaviour amongst his clients, is frequently referred to in capturing the heart of the problem (Napoleon, 2004; Toews & Katounas, 2004; Lofton, 2004). In his analysis, he interprets criminal behaviour as the result of ignored and undermined personal injustices stemming from destructive family and community environments which often riddle the lives of most "to-be-perpetrators". Though systematically victimized by these often abhorrent conditions, entrenched social injustices, often suffered by children and youth, are hardly, if ever, criminalized. Instead, these children grow up with a broken spirit and a warped perception of morality, whereby crime is the avenue for many to avenge their pain. Wright (1996:27) notes that "...many harmful acts are not defined as criminal, while some not very harmful ones are." As there are few formal criminal justice channels to address domestic and community injustice (which is rather referred to as 'abuse' or 'violence' to be viewed in a civil sense), pain and anger is often displaced on innocent citizens, taking the form of 'breaking the law' as defined by state legislation. Unfortunately, this legislation does not acknowledge their distress in the first place (Tutu in Consedine, 1999): "If we believe James Gilligan that violence is an attempt to undo injustice, we are encouraged to pay more attention to the violence and disrespect that permeates the lives of many offenders" (Toews & Katounas, 2004:111).

Julich (2003) has remarked that social dysfunction affects the development of identity and as such a sense of belonging. Belonging, as she describes it, determines much of the process of social interaction, both in terms of who we choose to interact with, and how we treat the people we are in contact with. The development of these interactions can be positive or negative. Remembering the previous discussion on interconnectedness and respect as the key value and principle of restorative justice, Julich (2003:36) states that "although it might be easier to talk about being connected as opposed to belonging, unless we have respect both within people and between people, we cannot connect".

The discussion on belonging is particularly interesting with regard to youth in contemporary South Africa, where issues of identity are confusing, and have often been noted as a key reason for children to join gangs and engage in criminal behaviour (Pinnock, 1997). The disheartening reality of domestic life for many South African children drives them to escape, and to find situations where they can feel a sense of belonging and care, and where they can have purpose and meaning (Dissel, 1997; Valentine, 2002).

Gangs in South Africa are most common in impoverished communities. Youth growing up in the socio-economic conditions described above are particularly susceptible to being lured into gangs (Valentine, 2002). Already, for many, they have been exposed to often extreme levels of aggression, violence and substance abuse in their homes and communities. These social education tools reflect norms of behaviour where alternatives have seldom existed (Childline in BBC News Africa, 2002).

The context of youth crime in South Africa certainly mirrors the more universal findings around causes of criminal behaviour. What seems to be increasing among South African youth is indeed the forming of identity and a sense of belonging around gangs, where the respect between and within people is seldom part of the group ethos, but rather a sense of revenge and entitlement as a result of social injustice, which manifests itself as crime.

In response to this understanding of the causes of crime, in order to reverse the cycles of offending among youth in particular, social injustices in the home and the community which equally if not excessively victimize children exposed to these conditions, need to be properly identified and treated. Though this discussion is outside the scope of this paper, the concept frames the understanding in which the context of restorative justice should be applied with regard to the experiences of victims, offenders and the community.

2.6. Interpretations of justice

In order to determine whether restorative justice would be a viable solution to dealing with crime, one should take into account how justice itself is perceived and interpreted by the different role players and stakeholders.

Earlier, we briefly looked at how Susan Sharpe defined justice in light of the 'social contract theory'. In this interpretation of social harmony, Sharpe (2004:23)

states that "in many societies, 'justice' has been understood as a state of balance-a system of social cooperation that supports and encourages peaceful coexistence." Therefore, justice could then be considered the result of human interchange that allows for individual safety and prosperity.

Most often, when one speaks of justice, one thinks of the consequences the perpetrator has to bear as a result of the harm caused by the crime. In trying to define the scope of how these consequences can be meted out, Gustafson (2004:307) indicates that "justice can neither be so punitive that it becomes simply vengeful, nor so lenient that it becomes unconcerned about the harm caused." Within these broad parameters some level of satisfaction has to be achieved. In their presentation at the recent "New Frontiers" conference on restorative justice in New Zealand, Mc Cold and O'Donnell (2004) define this satisfaction from outcomes in terms of 'fairness' rather than 'happiness'. They stated that "there should be a fair process that takes into account past, present and future" (Mc Cold & O'Donnell, 2004).

There have been a variety of human rights standards that have given some understanding of fairness in determining procedures and outcomes of criminal cases. Akester (2003) makes specific reference to these international standards, particularly with regard to due process rights⁷ of the accused in the European Convention on Human Rights. With regard to sentencing, she refers to Strasbourg jurisprudence's 'concept of proportionality' which states that "...restrictions on individual liberties and rights if permitted at all, should be proportionate to the legitimate aim that the infringement seeks to achieve" (Akester, 2003). This understanding of proportionality in outcome is reflected in the international standards found in Article 40 of the United Nations Convention on the Rights of the Child (1989), and should therefore be adhered to by any state that is signatory to the convention in all cases affecting young offenders. This includes South Africa, whose government ratified the convention in 1995.

In the tradition of modern Western criminal procedures, the state is responsible for determining what will bring about justice in each case. As such, the state represents the interests of the victim and the community at large. It applies distinctly laid out procedures in this criminal justice system, specifically with regard

⁷ "Article 6 of European Convention on Human Rights ('the Convention') enshrines the right to a fair trial, the presumption of innocence, the right to legal assistance and the right to have criminal charges and sentence determined by an independent and impartial tribunal" (Akester, 2003).

to sentencing. It generally does not base its outcomes on the unique needs or harms of each case.

Although one could argue that the individual proceedings of restorative justice cannot guarantee the protection of society, which is central to the state taking on this responsibility, Mc Cold and Wachtel (1998) have responded that "by recognizing that community defines itself through individual perceptions of common interest, we can successfully engage a wide range of individuals in the resolution of their own problems". In his later writings, Mc Cold (2004:170) went on to suggest that "the cumulative effect of individual micro-community restorative efforts is the most effective means to repair the aggregate harm caused by crime is society". If this is the case, it presumes a reversal in the justice system from the macro to the micro, where the state encompasses justice for all individuals in the community, to the micro to the macro, where individual restoration results in justice for the whole community. Augustyn (2004) defines the roles and responsibilities as: "Government's role is to preserve a just public order, and the community is to build and maintain a just peace".

For the most part, these interpretations of justice implicate the processes or requirements for overcoming the damage caused by crime. Justice is viewed essentially from the perspective of the victims and the community, and what outcomes would repair the harm caused by the crime as well as promote a sense of public safety. Although these are central justice concerns, they do not acknowledge the background that led to the criminal behaviour or the circumstances that perpetuate the behaviour following the crime. If we consider criminal behaviour as a reaction to unresolved injustices experienced by children, as suggested in the previous section on the "Theory on causes of child crime", then understanding this perceived injustice by young perpetrators which may have directly or indirectly prompted the criminal behaviour should be part of a justice procedure. Also, without the inclusion of a process whereby the offender accepts and takes responsibility for his/her actions followed by his/her healthy reintegration into the community, it seems that justice cannot be holistically achieved.

2.7. Finding a place for restorative justice in the justice system

Despite the attraction to the values and principles of restorative justice of respect and interconnectedness (described above) which enhance community cohesion and

promote social justice, much of the interest in this approach is born out of a desperate need to improve on the existing criminal justice system. Central to this has been:

- the neglect of the victim, who is sometimes referred to as the “step-child” or “lost son” (Swart, 2000: 5) of the criminal justice system
- the overwhelming recognition of the abhorrent conditions which youth are subjected to, from the moment of arrest to serving a sentence, particularly in light of their vulnerability
- that given the high recidivism rates of youth exposed to these conditions and isolated from positive socialization at a most influential time in their lives, it is clear that the existing system does little to protect the community

The current criminal justice system is based on an adversarial approach, which seeks to determine guilt of the offender and to enforce punitive, retributive measures in response. Most commonly this means imprisonment. Ironically, prisons were initially created as a more humane alternative to the cruel and unusual forms of corporal punishment that were administered in the past (Zehr & Toews, 2004: vii). They rapidly declined into destructive, debilitating institutions around the world. In his book, *Restorative Justice-Healing the Effects of Crime* (1999:16), Jim Consedine captures the conditions of the prison system as “...a deadly virus that contaminates all associated with it...the boredom, the tedium, violence, waste, oppressive structures-the sheer inhumanity...leaves its mark on all”. He views the effects of such a system on its inmates and the people around them as irreversible. If one considers the domestic and community circumstances from where most offenders hail, prison conditions can do little more than allow resentment and animosity to fester, distancing them even more from society. Inmates thrive on each other’s anger, and through that, conjure up new ways of taking their revenge on society, particularly as they view the state that represents society as their enemy (Morris & Maxwell, 1999; Consedine, 1999).

South African prison conditions are far from being the exception to those described by Consedine. Prison overcrowding is seen as one of the greatest challenges facing the current government. According to the former South African Minister of Correctional Services (in Pete 2000):

"The majority of our prison conditions are inhumane because of overcrowding. We have cells which were built to house 18 inmates and they contain 65 where every

spare inch is taken and people spill over to sleep in toilets because there is absolutely no space... People have no room and absolutely no privacy. This brings other problems like murder and constant sodomy, which stem from overcrowding. Those are conditions that offend the very constitution we are trying to uphold"

Such conditions offer little hope for victim empathy or chances for healthy reintegration. Offenders who may once have had a chance of getting their lives on track become equipped with skills to commit more destructive crimes, and lose their ability to find jobs and to socialise in a harmonious way (Peterson & Kehler, 2002; Dissel & Ellis, 2002), ultimately making them a greater threat to society (Skolnick in Walgrave, 2004).

Victims are often most at risk, as enraged inmates view them as responsible for the destructive prison conditions and social rejection they are subjected to. It seems that no one benefits from the prison system as it is currently run. According to Immarigeon (2004:150) "incarceration is the institutional manifestation of the punitive impulse that restorative justice is designed and intended to challenge".

Although prison conditions may represent a range of human rights abuses that need to be addressed, they do not in and of themselves explain a need to change the existing adversarial approach of the courts which underpins modern Western criminal justice. Hence, there needs to be some discussion on why restorative justice has been looked to as an alternative to the existing system. After all, outsiders become enthralled by the 'court room drama', waiting on the edge of their seat for the verdict.

As Walgrave (2004:50) highlights, communication in the courtroom is based on confrontation most likely resulting in punishment for the offender. Here again, this tense interchange does little to promote victim empathy among offenders nor to feel a sense of remorse, which allows them to genuinely accept responsibility for their actions and take measures to repair the harm (Zehr, 2002): "The offender does not listen to the moralizing message but tries to get away with as lenient a punishment as possible. He does not hear the invitation, but experiences the threat" (Walgrave, 2004:50).

On the other hand, victims themselves hardly receive better treatment in the system. As the state takes on their role, they become mere witnesses in their own cases. They contribute to the facts of the crime as does any witness called to the stand. There is little, if any, opportunity for them to express the emotional impact of

the crime, nor to describe the extent of harm or trauma resulting from the incident. Rather they often report feeling "...ignored, excluded and profoundly disrespected..." (Herman, 2004:75). This is often referred to as secondary victimization, whereby the state process actually enhances victims' sense of vulnerability. They have no opportunity to enter into any process of dialogue or negotiation with their perpetrators in the courtroom, should they consider this necessary for justice. At the same time, many perpetrators are not present at their victims' testimonies, thereby not allowing them to recognize the perspective of the victim (Strang, 2004). It is therefore argued that the courtroom disregards the essence of the interconnectedness which underlies human relations. When this is shattered by crime, restorative justice advocates view it as probably the most detrimental consequence to victims and societies. The lack of emotional interchange in the courtroom (whether direct or indirect), particularly among victims and offenders, is seen to limit the chances of repair and healing according to harms and needs identified by the main parties involved (Zehr, 2002; Mc Cold, 2004:169; Pollard, 2004).

The key deficiencies in the existing criminal justice system have been clearly identified by various critics. However, the question in light of this discussion is whether a restorative justice approach would be able to address these gaps, and if so, whether it should then be considered an alternative justice system.

If one looks at the basic definition of restorative justice, one could argue that it has been neatly designed to address the limitations of the existing system: it calls for the interchange between affected and involved parties to share experiences and emotions; it encourages offenders to accept responsibility and have empathy for their victims; it allows victims to identify the harm and appropriate ways to repair it; it seeks to resolve problems and give a chance to healthy reintegration. After all, it is guided by the principle of interconnectedness and value of respect. In this sense the theory certainly seems to address some, if not all, of the key problems with the existing system. However, Brookes (2000:7) cautions that "restorative justice theory makes bold claims about the needs of people affected by crime within community structures (but) its validity as a social theory must be grounded in empirical evidence offered by those most affected by crime-victims and offenders". This need has been noted among the concerns of the British government in their interest to apply restorative justice, as well as the lack of clear standards or guidelines (Pollard, 2004). Another concern by critics of the restorative justice

approach is the fear of losing some of the protection and due process rights that the current system endorses (Achilles, 2004).

As there are benefits and gaps on both sides, some academics have questioned whether restorative justice necessarily needs to be an alternative to the existing system, or whether it is not, in itself, an approach which, if integrated into the current system, could address the shortcomings (Mc Cold & O'Donnell, 2004). Certainly there will be tensions between the two systems which will complicate their integration. In the final words of the "New Frontiers in Restorative Justice" conference in Auckland (2004) these were identified as tensions between:

- Professionalism and the community based approach
- Flexibility and standards
- Formal and informal
- Micro and macro
- Real and the ideal

However, there are valuable considerations for justice in both systems. Whatever system is able to maximize on justice as well as promote social harmony should at least be attempted. Nevertheless, as Zehr & Toews (2004: vi) warn "...in addition to their intended purposes, every social phenomenon also has latent, unintended functions". This has to be taken into account before applying any approach, including restorative justice.

2.8. Possible shortcomings in the application of restorative justice

In order to reduce the possible "unintended functions" of restorative justice, it is useful to anticipate its possible shortcomings, particularly with regard to its application. A considerable amount of research has already been done in various countries either piloting or adopting restorative justice as an approach to dealing with crime. The documented findings and experiences assist in identifying potential risks, and highlighting considerations for countries wishing to adopt a restorative justice approach, such as South Africa.

A central catalyst for concern so far would be the reported lack of or limited victim involvement, particularly as their harms and needs are axial to the process (Achilles, 2004; Akester, 2003)⁸. Uncovering some of the impediments in the

⁸ This certainly seems to be a risk in South Africa, where in many instances "diversion" options such as sending a child to a life-skills course, are considered "restorative justice" in and of themselves, without any consultation or dialogue with victims.

application of restorative justice may indicate the reasons for victim apprehension. Given the emphasis on the interconnectedness of the key players in the process, they will also expose some of the constraints experienced by perpetrators and the community as well.

2.8.1. *Imbalance of power*

"The 'power dynamics' can silence the voices of those who most need to be heard"
(Coward-Yaskin, 2002:22)

By removing criminal cases from the formal justice system to be resolved by the main people involved, one essentially counts on their willingness to participate in a spirit of justice and healing. The assumption is that the parties have agreed to come together without coercion or force, and the perpetrator has willingly accepted responsibility for the crime. However, regardless of the amount of preparation prior to the meeting, the dynamic among the parties once together is unpredictable. The heightened emotional state of an encounter may trigger unexpected reactions on all sides that may disrupt the process.

One of the obstacles most frequently noted, particularly in FGC's and VOM's, is the imbalance of power among the parties (Walgrave, 2004; Toews & Katounas, 2004; New Zealand Ministry of Justice, 2004; Julich, 2003; Coward-Yaskin, 2002). Power itself is volatile, and it is virtually impossible to determine how it will be played out or mediated in a conference.

Outcomes in a conference can be severely slanted, depending on which side gains the upper hand. Rather than enhancing reconciliation, the process can become a battle, where there is a winner and a loser. For instance, it is not uncommon for an offender to enter the conference showing complete disregard for the principles and values of the process. Boys (in Morris & Maxwell, 1999:3), argues that "...very few offenders of any age appreciate the effect their actions have on others." When referring to youngsters he says: "They just do not think. And really we cannot expect them to, given their so limited experience of human life and emotions". If this is the case, it poses a serious threat to restorative justice proceedings, as it suggests a certain naïve arrogance and callousness in young perpetrators that can aggravate the sense of weakness and powerlessness of victims (Daly, 1996). If victims come to a meeting expecting a show of remorse and empathy and a willingness to repair the harm by the offender, and are faced with sheer disrespect and lack of remorse, it can be very debilitating and discouraging (Julich, 2003; Brookes, 2000 Akester,

2003). In addition to this, there seems little aftercare or safeguards for victims who feel re-victimised or traumatized by the process (Herman, 2004). De Ridder (1997) has found that in some instances, though the victim may cope well at the time of the encounter, "...a worrying number of these individuals find that in the weeks following their deposition, there is a return and intensification of symptoms that may be related to actual re-traumatisation caused by retelling the story."

On the other hand, it has also happened that victims have come to the table harbouring deep rooted animosity that, for example, they have suppressed until the moment of the encounter. This may inhibit their inclination to give a fair hearing to the offender whilst accepting responsibility and attempting victim empathy. In fact offenders' genuine attempts at reconciliation may be completely disregarded (Toews & Katounas, 2004), which too can be disheartening for them, particularly as it can be testing for them to face their victims.

Achilles (2004:68) begs the questions: "Can we make room for victims in a restorative process when they are screaming out in pain or when they are vengeful, angry or full of rage? Can we make room for victims when they are not interested in what happens? Their interest does not fit in with what some of us would refer to as a restorative response." Victim animosity may lead to severe, punitive penalties for the offender in the name of restitution (Strang, 2004). It may be that a victim calls for harsher penalties than those proportionately legislated (Johnstone, 2004). This becomes particularly problematic for youths, who are protected by other instruments such as the UN Convention on the Rights of the Child (Dumortier, 2000). This has also been highlighted in the United Nations Standard Minimum Rules for Juvenile Justice - the "Beijing Rules" (1985). Section 5.1 states that "the juvenile system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence".

It has been noted as a major concern for a system that is trying to move away from the retributive or deterrent mindset of the courtroom (Dumortier, 2000). The risk, though, is then to make the distinction between 'good' and 'bad' victims, depending on how willing they are to remain tempered and tolerant during the process (Zehr in Julich, 2003). A related problem is that given the unique process and outcome of each case, the inconsistency in restitution for similar cases, particularly as there are no standards or benchmarks, could cause resentment among offenders towards victims who have given them particularly harsh

requirements. It is not clear how restorative justice addresses this. Strang (2004:103), however, suggests that if harsh attitudes of victims are not at least acknowledged, restorative justice cannot be seen as "...a mainstream alternative to the exclusive and punitive focus of the formal justice system."

Marshall (2004) reminds us, though, that it is "...easy to vilify the enemies in the abstract, but much harder with face to face encounters. We need re-humanisation of parties who need to meet with a common weakness". This refers back to one of the main values of restorative justice identified by Howard Zehr: humility. It also refers to respect, which is often illuminated by humility. Zehr (2002:36) also states that "if we do not respect others, we will not do justice restoratively, no matter how earnestly we adopt the principles"

2.8.2. Application

Even prior to juggling power dynamics of encounters between key parties, one has to consider the possible constraints for the practical implementation of restorative justice. The tidy appearance of a VOM or FGC or any other forum for meeting and negotiating in theory sometimes undermines the amount of effort that takes place behind the scenes in order to make the process beneficial. There is a host of considerations which allude to the possible blind spots in its application.

One area that can certainly cause tension with the formal justice system is the time needed in preparation. A main difference here is that the formal system encourages the right to a speedy trial, particularly with regard to youths (Beijing Rules for Juvenile Justice in Braithwaite, 2000), thereby accelerating the results of the case. However, as much of the preparation for restorative justice encounters relies on the emotional readiness of victims and offenders, the amount of time needed before each case can vary considerably (Julich, 2003). Braithwaite (2000) questions what measures are then in place to protect victims and society from potentially dangerous offenders during the time it takes to prepare for a conference. Would one then have to rely on the various existing options for offenders awaiting trial? If so, would these options be compatible with a restorative justice approach?

Another practical problem frequently reported is the inability of offenders to pay for material or financial restitution, if this is what the victim requires to repair the harm (Dumortier, 2000; Seymour, 1999; Galloway & Hudson in Wormer, 2001). This is very likely to be the case in South Africa, given, as mentioned above, the impoverished conditions many young offenders come from. After all, one of the

reasons noted time and again for the overcrowding of awaiting trial prison facilities by the Inspecting Judge of Prisons, Judge Fagan, is the inability to pay amounts of up to R500- bail. Many of these children cannot even afford to pay R50- (Fagan, 2005). Although the Child Justice Bill (49) 2002, suggests that restitution can be symbolic, such as providing community service or attending a relevant life-skills programmes, there is little evidence that victims will agree to this option. It is not clear what strategies are in place to assist youths to pay financial restitution, should this be insisted upon by victims during the negotiations, particularly in South Africa.

A third important consideration for the implementation of restorative justice is the availability of resources (Julich, 2003; Morris & Maxwell, 1999). These can be in terms of human resources, such as people available to prepare parties, facilitate conferences and to follow up on the outcomes of the encounter. It could refer to programmes which might represent symbolic restitution, or assist with the rehabilitation and reintegration of offenders. It could refer to neutral locations for encounters to take place, in order to minimize the possible imbalance of power. It could also refer to transport of the various parties to the conference, including the facilitator if necessary. If the resources needed for the smooth running of conferences are not available, it limits the success of the process.

A predominantly sensitive area that could easily affect the proceedings is cultural nuances. This has been recognized in conferences in New Zealand, Australia, Canada and America where cross-cultural conferencing has been tested. What has been found is that people's cultural constructions of the world influence their "perception of justice and communication style" (Myers & Filner in Umbreit & Coates, 2000). Although this may add to the richness of the restorative justice experience, it may heighten differences and disagreement, affecting the outcomes. Cross-cultural risks will be a specific concern in South Africa, not only given its inherent diversity, but also given the history of segregation and racism, which perceptions of crime seem to nurture, despite attempts at national conciliation. Race is frequently used as either an excuse or a reason for crime, both of which can be a dangerous trump card in the emotionally charged setting of a conference. Cultural awareness and sensitivity is especially important for facilitators, who too may have their own prejudices. Their role in this regard can be crucial in reducing inter-cultural resentment (Umbreit & Coates in Van Wormer, 2001).

Most of these practical considerations are based on the understanding that restorative justice processes involve a planned exchange, even if indirect, between

at least victims and offenders, often including their relevant supporters, or people indirectly affected by the crime. As mentioned before, this formulation is based on various indigenous practices where this is the entrenched justice approach. In the excitement of the successes of these approaches in their natural settings, it has been assumed that a similar design will be appropriate elsewhere. In South Africa, even though legislation leaves room for flexibility in the approach, the suggested practical guide is stated as 'family group conferences' and 'victim offender mediation', though neither of these has been widely tested. According to Warner Roberts (2004: 258), "there is a tendency for organisations, when creating new programmes to duplicate the policies, procedures and forms of other existing programmes...I am concerned about duplication, particularly when the programme is system initiated." A criticism that stems from this rapid duplication of programmes is that it risks becoming a "neo-colonial" generic construction (Houghs, 2004). Rather than taking on a form defined by indigenous practice and conceptualisation determined by each context, it spreads as a pre-packaged format. It hence risks losing an essential component of its philosophy: to be informed by the uniqueness and preferences of each setting whilst remaining true to the underlying principles and values (Warner Roberts, 2004, Van Wormer, 2001). As Warner Roberts (2004:258) reminds us, "it is imperative to evaluate programmes on their understanding of the fundamental principals of restorative justice..."

Conclusion

Implementing restorative justice in a way that truly captures the dimensions of the philosophy, and promotes fairness for all parties is certainly harder than administering a prison sentence. However, the weight restorative justice gives to human dignity for both victims and offenders, which should ultimately ensure public safety and enhance human relations, is surely a philosophy that should be encouraged in the name of justice. It is thus worth acknowledging the gaps and constraints and seeking ways that they can be overcome, rather than dismissing the whole theory.

Given the amount of emphasis that is placed on the input, acceptance and participation of the key players involved, particularly victims and offenders, one could presume that one way to minimize shortcomings and enhance justice is to inquire from them directly what advice they would give based on their experiences.

CHAPTER 3

RESEARCH DESIGN & METHODOLOGY

The interest in applying restorative justice in South Africa is primarily based on a belief that anything is better than the existing criminal justice system. If we consider the discussion on some of the conditions the current system provides, there is no doubt that there is much room for improvement. However, there is scarce empirical evidence in South Africa as to whether restorative justice is the answer to improving the criminal justice system. Although academics and practitioners who support the restorative justice philosophy are advocating strongly for its adoption, there has been virtually no consultation with the key role players (victims and perpetrators) as to whether they would indeed find it a desirable approach.

1. Conceptualization and key variables

"We must begin by entering into the actual experience of crime and of justice as deeply as we can. Only with a firm footing in such reality can we begin to understand what we do, why we do it and hopefully what we might do differently"
(Zehr, 1990:15)

This study explores the experience of victims and perpetrators of youth crime with regard to the context of crime and the criminal justice system. This serves as a guide to forming perspectives on the concept of restorative justice processes as either an alternative or integrated means of addressing the phenomenon. I therefore chose the 'phenomenological approach' in the research design, in order to capture and understand the phenomenon being researched according to the direct experience of the people who have lived it. A 'phenomenological approach' means that the findings will be based on individual reflections on the actual experience of the phenomenon (Greeff, 2002). Henning (2004:37) notes that "the phenomenological researcher believes that the participants can give their experience best when asked to do so in their own words, in lengthy, individual, reflective interviews".

A central characteristic of phenomenological studies is that their value lies in the depth of the interviews, rather than in the number of participants or a closed scale

with set responses. This means that it is a 'qualitative' rather than 'quantitative' approach. According to Henning (2004:3), in qualitative research "the 'variables' are usually not controlled because it is exactly this freedom and natural development of action and representation we wish to capture". This contrasts with quantitative studies whereby instruments are used for data capturing and analysis to control the variables and quantify the outcomes in order to draw conclusions (Henning, 2004:3).

