

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

**THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN
THE SENTENCING OF YOUNG OFFENDERS IN THE
NORTHERN CAPE.**

Elise Moorcroft

RHDELI 001

Submitted in accordance with the requirements for the

MAGISTER SOCIETATIS SCIENTIAE
(Dissertation only)

Degree in the

FACULTY OF HUMANITIES

(DEPARTMENT OF SOCIAL DEVELOPMENT)

UNIVERSITY OF CAPE TOWN

Supervisor : Dr. R. Graser

2006

TABLE OF CONTENTS

	Page
Abstract.....	i-ii
Acknowledgement.....	iii
 CHAPTER ONE: INTRODUCTION	
1.1 INTRODUCTION.....	1
1.2 HISTORICAL PERSPECTIVE.....	1
1.3 BACKGROUND.....	3
1.4 RESEARCH QUESTION.....	6
1.5 AIMS AND OBJECTIVES OF THE STUDY.....	6
1.6 MOTIVATION FOR THE STUDY.....	6
1.7 SIGNIFICANCE OF THE STUDY.....	7
1.8 OUTLINE OF THE DISSERTATION.....	8
 CHAPTER TWO: LITERATURE REVIEW	
2.1 INTRODUCTION.....	10
2.2 THE INTERNATIONAL FRAMEWORK AND DEVELOPMENTS IN YOUTH JUSTICE.....	11
2.3 RETRIBUTIVE JUSTICE.....	13
2.4 THE CONCEPT OF RESTORATIVE JUSTICE.....	17
2.5 RESTORATIVE JUSTICE IN THE SOUTH AFRICA CONTEXT.....	20
2.6 RESTORATIVE JUSTICE IN SENTENCING OF YOUNG OFFENDERS.....	21
2.6.1 The purpose of the Child Justice Bill.....	25

2.6.2	The objectives of the Child Justice Bill.....	25
2.6.3	General principles of the Child Justice Bill.....	26
2.7	CONCLUSION.....	27

CHAPTER THREE: METHODOLOGY

3.1	INTRODUCTION.....	28
3.2	THE MAIN OBJECTIVES OF THE STUDY.....	28
3.3	FOCUS OF THE STUDY.....	30
3.4	RESEARCH METHODOLOGY.....	32
3.4.1	Research Design.....	32
3.4.1.1	Qualitative Research.....	32
3.4.1.2	Quantitative Research.....	33
3.4.2	Focus of the study.....	34
3.4.2.1	The Children.....	35
3.4.2.2	The Judicial Officials.....	36
3.4.2.3	The probation Officers.....	38
3.4.3	Sampling.....	38
3.4.3.1	Probability Sampling	39
3.4.3.1.1	Judicial Officials	40
3.4.3.1.2	Probation Officers	40
3.4.3.1.3	Charge Sheets	41
3.4.4	Method of gathering information	41
3.4.5	Pilot Study	43
3.4.6	Method of data analysis	44
3.5	LIMITATIONS OF THE STUDY.....	45

CHAPTER FOUR: FINDINGS AND DISCUSSION

4.1	INTRODUCTION.....	47
-----	-------------------	----

4.2 FINDINGS.....	47
4.2.1 Profile of the respondents.....	47
4.2.2 Categories of respondents	49
4.2.2.1 Distribution of the various categories of respondents in the different centres	50
4.2.2.2 Distribution according to gender	51
4.2.2.3 Attitudes of respondents towards restorative justice	52
4.2.2.4 General knowledge of respondents regarding restorative justice	54
4.2.2.5 The implementation of restorative justice	55
4.2.3 The views of respondents regarding the effectiveness of the current criminal justice system in achieving the objectives of punishment.....	57
4.2.3.1 The extent to which the criminal justice system is effective in preventing crime	57
4.2.3.2 The extent to which the criminal justice system is effective in deterring offenders and potential offenders	62
4.2.3.3 The extent to which the criminal justice system is effective in protecting society	65
4.2.3.4 The extent to which the criminal justice system is effective in rehabilitating offenders.....	68
4.2.3.5 The role the victim should play in the justice system	71