It is also a 'case studies' approach as the "themes and general descriptions of the experience are analysed within a specific context" (Greeff, 2002:273). The findings are based on the experiences and perceptions of the subjects interviewed. Though the subjects may provide rich data, and patterns or similarities may emerge from the various accounts, the sample is too small to generalize the findings. However, the purpose of the research is to gain more in-depth insight into the lived experiences, particularly as it is a preliminary stage of investigation into this phenomenon, which therefore requires initial exploration. It is also to illustrate the importance of consultation with the key role players in the restorative justice process (i.e. victims and perpetrators) in order to ensure the feasibility of the approach.

Although, as will be discussed below, a research instrument was designed to guide the exploration, the intention was to allow the participants the freedom to explain and give meaning to their experiences in a free and open manner. The design relied on descriptive and exploratory information on an angle of a topic which has scarcely been researched in South Africa, whereby "the interest is in the...discovery rather than confirmation" (Merriam in Henning, 2004:41). The angle referred to is the consultation with victims and perpetrators of youth crime on how they would view restorative justice as a means of dealing with young offenders in light of their experiences. These are victims and perpetrators, who have experienced crime, its context and the criminal justice system, without the option of a restorative justice process to resolve their cases.

As discussed, this research is exploratory, seeking to understand the experiences and perspectives of the subjects of a particular phenomenon. It therefore uses 'research questions', which allow the researcher to explore key aspects around the phenomenon. It does not use a 'hypothesis' to try to predict and test the effects of an 'independent variable' on a 'dependent variable', as was more common in traditional research approaches (Collins, 1998:48).

Research questions:

- What is the perceived experience of crime, its context and the existing criminal justice system by victims and perpetrators of youth crime?
- How would victims and perpetrators of youth crime perceive the use of restorative justice processes as a means of resolving juvenile crime in light of their experiences with crime, its context and the existing criminal justice system?
- How could their perceptions influence the application of restorative justice as a means of dealing with youth in trouble with the law in the South Africa and what if any, suggestions could they give in this regard?

The third research question brings in a dimension of participatory research, in that the purpose of stimulating suggestions from the participants with regard to the application of restorative justice, based on their own experiences includes "...an explicit commitment to the empowerment of participants and to challenging the social conditions of the participants." (Mouton, 2001:151) This interpretation of participatory research is echoed by Reason (in Collins, 1999:3)

2. Issues of measurement

The research instrument used was a semi-structured, guided, in-depth interview schedule with exploratory and descriptive probe questions, otherwise referred to as "a basic check list" (Greeff, 2002:297). This approach allowed for the necessary flexibility for discovery whilst remaining within the boundaries of the area being explored. (Greeff, 2002:299). Therefore, the probe questions were not necessarily asked systematically, but were there to guide the discussion and to ensure that those important aspects were covered during the interview (See Annex 1). This is consistent with the phenomenological approach, where the interaction is "...free and open constrained only by the focus of the research question" (Henning, 2004:38), as well as attempting to yield "...data of participants lived experiences and worldviews" (Henning, 2004:33). This being the case, the phenomenological approach understands the participants' input to be their subjective truth on the issue being explored. As the number of participants increases, the inter-subjectivity increases reliability of the findings (Henning, 2002:54). The semi-structured, open ended

composition of the questions thus allowed for flexible subjectivity, whilst still emitting "...comprehensive and comparable data" (Greeff, 2002:298). It is essential that the facilitator remains neutral during the interview so as not to influence the responses of the respondents, whilst at the same time prompting them in an "...atmosphere of trust and accountability" (Henning, 2004: 54).

Despite the controls built into the semi-structured, open ended interview design, (including the neutrality of the researcher), one cannot deny that in order for the interview to flow, a certain rapport has to be created between the researcher and the participants. Each interviewer will inevitably approach the interview with his/her own subjective perspective and background. This position needs to be accounted for "...when formulating each and every response" (Henning, 2004:55). As such, Henning (2004:57) considers the outcome of the interview to be a "co-constructed" interpretation of the interview experience. This, Henning calls "'communicative' action with discursive qualities" (2004:57) Given this co-construction in the research, this dissertation has been written in the first person 'I' throughout, instead of the more traditional third person approach, whereby the researcher refers to him/herself as 'the researcher' or 'the author' , thereby distancing him/herself from the data and the findings.

As Collins (1999:22) explains when describing the participatory approach (of which there is an element in the design of this research as stated above), despite the fact that an outsider may initiate the research, the content is based on the point of view of the participant, with the hope that any changes which the research may bring about will have direct bearing on them and the stake holders they represent.

The interviews comprised of two parts:

- Part 1: The first section concentrated on the experiences of victims and perpetrators of juvenile crime with crime, its context and the criminal justice system.
- Part 2: The second part focused on the perceptions and opinions of each of the subjects with regard to the concept of restorative justice as a means of addressing youth in trouble with the law. It explored what aspects participants would find beneficial and under what circumstances. Therefore, it tried to look beyond their case by using the insight of their experience.

Although the topic was introduced to the participants from the moment of making contact with them as part of the selection process, and participants were reminded of it as a central theme throughout the process, a basic description of restorative justice was given prior to the second part. The description given to the participants focused essentially on the notion of an encounter (direct or indirect) between victims and perpetrators as a means to:

- **discuss the causes and effects of the crime;**
- **express the impact of the crime;**
- **identify the needs resulting from the crime; and**
- **negotiate a solution**

I did not go into detail of the proposed benefits of such an approach with regard to taking responsibility, respect, showing remorse and/or forgiveness, reconciliation and reintegration. Rather, I wanted to see whether these advantages would emerge automatically in the responses. I felt that this would prevent positively influencing the participants in favour of restorative justice processes, which might also block discussions around the possible shortcomings perceived by the participants.

However, in the first section, I was curious as to whether any of these proposed benefits of restorative justice processes were experienced by either victims or perpetrators in the existing adversarial criminal justice system, and if so, how. Here again, I did not ask this directly, but I tried to investigate issues around relationships, the experience with the justice system, and their perceptions on justice through the open ended questioning in order to determine whether there were restorative elements in their experience which could perhaps be maximized on in implementation. The purpose of this was to try to unpack, in some way, whether restorative justice approaches should be alternative, parallel to or integrated into the criminal justice system.

Included in the study was the attempt to determine how many of the participants had heard of restorative justice prior to the interview, and if they had, where they had received their knowledge from.

The interviews took between one and a half to two hours on average. Initially the idea was to separate the interviews into two separate sittings. This idea was rejected, primarily due to the flow of the interviews from the participants' own experiences to their perceptions of restorative justice as an alternative.

3. Sampling design and sampling methods:

If a population is "a collection of objects, events or individuals having some common characteristics that the researcher is interested in", as described by Roscoe (in Mouton, 1996:134), the unit of analysis "...directs the boundaries" for the research (Henning, 2004:32).

The selection of subjects for this study aimed to focus on people who have been involved in and affected directly by crime: victims and offenders. They are, by definition, key to any restorative justice process, and would necessarily be central in the process. They are responsible for the unique content of each process, as well as for determining the consequences of the actions which attempt to repair the harm caused by the crime. Their attitudes and willingness to participate in such a process should be paramount in the decision to implement the concept of restorative justice. Their acceptance of this approach, I believed, should be considered even more essential in determining the viability for implementation than that of the key players in the formal criminal justice system. If the victims and perpetrators do not accept the idea of restorative justice, then for a judge, magistrate or prosecutor to opt for this approach as a means of serving justice would ultimately be redundant, if not detrimental in some cases.

Distinct criteria for selection based on the purpose of inquiry were drawn up. The parameters which guided the choice of subjects for this case study were victims and perpetrators who have had experience with youth crime and the criminal justice system. The intention was to determine what system of justice they think would best suit their needs in light of their experiences.

Part of the criteria was that none of the participants were given the option of a restorative justice process such as a Victim Offender Mediation or a Family Group Conference, or any other related process of restorative justice encounter, to resolve their case. I deliberately did not chose victims and perpetrators from the same case. The reason for this was because the study aimed to explore the experience and effects of crime in order to determine whether the participants would consider restorative justice a viable option in their case. As this could be a sensitive and painful process for participants, I did not feel that it would be appropriate to interview people in the same case at this early stage of investigation.

The reason for selecting those with first hand experience was that it would include experiential truth evoking a genuine emotive emphasis that cannot be

captured by those who have not had direct experience of crime and the criminal justice system. I considered this important, given that an essential aspect of the restorative justice approach is the affective quality which directs concepts such as forgiveness, remorse and empathy for example, which are all components of repairing harm, deciding on restitution and restoring relationships.

With the above in mind, the populations from which the units of analysis were selected for this study were:

- Young offenders (18 years and below) who had experience with the criminal justice system including arrest, and who had not had the option of a restorative justice process to resolve their case through contact and negotiation with their victims. (Various diversion, awaiting trial and sentencing options are currently being used for youth in the formal justice system. This variety was reflected in the selection of the subjects, although it was not included in the dimensions for selection.) (n=6).

- Victims of crime committed by young offenders who subsequently passed through the criminal justice system including reporting the incident to the police, but who had not had the option of a restorative justice option to resolve their case through interaction and negotiation with their perpetrators. The victim could be any age, including adult, so long as the perpetrator in his/her case was below 18 (n=5).

- There were two participants who did not fit the criteria. One was a perpetrator of 32 years old, though he was a former juvenile offender incarcerated at 14 years old, and the second was a child victim of an adult offence (See section on "Shortcomings and Sources of Error"). (n=2)

- **Total number of interviews = 13**

For reasons of accessibility, the study was only conducted in the Western Cape, including Cape Town, Atlantis, Athlone, Mitchell's Plain, Wynberg and Belleville magisterial districts.⁹ Sampling was purposive in that it "look(ed) towards the people who fit the criteria of desirable participants" (Henning, 2004:71). The selection, though purposeful in terms of the criteria, was based on convenience based on the

⁹ Although race, gender and class were not specifically considered in the criteria for the purposive sampling, the sample itself did include a cross section. Results however will not be analysed in light of these types of diversity in the sample.

availability and willingness of appropriate subjects. This, again, reduces the potential for generalizing the results. Also, though willingness is included in the ethical considerations (see below) for the study, it risks limiting the validity of the findings as it does not offer the perspectives of individuals who are not willing to participate. However, as this is a case studies, phenomenological research approach, the findings are based on the subjective truths of the individuals interviewed in order to provide insight into the phenomenon being explored at this preliminary stage, but, again, not to generalize the findings.

4. Selection methods

The process of selecting subjects for this study turned out to be an insightful part of the study itself. It required a lot of thinking, trial, error and changes in strategy to find an approach that would be best suited to the inquiry. This is common for qualitative research, which provides scope for flexibility and creativity during the process in order to find an appropriate strategy for the study. Below is a description of the various routes taken in order to decide on an adequate selection method, which, as will be discussed in detail below, relied on the assistance of probation service providers in the six selected magisterial district offices for the Department Social Services and Poverty Alleviation in the Western Cape.

4.1. Finding an appropriate strategy for selection:

As confidentiality and sensitivity towards the participants were essential, the intention was for subjects to first be contacted by the service providers who have already had contact with them to explain the purpose of the study to determine whether they would be willing to participate, prior to having contact with the researcher.

Victims:

Although numerous people have been directly affected by crime committed by youth in the Western Cape, I wanted to select victims through existing service channels. Originally, I thought of drawing participants from a variety of sources, including police stations where crimes have been reported, as well as South African Police Services (SAPS) counseling service providers for victims of crime. I also thought to get access via various NGO's providing victim support such as the Trauma Centre and the National Institute for Crime Prevention and Reintegration of

Offenders (Nicro). I tried contacting authorities from each of these services to gain permission.

After numerous and varied attempts, I was unable to make contact with any coordinators for SAPS victim support services in the Western Cape. I therefore thought to concentrate on the NGO option.

The Trauma Centre expressed an interest in the study and a willingness to assist, but was unable to decipher from their records which of the clients at their centre had specifically been victims of youth crime. I then tried to concentrate on Nicro instead, particularly as they are responsible for youth diversion programmes and they have a victim support unit. I contacted the coordinators for both programmes. With regard to the youth programme, it turned out that there is virtually no contact with victims of the children that come through the programmes, and the victim support programme's client base is mostly women affected by domestic violence and abuse, and therefore they did not have access to victims of youth crime *per se*.

Perpetrators:

Originally the idea was also to access the youth perpetrators through a variety of sources such as the Department of Correctional Services (DCS) responsible for sentenced youths as well as NGO's providing support for offenders such as Nicro & Creative Education (Cred). I wanted to access young offenders who had direct experience with the criminal justice system but had not been subject to any restorative justice processes to resolve their case via the criminal justice system.

DCS required a special request through their standard format to get access to sentenced criminals under their responsibility. After some time this was not forthcoming. Nor was it from Cred. Nicro was willing to assist. However, Nicro only specializes in providing programmes for children who are diverted from ordinary court procedures, particularly trial. At that stage I was not sure whether I was going to accept diverted children within the parameters of the criteria.

'Diversion' refers to cases that are rerouted from proceeding to trial on the condition that the person being diverted performs a task/programme ordered by the court. A person can only be diverted if s/he has accepted responsibility for the charge. The advantage of being diverted is that once the conditions are fulfilled, the case is withdrawn and there is no criminal record. As such it is a 'one off option' for first time offenders. It is usually offered for less serious offences, although some programmes have been developed to accommodate more serious cases.

Eventually I decided to include certain diverted children who had contact with the existing criminal justice system in terms of being arrested, appearing in court and relying on the decision of the prosecutor to divert them, and to what programme, even though they may not have been to trial. Firstly, although the ultimate intention of diversion is to prevent children from being exposed to the formal criminal justice process, as there is still no legislation governing diversion in South Africa, most children experience elaborate drawn out procedures in court before being diverted, as was the case with the participants in this study. Secondly, it was acknowledged that diversion programmes do include some elements of restorative justice (as discussed in the literature review) as they do require children to accept responsibility and programmes often include approaches that can assist children with rehabilitation and community reintegration. However, as noted above, most diversion programmes do not include any formal interaction between victims and perpetrators to resolve the case or to repair the harm through restitution and reconciliation. Therefore, children who had been diverted but had not had contact with the victim in order to resolve the case and negotiate means to repair the harm did indeed still fit the criteria, and therefore were included in the sampling. However, children who had been diverted to a Family Group Conference or Victim Offender Mediation would not fit the selection criteria as these are distinct restorative justice processes.

4.2. The chosen selection method

The lack of success in these approaches to selecting both victims and perpetrators helped me to hone in on a strategy that would be more standardized and ultimately more relevant to the purpose of the study with regard to existing and proposed legislation which discusses restorative justice¹⁰ as will be described below. In part, the change in direction came from the youth coordinator from Nicro in Mitchell's Plain, who recommended that I contact one of the probation officers that they work closely with at Athlone office for Social Services and Poverty Alleviation.

This suggestion became the solution I was looking for, as probation officers are responsible for the assessment reports for children in trouble with the law, which guides their recommendations in pre-trial and pre-sentence reports for the court (Probation Services Act 116 of 1991). The idea of approaching victims through

¹⁰ i.e. The Child Justice Bill (49) 2002 and the Probation Services Amendment Act 35 (2002)

probation officers also appealed to me, as their prescribed duties include contact with victims for restorative justice purposes as well as for victim support.¹¹

Following this course, I began by contacting the probation officer in Athlone, providing her with an outline of the purpose of the study and the criteria I was looking for in the selection process. We then met to discuss the selection criteria, together with two other probation officers from the office. They showed an interest and a willingness to assist in selecting all the participants for the study (i.e. both victims and offenders).

It was almost six weeks before I heard from them again. I realized that part of the delay was due to a lack of permission from their regional authority. I also realized that requesting one probation office to do all the selecting was not only cumbersome, but would also only reflect one geographical area in the Western Cape. This again refined my thinking around the selection of subjects. My plan now was to select six social service offices in the Western Cape and to approach the probation service providers from each of these offices to help me access the participants. It was suggested that I go through Dr. Stan de Smidt, the Assistant Director and Coordinator of Probation Services for the Western Cape's Department of Social Services and Poverty Alleviation, to get permission to do the study with the help of the district offices. This was promptly granted (See Annex 2).

4.3. Selection Process

I selected six district offices for the Department of Social Services and Poverty Alleviation in the Western Cape from which to get my sample. These were chosen based on their availability, willingness to assist and geographic accessibility to conduct this small scale, preliminary study. The offices included: **Cape Town, Mitchell's Plain, Athlone, Atlantis and Belleville, Wynberg**¹². The range of offices offered greater regional representation than just approaching one office. They were also accessible from Cape Town where I was based. I then reduced the number

¹¹ The Probation Services Act (Act 116 [1991]) stipulates in Section 3(d) that the Minister of Social Welfare can request a probation officer to devise and implement programmes for the "care and treatment of the victims of crime". Section 4(e-h) states more specifically the "Powers and duties of the probation officers" with regard to victim support, which include the actual "planning and implementation of programmes referred to in section 3"; "the recruitment and in-service training of volunteers and regulation of their activities" and "the conducting of information classes". These duties have been matched as amendments to the Probation Services Act (Act 116 [1991] Amendment Act 2002, where by Section 3(d) now includes "mediation in respect of victims of crime", and Section 3(k) has been added to provide "early intervention including family group conferencing" as well as Section 3(l) which considers "restorative justice as part of appropriate sentencing and diversion options".

¹² I hoped to include Khayalitsha District Office, but was not able to get hold of the key contact person during the period of the study.

of participants to **one young offender and one victim of youth crime per office** which, I hoped, would give me the **total of SIX victims and SIX perpetrators**. I felt that this would be more manageable for each office than to request that all the participants be drawn from one office, which, as mentioned above, proved to be unrealistic and time consuming.

I contacted the office managers in each of these offices in order to get permission to request assistance from their probation service providers. I provided them with information about the study and a request for assistance in accessing participants (See Annex 3). They referred me to either the probation officers or the assistant probation officers in their office to assist. From there we were able to select the required participants for the study according to the defined criteria of the 'bounded study' (i.e. victims and perpetrators of youth crime who had been through the existing criminal justice system, but had not experienced a restorative justice process to resolve their cases and determine their own outcomes).

In some cases it was difficult for the probation officer to select victims directly, as they too seemed to have limited contact with victims. In each of the offices, the only victims the probation officers claimed to be in contact with to provide support and assistance were victims of sexual violence, including rape. In general, they stated not having contact with the victims of other types of crime, which was why they were unable to assist with the selection of victims other than for sexual offences. This was of concern, as Section 4 of the Probation Services Act 116 of 1991 and Amendment Act 35 of 2002 includes victim support as one of the duties of probation officers. This is not limited to sexual offending, but should include victims of any crime. The lack of contact with victims inherently shows a lack of restorative justice approaches, as victims should still be central to the process. Without their direct input and consultation in the outcomes of their cases, they remain as sidelined as in the retributive adversarial system.

Given that the probation officers were unable to access victims of youth crime other than for sexual offences, I was put in contact with the juvenile prosecutor they work most closely with in their district. Purposive sampling of victims and perpetrators was conducted. In all cases the subjects had to express a willingness to participate. As mentioned above, a convenience sampling method was also used in terms of the availability of participants and being able to access them. Prosecutors were only able to select victims who were on their roll on the day I approached the court, as that was when they had access to the case dockets. Following the court

appearance, dockets are returned to the police investigators, and are therefore more complicated to access.

Though I did not limit the study to less serious offences, I was wary of the sensitivity around the more serious and emotionally traumatic offences, such as the higher schedules of offences, such as rape and murder in the Criminal Procedure Act 51 of 1977¹³, particularly with regard to victims. Hence, given the potentially delicate nature of the research, I was aware that in some instances the interviews could be emotionally challenging for the participants, irrespective of the schedule of offence or the willingness of the subjects to participate. It was thus necessary to bear in mind that although the interviews may be cathartic and provide therapeutic benefits for victims and perpetrators, they are not a therapy/counseling session. If the need for support arose, I tried to provide information about available services where support could be accessed if necessary, and in one case assisted in initiating contact between the subject and the service provider for psychological support for trauma resulting from the incident.

5. Data collection methods and fieldwork practice

Although a standard procedure for each of the six designated centers in the Western Cape had been established (see above), making the actual contact with the participants themselves varied according to the circumstances of the cases selected either by the office directly or with the help of the service providers delegated to assist.

For three of the offices it was sufficient to discuss the criteria in more depth with the designated service providers (i.e. probation officers or assistant probation officers) over the phone after they had received the criteria and summary of the proposal in writing. Only the probation officers at the Cape Town and Athlone offices requested a meeting to discuss selection further.¹⁴ I also met separately with the probation supervisor at the Wynberg office, whom I approached directly instead of first sending a request letter.

Once it seemed that the selection criteria were clear at each of the offices, the plan was for them to contact the victims and perpetrators as requested, to inform

¹³ In the Child Justice Bill (B49[2002]) Schedule 3 offences are classified as the most serious and violent offences including rape and murder.

¹⁴ Except for the original meeting at Athlone office described above

them about the study, and then to provide me with their contact details so that we could set up an appointment at our convenience. This approach worked for the victims and perpetrators selected by the Belleville and Athlone offices and the perpetrators from Cape Town and Atlantis offices.

As mentioned above, victims of youth crime proved to be more difficult for probation officers to get in contact with. The probation officers from the Cape Town and Belleville office did put me in contact with rape victims they had been working with. However, after speaking with the father of the girl referred by the Cape Town office, it was agreed that the case was still too sensitive as the outcome seemed controversial at that stage. Therefore, he felt it would not be appropriate to include her in a study.

The victims of youth crime from Mitchell's Plain, Cape Town and Wynberg were selected by prosecutors of juvenile offences at all three courts.

The first perpetrator selected by the Belleville office I went to meet at the end of a Saystop session (a life skills diversion programme for young sex offenders) being held in their office. He was there with his aunt, and we discussed the purpose of the study and the possibility of an interview. The aunt advised me to speak to the mother. Not understanding why her child had been 'targeted' for the study, the mother refused participation.

The perpetrator selected by Mitchell's Plain office did not fit the age criteria for the study. The probation officer in Athlone however was able to select two perpetrators who were willing to participate, so one served as a substitute for Mitchell's Plain.

The victim selected by Atlantis office did not fit the criteria in that the perpetrator in her case was an adult. Though I tried on numerous occasions via the juvenile prosecutor to include a victim from Atlantis who fitted the criteria, I was not successful by the end of the data collection period.

I met with participants at Mitchell's Plain court, Mitchell's Plain offices for Social Services and Poverty Alleviation, homes in Athlone (Heideveld, Hazendal & Manenburg), Ravensmead, Riebeek-Wes, Brooklyn, Retreat, Summer Greens, Abbotsdale, and Pollsmoor Prison's section for juveniles awaiting trial in Tokai.

The fact that I was not able to get the exact 'one victim and one perpetrator' from each area did not affect the outcome of the study itself, as I was not focusing on a geographical comparison, but more on the experiences of victims and perpetrators with the criminal justice in the Western Cape in general, and their views

on the possible application of restorative justice in South Africa. After all there is nothing comparable between districts if only one victim and one perpetrator are being interviewed per area, re-emphasising that this was not the intention of the study.

Any changes in selection procedures (as described above) were based on convenience sampling. I also felt satisfied that each office had been sufficiently involved in at least attempting to select appropriate candidates, and each office did at least provide one of the required subjects for the study.

6. Ethical considerations

The main ethical consideration was with regard to the participants' willingness to be included in the study. This was first determined at the initial contact, when requesting the interview. Before the interview began, participants were informed that the interview would be recorded, but were also encouraged to indicate whether they felt uncomfortable with any of their information being used. At the end of the interview, they were asked again whether they agreed to their information being used for research purposes, and were given a consent form to sign, indicating that anonymity would be assured (See Annex 4). I also informed them that I would provide them with a summary of the results and findings at the end of the study, to see how their information had been integrated into the outcome.

Only two subjects approached expressed an unwillingness to participate (described above as the young girl who had been raped and was awaiting the outcome of her trial and the young male sexual offender whose mother did not want her son to participate). All participants interviewed signed the consent form. All juveniles who participated were given permission by their current caretakers, whether parent's, guardians or the prison social worker.

The issues described above regarding the sensitivity of the exploration and the potential need for backup support also formed part of the ethical considerations for this study.

7. Data capturing and data editing

All of the interviews, except one, were recorded using an MP3 recorder, whereby the recordings could be downloaded onto the computer under Windows Media Player.

The exception was recorded by taking notes during the interview (see above). The interviews were scribed, *verbatim*, by the researcher. This process put me more in touch with the content of the interviews, which helped me to notice themes emerging and appreciate the significance of the data. In turn, this could assist with the eventual analysis. This is consistent with Henning's (2004:76) opinion which states that "it is advisable to transcribe as much of the data as you can yourself. Working closely with the data assists in the analysis that will come later".

The approach to the analysis of the findings was guided by Henning's advice in *Finding Your Way in Qualitative Research*, with particular regard for Chapter 6: "Making meaning of data: analysis and interpretation".

Following the scribing, I extracted the key themes which emerged from the interviews through an initial open coding of transcripts. Three broad categories emerged: "Context", "Experience with the criminal justice system" "Perceptions of restorative justice". I then coded the information under each broad category where various sub-categories were formulated. The sub-categories generally reflect the sections of the interviews as guided by the questioning. This is not surprising given that I wanted these categories to emerge through the basic checklist in the interviews. The category on 'context' emerged independently from the open ended approach to the interviews, based on common themes that were raised by the participants.

The arrangement of sub-categories under the broad categories used a 'selective coding approach' whereby the categories are linked to 'core categories' (Henning, 2004:132) The information under each subcategory was then open-coded and analysed according to the patterns and themes that emerged from the open-endedness of the approach to the semi-structured questioning. Therefore, there were three levels of coding and categorizing in order to make sense of the data. This will be discussed in detail in the following chapter.

8. Shortcomings and sources of error

- One concern with using in-depth interviews was with the attention span of some of the subjects, especially youth with little schooling. At first I thought to divide the interview into two sessions according to the sections, but then I realized when conducting the interviews, they gain a momentum which would be broken by dividing them. What I did find was that in some instances the participants would answer the

semi-structured guided questions without going into much extra explanation, whereas others would take the opportunity of the open-ended structure to explore the questions in much more depth. This alludes to the flexibility of the structure, whilst still managing to reach the objectives of the study.

- A second concern would be regarding the ability of subjects to understand the intellectual and philosophical concepts of restorative justice, or to be able to form an opinion on it, in light of the concern noted above. To prevent this, the language of the concepts was simplified by reducing it to the simple components of the description, in order to try and clarify and unpack the complex terminology. As described above, I made every effort to keep the terms as neutral as possible in descriptions in order not to influence the outcomes during the interviews, and to ensure that responses were as accurate a reflection of the perspectives of the participants as possible.

- Language proved to be a constraint in two cases, whereby the participants did not speak English and my Afrikaans was too limited to conduct an in-depth interview. In one case I was assisted by the assistant probation officer and in the other by the probation officer. They were informed of the purpose of the study. However, working with lay translators proved to be problematic as questions were often interpreted and misinterpreted, and risked becoming leading. As I understand enough Afrikaans to know how questions were being asked and in some cases manipulated, I had to spend much time in the interviews keeping the interpreters "in check", and was unable to use some of the information for the analysis, due to the lack of validity as a result of interpreter bias. I did not find that this affected the value of the findings, as I only included direct responses and not those that seemed to have been manipulated by interpreters. However, this being the case meant limiting the depth of exploration and use of responses from these particular participants.

- In two cases there was some misunderstanding around the criteria for the participants, which affected selection. One offender was 32 years old, so exceeded the age criteria. In the other case the victim was a youth and the perpetrator an adult, therefore thinking that the request was for youth victims, rather than victims who had been affected by youth crime. As the probation officers had already made the contact with these participants and set up the interviews, I interviewed them nevertheless, although I explained at the start that they did not fit the criteria of the participants and indicated their differences. Although I did not include them as the

main units of analysis, they provided valuable information in both their interviews that helped to enhance some aspects of the analysis. Both signed consent forms for their information to be included in the research, even if only for purposes of analysis.

- The assistant probation officer from Belleville who served as the interpreter for the young offender from that district offered some useful insight into the context of the children that he works with and his take on the situation affecting youth in the community. Although he too was not included as a participant, with his permission, his information was transcribed due to their contextual insight and was used to assist in the formulation of background and in the data analysis (Not necessarily a source of error *per se*). He too signed a consent form for his information to be included.

- As Pollsmoor Prison has a policy of not leaving outsiders alone with prisoners without supervision for very long, two warders randomly came in to supervise the interview. Although they were not there constantly, I did feel that their presence restricted the free flow and the depth of the interview.

- Due to reasons of time, consistency in approach and accessibility, each of the participants were met with once. Although the one interview did manage to elicit valuable information, it could be argued that more encounters could provide more depth and insight. However, this should rather be seen as an opportunity for further research born out of the findings in this initial study.

- All interviews, except one, were transcribed using a recorder. In the one that was not, the participant was not comfortable being recorded, but allowed me to take notes during the interview, and gave permission to use her information. However, a direct recording would have been more accurate at capturing the information.

- Another possible shortcoming in the research could be the fact that the subjects were selected by people who already had contact with them (such as the probation officers, assistant probation officers or prosecutors). The relationship between the service provider and the client may have had an impact on the views. If this seems to be the case it will be highlighted in the analysis.

- Although the criteria for selection did not include any specific racial or cultural group, all the subjects were from middle to lower social classes according to willingness, availability and accessibility of the subjects. Hence this study cannot make generalizations or draw conclusions based on race or class, or even a full cross section of society. However, this was not the intention of this study. The intention was rather to illustrate the importance of consultation with victims and perpetrators

of crime in general when considering restorative justice as an approach to resolving their cases.

Summary

The research uses a qualitative design according to a phenomenological case studies approach. It includes a participatory approach in that it aims to consult with the subjects on their views on whether restorative justice could be a feasible approach to responding to cases involving young offenders and if so, what recommendations would they suggest for its application. The method chosen to elicit information was in-depth interviews with guided open-ended questions compiled according to the purpose of the investigation.

Sampling was purposive though it relied on convenience for accessibility and willingness of participants. The units of analysis were recruited via justice officials and service providers, including probation officers, assistant probation officers and prosecutors from six magisterial districts in the Western Cape. They were selected according to the purpose of the study.

A total of six young offenders below the age of 18, and five victims of youth crime were interviewed. In addition to these participants, one adult offender was interviewed who had been a former youth perpetrator, and one child victim of adult crime was also interviewed. The results of their findings are included for the analysis given their value to the research topic.

The data analysis uses a qualitative approach of organizing the in-depth responses into rational categories and sub-categories, with coded themes that emerged under these categories (Henning, 2004). The discussion itself will integrate, compare and contrast these emerging categories and themes.

CHAPTER 4

PRESENTATION AND DISCUSSION OF FINDINGS

1. Sample profiles

This section provides separate profiles of each participant. The profiles include gender, the criminal charge, consequences of the criminal case, and where the interview was held. The reason for describing profiles individually (using the qualitative approach) rather than trying to fit cases into general categories of crime (which would be a more quantitative approach) is essentially to illustrate the uniqueness of each case, which is part of the thrust of the restorative justice approach. Another reason is that the sample size is too small to try to quantify in any meaningful way.

Race groups of the participants included 'Black', 'White' and 'Coloured'. For reasons of confidentiality, location and race are excluded in the profiles. Another reason for not including race specifically is because crime includes victims and perpetrators from all race groups in the Western Cape and I therefore preferred not to shroud the participants' experiences in racial stereotype. As mentioned among the shortcomings and sources of error, although this study was not limited to any particular social class or group, and tried to draw from a diverse pool in the Western Cape, none of the participants represent 'upper' or 'wealthy' sectors of society. All subjects were from the middle to low class. Here again though, the sample size is too small to generalize any phenomenon discussed to any particular social groups, either in terms of race, culture or socio-economic background.

The exact age of the perpetrators is included in the profiles, given its' direct relevance to the study in that juvenile crime is central to the phenomenon being explored. Hence, all perpetrators were below eighteen years old (which is the definition of a child according to the UN Convention on the Rights of the Child to which South Africa is bound following ratification in 1995). Although age is not part of the criteria for the victims, their ages have been either included or approximated. However, the age of their perpetrators has been included in the victim profiles, as being victims of juvenile crime was part of the criteria. It was therefore also relevant to the study.

In three of the victim's interviews a support person such as a mother or a wife was present and participated in the discussion. In these instances, the additional person had been directly involved in the case, either as a witness, personally affected by the incident or the person who laid the charge on behalf of the victim, as in the case where the victim was a child. For each additional person, I shall explain their relevance to the case and whether their input was integrated into the discussion of the findings.

Victims:

1- A 13 year old female who was gang raped at 11 years old (almost exactly 2 years prior to the interview) by three adolescent males from her neighbourhood. The boys who raped her were between the ages of 16-18. The outcome of the case was still pending at the time of the interview. The perpetrators were released on R500-bail at her and her mother's request as she had known the boys since they were very young and did not want to be responsible for having them sent to prison. They were still in the neighbourhood. The interview took place in the girl's home. The mother was present at the interview and gave input, though the emphasis in the results is on the input from the direct victim. The interview was not recorded at the girl and her mother's request, but I was able to take notes and the consent form was signed by the mother on behalf of and with the agreement of the daughter.

2- A female in her thirties. She laid a charge of malicious damage to property against her 15 year old nephew, to whom she is the guardian, after he threw a brick at her door approximately a year before. He had previously broken her windows and thrown bricks through her corrugated roof several times in the past to wake her up when he came home late at night. The boy had been to Horizon's Youth Centre, a secure care facility in Eerste Rivier, to await trial. He returned home without any explanation or follow-up. The case was still pending at the time of the interview. We met in her home.

3- A 31 year old male who was assaulted in his home by three adolescent males from his neighbourhood between the ages of 17-20 (therefore as one of the perpetrators was above 18 at the time of the offence, he would not be considered a juvenile according to law in this case, although the other two perpetrators were juveniles, and hence the participant met the criteria of being a victim of juvenile crime). He laid the charge over a year prior to our meeting. The outcome of the case was still pending at the time of the interview. The interview took place in the victim

support room at the court he was due to appear at. His mother-in-law, who was a witness to the assault, and had tried to break up the fight at the time, was present at the interview, as she had accompanied him to court. Although she had valuable input during the interview, she did not sign a consent form, and therefore she is not quoted in the analysis.

4- An elderly gentleman (pensioner) who laid a charge of assault against his 16 year old granddaughter. She was discharged with a warning three days prior to the interview. He had been supervising her and her older brother and sister (twins) in a house he owned up the road while their father was away working in Namibia. The children's parents were separated, and neither was taking responsibility for them. The grandfather's house where the children were staying in had become a centre for drug abuse, and the grandchildren had become very disrespectful. His daughter who lived on the premises with the grandchildren had already requested a protection order from the police due to their disruptive behaviour. The interview took place in the grandfather's home. I interviewed him with his wife. Although his wife was not directly present at the time of the assault or the court case, she had also been trying to supervise and care for the grandchildren. After her husband laid the charge, both the girl and her mother came to physically threaten her. Given her involvement in the case, her information will also be included in the analysis. She signed the consent form.

5- A man in his mid-30's who had laid a charge of theft against a 13 year old boy who tried to steal a CD-Rom inside his second hand shop. He caught the boy outside the shop and called the police to arrest him. He had never met the boy before. He, himself, had served a 9 months prison sentence in Pollsmoor Prison, approximately five years before. The boy was dismissed on insufficient evidence two weeks prior to our interview. I met with him in his home.

6- A 16 year old girl. She and her sister had been raped frequently by her father over a period of 4 years. Her teacher laid a charge on her behalf. At the time of the interview her father was awaiting trial in prison. She was not certain at that stage whether he had been sentenced yet. I met her at her home (See section on "units of analysis" which explains that although this case does not fit the criteria in the sense that the perpetrator was an adult, the victim's perceptions on restorative justice from the perspective of someone who says she felt that she had lost everything due to this protracted incident, were particularly insightful, and were therefore considered relevant to the study).

Perpetrators:

1- A 16 year old male charged with assault using a pair of scissors. (It is not certain where he got the scissors from). The victim was a school mate. The fight took place between his dance group of seven members and a gang of approximately forty members (according to the participant) to which the classmate belonged, due to a touse over a girl. He was expelled from school after his case and had been diverted to the Nicro eight weeks life skills programme, the Youth Empowerment Scheme (YES) (a life skills programme focused on taking responsibility for ones' actions and decision making aimed at crime prevention). He was still awaiting the outcome of his case which was conditionally withdrawn based on his performance in the diversion programme. The incident had occurred in August, 2003. The interview was held in his home.

2- A 16 year old male charged with assault using a pair of school scissors he claims to have had in his bag. The victim was a gang member who was a cousin of the perpetrator's classmate who the participant had formerly accused of stealing from other classmates. He had also been diverted to the eight week Nicro life-skills programme, and was participating in a project where he visited schools as a peer educator to discuss issues around crime and drugs as part of his diversion conditions. The incident took place 14 months prior to the interview. The case was conditionally withdrawn based on his performance under the conditions of his diversion. He said he was still waiting on the final outcome of his case at the time of the interview. We met in his home.

3- A 16 year old male who had been convicted for theft of R200- from his caretaker approximately three months before the interview. He was under home based supervision¹⁵ (which he referred to interchangeably as 'house arrest') for a period of six month at the time of the interview and had also been ordered to 3 weeks drug rehabilitation at Danovo state rehabilitation facility just outside Cape Town as part of his sentence, which he had not served yet. Part of his time awaiting trial was spent at Bonnytoun, a place of safety in Cape Town. He was interviewed at his caretaker's home where he was under home based supervision.

4- A 14 year old male charged with armed robbery with two other juvenile boys. They used an unloaded gun that had been left with the boy for 'safe keeping' by older gangsters. The victim in this case was a stranger passing on the street after

¹⁵ Home based supervision was developed as an option for arrested, convicted or sentenced children between the ages of 13 – 18 to stay in the care of his/her parents or guardians under the supervision of a probation officer. This option usually comes with programmes such as a life-skills attached.

leaving a video store. The boy was currently awaiting trial under home based supervision with an assistant probation officer. The outcome of his case would depend on his performance whilst under supervision. This included attending various programmes. I met him in Ouderkraal with his assistant probation officer who assisted in translation from Afrikaans. At the time of the interview he was supposed to be attending a boat racing programme in Hout Bay as part of his conditions for home based supervision, but it was cancelled that morning. Therefore I caught up with them near Ouderkraal.

5- A 14 year old female charged with stealing money from an older friend's purse from her neighbourhood. She was with another friend at the time who she claims persuaded her to take the purse so that they could buy alcohol at the local shebeen (bar). She was ordered by the court to reimburse the money and promise not to commit further offences. She was in the process of working to pay back the money at the time of the interview. The exact time of the incident is not certain, but it was within the three months prior to the interview. After the interview, the probation officer assigned to her case said that she was going to be sent to a home for delinquent girls in Elsie's River outside Cape Town as this was not her first offence. The interview was held under a shady tree near her house. I met her with the probation officer who assisted in the translation from Afrikaans.

6- A 17 year old male charged with indecent assault with attempted rape of another teenage boy after getting drunk at a party. He claimed he had seen the boy around his school prior to the incident, but he did not know him personally. He had been awaiting trial in the juvenile section at Pollsmoor Prison for over a year, though he alleges to have been told that he would be placed in a place of safety upon availability. He was formerly awaiting trial for a previous case at Bonnytoun Place of Safety. He chose not to speak of his former case. It is not clear whether anything happened there to jeopardize his chances of being accepted at another place of safety. I interviewed him in the library in the juvenile awaiting trial section at Pollsmoor Prison.

7- A 32 year old male charged with assault of his girlfriend and her twin sister, after finding his girlfriend alone with his brother in the bushes and suspecting them of sleeping together. He was currently serving a 6 months correctional supervision sentence with community service at the Department of Social Services and Poverty Alleviation, under the supervision of the Department of Correctional Services (DCS). He had previously spent 10 years in prison for shooting and killing a police man at

the age of 14 during the Apartheid years. Three months after his release from that sentence, he was caught hijacking a car and served another 6 year sentence. I met him at the Department of Social Services and Poverty Alleviation where he was serving his community service sentence (See section on "units of analysis" explaining that although he did not fit the age criteria for perpetrators at the time of his current offence, he had spent most of his juvenile years in prison, and had rich insight into being a juvenile exposed to the criminal justice system, particularly the conditions and consequences of detention. Therefore, his input was considered relevant to the study and has been integrated into the discussion of the findings).

2. Presentation of results

The presentation of results will consist of a breakdown of the themes that emerged as a result of the open-ended in-depth questioning from the guided interview schedule. The themes are based on commonalities among the responses of the participants, which were coded under the various sub-categories. However, there are a number of links between the themes and the subcategories. Therefore, the analysis will consist of a discussion that integrates the categories, sub-categories and their themes. Henning (2004) describes the method of linking codes and categories on a conceptual level as "axial coding" whereby "categories are related to their subcategories to form a more precise and complete explanation of the phenomena" (Henning, 2004:132).

Given that the research partly explores experiences with the existing criminal justice system as well as the desirability of restorative justice as an approach to resolving crimes committed by young offenders, there will be a comparative discussion of these approaches to justice, to determine the benefits and shortcomings or challenges in both. This discussion will be couched in the context in which crime occurs and from which it emanates as described by the participants, as the context provides challenges of its own to any attempts at justice.

It may surprise the reader that the experiences and perspectives of 'victims' and 'perpetrators' are not discussed separately, nor are they contrasted against each other. Although they may be viewed as 'opposites' or 'rivals' in the traditional criminal justice understanding of victims and perpetrators, they have not been presented as such in the findings. Instead, I have considered them jointly as the 'key role players' in a restorative justice approach. Furthermore, the presentation of the

results in qualitative research is based on the outcomes of the data collection. What I realized during the analysis was that although the experiences of crime and criminal justice by victims and perpetrators may certainly be from two opposite sides of these phenomena, the understanding and perspectives of the phenomena by the victims and perpetrators in this study were often very similar. This can be noted in the discussion of the findings below, where it is stated whether an experience or perspective was shared by a 'victim' or a 'perpetrator'. I found this significant in terms of the potential for restorative justice, as it suggests that at least some victims and perpetrators who meet as key role players in the process, may share an understanding of the phenomena of crime and criminal justice from which to discuss ways to resolve criminal cases. Of course I cannot generalize this to all criminal cases, nor to the experiences and perspectives of all victims and perpetrators. Perhaps a similar study conducted with a different set of victims and perpetrators may produce very different findings to this one, which may have called for the separation of findings for victims and perpetrators leading to a different analysis. I would also imagine that if one were evaluating restorative justice approaches such as 'family group conferences' or 'victim offender mediations', one would be more likely to present the findings for victims and perpetrators separately, as one would probably want to evaluate and compare their respective experiences of the process. However, this study is more about the importance of consultation with the key role players when considering introducing a new justice system which places them at the centre of the process. As such their responses have been jointly analysed as the 'key role players in a restorative justice process.'

3. Discussion of results

The findings of this study will be discussed in light of the multiple factors exposed in the theoretical framework that could influence the feasibility of restorative justice processes in cases of youth crime. These included:

- Crime;
- Punishment;
- Justice;
- Social attitude and experience;
- The formal criminal justice system.

In part, these factors emerged as a result of the guided interview schedule. The interview schedule was aimed at exploring the experiences of crime and the criminal justice system in the first part, and perceptions on restorative justice as a means of resolving crimes committed by youth, (both in their own cases and in general), in the second part. However, in all the interviews, participants independently chose to describe and contextualize their experiences in a broader social setting. Dimensions including the associations between crime and violence in the community, poor parenting, peer pressure, substance abuse and the influence of prison and child offending, were spontaneously raised and expanded on by the participants. Their initiative to explore the context from which criminal behaviour originates in youths was a research finding in itself, as it illustrates the need for both victims and perpetrators to give meaning and subjective reality to the crime, its causes and consequences. This will be further analysed in the final conclusions.

PART 1 – VIEWS OF THE PARTICIPANTS ON CRIME AND ITS CAUSES WITH PARTICULAR EMPHASIS ON CHILD OFFENDING

1. Crime in the community

Describing the context from which youth offending ensues is particularly relevant to this research. It is within the framework of the context of the home and community that one must question the feasibility of restorative justice as a means of responding to crimes committed by youth. It is also within this framework that one can begin to unpack the restorative justice philosophy's greater potential to respond to more entrenched forms of injustice in the community, particularly with regard to factors affecting youth. As we shall examine below, these may include the traumatic effects of domestic violence and violence in the community (such as crime and gangsterism), and the instinct these give youth to adopt anti-social models of behaviour. This relates to the section on "Theory on the causes of child crime" in the literature review, relating it particularly to how a background of endemic violence and substance abuse in the home and the community may increase child offending as a result of the harm and unaddressed injustice they experience (Consedine, 1999; Toews & Katounas, 2004)

In order to provide a backdrop for this study, I shall begin the discussion of the results with the general experience of crime and its causes in the community from the perspective of the thirteen participants.

Crime, as described by both victims and perpetrators, has become a pervasive part of community life. Modern explanations for high levels of crime, notably violent crime, in South Africa are often linked to the history of violence during the Apartheid era, where deprived communities in particular, were frequently exposed to violence, either as a means of control by the government or as opposition by community members. The one adult perpetrator among the participants recalls when remembering what triggered him to get tangled up in violent crime at the age of fourteen:

"Ja, that is, that years is for the Apartheid years with the boycott, riot, everything goes wrong in school, in the road, the fields, the police station. That time I was in gangsterism man, see, and that time it was rough, see".

Though this statement captures the reality for many South Africans in the past, according to both victims and perpetrators in this study, the current reality is not much safer or more peaceful in many communities. Examples of ways in which participants had been directly affected by crime, over and above the case presented in their profiles for this study, included the gang rape and murder of one perpetrator's sister, the theft of jewelry, including rings and chains, from the wife of a victim, threats with guns outside a house of one of the victims, who was himself a former convict, and the killing by gangsters of one victim's eldest brother in their home. These few examples illustrate some of the personal invasion and damage of crime on a more individual level.

Despite the direct effects of crime described above, life in many communities is disrupted by the mere endemic presence of crime, and the way it limits people's freedoms. The quote below by one adolescent male perpetrator describes the unrelenting and threatening presence of crime in the community. The fact that he blames the presence of crime on the 'stupidity' of people relates to the notion of the breakdown in the 'social contract' described by Sharpe (2004), which calls on all members of society to respect one another to live in harmony. He described crime in his community as an increase in "shooting, killing and robbing". He attributed this increase to the rise in gangsterism which he describes as a sort of a mysterious disruptive presence:

"Strange things happen every day. Everywhere you go, everywhere you look, you will see the same things over and over...You see, you can't make anything better here. It's the people. That's the whole problem. There's no other word but stupid"

Given the prevalence of crime and violence in the community, it is not surprising that some of it will be committed out of revenge or anger. In some instances this may be due to petty misunderstandings which can flare up, as was the case with the three common assault cases. However, one extreme example worth mentioning, in order to illustrate the extent of brutality some citizens have to contend with in the community, is the case of a young boy whose sister was murdered by gangsters. This was an anecdote from the victim who had previously been in jail himself:

"The reason why he went to jail is because two gangsters, before he became a gangster, he was still a normal child out on the street. He was a normal kid, playing with balls, whatever. They murdered his sister here by a church. They cut the boobs out, they cut her private parts out, and they put it all on top of her chest...He found out who did it. Went to that oak. Wasn't a druggie at all. Made him a button pipe, and the oak took the pipe, gave it back to him, he stabbed him to death with the pipe because this ou killed his sister."

These examples of both personal effects of crime, as well as protracted exposure to crime and violence in the community may, in and of themselves, influence the willingness of victims and perpetrators to opt for restorative justice processes to resolve their cases. In this last anecdote, one sees the enraged need for this previously "normal child" to avenge the brutal killing of his sister, which leads him to kill his sister's murderers in order to gain a sense of justice. Though in his case, no restorative justice process took place to negotiate how to repair the harm caused by the killing of his sister, it begs the question of the feasibility of a negotiated process between the affected parties in extremely brutal cases like these.

This relates to the challenges for the application of restorative justice discussed in the literature review, which questions whether there is "...room for victims in a restorative process when they are screaming out in pain, when they are vengeful angry and full of rage..." (Achilles, 2004:68). Acknowledging that indeed there are real cases of extreme pain and vengeance in South Africa as a result of child crime raises concern around addressing harms related to needs of the victim. This includes

protecting the rights of the offender, if the victim, for example, believes that killing the offender may be the only way to restore the balance caused by the harm.

Restorative justice is distinctive in the sense that it does not only consider the criminal act, but it explores the causes of criminal behaviour, which may also help victims of even the cruelest crimes to gain insight into the reasons for such behaviour. Understanding what leads to such harmful behaviour may be one way to begin considering negotiation between victims and perpetrators, particularly if victims begin to recognise previous harms, neglect and abuse experienced by certain young perpetrators. This does not mean that disruptive backgrounds of youth should serve as an excuse for brutal crime, but the explanation may assist the process of reparation. In this study, the explanation given by both victims and perpetrators as to what they believed contributed to child offending in South African communities helped to construct the understanding of the phenomenon.

2. Perceptions on causes of child crime

Whether the legacy of Apartheid is at least partly responsible for the violence and the state of disrespect in some communities as suggested above, it seems that all participants felt that the situation is deteriorating, thereby suggesting contemporary causes and catalysts for the perceived increase in crime.

Particular emphasis was placed on the ways in which children are being conditioned in criminal ways from a very young age. One perpetrator described how children in his neighbourhood as young as 7 were starting to mimic the ways of the gangsters in the area. This can include the way they dress and the way they talk and behave, to actually being caught up in criminal activity themselves. However, although this may demonstrate the social learning of youth in communities affected by the presence of crime and gangsters, it is not a sufficient explanation for youth crime in and of itself. There would have to be other pre-disposing factors that would make criminal behaviour attractive to youth.

This discussion will begin with the findings of the experiences of the home environments of the youth interviewed, with particular emphasis on parenting, followed by a description of the broader social influences which were identified as affecting children's behaviour. Each section will comment on the implications of the effects of the context on the feasibility for restorative justice procedures.

3. The effects of poor parenting on children

The home environment is central to the development of a child. Ideally, it serves to protect and nurture children. It is the fundamental socialising agent, from where children should develop a primary sense of trust and an ability to interact with respect, as described in key developmental theories, such as Erik Erikson's psycho-social stages of development and Sigmund Freud's psycho-sexual stages of development. Jim Consedine (1999) in the section on "Theory on the causes of child crime" notes that a dysfunctional and abusive home environment puts any child at a serious disadvantage for developing a respectful, pro-social lifestyle. In fact, he believes that this environment is often responsible for criminal behaviour amongst youth. In this study, the effects of poor parenting on youth spontaneously emerged as a strong theme in all the interviews, whether with victims or perpetrators. Parents were discussed either in terms of the role of the father, the role of the mother or the effects of the parental relationship on the upbringing of the children.

The impact of absence, abuse or neglect by the father was a common theme in 11 out of the 13 interviews. Paternal responsibility, participants believed, is to serve as a role model and protector for both male and female youth. The lack of guidance and presence of the father was given as an explanation for deviant behaviour in youth by both victims and perpetrators.