4.2.4	The understanding of respondents of restorative justice and its application in the sentencing of young offenders.....	74
4.2.4.1	The understanding of respondents of the concept of restorative justice	75
4.2.4.2	Knowledge of the respondents on the main objectives of restorative justice	79
4.2.4.3	The extent to which restorative justice principles are considered when sentencing a young offender	82
4.2.4.4	The benefits of restorative justice for the victim	85
4.2.4.5	The benefits of restorative justice for the offender.....	89
4.2.4.6	The benefits of restorative justice for the community	92
4.2.4.7	Disadvantages of restorative justice for the victim	95
4.2.4.8	The disadvantages of restorative justice for the offender	98
4.2.4.9	The disadvantages of restorative justice for the community	101
4.2.5	Views of the respondents with regard to the implementation of restorative justice in the sentencing of youth offenders	104
4.2.5.1	Respondents' views on particular sentences that have restorative justice outcomes	104
4.2.5.2	Crimes which are appropriate for restorative justice	108

4.2.5.3 The respondents' views on crime that are inappropriate for restorative justice.....	111
4.2.5.4 Other views of the respondents' on applying restorative justice in respect of young offenders	114
4.2.6 The actual application of restorative justice In the sentencing of young offenders	118

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION.....	124
5.2 CONCLUSIONS.....	126
5.2.1 The attitude of respondents regarding the effectiveness of the current criminal justice system in achieving the objectives of punishment.....	126
5.2.2 The knowledge of the magistrates, prosecutors and probations officers on the implementation of restorative justice	127
5.2.3 Views with regard to the implementation of restorative justice in the sentencing of young offenders	129
5.2.4 Interpretation of the findings.....	131
5.3 RECOMMENDATIONS.....	132
5.3.1 Participatory training should be incorporated into the curriculum of the three main role-players.....	132

5.3.2 Improved communication to ensure uniform understanding of the concept restorative justice.....133

5.3.3 Improved relationship between judicial officials and probation officers towards effective and efficient implementation of restorative justice.....134

University of Cape Town

COMPULSORY 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.

Signed by candidate

Signature:signature removed.....

Date: 29/11/06

University of Cape Town

ABSTRACT

The aim of this study is to explore the attitudes of magistrates, prosecutors and probation officers to the implementation of restorative justice in the sentencing of young offenders. The study also explores the knowledge of the magistrates, prosecutors and probation officers about the implementation of restorative justice in the sentencing of young offenders. Lastly, it strives to investigate to what extent judicial officials and probation officers are implementing restorative justice in their sentencing practices.

The respondents comprised of magistrates, prosecutors and probation officers as well as court files for children under the age of 18 years at the following magistrates' courts: Kimberley, De Aar, Hopetown, Prieska, Groblershoop, Upington, Kathu and Postmasburg. The probability and non-probability sampling method was used.

The researcher mainly used the qualitative approach, which was reflected in the interview schedule, in terms of which the magistrates, prosecutors and probation officers were interviewed. Face-to-face interviews with the respondents took place and the interview schedules were independently completed by the researcher.

The quantitative dimension was the data collected from the court files for children under the age of 18 years. The tables reflect the nature of the offence, previous convictions and the type of sentence passed by the magistrates in selected magistrates' courts of the Northern Cape.

The study found that magistrates, prosecutors and probation officers know the objectives of restorative justice. But the respondents were not sure how to apply restorative justice during the sentencing phase. All respondents believed that restorative justice must be coupled with a sentence in terms of the

Criminal Procedure Act. The findings also indicated a lack of knowledge regarding restorative justice.

More structured workshops and training should be run and attended by all role players in the field of youth justice. Furthermore, the findings indicate that more collaboration was needed between judicial official and probation officers.

Another, factor that influenced the application of restorative justice is the different perception of the various role-players' regarding each other's responsibilities and duties, as well as uncertainties regarding the nature of restorative justice.

Therefore participatory training for magistrates, prosecutors and probation officers is necessary to implement restorative justice in their sentencing practices. This service is required by the Department of Justice, the Department of Public Prosecutions and the Department of Social Services and Population Development.

ACKNOWLEDGEMENTS

I hereby express my sincere gratitude to:

- My Heavenly Father for giving me strength to be able to complete this task
- Dr. R. Graser, my supervisor, for his guidance, commitment and expertise.
- The head of my department: Department of Social Services and Population Development and the University of Cape Town for financial assistance.
- The office managers of Kimberley, Mr. D. Whitebooi; Upington, Mr. M. October and De Aar, Mr. Ambross for authorizing this research with the probation officers.
- The Department of Justice for authorizing interviews with the magistrates in the Northern Cape.
- The National Prosecution Authorities for authorizing interviews with the prosecutors in the Northern Cape.
- All the probation officers, magistrates and prosecutors who participated in this research.
- Mr. T.W. Sithole for his motivation throughout this research.
- My colleagues, Valerie Lingham, Mariaan Moolman and Esther Pieterse for the various forms of support.
- Johan van der Westhuizen for his technical assistance
- My husband, children, family and friends for their love and support.