Reasons for absence or neglect varied. In one case, the victim interviewed, who was in fact the perpetrator's aunt and guardian, explained that the child's father (her brother) had been in and out of prison from the time his son was born. When speaking about her brother she says:

"When he comes out, he can't even speak to X. I've asked him so many times. I thought this is maybe what X wants. I told him, don't you just want to speak to him, tell him for daddy's sake at least. Like for our father's sake. He won't even do that."

A more common reason for fathers' absence noted was because they had to work far from home. In the case of the grandfather who was assaulted by his granddaughter, he explained how his son, the father of the young perpetrator, worked abroad as a caterer, and is seldom around to supervise his children. He holds the father's absence as partly responsible for leaving his children exposed to drugs and crime. The victim who had formerly been in prison spoke of the fact that

he grew up in a mining community, and his father had to work long hours, so spent little time at home.

Three perpetrators described how they were neglected and/or how their relationship with their father's broke down following parental separation after which the father had not been present in their lives:

"So my father wants to get involved in my life, but sometimes he also doesn't. It's like sometimes he shows that he wants to and other times he doesn't want to see me...But you see, my father hasn't got any children of his own apart from me, so he's not actually used to being a father, so that's why all this trouble happened".

"I was about six when my father go away from us...He was a council worker...Then one night my mother told us that our father is working late tonight, and that's the day he didn't come back...Then my mother told him (uncle) tell your brother his son is in prison. He has 10 years for murder. Then about six months I get a letter from him. He sent me money. He sent me stuff through the post you see. But his heart was not so good to come to me."

The only perpetrator who did not mention his father was the boy awaiting trial in Pollsmoor Prison for the indecent assault of another boy. The only victim who did not mention the role of the father was the girl who was raped by the three boys in the community. She made no mention of either her own father, or of the fathers of the boys who raped her, during the interview. Therefore, no comment can be made on the paternal role in any of their lives.

Substance abuse among fathers was specifically stated as a problem in three of the perpetrator's interviews, particularly alcohol. In one case, a 14 year old girl's parents were separated due to the father's excessive drinking. Ironically, she still lived in a subdivided house, sharing one side with her mother, while her father remained on the other. Her father's unemployment means that he still stays home drinking most days, which she says is why she has now chosen to stay with her boyfriend, as her mother works during the day.

Comments on the importance of a father figure include:

"Like I can say in my own words, with having no father figure, every kid, this is what every boy needs. Take it from myself. You need that father figure. You actually feel

something is missing. Because there not being a father figure, what is right and what is wrong?"

"I mean most kids would say, ja, they'd prefer to stay with my father, like if they had someone like my father then everything would be cool. But I've said children do need a sense of guidance."

"Then he told my father, your son is still in jail, because why? Because he wasn't there."

What is significant in each of these statements is the fact that without a proper paternal role model, children lack a sense moral guidance and support, the end result of which is often crime. Children, like the ones interviewed, clearly feel the emptiness of not having a proper father. This relationship therefore needs to be reconciled and restored, or maybe at least resolved in children in order for them to feel a sense of balance and justice in their own lives. Restorative justice processes that include fathers in negotiation can urge them to take responsibility for the monitoring and care of their children, both in terms of the agreements made to restore the harm to the victim, as well as in preventing children from committing further offences. Taking on this responsibility may be one way to improve a father's parenting role in general. However, the inclusion of a neglectful or abusive father in a restorative justice process, such as a 'family group conference', can also be damaging, particularly if fathers feel resentful of their children's behaviour, or if they refuse to acknowledge their role in the process of healing and restoration. Besides, it could not only affect the power dynamics with the victim, but also the child's chances of being supported in the recovery journey, and feeling re-accepted in the home and the community. This could increase the risk of perpetuating the child's sense of injustice against him/her, and hence the cycle of deviant behaviour.

Although mothers were cited less as the cause of delinquency among youth, when they were mentioned in this regard, they were viewed as having a particularly detrimental effect on children. Where mothers were held responsible for the delinquent behaviour it was frequently because they were accused of being poor disciplinarians and accepting their children's deviance. As the victim in the common assault case deduced with regard to the behaviour of his perpetrators:

"A lot of this would have been diverted if the mother had just had some form of discipline...but you see, the way I see it, the fact that they swear in front of her. Can you imagine the one brother swearing the other brother, and excuse my language, saying 'jou ma se poes!'¹⁶ ...the mother has to accept it because she is the one who condoned it."

In some instances mothers were seen as provoking the children's behaviour. It seems that this is linked to the mother trying to take the role of the head of the household by suppressing the man. This dynamic was mentioned in three of the thirteen interviews. In the case where the grandfather laid a charge of assault against his granddaughter, the mother allegedly accompanied the daughter to the grandparent's house after the charge, swinging an iron and threatening the grandmother. Apparently, the only restraint the mother gave when the daughter started hitting the window frames was: *"Just don't break the glass!"*

Substance abuse by mothers was also cited as a problem, either in the form of drugs or alcohol. The quote below illustrates how a mother not only got her children involved in drugs, but also in criminal behaviour as a result:

"Their mother was the instigator, she's the 'tik'¹⁷ addict. Gets the whole family involved in the 'tik' situation. Gets the family to steal from me so that they can have tik for the afternoon."

In principle, mothers are supposed to serve as care-takers and nurturers. In the situations described above, this role seems to have been distorted to become supportive of children's criminal behaviour. If this is the case, the role of the mother in assisting a child to gain a sense of respect, remorse and empathy, as well in the child's positive socialization for reintegration, seems limited, if not detrimental, as in the case of fathers described above. Furthermore, as the victim in the one assault case mentioned, he would in fact blame the mother for the children's criminal behaviour in his case.

¹⁶ Translation: "Your mother's cunt".

¹⁷ 'Tik' is the name given to methamphetamine in South Africa, also known as speed. It is an addictive drug that is increasingly affecting youth, particularly in the Western Cape.

These factors present a challenge to restorative justice, particularly in terms of possible power imbalances in the applied setting. For example, a mother might side with her child against the victim, creating a confrontational situation rather than a restorative one. However, they also offer potential for expanding the scope of restorative justice by using the process for reparation of dysfunctional situations, such as mothers condoning deviance, which may be partly responsible for the child's criminal behaviour.

In light of this potential, it is interesting to note that none of the youths spoke negatively about their mothers in the interviews. Instead, they generally acknowledged her support, and her personal needs. Shows of remorse by the young perpetrators as a result of their offence were generally directed to the mother, even more so than towards the victim. In fact, this is true of all the youths interviewed, as well as the older perpetrator in reference to his years as a teenager in prison, and going through the criminal justice system. Somehow it seemed that the youths were conscious of their mother's vulnerability and her protection over them. Restorative justice processes could capitalize on this as part of the healing process, as well as reintegration of the youths, particularly in light of the capacity for the youth to feel remorse due to the pain they cause their mothers, or empathy for their mother's suffering. Blame of the mother in the interviews therefore came particularly from the victims: parents of fathers, neighbours or husbands during the interviews.

Despite the influence of relationships between parents and their children on their delinquent behaviour, merely baring witness to violence including physical and verbal abuse between parents, as well as parental substance abuse, can entrench pain and vengeance in a child. The quotes below, the first two by perpetrators and the last by the victim who was a former perpetrator, illustrate the type of domestic abuse children are exposed to.

"Like before I was 10 and everything, life was also full of drugs and alcohol and violence, so that was on my mom's side. My mom wasn't doing drugs, it was the people around because financially she wasn't like very, she didn't like have enough money to like stay away from it, so she had to like be, so she also got involved with the wrong people, and her boyfriends beat her, all her boyfriends beat her up."

"Then my mother get another guy, then she lived with him. Then he treat my mother not right. Then we chase him away. Then my mother find another guy. That guy used drugs, so we take him also away."

"Look, I never lifted a hand to my wife out of my own. When she did this (pops out his fake teeth) I punched her...Um, but there are kids that go through, when the father walks through the door 'where's my fucking supper, bitch', and who starts screaming and slapping her around for no reason".

The parenting problem, in general, came down to a lack of capacity and skills. This was considered cornerstone to neglect and abuse in the home. As the APO summarized the situation:

"It's a vicious cycle, and that's the problem with the fact that one of the main things we're trying to work against, is that we're trying to instill is that it's the parent's role in the community to take responsibility, because at the rate we're going now, by us not caring and going that extra mile to give our children guidance, we're condemning the future."

If one considers James Gilligan's findings (discussed in Napoleon, 2004; Toews & Katounas, 2004; Lofton, 2004) that criminal behaviour is often a means of responding to injustices experienced in one's own life, such as domestic violence and abuse, (mentioned in the section on "Theory on causes of child crime") then a discussion of the home environment for understanding youth crime is essential. Furthermore, restorative justice intends reintegrating youth into a family and community environment. This may include what Braithwaite describes as a process of 're-integrative shaming, often by family members and/or guardians of the child, which means "disapproval while sustaining a relationship of respect for the individual", which include "ceremonies to denounce deviance terminated by ceremonies to re-accept the individual" (Wright, 1996:177). However, if one considers the harm and suffering caused in the same home environment by family members who are meant to assist in the reintegration of the child in the restorative justice process, one needs to question whether these environments are fit for reintegration, without some level of restoration themselves.

4. Effects of negative peer pressure

Although parenting plays a central role in determining whether or not a child will become involved in crime, a variety of external pressures, possibly beyond parental control in many instances, were also mentioned as central influences to deviant behaviour by both victims and perpetrators.

Peer pressure emerged strongly as a theme that shapes young offending. As the wife of the assaulted grandfather explained:

"You know you try to bring your children up to the best of your abilities so they don't become criminal, but they have to mix with the children, you know".

The young perpetrators interviewed all noted negative peer pressure as a problem facing most adolescents in the community, whether they were referring to themselves or in general. As one teenager explained with regard to himself:

"It's not that it's out of my own control. I can control myself, but sometimes when I'm with certain people, or whatever, then like I forget about everything. Its just like I want to have fun or whatever, and having fun in our terms means having like drugs and partying or whatever."

"It's all about being in. It's about a reputation that you're trying to build. You don't want to look like a fool in front of them"

Another young perpetrator mentioned that after getting caught for stealing together with another friend, she has left her former peer group due to the negative influence they had on her life:

"They let me do bad things and so on. They let me smoke buttons and so on, and they let me drink like that."

Peer pressure is generally associated with a youth's sense of belonging and identity formation, as discussed by Julich (2003) in the section of "Theory on causes of child crime" (p.21). Peer pressure that leads to social deviance and crime in youth can be due to the push-pull factors caused by dysfunctional, abusive and neglectful

parental environments, which lack moral guidance and support, as described above, (push) and the need to overcome escape the negative home environment (pull).

The findings in this study confirm that in many South African communities, peer groups that empower vulnerable children are often destructive. Crime and substance abuse is often a pre-requisite for belonging in these situations, and crossing this boundary offers youth the confidence and support they crave due to the lack in their homes. The need to belong and to be accepted often overshadows pro-social respectable behaviour. It also becomes an essential part of the process of adolescent individuation and identity formation. Therefore, although youth may demonstrate a callousness or indifference to the world, which may manifest as crime, they are often extremely loyal to their peer groups, which may test loyalty by forcing members to take risks involving crime.

The Assistant Probation Officer (APO) for one of the boys narrows the problem down to a need to belong, based on his experience in working with young offenders:

"It's all about being in. They make you feel like you're the man...because I mean, they see these guys doing it, and they want to follow in these guys footsteps...But all I can say, with all three, with them having the gun, they were given a false sense of belonging...a false sense of power, a false sense of authority".

It is interesting that he uses the word "false" repetitively in this description of the problem, suggesting that when youths get caught up in negative peer groups, their sense of reality is illusory. The example that the APO is referring to in this case is of the perpetrator he was translating for. As mentioned in the profile, this was a fourteen year old boy who had been charged with armed robbery after using an unloaded gun left with him by older gangsters. Hence, the fact that the children had a gun in the first place was a result of older gangsters taking advantage of their youth and vulnerability. They thought they could hide the illegal firearm with the younger children as they are less likely suspects, and therefore less likely to be caught.

According to the South African Law Commission's Project on Juvenile Justice (1997), children are co-accused with adults in approximately 30% of cases. The use of children in criminal activity by adults or older children was noted on another occasion during the interviews, by the victim who was the guardian of the young perpetrator in her case:

"They will let the children sleep there, because if the police were to knock there at 4 o'clock, then you'll take the wrap because the drugs will be on you. You see, and that's the things I tell him. Think about it! I tell him, read the papers. What's a 16 year old child doing with drugs of about R30,000- on him? It's the older people because they know the children can't go to prison...They'll let your child do drugs, they'll let your child drink, they'll let your child steal. But not their children, so."

A growing problem among youth in some communities, which is associated with peer group pressure, and was noted by four of the perpetrators and two of the victims, is the fact that prison is becoming a sort of 'rites of passage' in some peer groups. In the drive to belong, children seek ways to be part of this emerging sub-culture. Those coming out of prison create an aura of appeal and wonder, which lures youth towards them, which other peer group members need to experience in order to be accepted. This being the case, children will commit crimes in order to be caught and sent to prison. For some young offenders, being diverted to community based programmes can even be a disappointment, as they miss out on the 'rites of passage' which teaches them to survive in the tough prison environment.

"Once they're out, they won't change. They'll actually use the outside to brag about, ja, they've been inside. They've been this, they've done that. So they actually brag about it...And then you get the people to go behind you if you're coming out of jail...They've got a lot of friends". (victim)

"It's like a big thing if you've been to prison then everybody talks about it...It's almost like the younger ones are now looking up to them, because they are now like, 'the man!' " (perpetrator)

Group loyalty can affect restorative justice processes in various ways. For example, depending on the level of loyalty to a peer group or a gang, it may inhibit a child's sense of remorse. Accepting responsibility may be more a show of bravado than a catalyst for restoration. If youth enter a restorative justice process with an attitude that favours a negative peer group mentality, it could overpower a victim's ability to express the impact of the offence, and to negotiate a fair solution. In fact, as was mentioned as a challenge in the literature review, in the section on "Ensuring

a balance of power” (Walgrave, 2004; Toews & Katounas, 2004; New Zealand Ministry of Justice, 2004; Julich, 2003; Coward-Yaskin, 2002), such overbearing attitudes and lack of remorse could in fact re-victimise and traumatize a victim in such a situation.

On the other hand, seeing the effects of one’s actions on a victim, and perhaps even being forgiven in the process, may itself cause youth to reconsider the value of their negative peer associations. The restorative justice process may be empowering for both the victim and the offender, and may assist youths to gain the confidence to refuse peer pressure that leads them to commit crime.

5. The effects of substance abuse on criminality in youth

Although delinquent behaviour among youth was noted as a growing problem in and of itself, twelve out of the thirteen interviews mentioned substance abuse as a primary cause of the increase in crime in the community.

“Ja, drugs, problems, everything. ‘Cause of the drugs, it’s starting to rob people. You go rob people, you go to jail, come out, yo, if you come out, then you just want to be the king here. That’s where the whole thing starts”. (perpetrator)

“He steals stuff in the house for drugs. He stole my shoes already, my clothes, everything. He can make a lot of money. He can have a nice life. I tell him that all the time. Don’t steal other people’s stuff, or steal from your own house just to feed your habit when you can use the money and work.” (victim)

After explaining the high incidence of crime in his area, I asked one victim what he viewed as the main reason for crime being so high in his community. Without hesitation, he said:

“Drugs. ‘Tik’, mainly ‘tik’ (methamphetamine). He was offered ‘tik’ (gestures to his son in the distance). He’s 8 years old. At his school. 8 years old... It’s very quick. ‘Tik’ is like this (snaps his fingers). They say that ‘rocks’ and ‘crack’ and that type of thing is the most addictive. Forget about it! Try ‘tik’”.

‘Tik’ was mentioned specifically in four separate interviews as the fuel of criminal and delinquent behaviour among youth. This concern by both victims and

perpetrators is consistent with recent research findings from the South African Community Epidemiology Network on Drug Use in the Western Cape reported on in the *Cape Argus* in April, 2005. According to this study, the number of addicts in Cape Town has increased by almost "ten fold in the space of a year." This finding was based on the increase in drug users seeking treatment, where addiction to metamphetamine increased from 2.3% of total users at the end of 2003 to nearly 20% at the end of 2004. More disturbing is the fact that of this percentage, 60% of the users are below the age of 20.

One victim described how his neighbour vandalizes motorcars for his 'tik' habit:

"Normally they take a stone or something and they first break the tail light, and then they unscrew the light bulb so they can put the 'tik' in there, you know".

The director of the Cape Town Drug Counseling Center explained that the effects of methamphetamine on youth is that it gives them "confidence, energy and a sense of power" which he says "...dovetailed exactly with the adolescent state and what youngsters saw as lacking in their lives." (Jardine in Caelers, 2005) The Alcohol and Drug Abuse Research Group of the Medical Research Council went on to describe that the effects of long term use include "...uncontrollable rage and violent behaviour." (in Caelers, 2005)

When I asked the grandfather, the eldest participant among the victims and perpetrators, what he saw as the main effect of 'tik', he said:

"They get very abusive and vulgar...Children growing up now is growing up in very difficult times, because the drugs that's going around. You know, as I say, thirty years back we never heard about these kinds of things, 'tik' and so on...I think that parents with teenagers have a very difficult time in raising them in this time and age, to try and contain them from these drugs and things that's so freely available."

Another victim described how he perceived the rapid moral decline of youth in the community as a result of drugs:

"I've seen kids, respectable kids from poor families, but respectable kids, go down the gutter...not in recent years. In the last six months!"

Eight of the thirteen participants identified a direct link between substance abuse (either drugs or alcohol) and their crime. This was either to get money to drink or do drugs, or that the crime was committed under the influence of either drugs or alcohol.

The implications of drug abuse for restorative justice are considerable. As crime is often committed under the influence of drugs or as a means to sustain the habit, it suggests a certain depersonalization and lack of control by individuals. For example, the impact of methamphetamine on youth described above clearly affects judgment, and leads to behaviour that many youth would not commit when sober, even if an inclination or curiosity exists. This becomes particularly problematic when the dependency takes control of individuals, and they are no longer aware of the damage they are causing, either to themselves, their relationships or to others' property. Among the cases I have been in contact with, either during diversion programmes with Nicro, or in conducting life-skills sessions at Pollsmoor Prison with both males and females, youth have killed strangers, stolen all the property in their parents' homes including beds and curtains and one even throttled his mother almost to death to get her money, merely through the control of substance abuse. It seems that drugs inhibit moral and social conscience, and an addict will do anything in this state.

Trying to engage a drug addict in a restorative justice process may be particularly challenging, as their sense of reasoning and understanding is distorted by their cravings. Until this altered sense of reality is addressed, it could be virtually impossible for a drug addict to participate in the process in any way that would be genuine, believable or sustainable. However, a restorative justice process could recognize the need for a perpetrator who abuses drugs to get help, which could be integrated into the solutions for the perpetrator. This may not necessarily meet the needs of repair for the victim though. Perhaps it could become part of a longer term goal should the perpetrator reach a state of sobriety and moral consciousness.

Conclusion

The profile of community and family life constructed from descriptions made by the thirteen participants is consistent with the types of dysfunctional and destructive backgrounds young offenders emerge from provided in the theoretical framework in the section on "Theory on the causes of child crime". As noted above, these views were offered spontaneously from both victims and perpetrators, without a targeted

investigation in terms of questioning or probing, although, in some instances, explanation may have been requested for clarity and understanding.

What is most important in this section is the re-iteration of the injustices and pressures that youth are faced with in their own environment, which are seldom addressed or dealt with. This problem was even noted by victims in some cases, particularly where the victims had some level of responsibility towards their perpetrators. The negative directives and developmental prompts distort the youths' understanding of morality and social norms. In many instances, the fact that they have not been raised in respectful environments, or in a way where they are respected, means they probably do not understand the rights of others, and therefore have not learnt how to respect them either. This is a critical point in terms of restorative justice, because it is a comment on the fundamental values of respect of the approach, which if lacking, cannot be effective in practice. This section has tried to describe the various challenges the backgrounds and contexts of young offenders in South Africa could pose for restorative justice processes. However, these challenges can also be seen as opportunities for restorative justice, whereby they can serve to address injustices possibly linked to, but beyond the criminal case being negotiated between victims and perpetrators. This will be analysed in greater detail in the final conclusion.

PART 2- EXPLORATION OF RELATIONSHIPS BETWEEN VICTIMS AND PERPETRATORS AS WELL AS EXPERIENCES WITH THE EXISTING CRIMINAL JUSTICE SYSTEM, WITH CRITICAL COMMENTARY IN LIGHT OF RESTORATIVE JUSTICE

1. Interconnectedness

In this section, we shall focus on the grounding principle of the restorative justice approach: human interconnectedness. In the section on "Values, principles and description of restorative justice" it was noted that according to restorative justice, crime is a fracturing of relationships which justice should aim to heal. Therefore, I felt it was necessary to explore how the participants perceived their relationship with either their victims or perpetrators, depending on the case. In the section on "Sample profiles" I have stated the basic nature of the relationships between victims and perpetrators in the cases presented.

Although the selection criteria did not require victims and perpetrators to have known each other prior to the incident, I was surprised at the closeness of relationships between victims or perpetrators among the participants selected, which was only revealed during the interview. Of the thirteen participants, only one victim did not know his perpetrator before committing his offence, and only one perpetrator did not know his victim prior to the incident. Relationships between the remaining eleven participants included neighbours, friends, lovers, school mates, parents, grandparents and guardians.

1.1. Relationships prior to the incident

Here I shall explain the relationships between victims and perpetrators prior to the incident, and how these relationships were affected by the crime. The relevance of exploring relationships before and after the crime to this study is to find out whether victims and perpetrators would agree that crime is indeed a fracturing of relationships that need to be healed, as the restorative justice paradigm suggests, or whether they would consider their relationships irrelevant to the procedures or outcome of the case.

The reason for questioning the impact of the experiences of the criminal justice system on the relationships between victims and perpetrators was to explore whether they felt that any aspect of the existing system promoted healing and was conciliatory or whether they considered it rather further destructive to their relationships.

We shall begin with the cases where there was a distinct relationship prior to the incident. In all cases of victims with a disciplinarian role, such as a parent, a guardian, and the grandparents (who supervised their grandchildren who were staying alone in their property nearby), the relationship had already started deteriorating prior to the incident. It seemed though, that, for the most part, external factors affected the behaviour of the youths, particularly drugs and negative peer groups, the influence of which was described above in the section on "Crime in the community" above (p.75). It was hard for the adults to identify exactly why the relationship changed, mostly because it seemed due to the external factors as reflected in statements by two of the victims who were guardians of their perpetrators.

"We had a very good relationship. I don't know what happened. I don't know what I did. I asked X what did I do? Where did I go wrong? It's almost like you're blaming me for what you're doing, and I'm trying to help you. And then the one day he'll say, 'no, its not you, it's me. You don't have to worry about that'...And then the next time he's like really angry with me and he stands there in the road telling me this and that...If I close the door then he starts throwing stuff against the door and throwing bricks on the roof".

"I don't know what became of her, that she can be so, because I know that children can get cross and say other things, but you can't be that grown up, and I would call it rude. I would call it rude. You don't use words like that to your grandma and grandpa, I mean in public. I mean you don't!"

Where the one youth perpetrator spoke about his relationship to the guardian he stole from, he admitted that he was out of her control, and that he was looking to move away from her, for fear of disappointing her, suggesting that he did not intend to hurt her. He was in the process of a disciplinary hearing at his school, on the verge of expulsion at the time of the arrest. Therefore, he considered his own behaviour the problem in the relationship.

"Because at the time she's like been helping me out, she like basically took me in and I didn't want her to help me any more, because the way I feel, the way I felt at the time is like, wherever I go I will always find a way to mess up, or find a way to get expelled or this or that. I always find a way to make a balls-up"

In the three assault cases (including the indecent assault) where the victims were school mates, none of those involved in the altercation were particularly close, and they did not seem to have specific problems in the past. In the case of indecent assault which took place at a party, therefore outside of the school, the perpetrator said it was someone he had seen around school, but not someone he had had any contact with before.

In the two common assault cases (which were very similar incidents) the boys knew their victims from class or sports. Although they were not close friends prior to the incident, they were not enemies either as can be noted in their respective descriptions of their relationships below.

"Ja, I knew him, but we never used to speak to each other. I know where he stays and everything, but we don't speak...just if we're in a group and we're busy with a task or something, then we like, communicate for the sake of the task."

"I'm with him every day at school. 'Howzit!' or 'Is that your girl? ...But I don't know what happened between me and him. That day was at school, um everyone was playing outside, and running here in front, so he was talking about where he's going with the soccer, so, I said, ja, you can do it, but what happened, I don't know"

The case above shows how personal relationships between individuals can break down when one is caught up by peer group influence. As the boy was trying to indicate in this quote, his relationship to the boy in the altercation had been cordial and amicable until he showed up with his gang members. He describes how in a short space of time, tempers can flare up among opposing peer groups, and individuals get harmed. Again, this situation relates to the impact of peer groups on youths. However, what is positive and significant here, in light of the potential for restorative justice, is that it illustrates that relationships between individuals can exist exclusive of peer group pressure. A restorative justice process can exclude the peer group pressures to allow for freedom of negotiation, resolution and healing.

In two of the cases, the perpetrators were from the neighbourhood, and known to the victims and their families since they were young children. A general deterioration in their behaviour had been noted in their adolescence which affected the relationship.

"Originally we were friends. No, not really friends but like if I see the guys I'd say hi, things like that...Ja, look, I didn't really mix much with them because they were always drinking and like swearing each other...for reasons like that there as well, I said to myself, look, I'm not going to be friends with these guys...We've been living with them for years and we're having problems with one and the other neighbour and it's pathetic to go on like that."

In the case of the adult perpetrator who was also a former child convict, the relationship to his current victim was amorous. After spending most of his

adolescence and early adulthood in prison, he had found a girlfriend who cared about him, and he believed kept him out of trouble. It was as though he saw her as his saviour, and would therefore do anything for her.

"From that time, I came out of the jail you see for the car thief, until this day. Then I check, for four years! Why are you doing this to me after four years? I give you everything. You see, she hasn't got a mother, but she's got a father, see. Then that time I told her look here. Here's money. You can spend a weekend there...You can come again...Every year on her birthday I bought her something."

However, in the weeks prior to the incident, he too noted deterioration in their relationship, mostly, as he described, due to financial reasons, in that he could not provide for her as she wished to be provided for. It seems that his brother had also given his girlfriend R100-. Whether this was to sleep with him was not clear, but she had turned to his brother for support, thereby undermining his position as her boyfriend.

In the cases described above by both victims and perpetrators, it seems that, whatever the nature of the relationship, there had been some breakdown or disturbance leading up to the actual incident. Although the incident itself that resulted in a criminal charge may have been unpredictable, there were generally distinct predisposing, or at least precipitating, factors. Even in the two common assault cases at school, there had at least been some identifiable precipitating factor. In the one, it seemed the instigator was jealous of the other's girlfriend. In the other, there was an accusation of theft.

The two cases where the predisposing or precipitating factors were not clear were in the case of the girl who was raped by her neighbours and in the indecent assault case. The mother of the young girl who was gang raped by the boys in her neighbourhood believes that they took advantage of her daughter's beauty, youth and vulnerability. She was also accessible to them, being their neighbour and someone they knew well, so could presumably easily be 'lured into their trap'. The mother described the perpetrators as ugly boys that could not get girls easily. Why they chose to rape as a means to deal with their inabilities is not known from the findings in this study.

The above scenarios suggest that the background of the relationships between victims and perpetrators can provide meaning for the build-up to the incident. This is

significant, as it creates a platform for healing. Being able to identify conditions that led up to the particular criminal case proves that in many instances, reparation needs to explore the source of harm prior the actual incident. If we go on to look at the contact since the incident and the impact the crime had on the relationship, including the effects of the consequences of the crime, we may be able to expand the conclusions on the potential for healing within the restorative justice paradigm.

1.2. Relationships following the incident

As described above, relationships between eleven of the thirteen victims and perpetrators were already close, particularly in terms of geographic proximity (including living in the same house or neighbourhood). Hence, contact between them following the incident was inevitable. Three of the victims who had close contact with their perpetrators, either as guardians or neighbours stated that laying the charge perpetuated the anger of the youths:

"It's actually, since I laid the charge, it's almost as if its given X more of a reason to just dislike me now, hate me more...like his favourite thing is ja, if you really like me, you wouldn't have laid a charge against me...that never used to come up... and then he started that same week back with the same things, threatening me about throwing the windows in and burning the house down."

"From when they had been at the police station they came back here, around the house, swearing and stuff, and threatening us...She took an iron out of the car, she comes in here, her and her mother. Tries to fight with me. I was in bed."

One victim described how not only did laying the charge lead to more aggression and animosity by his young perpetrators and their mother, but he had also been ostracized and criticized by other neighbours supportive of the youths.

"I get snide remarks, I get dirty looks, we get stones thrown...Ja, we're basically the black sheep in the street...we're blacklisted because we laid a charge against them...this is what the neighbours are saying that's friendly with them."

Three of the seven perpetrators expressed being harassed by their victims. In one instance, a perpetrator described how after her victim, a former friend from the

neighbourhood, laid a charge of theft against her, the victim came over to the perpetrator's house with her cousin and beat her up.

In both the common assault cases, the perpetrators stated that they had been threatened by the complainants in their cases:

"Before they made a case against me they were chasing me in the house at my friend's house ...and they came there and they were like, now this boy's brother's is all gangsters and stuff, all like part of gangs and stuff, and so they came there, and there was this whole argument."

In the above case, the perpetrator indicated that since the charge, he just sees the boy around still but does not speak to him. In the other case, the threats seem continuous:

"Before the police came, they were here with guns and everything, standing by the side, teasing...but those boys never stop. They're walking past the house all the time, his friends, his gangsters and everything"

The situations described above by both victims and perpetrators illustrate how aggression following an incident can perpetuate or aggravate animosity. The fact of taking the matter through criminal procedures perpetuated the already shaky relationships. For both victims and perpetrators there was certainly a sense of threat, either for having laid a charge, or for having committed the crime. In light of the challenge of managing power imbalances, threatening or aggressive attitudes by either victims or perpetrators could inhibit restorative and healing environments.

None of the participants in the above cases had been through a restorative justice process of mediated dialogue, discussion, resolution and reconciliation at the time of the aggression or threat.

Where contact following the charge was negative or none was made between victims and perpetrators, there was generally no healing of the relationship or improvement in the general situation. In some cases however, though the contact between the victim and perpetrator deteriorated after the charge, the nature of the relationship made it impossible for victims to ignore the young offenders in their case due to their sense of duty and responsibility towards them. This was true in two

cases where the victims were the guardians of the children. As one participant described, (the grandmother of the perpetrator),

"Even up there they must come and tell me today X, something happened to her, we're gonna be the first that's gonna be there...I can't take that on me not to go and see what happens or hold it against her."

Such cases seem to be crying out for healing and repair. There was desperation in these victims who expressed feeling helpless as they watch children that they care so deeply for get involved in drugs and crime. Their sense of responsibility towards these children caused them in part to blame themselves. Sadly though, it appears that the youths themselves are unable to see the love and concern that these guardians have for them. They seem to interpret it as restriction and control, which they then rebel against. This dynamic is often based on misunderstanding and poor communication which, as in the cases described above, can escalate to laying criminal charges against the very youths the guardians care about. Restorative justice could be particularly effective in resolving these differences. It could offer a forum to unpack the misunderstandings, which could assist in developing a strategy to reconcile and move ahead.

In contrast to the negative relationships described above, it seemed that in incidents where the victim and perpetrator had a chance to discuss openly though informally what had happened, the relationship either remained the same or improved. This finding, illustrated in the quote below by the young perpetrator staying with his guardian under home based supervision, may support the analysis above in that it could mean that the incident helped him to gain insight and understanding into the causes for deterioration in the relationship, hopefully providing an opportunity to rectify the problem.

"Okay, well I know that when Y laid a charge against me I knew, she explained to me that she wanted to help me, which I was getting out of her control, she said that she doesn't want to do it but she says that she hopes that it helps me because, I was involved in drugs before, I was doing practically what I wanted, its like, I did what I wanted, no one could actually stop me its like, it just, like if I wanted to do one thing I could do it without any body telling me "no, you're not going to do it" like. Or if

someone does tell you then you do it anyway, but without them knowing. So when Y found out about everything, its not because of the R200- that's stolen or whatever, its just to help me to get right and without drugs and alcohol and all that, so ja she wants me."

Also, in the case where the perpetrator had been beaten up by her victim, (the friend from the neighbourhood she had stolen from), the perpetrator had later informally met with her victim to reconcile, and become friends again, though this was their own initiative and not a mediated process. What is also significant in this case is that the order given by the court was victim compensation in terms of paying back the money, and a promise not to offend again. Therefore, although this case followed ordinary court trial procedures, a restorative justice element of restitution and reintegration did occur both formerly and informally.

The relationship following the incident that I found most disconcerting was that of the girl who had been raped by her three neighbours. Though the incident had happened two years before, she remained inextricably linked to her perpetrators from whom she and her mother had withdrawn the criminal charges. One of the boys was now her boyfriend. The young female victim expressed feeling of lack of support from the community, sense of isolation, and possibly self blame seemed to make her believe that the only place she could feel accepted and a sense of belonging was with those who violated her. However, if one relates this to the belonging needs according to the "Circle of Courage"¹⁸ theory on developmental needs of youths, one would consider this relationship distorted. Although some form of relationship had formed between the victim and the perpetrators, it was not one that she described as safe or comfortable, but rather as one that perpetuates her sense of self-hate and worthlessness. Her contact with her rapists following the incident was never one of healing, repair and reconciliation, but rather one of escape from normality, where the girl felt she no longer belonged.

¹⁸ The developmental theory known as the "Circle of Courage" considers the development of children in light of four categories: belonging, generosity, mastery and independence. This theory was designed according to the Native American perspective on child development by Brendtro and Brokenleg. These four categories are considered in terms of being 'normal', 'distorted' or 'absent'. Analysing a child according to these criteria in each of the categories helps one understand what the child's strengths are and where gaps or distortions are prominent.

In some instances, particularly where there was no distinct relationship before, contact since the incident was limited to the police station and the court room, if at all. However, in the two cases where either the victim or perpetrator was unknown prior to the incident, there was clearly a curiosity about the person who harmed them or had been harmed by them.¹⁹ The crime had brought them into each other's life. Through the criminal process, they discovered something about the other person's life and background, for example when the victim was in contact with the young perpetrator's father, step-father and the police that had arrested him before. The young perpetrator who had not seen or met his victim before expressed his curiosity about the victim, particularly with regard to how the victim thinks about him following the incident. This suggests his awareness that by targeting this person who he had had no previous contact with, he had inadvertently invited him into his life to influence his own destiny. He did not seem to be aware or concerned about how the victim may have been harmed through the incident though. However, a restorative process would give the boy the opportunity to further understand that criminal behaviour is not just wrong because it could lead to painful consequences, but because it harms others unnecessarily, and creates imbalances among members of society.

As discussed in the literature review under the section on "Values, principles and description of restorative justice" referring to the principle of 'interconnectedness' described by Sullivan and Tifft (2004) and Zehr and Toews (2004), the findings in this study support the notion that whether or not there is a distinct relationship prior to the incident, crime inevitably creates a connection between victims and perpetrators or introduces a new dimension to an existing relationship. However, the experiences of the participants demonstrate that these connections can be destructive, particularly following a criminal or 'criminalized'²⁰ incident, as they can be riddled in resentment and misunderstanding. Nevertheless, with proper dialogue, negotiation and resolution, it could be argued that such incidents can also represent positive turning points in relationships, particularly where close relationships have been progressively deteriorating over time. If this is the case, restorative justice

¹⁹ The case of the perpetrator is the young boy under 'home based supervision' for holding up a passer-by with the unloaded gun. The case of the victim is the one where the young boy stole a CD-Rom from his shop.

²⁰ I have used the word 'criminalized' incident, as in certain cases, particularly those of people who had close personal relationships prior to the incident referred to in the study, there had been frequent unreported incidents of the same nature as the one reported, but it was only at the point of reporting that the incident became "criminal". This suggests that the fact of reporting a behaviour is what makes it a crime. This is an interesting area to explore further but is beyond the scope of this paper.

processes can indeed be cornerstone to the healing of relationships, thereby promoting the healthy reintegration of the child into the family or the community.

The discussion on interconnectedness based on the views of both victims and perpetrators in this study would support Zehr and Mika's (1997) understanding of crime as a fracturing of relationships that need to be repaired following a criminal incident.

2. Experience with the existing criminal justice system

Experience with the justice system takes place at many levels. These will be discussed systematically, and will be considered in relation to the restorative justice philosophy, process and proposed application where relevant. This means that the discussion will try to decipher whether there were aspects of the experience that included restorative justice elements that could perhaps be capitalized on, or gaps which a restorative mindset could fill. The purpose of this approach would be in response to the question in the theoretical framework as to whether restorative justice should be an alternative to the existing system or something that could be integrated into it.

2.1. Experience with the police

The first contact with the justice system for both victims and perpetrators is usually with the police. Although the role of the police varies, their primary functions are providing clarity of procedures and information on the justice system as well as taking clear statements and documenting all relevant facts at the point of entry into the system.

For the most part, experience with the police ranged from following clear procedures, to haphazard and vague, to abusive. This range was experienced by both victims and perpetrators.

Complaints from both sides included abuse of children's rights, whereby a boy was illegally held in a line up without informing his guardian of the arrest, a lack of privacy whilst giving a statement when laying a charge, and nepotism, whereby the police was related to the perpetrator, resulting in the "loss" of the docket. This case was only followed up a year later, when the statement had to be given again, twice, after the docket had been lost a second time.

One victim noted the lack of thorough investigation as a problem, leading to the fact that proper information from all sides does not reach the courts, thereby affecting judicial outcomes:

"That's why a proper investigation has to be done. Especially by the detectives handling the cases, because you know what? I checked with X. No one came to me. Not one detective came to me and interviewed me. And I laid the charge! Not one detective came to me and said listen, who's your witness? How do you know? No! The first time they heard of me was when I went to court, waiting for the investigating officer to come and look what the CD-Rom looks like. And the case was already finished!"

In one case, the victim had to bring the summons to the perpetrator's house herself, because the police failed to send it. The most abusive case reported was by the perpetrator of the indecent assault:

"They came into my house, and they took me to the police station, and they beat me up...They asked me to tell them the truth there...I told them the truth and then they beat me."

This kind of vigilante type of response is out of line with correct police procedures, particularly if there is no sign of resisting arrest. Any decision-making procedure on the outcomes or consequences should follow clear guidelines, and police brutality undermines any justice system. In light of a restorative approach, it undermines chances of remorse and victim empathy, as this treatment leads to animosity, fuels one's sense of victimization and exacerbates feelings of injustice. It also jeopardizes hope of reconciliation, as already at the entry point, resentment is ignited and harboured in the perpetrator.

Three out of the seven perpetrators stated being either too nervous or oblivious to what was happening, due to being under the influence of drugs, at the time of arrest to give a full statement. Therefore, their dockets did not express what they believed to be an accurate version of the incident. The fact that the decision to prosecute a case is based on the original police statements is significant, as these are the dockets that are presented to the court and influence thinking and decision making, which in turn could affect judgment.

Despite the abuse and/or confusion around police procedures, five of the thirteen participants reported that police followed correct procedures according to them in their cases.

2.2 Awaiting court appearances

Although the point of entry into the justice system via the police will influence the attitudes of both victims and perpetrators towards the system, as well as towards each other, the period awaiting court appearances to decide on the outcomes of the case is often the most tenuous for both victims and perpetrators. This can be either whilst awaiting the decision to divert the case, drop the case, to proceed to trial or to sentence.

All of the victims and perpetrators in this study stated having little, if any, information about what was happening in their cases. All thirteen participants reported that the procedures were drawn out, and court dates were given without any warning, often disrupting personal schedules. For working parties, including complainants in the case, this could mean losing days of pay with no compensation, thereby adding to the damage already needing repair. This, the participants stated was most disturbing when their cases were postponed for no clear reason.

Periods awaiting court appearances were frustrating for all parties, particularly due to the lack of clarity as to what was happening in their case. Victims wanted to know the how the justice system would decide on their case, and perpetrators wanted to know their fate.

Awaiting trial in prison was notably difficult for the indecent assault case, as the accused had been waiting for over a year at that stage, with numerous postponements and promise of being sent to a place of safety with no follow through.

In the victim's case whereby her perpetrator, to whom she was also the guardian, had awaited trial at Horizon Youth Centre in Eerste Rivier, though she stated being happy with the facilities, she was constrained by the distance she needed to travel to visit him. She said that she was embarrassed to ask a friend to take her. Strangely, the perpetrator in this case was released from the centre without explanation. No information was given to the victim, who, as mentioned above, was not only the victim, but also the boy's guardian, which she found very disconcerting. At the time of the interview, she had no information as to what was happening in the case, including whether it had been dropped altogether.

"I still sleep at night wondering where X is...and at that time I thought okay, this is it, you're going to be sent away and you're going to come back, and you're going to be a better person, you see. And all those dreams just slipped through my hands, and nothing happened. Nothing came of it"

One perpetrator under home based supervision explained what he experienced when waiting in the holding cells at the court.

"Everyone's like scared to go to court because then they 'sabela'²¹ when they will ask each other questions about certain gangs or whatever. So like the way it works, if you're a six, and that person is a seven and there's also an eight in there²², then it's all mixed, and there's going to be fighting and stabbing, so those people, they are scared to go to court."

This highlights the current lack of protection during the interim period in the current system.

Although the above statements reflect protection concerns for perpetrators, victims in this study also stated experiencing a lack of protection. In the section on the relationships we saw that victims were offered virtually no protection during this period. For example, the girl who was raped by her father expressed feeling particularly vulnerable, and stated that she would not feel safe until her father was sentenced and behind bars for life. At the stage of the interview she did not even know whether her father had been sentenced yet or which prison he was at. This lack of information regarding the status of the case, especially when one feels so vulnerable appeared to be very disturbing.

Above we see how both victims and perpetrators interviewed in this study felt uninformed and uninvolved in the procedures awaiting the status and outcomes of their cases. Given that we are looking at the existing criminal justice system in relation to restorative justice, this experience by participants would be considered

²¹ "Sabela" is the term used for code languages developed by various gangs to identify their members, particularly in prison and holding cells.

²² These numbers refer to the infamous so called "number gangs", the 26, 27 and 28's. These three gangs are notorious in South Africa's prison, and often determine a prisoners protection and survival through their belonging. However, there is brutal and violent competition between these three gangs, which often results in prison rapes, assaults and even killings. Although these gangs also exist outside of prison, they are most prominent inside prisons nationwide.

contrary to a restorative justice process. In a restorative justice process the period awaiting interaction and negotiations to decide on outcomes would be used to prepare victims, perpetrators and their support parties for the proceedings. This would include informing relevant parties of each other's status following the incident, beginning to heal some of the initial hurt and pain, and preparing the parties to be open with each other in the process. This would be central to the search for truth in order to repair the damage and reconcile. Therefore, it would seem that this element of the restorative justice puzzle of informing and preparing parties for decision making and outcomes is certainly absent from current criminal justice procedures. It seems that, looking at the responses of the participants of this study, if at least this element of keeping parties informed about the status of their case could be included in the formal justice system, it would already enhance the experiences of both victims and perpetrators.

2.3. Experiences in court

The decision making process in any justice system determines whether outcomes are fair and result in satisfaction for those harmed by the incident. Restorative justice is about the process which affected parties undergo in order to agree on outcomes which will resolve their criminal case. In this study though, all the participants relied on the decision making of court officials to determine the outcomes in their cases. Therefore, other than reporting on the facts the court deemed relevant to their process, victims and perpetrators did not participate in the decision making process. This section will look at how participants perceived their experiences in court and the process of decision making in their cases.

In this instance, we shall begin by looking at the experiences of victims, given that they should be placed at the centre of any justice procedure. Four of the six victims reported that their cases were undermined from the start by the justice system. They stated that they were made to feel that their cases were either petty or irrelevant:

"I was told that this case is so unimportant that there's no need for me to have even come. To me to the justice system it was just so unimportant, but it is a crime. To me a crime is a crime."

"Ja, I feel guilty! Like I'm the one that's like, I'm in the wrong here. And like okay, I did feel like it was wrong of me to lay a charge against him and that. And then afterwards I told myself, no man. A person can't let him go and do what he wants to. He defeats the rules every time."

Or that their statements were subject to the manipulation of facts by lawyers, whereby charges were either dropped or the child was discharged with a warning:

"I plainly told the magistrate, it is not how I say things, it is the action that happened. I say this child assaulted me, she did assault me and that is it, period. And then he said, 'don't harp on that assault thing. You said this to the court and that in the statement'. You see, that technical error. So it wasn't very helpful."

"So obviously this was a new lawyer, just come out of college or whatever, and now he's a lawyer, but he didn't know jack shit about what was going on. He asked me, would I think that X is a very dangerous community? What's that got to do with the fact that the ou stole from me?"

The feelings expressed by the victims above regarding indifference towards the case or manipulation of the way they presented their case, illustrates that the justice officials compiling a picture of the 'truth' paid no regard to the impact on the crime. They were not interested in the needs of the victim, either in terms of loss, damage or pain. This illustrates how indeed victims are often sidelined in the existing criminal justice system, as noted in the literature (Herman, 2004:75; Swart, 2000:5).

Devaluing victim's concerns which led them to lay a charge would be fundamentally contrary to a restorative justice mindset, which places victim's needs at the centre of the healing process. This is consistent with the description on the harshness of the adversarial system in the section on "Finding a place for restorative justice in the justice system" (p.24) in the literature review, which is concerned more with winning and losing than healing and restoration (Walgrave, 2004:50).

In addition to these instances, both victims and perpetrators indicated moments when they felt humiliated by the court officials, particularly the magistrates, who would not give them a full or fair hearing, even when they wanted to be heard:

"Let me say something, let me tell you! It's almost like you're treating me like the bad one here!" (victim)

"It wasn't the whole story. It was just small parts. But if you put everything together you will see that it don't make sense, the whole." (perpetrator)

When the young female perpetrator who was beaten up by the girl she had stolen the wallet from mentioned this altercation in court, the magistrate told her that she "deserved it", even though the charge of theft had already been laid for the case to be dealt with by the state.

Not allowing victims or perpetrators a chance to tell their whole story, and limiting the case to the presentation of facts of the crime is also contrary to restorative justice processes, which seeks the truth, not through a process of nerve-wracking cross-examination, but through a process of openness which contextualizes the incident in order to decide on outcomes. As small or insignificant as some cases may seem in relation to the many extremely damaging and violent crimes that justice officials may have to deal with, each case has its own history and impact which needs to be heard in order to determine a fair outcome.

In this section it was found that, particularly in cases where victims and perpetrators' relationships are well established, there has often been a build-up of incidents before the one reported to the police. These may have been even more damaging than the reported criminal case which, for the victims may have been the 'last straw' in a build-up of events. This is consistent with the views of Wright (1996:27) mentioned in the literature review who stated that "...many harmful acts are not defined as criminal, while some not very harmful ones are." Restorative justice processes make space to hear about the prior incidents in order to gain a complete understanding from which to proceed with reparation.

Nevertheless, six of all the thirteen participants felt that they had a channel to say what they wanted to. This may include via the police statement, the probation report or during court appearances. This may not necessarily mean that they revealed their complete perspective on the incident, but that they were offered an opportunity to express what happened and/or how they feel following the incident. For example, in the indecent assault case, the boy said that he was allowed to express his feelings in court, but he turned the option down. All the youths

expressed feeling nervous in court, although they did not all believe this affected their statements. To what extent they limited their statements to the facts alone, or felt they had an opportunity to elaborate was not clear.

Even if parties are given a forum to express themselves fully in a court of law, their statements are directed to the court, via the justice officials, and are not directed to one another as the main parties involved. A restorative justice encounter encourages emotive dialogue between affected parties which can direct outcomes as well as promote remorse, repair, forgiveness, reconciliation and reintegration. Even if complete statements are given in court, the lack of dialogue and negotiation between parties reduces the possibilities for repair of the damage and restoration.

2.4. The perceived role of probation service providers in the case

On a positive note, all youths who had been in contact with the Department of Social Services and Poverty Alleviation, particularly probation officers, described their services as helpful. It is not certain, though, whether this is because they were selected by the probation officers for the interviews, or because they genuinely felt they benefited from the service. Looking at the outcomes of the cases presented it would seem the latter, as most of the children had been able to stay out of prison as a result of their input.

Although all still had to go through lengthy or frequent court appearances before reaching that point, both the fact that they felt they had input in their cases via the assessment with the probation officer, and were given community based outcomes as a result, demonstrates that current procedures already lend themselves towards the development, reintegration and restoration of youths. However, they still lack a true restorative justice process, as the outcomes were still determined by justice officials not directly involved in the case, not through a process of negotiation and dialogue between the key parties involved and affected.

Where there had not yet been proper contact and follow up by the social service providers, as in the indecent assault case, the situation remained pending, unclear and unresolved. The boy was told from his first court appearance that he would be sent to a place of safety, but they were waiting for his social worker to return from Gauteng. This had been his awaiting trial status for over a year. The boy could not say why his social worker was allegedly in Gauteng, or why they had not assigned another social worker or probation officer to his case.

The one victim who was the perpetrator's guardian who had also had contact with the probation officer, also stated her appreciation for the service, as it made her aware of the various options available to a child, such as being sent to a secure care facility rather than prison to await trial. In general it seemed that at the very least, probation officers helped to bring clarity to the procedures, and suggest helpful options. This can be a particularly significant inclusion in preparation of victims and perpetrators for restorative justice procedures, as it can give them insight into a variety of options and their benefits, which may better serve their needs and interests than sending a young perpetrator to prison. At the very least it can help victims decide on appropriate outcomes, even if they should decide that prison is the only way to meet their needs and repair the harm.

3. Perceptions of justice by the participants

Perceptions of justice may differ greatly between a victim, a perpetrator and the community in the same case. In the existing court system it is an unrelated outsider who decides on the outcomes of the case, based on the presentation of the facts and the strengths of the legal arguments. Judgments leading to outcomes do not account for variations in perceived justice by all parties. Ideally, at the end of whatever procedure, there is the experience of justice, and satisfaction with the outcome for all parties.

Given that perceptions of justice by the key parties involved in the case (i.e. victims and perpetrators) are crucial to determining the outcomes of a restorative justice process, it seemed essential to explore their perceptions of justice. This did not only refer to what specific outcomes would constitute justice in their cases, but also what approaches to dealing with criminal cases committed by youths would bring fair results. Would the victims who have had direct experience with the effects of crime opt for harsh punitive retributive and deterrent responses, or would they prefer more restorative outcomes? This section seeks to explore the attitudes and mindsets of victims and perpetrators of youth crime which would influence their decision making if they were part of a restorative justice process.

If one looks at the profiles of the participants, although all cases were subject to the criminal justice system to determine the outcomes of their cases, there is a great disparity in the procedures and consequences, based on the discretion of the justice officials. The question then is, did the key parties perceive these outcomes as just?

The only case where the participant, a perpetrator, felt that justice had been served, was where her sentence was to compensate her victim for the money stolen a warning on the grounds that she promised not to commit any further offence. This was also the only case with a clear and finalised outcome at the time of the interview.

Cases that were discharged with warning or dismissed on insufficient evidence did not fulfill a complete sense of justice for the victims. However, in the case of the grandfather who laid a charge of assault against his granddaughter which was discharged with a warning, he felt that the mere act of getting her to court was his intention:

"The fact, the truth of the matter is, I just had the opportunity to bring it to court and then the court had to decide. I'm not worried about the outcome or the judgment. That's not my aim."

As his wife went on to explain:

"It's a fair warning to that girl. A warning, listen, you've got no right, whatever you do and what ever you want to do, to loose your temper. Don't pick up your hand. You don't hit your grandpa...It's not right for grandchildren to hit grandpas."