CHAPTER 1

PROBLEM FORMULATION

1.1 INTRODUCTION

In this chapter, the researcher will present a short historical perspective and the background to the research. Thereafter, the research problem will be formulated by stating the aims and the objectives of the study. Furthermore the chapter will cover the motivation for the study and its potential value. Lastly, it will outline the structure of the study.

1.2 HISTORICAL PERSPECTIVE

According to Wright (1991:11) "Some writers were of the opinion that victims fared better in the Middle Ages; they received compensation from the offenders". Wright further mentions that Howard Association pamphlets maintain that when a crime was committed "the property of offenders was taken away from them by the 'violent greed of the feudal Barons' and then punished them, but practically ignored the victim". (Wright, 1991:12)

In the early eighteenth century (1700-1799) poor offenders such as thieves, murderers and rapists were hung, drowned and even burnt, but offenders who were materially in a better position had to pay compensation to the victim. (Geis in Wright, 1991:13)

According to Wright (1991:14) under Edward I's reign, another theme appeared and the victim had two options of making a civil or criminal case. "It is

variously reported that 'angry litigants' preferred to settle purely civil causes of action by criminal proceedings: to gratify their desire for revenge."

It is also mentioned that there was a time in Europe during 1255 when victims could obtain compensation, but it happened that Henry III was in need of funds and "money collected from fines was equal to one - sixth of the king's revenue." These monies could have been paid to victims, instead of being paid to the king. By then (1327 - 1377) the monarchy of England grew so powerful that the king, Edward III, took over the judicial role. Instead of applying restorative justice to the offender, the offender was seen as a public enemy. "The first principle of the law of England on this subject is that every one, without exception has the right to use the Queen's name for the purpose of prosecuting any person for any crime." (Wright, 1991:17).

According to Wright, however, there were examples of mediation recorded in the seventeenth century (1600 - 1699) in Britain. In the eighteenth century, however, the victim initiated prosecution of offender, and also decided on the charges that were to be brought. The victim had a far more prominent role to play during those years.

In the nineteenth century the pendulum began to swing further in the victims favor. This allowed the criminal court to order the offender to pay compensation.

During the twentieth century in Britain attention was mostly given to the offender rather than to the victim. As noted by Wright (1991:42) "innovations, for example, legal aid, open prisons and the abolition of corporal punishment for offenders took up most of the attention of reformers". The victim was not considered in anything.

There is currently a total mindset shift on the role of the victim. Christie, in Van Ness and Heetderks Strong (1997:17) "proposes participatory justice as a better response to crime, a response characterized by a process of direct communication between owners of the conflict leading to compensation". During the 1990s The victims' movement was established, and it focused on three issues: firstly, "increasing services to victims; secondly, increasing the likelihood of financial reimbursement and thirdly, expanding victims' opportunities to intervene during the course of the criminal justice process". (Van Ness, D. and Heetderks Strong, K. 1997:20). The victim has now been emancipated to same degree.

1.3 BACKGROUND

At the start of the 21st century, South Africa is being faced with a sharp increase in crime and in fact the country currently has one of the highest crime rates in the world. Crimes such as murder, rape, robbery and housebreaking and theft have increased. Contributing factors leading towards the high crime rate appear to be poverty, lack of employment opportunities, lack of infrastructure and growing lawlessness in our country. The HIV/Aid pandemic resulted in children becoming orphans and street children. These children often need to commit offences in order to survive. In terms of the Juvenile Justice Model, young offenders in conflict with the law were treated as a "young adult" and were held responsible for his/ her actions.

From news headlines in newspapers, radio and television, it often appears that victims of crime are seeking harsher punishment for offenders, because they feel that this will prevent further crimes. They are demanding longer sentences to be imposed, more prisons to be built and for the death penalty to be re-instated. The researcher is of the opinion that in exceptional cases, where brutal violence was part of the offence, a sentence with punishment could be passed, but, reparation should definitely be part thereof.

The offender must be helped to take responsibility and to make right the wrong he or she has caused.

Although the Department of Social Services and Population Development (Probation Section) is only keeping monthly statistics on young offenders under the age of 18 years, it is clear from these records that there has been an increase in crime. Statistics of reported cases in Kimberley for July to December 2003 were compared with statistics kept for July to December 2004. There was an increase in reported cases from 115 to 187. These cases includes rape, housebreaking and theft, illicit drug trafficking and robbery. To emphasize the above, it is commonly known that prisons are overcrowded by 200% or even 300%. Clearly, this is an unacceptable situation, as such overcrowding does not promote rehabilitation of offenders. At the Kimberley prison, the youth section can only accommodate 26 people but during 2004 there were 108 young persons in that specific section. There was a high rate of incarceration of sentenced and unsentenced persons between the ages 14 and 18. This is no longer the case due to regular assessment of young offenders, (twice a month). This effectively means that children with minor offences such as theft are either sent to a place of safety or diverted into the care of the parents.

The Minister of the South African Police Services, Mr. Charles Nqakula, announced in the Afrikaans newspaper Rapport that from 1 March 2006 until the 31 May 2006, 1 809 people had been arrested for murder, 1 045 for attempted murder, 2 483 for rape, 244 for indecent assault, 3 127 for armed robbery and 2 773 for robbery. He furthermore stated that the current crime rate is unacceptably high.

In the past the juvenile justice model represented prosecution and punishment. It is evident that, from the high rate of incarceration, the increase in the current crime rate and the re-offending rate of offenders, the current criminal

During 1995 the government started to play a more direct role and the then Minister of Justice, Dullah Omar, appointed a committee under the auspices of the South African Law Commission to draft new legislation for the management of children charged with crimes. The process was officially announced to the South African public on 17 July 1995. The South African Cabinet has approved the Draft Child Justice Bill for introduction into Parliament in 2002. This Bill promotes restorative justice as a fundamental principle of juvenile justice reform.

The following section will discuss important literature on the international framework and developments in youth justice, retributive justice, restorative justice generally, restorative justice in South Africa and the objectives of the Child Justice Bill. Discussion will then follow on the implementation of restorative justice in the sentencing of youth offenders within the criminal justice system.

2.2 THE INTERNATIONAL FRAMEWORK AND DEVELOPMENTS IN YOUTH JUSTICE.

At present there is no specific legislation which governs the handling of young offenders. Magistrates, prosecutors and probation officers dealing with young people in conflict with the law have to work through a number of acts in order to find sections dealing with young offenders.

These acts are (1) Criminal Procedure Act (51 of 1977),

(2) Probation Service Act (116 of 1991),

(3) Probation Service Amendment Act (35 of 2002_ and

(4) Correctional Services Act (8 of 1959).

The United Nations Convention on the Rights of the Child (which was ratified by South Africa in June 1995) is the primary instrument guiding the development of child justice. It was used as foundation document for the framing of policy recommendations for the transformation of the child and youth care system (including the development of youth justice) for South Africa. (Interim Policy Recommendations, 1996:15) The Convention is the framework for a child rights approach. A national programme of action was launched to improve the welfare of children in South Africa and the Working Committee on Children in Detention was established. The Committee on the Rights of the Child, consists of international experts who oversee the implementation of the Convention.

Skelton points out that in the 1970s and 1980s children were regularly arrested and held in custody on charges relating to political activities. (Skelton 2002:496) She concludes that a number of political and human rights organizations came to the assistance of these children. In 1992 the Community Law Centre initiated the campaign *Justice for Children: No Child Should be Caged* and this raised national and international awareness. The release of all youth and children from detention in prison and police cells was demanded. The time had come for a separate justice system for young offenders. Guiding principles were set out to be followed by any court or person who exercises any power in terms of the legislation. This was formulated with reference to the United Nations Convention on the Rights of the Child, The Beijing Rules, The Organization of African Unity Charter on the Rights of the Child, The South African Charter of Children's Rights and the Constitution of South Africa.