In noting the negative contact and the further deterioration in the relationship between the grandparents, the granddaughter and her mother after laying the charge (described in the section on "Interconnectedness" in the findings above (p.74)), it is not clear whether this intention had been achieved. What is interesting in this case was how the grandparents turned to the state to reinstate boundaries into the grandchildren's lives, where they had been lost due to a lack of supervision and parental guidance. Therefore, they willed the state to provide boundaries and discipline as they failed to resolve the problems on their own. However, as described above, taking a case to a court of law does not necessarily achieve a sense of justice or resolution.

Two of the perpetrators who had to fulfill court conditions felt that they got what they deserved, though stated that the outcomes were not completely fair. In the one case the boy felt that although he accepted responsibility for his part in the assault and had fulfilled the required consequences, which included going through a

life skills programme, he thought that the other boy involved in the assault was in equal need of going through a similar process:

"How can I put it? I was in the wrong, but in the court's eyes I was the one stabbing and what, so I tell myself okay, I must say this is better than going to reform or to prison or something... Ja, that boy is like doing drugs. He could also go into the programme, cause the way I see it I'm not the one needing the programme, he do need the programme, cause he's on drugs and all this such stuff."

Chris Marshall made an interesting point about assault cases in his presentation at the "New Frontiers in Restorative Justice Conference" in Auckland (December, 2004). He stated that it is often hard to assign blame or to determine who is the true victim or perpetrator in certain cases, as usually the one considered the victim is the one who laid the charge, though s/he may have been the instigator and/or equally involved in the altercation. Perhaps the way this boy felt in his case is in part a reflection of this statement. What is admirable, though, is that the boy is not denying his responsibility in the assault. He acknowledges the harm he has done, and the need for him to bear the consequences. However, he also reports on the part of his complainant in the case. Rather than suggesting that he deserves to be punished, he proposes that the other boy also goes through a life skills programme due to a recognised need in his detrimental lifestyle which led him into the case in the first place.

Considering how this young perpetrator would perceive justice or fairness in his assault case suggests that more holistic justice may have been achieved using a restorative justice process of dialogue, reconciliation and negotiated outcomes for both parties involved in the case. This could benefit them both personally on a developmental level, provide symbolic restitution by agreeing to attend the life skills course, as well as assist with their reintegration. Of course this is only a possible scenario, but it has been constructed using the facts of the case and the perspective of the participant.

The other participant, who felt he got what he deserved, though stated that the circumstances of his conditions were not completely fair, was the boy under home based supervision for six months. He was ordered to remain under the supervision of his guardian (who had laid the charge) during the week, but could stay with his mother over weekends, as she was not always in a position to supervise him. He felt

that it was unfair that if his mother was home during the week he could not stay with her:

"But now also under the whole programme or whatever, they said it's like, I must get used to the whole family environment or whatever. Now my mother made the point that how can I get used to the family environment when I can't spend time with the family?"

From this statement I got the impression that when passing the sentence, the magistrate tried to include a restorative justice slant by talking about the need to reintegrate the child with his family. This may have been part of the probation officers recommendations. But as the participant points out, given that there were conditions on the contact he could have with his direct family, particularly his mother, the application of this notion in this case falls short of the purpose. I find that this raises concern about using the lofty words and ideals of the restorative justice philosophy without giving them true meaning in practice, which can put the whole approach at risk by failing to meet its stated objectives.

3.1 Views on prison as a means of serving justice

Although questions on prison as a consequence were not asked directly during the interviews, spontaneous commentary and discussion on prison as a consequence arose in all the interviews in some way. This is probably as prison is often synonymous with consequences of crime, but as both victims and perpetrators described from their own experiences and perceptions, may not be the best route to justice, particularly for youths. Due to the weight given to the concept of prison as a consequence in interviews, a section has been devoted to this particular finding.

Only one of the six victims adamantly wished her perpetrator to go to prison. This was in the case of the girl who was raped by her father, who was thus an adult offender. The one victim of common assault stated that he did not want the perpetrators to be sent to prison, but wanted them to have the threat of prison, thus considering prison a deterrent. However, what this victim believed would bring about justice in his case was for the perpetrators to leave him alone, as well as for them to provide a public and written apology for the way they had treated his mother-in-law. According to him, the actual case was less disturbing than the persistently negative atmosphere that was created by the poor relationship with his

neighbours, both before and after the incident. He stated that this solution would be more satisfying than receiving physical compensation for the damage caused by the perpetrators. This included damage to property, or the medical bills and loss of income due to time taken off work following the assault.

Apart from these two cases, both victims and perpetrators stated a distinct aversion to prison. Reasons included the detrimental influence that youth coming out of prison have on other youngsters in the community, (as stated above under the section on the "Effects of negative peer pressure" (p. 70)), as well as the fact that once in prison, they seldom come out of the cycle of crime.

"I wouldn't want him to go to prison...You know, if you send a child his age to prison, they come out of prison, and they just live to go back to prison...because there's been a lot of examples here of children who've been to prison and they come out, they're no better you see. They're like kind of worse." (victim)

This was particularly viewed as a problem for the perpetrators with lesser offences that get sucked into the teachings of crime, becoming hardened and potentially more dangerous in the process.

"He was a juvenile when he went in. He came out of jail being a 26 (i.e. a member of the 26 prison gang). He was one of the most feared people...because of the reputation he built up in jail. And he was a normal kid like mine. And that's what happens to the juveniles in the legal system." (victim)

As one young perpetrator suggested, based on his experience, perpetrators with lesser offences and little or no history of crime should be taken through the system quickly and separated from more dangerous offenders, including and especially in the awaiting trial period.

Eleven of the thirteen participants stated being particularly perturbed by the inhumane and brutal prison conditions as perceived or experienced, and would not wish that for themselves as perpetrators, or, in the case of victims, for their perpetrators. Those in the interviews who had been in prison could vouch for this in their anecdotes. As one described, there is no escape from the violence, and no protection.

"I might look like a strong person to you, but believe me when I tell you, I had a 'coul' (a pole) that big, and that big (motioning the dimensions) shoved up my arse, and I had to fight 30 gangsters, and to me that's rape. And you go to Pollsmoor and they do nothing about it. Now the same things happen to those little kids."

Indeed, on the random morning I chose to interview the juvenile awaiting trial, there were 11 boys battered and bruised from a fight that morning, and three waiting to see the social worker after being sodomised the night before in the section. This finding on prison conditions is consistent with those described in the literature (Consedine, 1999; Minister of Correctional Services in Pete, 2000).

Being released from such conditions under the harsh scrutiny of public apprehension makes any attempt at reintegration nigh impossible. The victim who had formerly been in prison himself explained:

"That's what I try to tell these youngsters. Once you've been down that road my friend, you've been labeled by the community, and they are not going to forget about it. You are now a bad person. End of story."

As the former child offender explained, after serving his 10 year prison sentence from the age of 14:

"I come out, and then I was two months out at home, then I thought, no man, there's no one to come to me, no friends. Nobody wants to know me anymore. Then I go, and then I check, hey, I'm gonna sommer go and do something. Hey I'm gona go again. And then I go and sommer steal a car in front of everyone, so that they see. And they see, and they catch me, and they ask, 'Why are you stealing a car?' and then I told them, because there's no life for me outside."

3.2 Suggested alternatives to prison

Resistance to having youth perpetrators sent to prison was also often based on the closeness of the relationship to the perpetrator. This included the girl who had been gang raped and her mother, who chose to withdraw the charges, specifically as they both feared that the boys would be sent to jail. They did not want to be responsible for sending the young boys they knew since early childhood to the harsh prison environment. The girl's mother said that she had worked with children for

most of her life, and did not have it in her heart to cause them to suffer, despite the pain and destruction they had caused her daughter and family as a result.

What was certain in the majority of cases in this study was the fact that victims in particular would prefer developmental outcomes, whereby the perpetrators would go through a learning experience that would not only prevent them from re-offending, but also help them become better citizens, in part by becoming aware of the impact of their actions. This is consistent with the notion of positive rather than punitive outcomes that are seen to repair the harm, as well as provide opportunities for reintegration, as intended from a restorative justice procedure.

When I asked the mother of the girl who had been raped whether she felt there had been justice in her case, although she chose to withdraw the charges on the grounds that she feared being responsible for sending these young boys from the neighbourhood to jail, she admittedly said that justice had not been achieved. She and her daughter had not been able to liberate themselves from the pain of the incident, which hung over them daily. When I then asked her what she thought would bring about justice in her daughter's case, she said that justice would be sending the boys to a place where they had to work with child victims of sexual abuse, so they could see the effects of such traumatic events, and realise the damage and harm they had caused her daughter. She believed that this would help them feel the impact of their offence, and through that develop remorse, and encourage them to repair the harm, if not for the girl herself, by helping other children in similar situations.

In other less severe cases, but where it was clear that the youths were veering on a dangerous route of drugs and crime, the victims generally wished for a solution that would keep them away from drugs, and bring them back to the correct path. This was either identified as a life skills type of programme with a social worker, a rehabilitation facility or community service under their supervision.

For the youth who had not been sentenced to prison or waiting trial there (i.e. all cases, except one) they were all grateful for the opportunity not to go to prison, and if anything, accepted the outcomes of their cases on that basis. Whether they appreciated the developmental type approach or programmes they had been sent to in consequence, was not specifically apparent. However, in the case of the boy serving home based supervision with developmental programmes linked to it, he felt that this opportunity was fair for him:

"...to get a second chance for the reason that he can not only prove to everybody that's involved in the whole situation, but also to himself, okay, that he can make a change." (Statement relayed by the interpreter)

The victim who had been a former convict in prison felt that ultimately justice should question who is in the position to judge.

"You know what the important thing in all this is? Who are you, him, her or me to judge anybody? That's why I can't understand the job of a magistrate. Who is that man to judge me? ...They haven't got a clue. They've got to learn. They've got to learn how a drug addict's mind works. They've got to learn how a child's mind works. They've got to learn how an individual human mind works...I would like someone like me, who's been through the whole rigmorale to be a justice one day, because you know what? I've got more experience than any of those magistrates sitting on the benches there...I would say that, lets say, if I murdered your father, and your mom is not around, she passed away. You're the last living relative. You can judge my sentence. That's what I think."

Whether or not the participants were satisfied with the consequences or outcomes of their cases, both victims and perpetrators were able to identify or comment on how they would perceive justice in their situation and could provide suggestions on suitable outcomes, if they had to decide. Given that they have a sense of justice, and particularly as we saw above that this sense of justice is often not excessively punitive, but can indeed be fair and proportionate, victims and perpetrators should be allowed to participate in the decision-making process to determine the outcomes of their cases. Of course, the findings in this study cannot be generalized. However, what they can do is open up the option for consultation with involved parties, particularly those harmed by the incident, when deciding on appropriate outcomes.

Conclusion

The above section is an attempt to unpack the experiences of victims and perpetrators with crime, the criminal justice system and their perceptions of justice. I wanted to determine, from their discourse, whether the values and principles of the

restorative justice philosophy were reflected in their opinions on justice and justice procedures in particular. The intention was to discover whether the stated benefits of proposed restorative justice procedures would be spontaneously raised as either being desirable or missing from the existing system, or in the outcomes of the experience of the participants selected for this study. I wished to explore this with them before presenting the concept of restorative justice, or the idea of encounters to resolve cases, in the interview. This was to ascertain whether, when the suggestion of an encounter was made, it would hold appeal, and, would perhaps be seen as an answer to problems faced in the justice system. The next section looks at the reactions of the participants towards the notion of restorative justice as an approach to justice.

PART 3- ATTITUDES OF VICTIMS AND PERPETRATORS TOWARDS THE NOTION OF RESTORATIVE JUSTICE AS A RESPONSE TO CRIMES COMMITTED BY YOUNG OFFENDERS

1. Reactions to the concept of restorative justice

As mentioned in the chapter on design and methodology: *"The description given to the participants focused essentially on the notion of an encounter (direct or indirect) between victims and perpetrators as a means to:*

- ***discuss the causes and effects of the crime;***
- ***express the impact of the crime;***
- ***identify the needs resulting from the crime; and***
- ***negotiate a solution"***

I was curious as to whether the participants would consider this process viable, if so why, and what, if any benefits they would envisage from an encounter. Hence, in the description, I deliberately left out the proposed benefits of restorative justice approaches, such as healing relationships, reconciliation and reintegration, in order to discover whether the idea of such an approach would automatically elicit responses that included these benefits. This is linked to the approach in exploring the experiences with the criminal justice system which attempted to discover whether

any of the stated benefits of restorative justice processes already existed in the current system.

Only two of the thirteen participants had heard of the term 'restorative justice'. Both of them were perpetrators who had heard of it when they were in prison. They both described it as "a programme" in the prison. Neither of them had followed the programme, nor were they able to give any further description, so they did not know what the purpose or process entailed.

In the first instance I wanted to know whether a restorative justice approach as described would be desirable in their case. Only three out of the total thirteen participants did not believe that it would be desirable in their own case. Two of these cases (one of which was a victim of assault and the other a perpetrator of an assault) stated that a process of negotiation would not be possible due to the negative attitude of the other party, and the fact that they may be "too far gone" or not in a frame of mind to appreciate such a setting. As such, they could not see the potential.

"I will actually be willing to try, but I don't still see myself talking to him...because I'm on the right road, but him, he's off the highway already." (perpetrator)

"They are not going to stop whatever they are doing. If we do try to sort this out diplomatically, it's never going to work...This may just be the straw that breaks the camel's back. This might just be the type of case, you know, where you've exhausted every other means, and even this one is probably going to get exhausted." (victim)

The girl who was raped by her father certainly saw no possibility of speaking to him, or negotiating a solution. She did not want to see him again, not only out of expressed fear, but out of loss:

"I will never forgive my father for what he did to me, because he took my whole, he took everything away from me. Everything."

The emptiness with which she said this, more than what she said, made it clear that in some instances, there is no form of compensation that can make up for the damage. It may be possible to compensate material loss or damage, but in this case,

there was a clear damage of a spirit or a soul that leaves a vacancy that nothing can fill. At best, and probably most importantly, this girl needs her dignity restored. For her, this would not come about from an encounter with her father, but rather through the support of the community around her. This is not only in terms of giving her strength, but in seeing society punish the crimes of her father, and to keep him away from her.

Indeed, this is the case of a child who has been damaged through crime committed by her own father. It has numerous implications in terms of the nature of the interconnectedness, resulting in deep levels of pain and deceit. Given the subjective impact of each case, it reiterates the need for every individual to be heard and taken seriously in any criminal case, and to understand the depth of their suffering, which may influence their readiness or desire to enter into a negotiated resolution, even if the perpetrator is a child in the eyes of the law.

The rest of the participants welcomed the idea of an encounter to discuss and resolve their cases. In some instances, such a process had already taken place informally, mostly in an attempt to reconcile following the incident. This was applicable to cases where victims and perpetrators remained in contact, such as the boy who was under home based supervision with his guardian whom he stole from, as well as the girl who stole money from her friend from the neighbourhood, both mentioned above.

In three cases, there had been a willingness to discuss and resolve the case on the side of the perpetrator, but their victims were not cooperative. For example, one boy, a perpetrator in an assault case, said he had spoken to the parents of his victim. He said that although the parents were supportive of the idea, the victim was not willing to meet with him. Instead he preferred to remain a threat to his perpetrator.

In the case of the assault on the grandfather, the family had even tried to set up an encounter, which was to be facilitated by the church minister. Unfortunately, one of the key family members, the granddaughter's father, was unable to make the meeting, and another one had not been arranged by the time of the interview. However, when I spoke of the idea of an encounter for the purpose of repairing the harm, the grandfather who had been assaulted by his granddaughter, was very open to the idea, particularly with regard to his situation.

For both victims and perpetrators the appeal of the encounter was having an opportunity to be heard, and to get all sides of the story before jumping to

conclusions as these two statements (the first by victim and the second by perpetrator) suggest:

"Something like that would be perfect, because that is what I really wanted that day in court hey. Let me say something!...so if I can get a system like that, it will work for me."

"I mean if everyone were to sit down and discuss it, it would be a lot better than coming straight to conclusions. I mean people do have to talk about it and they do have to find out all the facts so to me, you have to. I don't see any other way of making things right."

One victim saw the benefit of the encounter in terms of the possible restitution as well as reintegration, whereby he would have the child who stole from him work for him to compensate. He did suggest that this would include some form of physical labour, such as working in his garden. He also said that at the same time he would mentor the child, in an attempt to get him back on the right track. This suggestion again calls on a more developmental approach to the outcome, as seemed to be favoured by victims in the section on "Perceptions of justice by participants" (94) in the findings above.

Those who felt positively about the idea of an encounter in their own case also thought that it should be an option in all cases, particularly with regard to young offenders. Victims in particular acknowledged that they were still young, and needed to mature and become responsible citizens, which they felt prison would drastically undermine (as discussed above). In this study the youthfulness of the perpetrators was also significant due to the nature of the interconnectedness, and the victims felt responsibility towards the perpetrators, either as guardians, neighbours, or simply members of a shared community.

One victim, a guardian, felt that the main benefit of restorative justice encounters would be that they could give parents more say in the outcomes, suggesting that it would encourage them to take responsibility for their children. This is a significant insight in terms of the restorative justice approach. It illustrates that the process can indeed assist in making parents more aware of their responsibility

towards their children, who, as described above, are partly, and sometimes largely, to blame for leaving their children exposed and vulnerable to external pressures.

As discussed in the section on "Effects of poor parenting on children" (p 64) in the findings above, though the encounter may result in this beneficial outcome, parents have to be in a position and willing to take on this necessary responsibility, as many of them are unaware of or deny the destructive nature of their behaviour on their children. As proper parenting is crucial to the reintegration of children through restorative justice outcomes, it may be that support for parents is a necessary condition in the restorative solutions in some cases.

Two of the young perpetrators considered that the process of an encounter could serve as a learning experience:

"Then if we can talk about everything...you will learn, not with a fight or anything. Just to sit down and talk about it, like no, this is not right. You'll always think twice because of this. There will be people talking to you, just people doing these crimes and everything, they are the people who never get to talk."

"It can work because it actually gives the perpetrator a chance to come face to face to see what he's caused and basically having him realise that what he's done is wrong, and that can prevent him from ending up in jail and throwing his life away."

Linked to this was the statement by the young female victim raped by her father. Although she did not desire a restorative justice encounter in her case, she could see the potential in other cases, particularly with regard to making perpetrators aware of the impact of their actions:

"Yes, because, then you can tell the other one what you feel and things like that. They should know that they hurt other people, and they took, they do things that isn't necessary."

The importance of awareness and understanding that could be brought about by an encounter, as expressed in the last three statements above in particular, is indeed considered among the main benefits of the restorative justice approach. The statement below made by one of the perpetrators captures the essence of the

process of a negotiated encounter in the search for truth and understanding, which can in turn result in a true justice. It describes the benefits in contrast to the lack of repair and healing in a retributive justice system, where no constructive discussion or resolution takes place between the key parties:

"It would be a good thing, because at this moment there is nothing like that out there. Plain and simple: go to court and people win cases, people lose cases and then one never talks to the other again, they never communicate, and forever throwing tantrums at each other and stuff like that. Then they hate each other and they go down to the grave like that. Lots of hatred and anger for the next person"

Again, the notion of healing relationships is reflected in the statement above, as in the one below from the grandfather who laid a charge. Taking his case to the state was an act of desperation resulting from the breakdown in the relationship with his grandchildren, but also acknowledging the impact of the breakdown in the children's family. He attributed most of the problems to the separation of the parents, the fact that the father works far away and is seldom home to supervise the children, and the fact that the mother has not taken responsibility to discipline the children. He therefore considered an approach that would promote family restoration as essential:

"To bind that family and lay the relationship again. Take families together. Restoring families you know, instead of living apart. It would be helpful to do that."

One young perpetrator noted, possibly as one of the aids to healing relationships, that the process of an encounter for the purposes of understanding and finding solutions helps people to break down prejudice and labels, and to view each other somehow more purely. This is a central feature to reconciliation and reintegration, as it allows the breaking down of labels and misperceptions that often trap individuals in certain behavioural patterns that perpetuate criminality:

"Until you start talking you will see, ja, he's not that boy you thought now. 'Gangster', everyone looks him over, mess with him, no. You will talk to him, and you will see."

2. Appropriateness of restorative justice processes

Despite the openness of the participants towards the notion of restorative justice approaches, I was curious as to whether they would unconditionally rule out certain cases from the opportunity for a restorative justice encounter, and if so, on what grounds. After all, in most countries, including South Africa, there is scepticism and doubt as to whether a restorative justice encounter would be appropriate in more serious cases, particularly cases of violent crime.

Although no prompts were given as to what cases may not be considered appropriate, cases such as rape and murder were spontaneously mentioned by two of the juvenile perpetrators, which they stated was indeed due to their gravity. However, neither victims of the rape cases nor the perpetrator of the indecent assault case considered such categories of offence impossible for a restorative justice encounter between victims and perpetrators. In fact, the latter justified his belief that such cases should not be ruled out from the possibility of an encounter, as he could see the benefits in his own case. He explained that as his case was considered a more severe category of offence and he could see the benefits of an encounter, other serious cases should also be given the option.

Other participants who did not believe that restorative justice processes would be feasible in all cases stated that feasibility would depend on various factors in each case, rather than the nature of category of the offence. Examples of these factors included the willingness of parties to meet, as well as the need or openness for participants to understand each other. As the victim in the assault case described, though he was the most skeptical participant:

"For it to work in the beginning, I would say some sort of discipline, or understanding or respect has to be there."

These noted factors, 'willingness', 'openness', 'understanding', 'respect', are all cornerstone to the success of a restorative justice encounter. Without these elements, meetings could potentially be detrimental. As one victim expressed in noting her trepidation towards some encounters:

"Sometimes we stand face to face and start beating up on each other".

Again, this raises issues of protection in encounters, particular in cases where parties enter with an attitude of vengeance or resentment, which they use the forum to express.

2.1 Protection

In the section on "Experiences of participants with the criminal justice system" (p. 86) in the findings, we saw the need for protection of both victims and perpetrators in the awaiting-trial period. Restorative justice processes do not inherently resolve the need for protection for victims or perpetrators in the interim period, at the moment of encounter, or following the encounter. For the latter, some perpetrators felt that angry victims could be ruthless and hurtful during encounters. This reiterates the concerns noted by Achilles (2004:68) and Strang (2004: 103) in the section on "Power imbalances" in the literature review (p.29) which questions the place for angry and vengeful victims in restorative justice encounters. Some victims feared the same of their perpetrators, not only during the encounter, but especially if they were the ones to decide on the outcome. They were concerned that if perpetrators viewed the outcomes as unfair or punitive they may become threatening.

Although most participants did not consider protection a problem either in their own case or in others, where some might feel afraid or vulnerable, suggestions made which could at least enhance protection during encounters, included presence of a police officer or a social worker, who may be able to diffuse or control dangerous outbursts.

The hope of a restorative justice process is for parties to meet in the spirit of healing and reconciliation. This relies on the understanding of the approach and the attitude by all parties towards entering a participatory dialogue to resolve the case. This may not be possible immediately after an incident. As mentioned in the section on "Possible short comings of a restorative justice encounter" in the literature review, as well as the section on "Awaiting court appearances" in the findings, some level of healing often needs to take place prior to a restorative justice encounter as part of the restorative justice process. This initial healing, particularly by parties harmed by the incident, should be incorporated into the preparation phase of the process. It is the period that needs to deal with the raw, fresh wounds caused by the incident, to contain the damage in order to begin repair and restoration. Proper

preparation of all parties is therefore an indispensable part of the process, and can help to prevent further pain or damage that an unprepared encounter could elicit.

2.2 Support

Issues of protection also bring in the importance of support for participants, before, during and after an encounter. Neither victims nor perpetrators expressed feeling supported by the court system in their cases. However, as mentioned in the section on "Experiences with the criminal justice system" (p.86) in the findings above the five child perpetrators who had had contact with a social worker or probation officer found their services supportive²³. This was particularly with regard to finding alternatives to prison in the justice system. The guardian of the one perpetrator interviewed stated that she also found the probation officer's services supportive, also because they helped to keep the child out of prison, even though she was not satisfied with the uncertain and pending outcome in her case.

Although the system may not have been directly supportive, participants identified a range of people they received support from during their experiences with crime and the criminal justice system. These people included parents, a teacher, respected parents from the neighbourhood, and the community in general. Only in one case did a participant feel that his friends had been supportive.

Both victims and perpetrators who could identify a support structure and/or specific people who assisted them in their case would consider them helpful during an encounter. Reasons given for the benefits of outside support during an encounter included protection, guidance and strength:

"Because sometimes we are so weak and we couldn't take it anymore, and then there is someone to stand by us." (victim)

"(If) the parents are there, you do listen to your parents, they can also guide you...parents still will support the child no matter what." (perpetrator)

The fact that both victims and perpetrators were able to identify sources of support is a significant finding in terms of the application of restorative justice. These supportive people were able to give them strength, empathy, encouragement

²³ Recall that the only child perpetrator not to have been assessed by a probation officers was the boy awaiting trial in prison

and advice during the difficult and often emotionally draining process surrounding the crime and its consequences. The significance of this is that although this study concentrates on the feasibility of restorative justice encounters between victims and perpetrators of crime, restorative justice processes by definition also include relevant members of the community. The family group conference and similar community based restorative justice processes are designed to include members of the family and community who are identified as support persons for the affected parties. They are present to contribute to the negotiations and the healing process. In some instances they too may have been harmed by the event. Often this is as a result of the suffering of someone close to them who has been directly damaged by the event, or has caused the damage. Therefore their input could be an invaluable element in the restorative process.

The fact that both victims and perpetrators in this study were able to mention specific sources of support in their experiences is certainly a finding that should be capitalized on when preparing restorative justice encounters in South Africa. Part of preparation should be for parties to identify who to include in restorative justice encounters. These people should be screened for their relevance and willingness to participate so that they do not become a disruptive presence in the process. They should then be prepared for the encounter.