The above mentioned as well as the drafting of new legislation for the management of children who are charged with crimes, culminated in the Child Justice Bill, which the South African Cabinet approved for introduction into Parliament in 2002. It was tabled before Parliament in 2003. One of the

objectives of the Act is to promote *ubuntu* and one of the aims of the new system is to divert as many children as possible. (Skelton 2002:497)

2.3 RETRIBUTIVE JUSTICE

Field and Zehr - in Bazemore - maintain that the term “retributive justice” is used to describe a “paradigm whose focal concerns include a primary emphasis on the value and priority of punishment, a lesser emphasis on rehabilitative goals, a central emphasis on desert as the primary rationale for decision making.” (Bazemore 1996:38.)

Bazemore (1996) stated that for more than a decade, the paradigms of individual treatment and retributive justice have set priorities for juvenile justice interventions. He furthermore concludes that there are some obstacles to develop a victim-focus in offender-driven justice system.

There is no separate criminal court for children in South Africa and this may be the reason why juvenile courts were found to be a quasi-welfare agency. The assumption was that delinquency should be viewed as symptomatic of underlying disturbances while the seriousness of the offence was seen as less of an issue. Treatment of young offenders was mainly based on the assumptions of the medical model. (Rothman in Bazemore 1996:40). The individual treatment model has been fairly and unfairly criticized as ineffective, and since the 1970s only a few juvenile justice professionals still endorse the medical model.

Probation officers are concerned that recommendations for diversion of children away from the criminal justice system are not constantly adhered to. These children stand trial and are convicted. Focus is then on retributive justice instead of the new paradigm of restorative justice. According to Zehr (1995:80) “Instead of concentrating on the actual harm done and on what the

victim and the offender have experienced, we focused on the act of breaking the law". The needs and the wounds of both the victim and the offender were neglected throughout the criminal justice process.

The author further holds the view that retributive justice concentrates on the crime and not the effects of the crime on the victim. One might argue that the effectiveness of the punishment is of no more than secondary importance.

According to Walgrave (1995) "Crime is mystified and mythologized, creating a symbol that is easily manipulated by politicians and the press, and the phenomenon of crime becomes larger than life". The phenomenon of crime should not become larger than life and Walgrave (1995:228) argues that it is essential that the harm inflicted by criminal law must be proportional to the harm caused by the offence. If not, this results in children being placed in places of safety rather than releasing them into the parents' custody, or that children with minor offences are sometimes sent to prison to await trial.

In 1995 Walgrave analysed the pure retributive approach and reveals some of its weaknesses:

- "(i) It is based on a naïve view of humankind, supposing people to be possessed of completely free will to choose whether to integrate into society or not.
- (ii) If the point of retribution is to restore the moral balance, it must be asked what morality we are dealing with.
- (iii) There can be no intervention on the grounds of a principle which does not examine the effect of that intervention on social system."

(Walgrave 1995:228)

According to Zehr, the attempts to reform the retributive process and the conclusion that nothing has come of these reform efforts is inaccurate. "Prisons themselves were originally promoted as a humane alternative to corporal and capital punishment." (Zehr 1995:63)

The answer to why changes intended as reforms are so often unsuccessful lies in our shared understanding of what crime and justice is all about. Zehr (1995:64) claims that "..... we find considerable diversity even among criminal justice professionals. Judges, for example, show tremendous variety in their perceptions about what outcomes are appropriate and why. This is a major reason behind the serious lack of uniformity in sentences. The range in outcomes is breathtaking. Each judge, each prosecutor, each probation officer operates according to his or her own understandings of what is appropriate." This often leads to children with minor offences being sentenced to imprisonment.

It is therefore necessary, as mentioned by Considine, "to discover a philosophy that moves from punishment to reconciliation, from vengeance against offenders to healing for victims, from alienation and harshness to community and wholeness, from negativity and destructiveness to healing, forgiveness and mercy." (Considine 1999:10)

Retributive justice is unevenly meted out and research shows that:

1. Deterrence is only effective in certain conditions and for certain offences;
2. It would be more the exception if the offender reforms;
3. The victim's rights are not central to retributive justice;
4. Crime is seen as a violation of the state. (Zehr 1990:80-82)

In order to strengthen the above mentioned argument, Zehr concludes with the following statement of retributive justice.