2.3 Facilitation

When asked during the interviews who would be an appropriate person to oversee their encounter, all participants, (except the one adult victim who had been a former convict), spontaneously suggested a social worker for this purpose. Even the juvenile who did not see a probation officer or social worker in his case recommended a social worker to facilitate an encounter. Particularly in the case of the young perpetrators, this was probably due to their positive interactions with probation officers (who they referred to as "social workers")²⁴.

²⁴ In fact, all the young perpetrators referred to their probation officers as "social workers" as they were unfamiliar with the term "probation officer". In South Africa, this is becoming a contentious issue, as the probation officers position is becoming a profession in its own right, with specific skills to carry out probation duties. According to both the Probation Services Amendment Act (35) 2002 and the Child Justice Bill (49) 2002, these skills include facilitation of 'family group conferences' and 'victim offender mediations'. The fact that many probation officers in South Africa are still trained and function in social work only may mean that they lack the required knowledge and skills to facilitate restorative justice encounters.

The choice of selecting a probation officer to facilitate the restorative justice encounter is consistent with current and proposed legislation guiding restorative justice processes (i.e. the Probation Services Amendment Act 35 of 2002 and the Child Justice Bill 49 of 2002). As this research illustrates, a comprehensive restorative justice process requires in depth work to prepare all parties, facilitation of the encounter and follow-up of outcomes. Therefore, anyone facilitating will need skills and training to carry out each step of the delicate process, whilst still remaining neutral. Selection and training of appropriate facilitators is a crucial component in the application of restorative justice in South Africa, particularly if it is to be truly restorative.

Church ministers and magistrates were also suggested as facilitators for restorative justice procedures. These are each interesting suggestions, given their polarity. Church ministers would place the process directly in the community, whereas magistrates would integrate the process into the existing criminal justice system. How much flexibility restorative justice will be allowed in terms of becoming a completely community based process verses a court determined process will be part of the challenges in application in South Africa's diverse context. This area should be explored in future research.

Conclusion

In general, reactions to the notion of the restorative justice approach by both victims and perpetrators were positive. Without being asked directly, the preconditions of willingness, respect and understanding were considered essential. The healing of relationships was indicated as a potential outcome of the process. In terms of restitution or methods of compensating the damage, preferred outcomes were mostly rehabilitative and developmental, aimed at preventing young perpetrators in particular from going down a worse path of more dangerous crime. Part of this, as suggested, was to instill a sense of empathy in the perpetrators, with the hope that if they could realise the impact of their crimes, they would not re-offend. In contrast, most victims were adamantly opposed to prison on the basis that it provides no benefits, but is rather destructive to all. This was mentioned as a particular concern for youth, who participants feared could be further corrupted by prison and lead them down a path of more severe crime. These perspectives, particularly by the victims, reflect humility and an openness to assist in the process of reintegration.

Despite the general openness to the concept of restorative justice processes, there was still caution with regard to the conditions which should determine the feasibility of parties to meet to resolve their cases. It was suggested that restrictions to restorative justice encounters should be based on the severity of the offence, particularly in cases of rape and murder. However, most participants believed that the attitude of the participants towards the notion of jointly resolving their cases in a manner of healing and restoration should determine the feasibility of an encounter. These challenges could be overcome with adequate preparation of parties, skilled facilitation and appropriate support during an encounter.²⁵

Nevertheless, one cannot deny that some cases are incomprehensibly evil and seem beyond repair and reconciliation. Even though key role players should be consulted and screened for their willingness to participate in a restorative justice process, it is not certain that one can conclude from the findings of this study that all cases are appropriate for a restorative justice encounter irrespective of the nature of the offence. Perhaps though, determining appropriateness may still be part of the screening process. It is doubtful that many victims of very brutal crimes would be willing to engage in a restorative justice process with their perpetrators, particularly where they have to decide on restitution. However, the question is, if victims are willing to attempt this approach to resolve their cases, would community based, developmental outcomes be acceptable to the greater community, if these are the negotiated and accepted solutions by certain victims? Would this possible scenario (however unlikely) jeopardise the community's sense of safety and undermine the benefits of restorative justice?

This area needs more exploration, although it is extremely sensitive, and may be unethical to test. A suggestion could be for the state to decide on the consequences, but a process of healing and reconciliation between victims, perpetrators and affected parties takes place alongside. The Department of Correctional Services has recently started a restorative justice programme in prisons, where at least the process of reconciliation is encouraged, even if there was no discussion around outcomes between these key role players.

²⁵ Underlined sections in the conclusions highlight how although the suggested benefits of restorative justice processes were not revealed to the participants during the interviews, they were spontaneously raised by both victims and perpetrators during the interviews. Cautions are also underlined, which also reflect some of the main concerns by analysts of the approach. Both these were based on how participants would perceive the encounter.

CHAPTER 5

CONCLUSIONS & RECOMMENDATIONS

"Let us build communities and families in which our children and youth, especially those who are most troubled, can belong. Let us build a country in which our children and youth can learn to care for and respect others so that one day, they too will build a family, a community and a country which is well and strong"

(Nelson Mandela, 2003)

Initially, my intention to conduct this study came from a base of scepticism. Though I was drawn to the values and principles of restorative justice (most notably 'respect', 'interconnectedness' and 'healing'), I wondered whether the proposed application of bringing affected parties together to resolve their criminal cases would be feasible in South Africa.

When South Africa pioneered the Truth and Reconciliation Commission (TRC), it was considered our testimony to the appropriateness of restorative justice here. However, I still saw a difference between reconciliation at a national level following an era of dysfunctional politics versus criminal acts that violate the legal rights of others, once a culture of human rights was born. When the brightness of the 'rainbow nation' faded, the on-going suffering caused by excessive levels of crime was revealed, allowing anger and discomfort to manifest and perpetuate cycles of disrespect, violence and abuse.

Packaging the feasibility for restorative justice in the traditional concept of *ubuntu* made sense conceptually. However, with crime levels as high as they were, and the new nation striving for the more egocentric capitalist dream, the sense of *ubuntu* that "*I am a person through other people*" did not seem to be resonating very strongly in South Africa. If anything, high crime levels were a reflection of the deterioration of *ubuntu*. As advocates for restorative justice in South Africa were presenting their case, I was hearing the echoes of enraged voices through the media and on the streets that called for the most punitive sanctions against offenders. I found it hard to imagine that outcomes of cases would indeed be restorative if people filled with such animosity were engaged in a process of dialogue and negotiation with perpetrators.

As mentioned in the introduction, it was this uncertainty that set me on the research journey to discover whether South Africans would be ready to engage in restorative justice processes such as those proposed in both existing and draft legislation, (i.e. the Probation Services Amendment Act 35 of 2002, and the Child Justice Bill 49 of 2002). These included family group conferences and victim offender mediation. As interaction between victims and perpetrators were cornerstone to these processes, I felt that these parties needed to be consulted on whether restorative justice is a desirable option for South Africans, or whether matters regarding the consequences of criminal cases should remain uniquely in the hands of the state. Hence the decision to consult victims and perpetrators of crime who had been subjected to existing criminal justice procedures, particularly with regard to the outcomes of their cases. At this stage, restorative justice has essentially been proposed as a strategy for dealing with cases of youth crime committed by people below the age of 18. This too became a component of the research, and was reflected in the research criteria.

Conclusions were drawn as themes emerged in the three different sections of the findings. This chapter will consolidate and summarise the conclusions from these findings in order to make the final concluding remarks and draw up recommendations.

1. Restorative justice in the community

If one considers 'respect' the key value which maintains social harmony, as would supporters of John Rawls social contract theory such as Susan Sharpe (2004), one could conclude that a sense of respect seems to be fundamentally lacking in communities characterised by violence and abuse.

Growing up in these conditions is often painful and traumatic for children. As we saw in the section on "Causes of child offending" (p. 20) most research on child offending shows that the majority of children who commit crimes emanate from highly disrupted and dysfunctional homes and communities (Consedine, 1999; Morris & Maxwell, 1999; Mc Cold, 2004; Skelton in Banfield, 1993). The description of the lives of the child offenders in this study reflected these findings.

I may agree to some extent with the comment by Michael Hardy Boys (in Morris & Maxwell, 1999:3) that often when youth offend, they do not think, either about the harm they may cause or about the consequences they may have to bear as a result.

However, I would not necessarily agree with his reasoning that "...really we cannot expect them (youth) to (think) given their so limited experience of human life and emotion." If we consider the depth of experience and emotion that the youth in this study alone have undergone, one could not refer to it as "limited". In fact, I would argue that it has often been so extreme and destructive in such a short space of time, that to spend time processing the effects of violence or abuse in the home or the community may often be too distressing for youth. As a result, they shut off their 'rationalizing mechanisms', allowing instinctive reactions to their pain take over. This may often be what makes it seem like they "do not think", and even sometimes, "do not care", as Nic Fines has suggested in his manual on youth empowerment, *Through the Walls* (1996).

Such circumstances help to explain why cycles of abuse and crime seem to become endemic in communities where traditional morals and values have eroded, thereby undermining respect between fellow human beings. However, this does not mean that because respect seems low in communities where crime is high, victims and perpetrators are unable to engage in meaningful experiences of restorative justice. On the contrary, such encounters may become a forum that initiates a sense of respect through the process of opening up, listening, acknowledging one's own pain, as well understanding different effects one's behaviour has on others. This openness can produce a sense of remorse among perpetrators by bearing witness to the effects of one's actions. A perpetrator can be humbled by forgiveness. These are, after all the said benefits of restorative justice, not only according to the theory, but also according to the real perceptions of both victims and perpetrators in this study as they reflected on the possible advantages of a restorative justice process.

Therefore, I would even say that 'learning to respect' may be part of the restorative justice process. Respect may not be felt at the onset, but rather through the journey of recovery. Hopefully, if this is the case, the lesson will be sustained, as perpetrators too, will ideally feel respected in the process. This is often for the first time in their lives, which have been riddled with lessons of disrespect, and where aggression has become an indiscriminate means of survival and protection.

Restorative justice broadens its scope by engaging related and/or relevant parties from families and the community in the process of restoration. It thus does not limit itself to healing the harm caused by an isolated event, but it creates opportunities for much deeper levels of restoration and healing. This may be by acknowledging the harm caused indirectly to those close to the victim, to members

of the perpetrator's own family who may feel humiliated by his/her actions and had to bear the brunt in some way, and to the community, which is shaken by the ripples of crime, and may be represented by significant, respected members.

The majority of the participants in this study (nine out of the thirteen) proved that there are often salient relationships between victims and perpetrators prior to the incident, such as family, neighbours, friends and lovers. Hence, for most of the participants there was very clear interconnectedness among parties, more so than was expected from the selection criteria. Given that this was a random purposive sample for dispersed areas of the Western Cape, the close relationships which crime had disrupted amongst this sample alone attested that there is a real need for restoration in our communities, as even violent crimes are being committed by those closest to one another.

2. Restorative justice in the family

As we saw in the section on "The effects of poor parenting on children" (p.63) in the findings, restorative justice can offer opportunities for parents to repair some of the harm they may have caused their children through neglect, abuse and violence in the home, which has never been acknowledged or resolved. Though they may feel humiliated by their children's behaviour, when children commit crime, it is often the manifestation of parents not taking responsibility, or not paying enough attention to the path their child is on. When parents feel the effects of the crimes caused by their children, it often jolts them into realizing what is happening in their children's lives. It is unfortunately common though for parents/guardians to either punish their children harshly, or as we saw in this study (particularly among guardians), turn to other disciplinary options (such as the state), in order to shift the responsibility, often because the children have reached a stage that is out of their control.

This dynamic between parents/guardians²⁶ and their children, enhances the potential for restorative justice processes. A criminal offence becomes the catalyst for much needed communication, realization, acknowledgement, understanding, repair and reconciliation from all sides, whether they are victims and perpetrators in the same case (as was seen in some instances in this study) or whereby parents would be the supporters of the young perpetrator in the restorative justice process.

²⁶ In the Child Justice Bill (49) 2002, the terms "parents" and "guardians" are always used together, as it has been acknowledged that in South Africa, many children are not raised by their biological parents, but rather by recognised guardians.

However, where damage is deep rooted, the healing process has to be cautious and very thorough in order to properly 'cleanse the wounds'. If the process is superficial and not genuine, the residue of the pain can remain festering on all sides, often from resentment at merely going through the motions. This of course can be true of superficial and artificial negotiations between victims and perpetrators too. It is also a note of caution to the language of restorative justice, which may create the sense of healing and repair, but if not properly administered can fall short of its stated worth and benefits.

One must also be realistic as to what restorative justice can achieve. Restorative justice processes are unpredictable at the outset, irrespective of preparation and facilitation, often due to unexpected emotions at the time of encounters. It is important to remain cautious and realistic when thinking about restorative justice.

3. The need for proper facilitation

The fact that the appropriateness of encounters often depends on the attitude and willingness of participants stresses the importance of proper facilitation of restorative justice processes. As exciting as the opportunities and the potential for restorative justice may seem in South Africa, we still need to be circumspect. As we have seen, both in the literature and the findings in this study, crime is fundamentally about the fracturing of relationships (Zehr, 1990; Zehr, 2002). This means that affected parties feel vulnerable and need to be treated with care, whilst allowing them a chance to express their hurt and needs. The section on "Possible shortcomings of the application of restorative justice" (p.28) presented real challenges to facilitation, particularly with regard to power imbalances. This study suggested that power imbalances in a restorative justice forum could result from peer group loyalty resulting in indifference, callousness and bravado on the side of a perpetrator, which could overwhelm already fragile victims. They could also result from the rage felt by victims wishing only for the harshest punishment against their perpetrators, with no intention for a process of negotiation, repair and reconciliation. As we saw in the section on "Effects of poor parenting on children" (p. 63) in the findings, power imbalances could even result from situations whereby parents support their child's disruptive behaviour, which could undermine the position of the victim, who may have hoped that the parents would take responsibility to discipline their child and keep him/her out of crime, as part of the process of healing and

reparation. Power imbalances could even emanate from the anger of a parent towards a child perpetrator during a forum, which can negate the child's hope of reintegration. It was suggested above that restorative justice can be a powerful tool to mend these domestic differences, but these are nevertheless delicate situations.

Managing these power dynamics in emotionally charged situations requires high levels of skill, sensitivity, impartiality and neutrality from a facilitator, as s/he must help guide the process to success from the moment the process is initiated to following up on the outcomes. This in itself calls for proper preparation of all parties once they have agreed to a restorative justice encounter which can assist facilitation. Preparation should include an understanding of the process, as well as offering an opportunity to debrief some of the pain and anger following the criminal incident as well as to vent some of the possible fears around meeting one another face to face. This needs to take place prior to an encounter between the key role players.

The fact that one of the key benefits of restorative justice processes is that they are guided by the uniqueness of each case calls for particular competence and dexterity of facilitators. This in itself can pose a challenge to the application of restorative justice, as selection and training of appropriate facilitators needs to be managed carefully if the process hopes to gain credibility and support.

In South Africa, probation officers have been identified as the key facilitators for restorative justice processes such as family group conferences and victim offender mediation. This study supported this move, as perpetrators in particular identified probation officers as the most appropriate people to manage the process, often based on their positive experiences with probation officers in their case (although they generally referred to them as social workers).

For now, probation officers probably are in the best position to facilitate restorative justice initiatives, given their training both in social work skills, including community and family dynamics counseling and mediation, as well as in probation including criminal justice, rehabilitation, understanding victims' needs and restoration. The Restorative Justice Center in South Africa was commissioned by the government to train probation officers in facilitating restorative justice procedures, which has been on a nation wide mission to fulfill this task.

The main possible draw back for probation officers as facilitators is that even if they are properly trained, they may lack the capacity in terms of time and numbers to undertake this potentially time-consuming task. In an informal survey conducted by the University of Cape Town's Department of Social Development during its own

national training of probation officers this year, it was found that most respondents found their workload overwhelming. If they are already struggling to cope with their current services, it raises concern as to whether they will be in a position to facilitate restorative justice procedures in a holistic manner.

4. Preparing to respond to restorative outcomes

Another challenge for the application has to do with the ability to follow through on the outcomes of restorative justice processes. The findings in this study revealed that the views of victims resonated with the findings from the Strang (2004) and Stressar (1999) and Leggett (2005) victim studies referred to in the section on "Common perceptions on crime and punishment" (p. 19) in the literature review. For the most part, the victims in this study were not punitive. They wanted peaceful resolutions that would repair the damage caused by the incident and preferred developmental outcomes and giving young perpetrators the chance to learn and to prevent them from heading down a slippery slope of crime. As a result, most were vehemently opposed to the oppressive and destructive prison conditions which enhance aggressive and criminal behaviour, as described most expressively by Consedine (1999). It seems that both victims and perpetrators would approach resolution in the spirit of fairness as well as according to the principles of rehabilitation and reintegration.

Although these findings are encouraging for restorative justice, they also suggest the need for facilities, services and programmes that can assist in the process of rehabilitation and reintegration. If reparation includes that a child should go through an anger management programme, for example, then such a programme must be available, effective and accessible. If a restorative justice process finds that families need counseling and support, then again, these services need to be available.

An area which the participants in this study would agree is becoming increasingly crucial if restorative justice outcomes are to be effective is the availability and accessibility of rehabilitation programmes for substance abuse. As crime increasingly revolves around substance abuse, systems must be in place to contain and prevent the destructiveness of this phenomenon. Restorative justice outcomes can include the necessary recommendations for these processes, and encourage that the adequate support structures are in place at home and in the community. Without proper facilities for rehabilitation, particularly for highly

addictive substances which are on the increase and are exacerbating crime, the outcomes of restorative justice processes will be futile. Existing facilities in South Africa with any track record of success are very expensive for the majority of families in need, but it is a serious matter that should be placed high on the state agenda if the government hopes to control crime.

5. The influence of youthfulness of perpetrators on outcomes

It seemed that youthfulness of the perpetrators was relevant to how the victims in this study considered the possible outcomes. This was particularly with regard to the acknowledgement of the difficult conditions in which children are raised which can lead them into crime, as we have seen throughout this study. Both victims and perpetrators were concerned with the path that youth are following in their communities, and believed that restorative justice could be a strategy to bring them on the 'right track'. The youth in this study saw it as an opportunity to get a second chance, to learn from their mistakes and to stay out of crime without going to prison. The victims in this study saw it as a way to help children learn from their mistakes, to understand the harm that they cause, to guide them and to give them skills to avoid getting more tangled up in crime.

These responses illustrating concern towards the youth could be due to interconnectedness and closeness between the parties in this particular study. It is not certain whether the same would be felt by many completely unrelated parties. More research needs to be done in this area. The only victim in this study who did not know the young perpetrator before the incident was the one who had been in prison himself. Although he did not want the boy to get away with stealing from him, he did not want to see the child go through the devastating prison system where he would come out far more destructive. His own experience is what led him to opt for a developmental outcome which included making the child work for him for free and mentoring him to help him stay out of crime.

6. The formal criminal justice system

Sceptics with a more formal legal background criticise restorative justice on the grounds that it lacks protection, due process considerations, the right to a speedy trial, clear guidelines to sentencing and proportionality in outcomes. However, there

was very little proof emanating from the experiences of the participants in this study that the formal legal system is practically following these justice safeguards. For the most part, there seemed to be much confusion with the criminal justice system, and little reported satisfaction.

Areas that both victims and perpetrators felt could be improved certainly included being more involved in the case, particularly with regard to being able to have their say, without being undermined, humiliated or manipulated by the justice officials. Having more information of what was happening in the case, such as reasons for postponements or certain decisions would have been considered helpful in most cases, for both victims and perpetrators, particularly as they have a stake in the outcome. These reported gaps in existing criminal justice procedures are consistent with findings in the literature in the section on "Finding a place for restorative justice in the justice system" (Herman, 2004; Walgrave, 2004; Zehr, 2002).

It may not be that victims and perpetrators feel the need for the case to be completely taken out of the formal justice system to be resolved among each other. However, it does suggest that the existing system should make space for parties to tell their stories as thoroughly as possible, including the circumstances leading up to the reported criminal incident, and importantly, the impact that the incident has had. The court should know and acknowledge the resulting pain and needs from the incident particularly of victims, which should assist a judicial officer in making a decision, if the matter is indeed left up to him or her. Increasing the involvement of the affected parties in the decision making process could go a long way to making outcomes more restorative and healing, even if these are merely additions to the current system.

The 'victim impact statement' is slowly being integrated into the current justice system to be considered by judicial officers when making their decisions. These are statements, often in the form of a letter, that are made by the victims, which elaborate on the impact the crime has had on them, in terms of personal loss and emotional suffering, which are presented to the judicial officers.

Even by allowing victims as well as perpetrators to be more involved in terms of expressing their side of the story and the impact of the incident, the current justice system does not give them a say in the outcomes of their cases. It is still up to the justice officials to determine what would bring about justice. However, a significant finding in this study is that both victims and perpetrators were able to define what

would bring about justice for them, which often was not consistent with the rulings of the justice officials.

Often the fear of allowing parties to determine the outcomes is that they will not be proportionate to the crime, as they are driven by reaction and emotion. Of course this is a very real concern, but it was not reflected in the proposed outcomes that were perceived as 'just' by the participants in this study. In fact, the way both victims and perpetrators considered just outcomes did focus on "...something positive...to meet the needs of the people harmed by the crime" (Johnstone, 2004:10) whilst taking "...into account past, present and future" (O'Donnell & Mc Cold, 2004). Whilst the fear of disproportionate outcomes exists, safeguards should be built into the restorative justice process. Already screening for appropriate attitude, adequately preparing parties and skillfully facilitating the route to appropriate outcomes can assist in preventing inappropriate consequences.

The only participant who felt strongly that her perpetrator should be locked away for as long as possible was the girl who was raped by her father, (who was an adult perpetrator in this case). Certainly, as she saw it, their relationship was beyond a point of repair or restoration and she did feel he needed to be severely punished for his crimes. Her voice is a reflection of instances where the damage is irreparable.

As I write this final chapter with much enthusiasm with regard to the potential for restorative justice in South Africa, I read on the front page of today's paper of the murder of a six months old baby, after tying up of her nanny and her uncle, who were looking after her while her mother went to the gym (Bailey, 2005). Again I am struck by the senselessness and brutality of crime, and the amount of pain it causes. I question what could repair the harm caused by the loss of a baby for a mother? At least, I think, a restorative justice process can expose the perpetrators to the pain that they cause, which may be a lesson in empathy and remorse, preventing them from committing such crimes again. But I wonder if a mother would want anything short of a severely punitive sanction in such a case.

7. The need for the appropriate attitudes to engage in restorative justice processes

Despite the apparent openness of the majority of victims and perpetrators in this study towards restorative justice processes, one still cannot deny that many victims and perpetrators of crime in South Africa are still filled with animosity and

resentment, as numerous surveys and media reports portray. Even some of the participants in this study, both victims and perpetrators, indicated that the other party in their case was not in a position to enter into a restorative type of negotiation. According to them, the other party lacked the 'right attitude'. This, they described as including a lack of willingness, a lack of respect, a lack of understanding and too much anger. Once again, where these elements are lacking, particularly 'respect', as Howard Zehr (2002:36) stated, "we will not do justice restoratively, no matter how earnestly we adopt the principles."

One cannot assume that all parties in South Africa are going to be open to restorative justice processes to resolve their criminal cases. What is significant in the findings of this study though, is that it was generally not the severity of the crime that determined the appropriateness of a restorative justice process, but indeed, as stated above, the attitude of the participants. Even the young girl who was gang raped by her neighbours preferred the idea of having a restorative justice process to resolve her case rather than having her aggressors, boys she had grown up with in her neighbourhood, judged harshly by the state and sending them to prison. In this case, there was no resolution or justice. The pain lingered over the girl and her family, with no sense of repair, specifically because the girl and her mother did not want to see the boys punished harshly. The option of a restorative justice procedure was welcomed by the young victim and her mother as it offered a real opportunity to repair the harm, and gain a sense of justice. This, to me, illustrated the significance of offering the option for victims and perpetrators to engage in restorative justice processes in any case. From there, it can be determined whether the parties on all sides have the appropriate attitude that would result in the fairest outcome, or whether it would be better to leave the matter up to the state, particularly keeping in mind the rights of the community to be protected from crime. Again, this calls for the competence of the facilitator in helping the parties to understand the process, to assess the appropriateness of the attitudes, and indeed to ensure the fairest procedures for all parties.

In some instances it may be that parties do want to engage in restorative justice processes, but do not want to meet face to face. Even though 'face to face' meetings are considered most ideal in order to "...engage in constructive, respectful dialogue" (Johnstone, 2004:6), if parties are not comfortable, facilitators can use more creative indirect means of conducting the process, such as via letter writing, serving as an intermediary for the parties and organizing phone conferences. These

methods could diffuse some of the discomfort of face to face meetings, but still allow for restorative justice procedures to involve all the main parties.

CONCLUDING REMARKS

Although there is evidence of restorative justice in various traditional and community justice procedures, incorporating restorative justice into the mainstream justice system, particularly for young offenders, is still a very recent consideration in South Africa.

Despite the uniqueness of each case presented in this study, combined, they shared a common humanity that gave credence to the possibilities for restorative justice in South Africa. I believe that this comes with the direct experience of crime. The strength of coping and healing through the experience of crime, its causes and its consequences is what places those who have been directly involved, in the best position to comment on justice. As such, the restorative justice philosophy has referred to them as the key role players, which was the motivation for using them as the subjects of this research. The commonalities in their perceptions particularly towards causes of crime and benefits of a restorative justice approach in the findings of this study allowed their views to be combined in the discussion of the findings. This finding of shared understandings and perspectives gives hope for negotiation and reconciliation as it suggests that it is possible for parties to share common ground during a restorative justice encounter from which to negotiate solutions. Of course, this will depend on the willingness and attitude of the parties, which as mentioned frequently, would need to be screened prior to going ahead with the process.

This study did not answer the question as to whether restorative justice should be integrated into the existing criminal justice system or whether it should form an alternative or parallel criminal justice system in itself. Though there may be openness to the idea, it still needs much testing in order to determine its potential and success. Evidence needs to be created in order to convince that it does indeed serve the purposes it intends to. It is only through testing and application that the challenges in the South African context can truly be discovered and resolved.

What this research did significantly reveal though is that all participants, whether victims or perpetrators, who have had experience with crime and the criminal justice system, believed that there was a place for restorative justice in the justice system,

and that the option should be available. It can always be refused, but the choice and decision should come from those involved, and should not depend on the whim of the judicial officer or even a probation officer. It has to be agreed upon through a process of consultation with the key role players.

If McCold's (2004:170) contention that the cumulative effect of restorative justice outcomes can result in community restoration is correct (in "Interpretations of justice" (p.23)), then one should not deny the opportunity to members emanating from dysfunctional communities. If, indeed, the process can serve to instill an understanding and sense of respect, then increasing the opportunities to engage in such a process should be encouraged, at the very least to test the potential benefits of the outcomes.

Recalling the many facets of restoration that Braithwaite (2002) referred to, particularly including restoration of 'human dignity', of 'peace', of 'damaged human relationships', of 'communities', of a 'sense of duty as a citizen' then perhaps we should look at restorative justice as not only feasible when dealing with cases of crimes committed by young offenders, but as a powerful strategy that can assist in the shaky process of nation building and addressing the often neglected or forgotten entrenched social injustices. In this sense, one hopes that instead of communities feeling the ripples of crime, they feel the ripples of repair. Perhaps, most significantly, where the spirit of *ubuntu* has worn out in South Africa, restorative justice processes can revive it, indeed, restore it, beginning with processes that assist youth to find a path as positive, constructive citizens.

RECOMMENDATIONS

The recommendations below are based on the permissiveness of the participants of restorative justice processes in resolving cases committed by child offenders. They suggest ways that restorative justice processes which include interaction between victims and perpetrators, and which allow these key parties to become central to the decision making process, could be made available. They also suggest what needs to be in place in order for outcomes of restorative justice processes to be positive, reparatory, and restorative, and allow for the reintegration of children in homes and the community.

Already, as we have seen in this study, there have been great strides towards the implementation of restorative justice in South Africa. These have been particularly

with regard to appealing to the public and justice officials to shift their mindset from relying on harsh punitive sanctions to more restorative consequences. Much of this has to do with an acknowledgment of the 'troubled circumstances' from which crime emerges, particularly among youth. As we have seen, this criminal behaviour is not being rectified by sending perpetrators through the prison system. Its related appeal is that the process encourages children to take responsibility for their behaviour, and learn to understand the harm they cause. It also has to do with a clear acknowledgement that victims have been sidelined from their cases in the existing criminal justice system, whilst they should be central to decision making on outcomes.

Although 'diversion' and 'community based sentencing' is a significant step towards restorative justice, until decisions come from the key players involved, meaning at least the victims and perpetrators in criminal cases, the justice process lacks a crucial component to making it truly restorative. Therefore, most of the recommendations below are based on how to encourage the involvement of these key players, particularly victims, in resolving their cases and producing restorative outcomes.

Based on the outcomes of the findings, the following recommendations have been made to inform the process of implementation of restorative justice in South Africa.

Service providers:

- ❖ In both the Probation Services Amendment Act 35 of 2002 and the Child Justice Bill 49 of 2002, probation officers have been assigned the task of facilitating restorative justice encounters. Given that all participants felt that the probation officers would be appropriate facilitators of restorative justice encounters, it seems that this would also be desirable for victims and perpetrators.
- ❖ The possible role of assistant probation officers (APO) in conducting restorative justice processes should be explored. A suggestion is that they could assist with the preparation of parties and the follow up of outcomes.
- ❖ Probation officers should be given training on how to facilitate restorative justice encounters as well as on supervision of assistant probation officers in the preparation and following up of outcomes. Assistant probation officers

(APO) should be trained on how to prepare parties for restorative justice encounters and how to follow up the negotiated outcomes.

- ❖ Probation officers and assistant probation officers trained in conducting restorative justice procedures should be carefully monitored in terms of:
 - assessing the appropriateness of the attitudes of all parties for engaging in restorative justice processes;
 - preparation of procedures;
 - facilitation of restorative justice encounters;
 - how they manage restorative justice processes where contact between parties is indirect rather than face to face; and
 - how they follow up the outcomes of the negotiations.

Monitoring systems for this could be included in probation supervision. Therefore, probation supervisors should also be trained in the restorative justice approach and how to monitor procedures and outcomes.

- ❖ If it is not feasible for all probation officers and assistant probation officers to conduct restorative justice procedures, at least one probation officer and one assistant probation officer in each office should be appropriately trained to follow out this task when the need arises.
- ❖ If the demand for conducting restorative justice processes increases beyond the capacity of the probation officers and assistant probation officers selected to be trained in conducting restorative justice procedures in a particular office, then a decision should be made to have certain probation officers and assistant probation officers to not only be trained and assigned to conducting restorative justice procedures when the need arises, but to concentrate solely on this task. This will probably mean that the probation officers dedicated to this task will not conduct the pre-trial or pre-sentence investigations in the cases they are facilitating. Therefore they will need to work in collaboration with the probation officers who have conducted these investigations and prepared the court reports.
- ❖ Given the current shortage of probation officers and assistant probation officers nationwide, an extensive recruitment campaign is needed in order to fulfill the above recommendations.

Application:

- ❖ Every probation officer's developmental assessment should include the question as to whether the perpetrator would wish to enter into a restorative justice process with the victim (either directly or indirectly) to resolve the case and to make amends for the damage caused.
- ❖ Should the perpetrator agree to entering into a restorative justice process, probation officers should contact the victim(s) to explain the option and to determine their willingness to participate in a restorative justice process. This should only be after the perpetrator has not only admitted to the offence, but also accepted responsibility and shown willingness to make amends.
- ❖ Police should provide probation officers with the victims' contact details (with the victims' consent) as part of the standard referral procedures. Police should inform the victims of the role of the probation officer with regard to youth justice.
- ❖ If a restorative justice process is desired by both parties to resolve the case (either through direct or indirect contact), the court should be informed of this in the probation officer's report, and they should be allowed to proceed without going through court trials.
- ❖ If a restorative justice process is accepted by the court, probation officers should take steps to prepare both parties for contact. In the case of face to face encounters, this should include time, date, venue and who should be present to support both parties. Ideally this should be negotiated with both parties. This has already been included in the Child Justice Bill as the responsibility of the probation officer. It should also include some initial healing of affected parties, to deal with some of the heightened and painful emotions before meeting each other.
- ❖ Victims and perpetrators should be consulted on whether anyone else should be included in the restorative justice processes, such as family members or respected members of the community, such as religious leaders. They should be screened by probation officers for relevance, such as having been involved in the crime, harmed by the crime, in some way responsible for the criminal behaviour or potentially responsible for ensuring the success of the outcomes.
- ❖ Restorative justice processes for serious offences (such as rape and murder) committed by youth need to be approached with caution, particularly to ensure community and victim safety. However, they should not be completely

excluded from the option, particularly given the extensive need for reparation and healing in such cases. A suggestion made above in the findings is to have restorative justice processes either integrated into or parallel to court proceedings, to at least allow for some level of dialogue aimed at reparation and healing. If a full restorative justice process should be desired by all parties in such cases, whereby outcomes are negotiated by the affected role players, it may be best to begin attempting this with court back up in order to ensure fair outcomes and community protection. Detention can still be the outcome of any negotiated solution, even though developmental alternatives may always be preferable. Even in cases where a detention sentence has already been passed by the court, mediation for the purpose of reconciliation between the affected parties may still take place in prison. This could also assist with post-release reintegration of offenders. The Department of Correctional Services is currently in the process of trying this strategy with some prisoners.

- ❖ In every case, whether it goes through the formal justice system or through restorative justice process victims should be encouraged to produce a 'victim impact statement'. This should not only be presented to the justice official but also to the perpetrator, with the consent of the victim, for the perpetrator to truly understand the effects of his/her actions. In response, perpetrators should be requested to write a letter to the victim. This letter may include an explanation of the events leading up to the offence, as well as the circumstances and background of the offender. It should only be presented to the victim if it shows genuine empathy and remorse and a willingness to make amends.

Outcomes:

- ❖ All outcomes of a restorative justice process should be carefully followed up to ensure that they have been restorative. (The suggestion above is that this is done by assistant probation officers under the supervision of probation officers). To assist, criteria on how the outcomes are intended to be restorative should be established as part of the restorative justice process in order to monitor whether the actions fulfill the aims.
- ❖ In many instances, young offenders do not have the means to 'pay back' in terms of financial or material compensation. There has been discussion in the

victim support movement to initiate a 'victim compensation fund' through the state. Even if such a fund is available to provide financial or material compensation, symbolic restitution as proposed in the Child Justice Bill should still be encouraged, even if it is an addition to actual compensation, in order for perpetrators to truly take responsibility and to restore the harm, thereby assisting their own reintegration.

- ❖ In order to assist youth perpetrators to truly accept responsibility, to understand the impact of their offence and to fulfill the outcomes of the encounter in a sustainable manner, adequate programmes should be available. These programmes should assist in managing the causes of the criminal behaviour in order to prevent re-offending. These could include drug rehabilitation/counseling, life skills, team building, anger-management, family support and so on. Such programmes may be the required outcome of the encounter, or they may be recommended additions made by the probation officer facilitating the conference. Information about programmes should be given to both victims and perpetrators prior to an encounter, so that they are aware of these options, and can consider them whilst negotiating outcomes. This will mean the accessibility and availability of appropriate programmes, with follow-up accounted for. They should also be screened for effectiveness.
- ❖ In situations where there has been a breakdown of close relationships even prior to the incident, such as between family members, neighbours etc, recommendations for programmes to heal the relationship beyond the encounter should be made. These could include family counseling or mediation for example. Here again, these programmes would have to be available and accessible.
- ❖ Victim support services that meet victims' needs in terms of involvement, information, support, trauma healing and compensation should be an integral part of any justice system, including restorative justice. Research in this area is recommended.

FURTHER RESEARCH

Recommendations for further research (in addition to victim support services) stemming from this research would include:

- Investigating the attitudes towards the notion of restorative justice of community members not directly involved in criminal cases.
- Piloting and evaluating restorative justice processes in cases of juvenile offences, particularly with regard to the recommendations above.
- An exploration on possible culturally appropriate restorative justice alternatives including facilitation, procedures and rituals which could enhance community based restorative justice procedures.
- Piloting and evaluating of cross-cultural encounters. This area did not feature in this research. However, it may be significant in South Africa, given its multi-cultural nature, and a history that divided people along racial and cultural lines.
- An in-depth exploration on how drugs and gangsterism can influence restorative justice processes and outcomes and whether restorative justice processes can help to find solutions to these problems.

University of Cape Town

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ANNEX 1

Questions Relating Specifically to Crime and Experience with the Criminal Justice System:

Victims:

The intention would be to conduct a thorough assessment of the experience of victims from the time of the crime, to reporting the crime, to the process of the criminal justice procedures including how they felt about the sentencing, and what their feelings are likely to be once the sentence has been served by the perpetrator. It will try to discover whether victims felt adequately involved in the process and whether they feel protected and safe following the incident and sentencing, especially with regard to the period after the sentence. The interview will also investigate the relationship between the victim and the perpetrator, and whether if there was a relationship before how it has been affected by the crime and whether the existing criminal justice procedures had any impact on restoring or harming the relationship. In conducting this interview it would be essential to determine the level of satisfaction with the way the case was handled through the existing criminal justice system, with an emphasis on whether the victims felt that justice had been served.

Probe Questions:

- Describe in detail the time of the crime, including what happened right before and after the incident.
- Did you have any contact or relationship with the perpetrator before the crime? If so, can you describe that contact/relationship?
- Describe your experience when reporting the crime. (Where did you go? How were you treated? What happened after you reported the crime? Were the procedures clear to you? Did you have sufficient information about what to do and what was happening around the time of reporting?)
- Describe your experience in passing through the criminal justice procedures. (Did you feel you had adequate information? Did you feel you had adequate support? Who provided you with support if any? Did you feel adequately involved? Would you have liked to be more involved? Did you have to face the perpetrator again at any stage? If so, describe the circumstances, including what happened and how you felt.)

- Describe how you felt about the sentence. (What was the sentence passed? Were you satisfied with the sentence? Would you have proposed another sentence? If so what?)
- If you had any relationship with the perpetrator prior to the crime, how has this relationship been affected, if at all, by the incident? (Are you still in contact with the offender? If so how? If not, why not? How would you feel if you were in contact with him/her? If the relationship has been destroyed through the incident, would you want to restore it? If so, what do you think it would take? Do you feel adequately safe and protected following the incident? If not, why not? What would make you feel safer?)
- Do you feel that justice was served through this process? If so, why/how? If not, why not, and what would have made you feel a greater sense of justice?

Perpetrators:

The intention would be to conduct a thorough assessment of the experiences of young offenders from the time of committing the crime, to the time of arrest, to passing through the criminal justice system to sentencing as well as serving the sentences. The interview will investigate the relationship between the offender and the victim if any, and whether the criminal justice system had any impact on restoring or harming the relationship. Although it would be hard to talk about the "satisfaction" of offenders with the criminal justice procedures, the aspect of whether the offenders felt that justice had been served will be discussed.

- Describe the time of the crime, including what happened right before and after the incident.
- Did you have any contact or relationship with the victim before the crime? If so, can you describe that contact/relationship?
- Describe your experience upon arrest. (Where did you go? how were you treated? what happened? Were the procedures clear to you? Did you have sufficient information about what to do and what was happening around the time of reporting?)
- Describe your experience in passing through the criminal justice procedures. (Did you feel you had adequate information? Did you feel you had adequate support? Who provided you with support if any? Did you feel adequately involved? Would you have liked to be more involved? Did you have to face the victim again at any stage? If so, describe the circumstances, including what happened and how you felt.)

- Describe how you felt about the sentence. (What was the sentence passed? Was the sentence similar to what you expected? If not, why not? What sentence did you expect?)
- If you had any relationship with the victim prior to the crime, how has this relationship been affected, if at all, by the incident? (Are you still in contact with the victim? If so how? If not, why not? How would you feel if you were in contact with him/her? If the relationship has been disrupted through the incident, would you want to restore it? If so, what do you think it would take? Do you feel adequately safe and protected following the incident? If not, why not? What would make you feel safer?)
- Do you feel that justice has served through this process? If so, why/how? If not, why not, and what would have made you feel a greater sense of justice?

Questions Relating Specifically to Attitudes toward the Notion of Restorative Justice:

At the end of the first interview, a standard explanation of restorative justice will be given to each of the subjects. They will be asked to reflect on this concept to be followed up on during the second interview in order to determine their attitudes towards it. There will be a recap of the explanation to remind subjects of the concept of restorative justice at the beginning of the second interview. A brief description of the various approaches to restorative justice that are currently being tested in South Africa such as Family Group Conferences and Victim Offender Mediation will be included in the explanation to give subjects an idea about possible application. It will however be emphasized that these are not the only possible application, and that part of the study would be to try to determine whether there was an approach that would make all parties more comfortable bearing in mind the philosophy of restorative justice.

- Having had time to reflect on the notion of restorative justice, do you think that it is a way to bring about justice that you would have wanted used in your case. If so why, if not why not?
- Do you think that there are any (other) circumstances under which victims, perpetrators and community members might prefer a restorative justice approach? If so, under what circumstances do you think this approach would be most appropriate? Are there any cases where you do not think that restorative justice would be appropriate? Why not?

- If restorative justice had been used in your case, how would you have wanted it to be conducted? (Who should be present? Should there be a mediator? If so, who?)
- Would you feel comfortable being directly involved in the process (facing the victim/perpetrator/relatives, discussing each others circumstances and perspectives on the case, deciding on the form of restitution) or would they rather leave it in the hands of the state to conduct the case and pass judgment?
- Would you (victims/relatives of victims/perpetrators) feel adequately protected if they were involved in deciding on restitution to restore balance, especially after the meeting? If so, why? If not, why not and what measures could be in place to help victims feel better protected?
- Do you think that restorative justice approaches can help to build up relationships between victims, perpetrators and relatives? If so how? If not why not, and do you think that it could further harm relationships? If so why?
- What complications would you foresee in the application of restorative justice? What could be done to minimize the complications?
- Would you like to see restorative justice as the main way to deal with criminal cases for young offenders? If so, why? If not, why not?

ANNEX 2

E-mail scdsmidt@pgwc.gov.za
E-pos

Verwysing
Reference MA Student
Isalathiso



Navrae
Enquiries Dr Stan de Smidt
Imibuzo

Departement Maatskapiike Dienste en Armoedeverligting
Department of Social Services and Poverty Alleviation
iSebe leeNkonzo zeNtlalo noNtlalo noNciphiso lweNdlala

Telefoon
Telephone 021-483 4563
Ifowuni 083 6276 563

Ms A F Shearer
PO Box 795
CAPE TOWN
8000

Dear Ms Shearer

REQUEST FOR INFORMATION: MASTERS RESEARCH PROJECT

Approval is hereby granted for you to conduct your research within the Department. Please base with the district office manager when your are going to utilise resources.

Everything of the best with your studies and research

Regards

Signature removed

For HEAD OF DEPARTMENT

DATE 13/09/2004

Queen Victoriastraat 14
Privaatsak X9112
KAAPSTAD
8000
SUID-AFRIKA
Faks 27 - 21 483 4481

14 Queen Victoria Street
Private Bag X9112
CAPE TOWN
8000
SOUTH AFRICA
Fax 27 - 21 483 4481

ANNEX 3

(Letter of request to service providers for victims and perpetrators of youth crime to assist in selecting subjects for the research)

11/12 Hollymount
Clarens Road
P.O. Box 795
Sea Point
Cape Town
8060
Tel: (083) 356 9243
E-mail: she_ra61@hotmail.com

RE: REQUEST FOR SUPPORT IN SELECTION OF SUBJECTS FOR MASTERS RESEARCH ON RESTORATIVE JUSTICE

To whom it may concern,

My name is Ashley Shearar. I am currently a Masters student in the Department of Social Development, specializing in the field of Probation and Correctional Practice at the University of Cape Town. My aim is to conduct research on perceptions of members from the community, who have been in contact with the criminal justice system (as victims, perpetrators or relatives of both), on the notion of restorative justice as a means to deal with young offenders.

I have included a brief outline on the purpose of the study as well as the subjects I wish to gain information from. My request is whether you could assist in the selection of subjects for this study. I shall approach 5 randomly selected probation officers from different centers in the Western Cape. From each one I am requesting contact with one victim, one perpetrator, one family member of a victim and one family member of a perpetrator. Essentially, I require your support to facilitate my contact with the subjects. This would mean assisting to select them and putting me in contact with them, as well as to be available to provide back-up support in line with the services you already offer.

Please let me know whether it would be possible to meet to discuss this further. I plan to begin the interviews as soon as possible. Thanking you in advance for your cooperation.

Sincerely yours,

Ashley Shearar

(Basic background information for the study included in the letter of request above)

USING RESTORATIVE JUSTICE TO DEAL WITH YOUNG OFFENDERS IN THE NEW SOUTH AFRICA – INVESTIGATING ATTITUDES OF THE MAIN PARTIES INVOLVED: VICTIMS & PERPETRATORS²⁷

Crime has become a phenomenon in South Africa that affects every citizen in one way or another. In recent years, virtually every South African has either been a direct victim, a perpetrator, a relative of one or the other, knows of friends or neighbours that have been affected by crime or protect themselves from fear of becoming yet another statistic. According to Zehr & Mika (1997) "Crime is fundamentally a violation of people and interpersonal relationships" and should therefore be addressed accordingly. It is on this basis that the idea to test more restorative approaches to justice, particularly with regard to youth, has been suggested by various criminal justice advocates in South Africa.

The promotion of restorative justice has taken root in two notable pieces of South African legislation, namely the Probation Services Amendment Act (Act 116 [1991] Amendment Act 2002, and the Child Justice Bill (Bill 49[2002]). Central to this Bill is the promotion of restorative justice which aims to "entrench the notion ... in respect of children".

Despite the push by concerned members of government and civil society to find theoretical and philosophical justifications for promoting restorative justice in South Africa, there has been little direct consultation with the main parties who will ultimately be responsible for the content of the process: the victims, perpetrators and community members. To date there has been virtually no explanation of the theory to the public, particularly at a grassroots level in rural and/or disrupted communities.

One aspect that raises concern about the openness of South African's to accept the concept of restorative justice are the trends in attitudes of community members towards crime and criminals. Rather than seeing an increased willingness to reaccept criminals into society and to become involved in processes of rehabilitation and reintegration, violent vigilante responses to crime, including petty crimes committed by youth are on the increase. Vigilantism is also gaining public support as the crime rate remains high and state response is often inadequate or inappropriate. (Sekhanyane, M. & Louw, A. (2002):16)

These types of responses raise concerns about how vengeful victims will approach the opportunity to formulate restitution to restore justice. Therefore it seems that in many cases the attitudes of those affected by crime may not be conducive to bringing about the most tempered or fair results. In many cases decisions are made on the whims and emotions of the victims and

²⁷ This was one of the original titles for the research.

their relatives, which could lead to a variety of incoherent and inconsistent outcomes if there are no clear guidelines and safeguards when making suggestions on restitution. (Akester, 2003)

The need for safeguards does not only apply to the offenders, but also to the victims, who have been on the receiving end of the crime and the main party to be affected. For many victims, facing their perpetrators can be a highly emotionally charged occasion which may cause a range of negative feelings to surface.

Further complicating the application of restorative justice procedures is cultural diversity. Deep rooted inequalities and racial disparity from the past will continue to influence attitudes of various parties facing each other in a conference. Although cross cultural application will not be a focus of this study, it will be interesting to note whether it is an issue that emerges, given the cultural diversity in South Africa.

When designing restorative justice approaches that may be suitable in the South African context, service providers so far have mostly turned to its application elsewhere. The rationale of this study is based on the fact that little is known at this stage as to whether restorative justice would be a widely accepted approach in South Africa for dealing with young offenders, and if so under what circumstances and using what methodology. As Akester (2003) points out, there has to be some caution against "...new projects that start off with inspiring leadership and gradually deteriorate as the practice becomes more routine", which could eventually lead to confusion and perhaps a greater sense of injustice. When suggesting changes to the criminal justice system, it seems crucial that the public the system vouches to serve, has been well consulted and informed, and that the proposed alternative strategies have been thoroughly and critically explored in order to minimize possible shortcomings.

Therefore, whilst restorative justice becomes a viable option in the South African justice system, we need to take a step back to question how viable the main players would consider this philosophy as a means of dealing with young offenders, and if they do consider it viable, under what circumstances and using what approach.

UNITS OF ANALYSIS

For some, the interest in applying a restorative justice approach is largely based on a sense that anything is better than the existing criminal justice system. There is no doubt that any objective observation of the existing system would confirm that there is much room for improvement. However, there has been little empirical evidence in South Africa so far as to whether restorative justice approaches are sure to provide the alternatives that are going to bring criminal justice on track.

The purpose of this study is to focus on the main subjects that have been involved and affected directly by crime that could be called upon to participate in the process of restorative justice. These are the people that will be responsible for the content of the process, as well as for

determining the consequences of the actions which are supposed to repair the harm caused by the crime. This being the case, their attitudes and willingness to participate in such a process should be paramount in the decision to implement the concept of restorative justice.

The choice of subjects for this study is therefore people who have had experience with crime and the criminal justice process to

With the above in mind, the units of analysis that are proposed for this study are:

- **Arrested youth** who have been in contact with the criminal justice system and have been either sentenced or diverted, but have not participated in a restorative justice approach.

Five people will be interviewed **in each category (n=10)**. The intention is that the units of analysis represent a cross section of South African society, including race, gender and class. For convenience, the study will only be conducted in the Western Cape.

Purposive random sampling of victims and perpetrators will be conducted. In all cases there will have to be an expressed willingness of selected subjects to participate.

Back-up support will be discussed with both the interviewees and relative service providers, if any of the subjects feel it will be necessary.

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Zehr, H. & Mika, H. (Working draft 1997) "Fundamental concepts of restorative justice and related principles"

ANNEX 4

**RESEARCH AGREEMENT BETWEEN THE RESEARCHER AND THE
SUBJECT**

I, _____ agree to be interviewed on events surrounding my criminal case which will be recorded. I understand that the interview will include details about the case itself, as well as my contact with the criminal justice system. I shall also agree to give my views on the notion of restorative justice as a means of dealing with cases of youth in trouble with the law, based on my personal experience as well as my understanding of restorative justice. I consent to the fact that this information will be used for research purposes aimed at providing insight into ways in which the existing criminal justice system can be improved for victims and youth perpetrators.

I prefer to remain anonymous in the study (Y/N)

Date: _____

Signed:

SUBJECT

RESEARCHER

Meet Mr. & Mrs. Crystal Meth

*I destroy homes, I tear families apart
I take your children and that's just the start.
I'm more valuable than diamonds, more precious than gold
The sorrow I bring is a sight to behold.
If you need me, remember, I'm easily found
I live all around you, in school and in town.
I live with the rich, I live with the poor,
I live just down the street, and maybe next door.
I'm made in a lab, but not one like you think
I can be made under the kitchen sink,
In your child's closet, and even out in the woods.
If this scares you to death then it certainly should.
I have many names, but there's one you'll know best.
I'm sure you heard of me. My name's Crystal Meth.
My power is awesome, try me you'll see,
But if you do, you may never break free.
Just try me once, and I might let you go,
But if you try me twice, then I'll own your soul.
When I possess you, you'll steal and you'll lie.
You'll do what you have to do, just to get high.
The crimes you'll commit for my narcotic charms
Will be worth the pleasures you'll feel in my arms.
You'll lie to your mother, you'll steal from your dad.
When you see their tears, you must feel sad.
Just forget your morals, and how you were raised.
I'll be your conscience, I'll teach you my ways...*

(Excerpt from a poem on the effects of methamphetamine- Anonymous)