Zehr, as quoted by Holtquist, sees the retributive paradigm as follows:

- “1.1 (1) Crime violates the state and its laws;
- (2) Justice focuses on the establishment of guilt;
- (3) The process of establishing guilt is adversarial and occurs by proxy;
- (4) This adversarial process declares a winner and a loser and makes rules of supreme importance;
- (5) Once guilt is established, pain is inflicted upon the offender in measured dose;
- (6) With the establishment of guilt and the application of pain, a stigma is imposed that is unremovable.” (Holtquist 1999:64)

Even with harsher punishment, it is evident from statistics and newspapers that crime is on the increase and remain high in South Africa. Young offenders under the age of 18 years are more and more involved in serious crimes. Overcrowding of prisons creates more crime within the prison instead of having a rehabilitative effect on the young offender.

Considine argues that, for two reasons, none of these ideals are being achieved in the current retributive system: “One reason is that the social structures are so inherently unjust that achieving such ideals is impossible without social transformation. The other is that the current criminal justice system focuses primarily on punishment.” (Considine 1999: 18 - 19) He, therefore, is of the opinion that the relationship between criminal justice and punishment needs to be re-examined, because punishment is legal violence.

It is, therefore, necessary to search for solutions which promote repair, reconciliation and re-assurance. The offender must be helped to take responsibility and to make right the wrong he has caused.

2.4 THE CONCEPT OF RESTORATIVE JUSTICE

Bazemore indicates that Restorative justice may be viewed as a component of public problem solving and community participation. It is also closely linked to emerging theoretical perspectives on the role of meaningful sanctioning and the importance of citizen involvement in response to crime and enforcement of community norms. (Bazemore, 1996:44). Restorative Justice as a theory of justice relies on reconciliation rather than on punishment. Its purpose is to identify responsibilities, meet needs and promote healing. The aim is to restore what has been lost through the offence and to promote healing and then society must respond appropriately.

According to Van Ness and Heetderks Strong (1997), the term “restorative justice” was first used by Albert Eglash in an article in 1997. Eglash suggests that there are three types of criminal justice:

- (1) retributive justice based on punishment;
- (2) distributive justice based on therapeutic treatment of offenders; and
- (3) restorative justice based on restitution.

Eglash noted that both the punishment and treatment models, focus on the action of offenders. Restorative justice on the other hand focuses on the harmful effects of offenders’ actions, and actively involves both victims and offenders in the process of reparation and rehabilitation (Van Ness, D and Heetderks Strong, K 1997:24).

Van Ness mentions that different persons give different meanings to restorative justice. Zehr (in Van Ness et al.1997) explains restorative justice as follows: “Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation and re-assurance.” (Van Ness, D and Heetderks Strong, K 1997:24)

According to Van Ness and Heetderks Strong (1997:24) “Wesley Cragg describes restorative justice as a process: ”Resolving conflicts in a manner that reduces recourse to the justified use of force”. Martin Wright adds that instead of causing more harm to the offender, the situation must rather be restored. (Wright. 1991) This will result in the offender to be held accountable and also to repair his wrong doing. Not only will the emphasis be on the outcome but also the process that respects the feelings and humanity of the victim and the offender.

Holtquist interprets restorative justice as follows:

- “(1) Crime violates people and relationships;
- (2)Justice focuses on the identification of needs and obligations resulting from the harm inflicted on people and relationships;
- (3) Justice encourages dialogue and mutual agreement, giving victims and offenders central roles in addressing the needs and obligations caused by the harm inflicted;
- (4) Justice for the victim, the offender, and the community is measured by the restoration of ‘right relationship’;
- (5) Justice is judged by the extent to which responsibilities are assumed, needs are met and healing of individuals and relationships is fostered;
- (6) Stigma is removable”. (Holtquist 1999:65)

To emphasize the above statement, Holtquist also mentioned that the victim needs to be reassured, repaired, vindicated and empowered. It is, therefore, necessary that restorative justice should be based on the assumption that response to crime cannot be effective without the involvement of the victim, offender and the community. Empowering the victim is about making it possible for a victim of crime to heal and move on from the crime with the least possible harm or loss. (Holtquist 1999:65)

It is also in the best interest of the young offender to address the injuries of the offender. Van Ness indicates that these injuries can either be contributing to the crime or be a result from the crime, but nevertheless he is not arguing that offenders be relieved of their accountability. The offender injuries should also be addressed because, it has sometimes been argued that some victims of child abuse become abusers themselves. (Van Ness and Heetderks Strong 1997:32 - 34)

Diane LeReche quoted by Ross view restorative justice as a “way of handling disagreements that helps mend relationships and provides solutions. It deals with the underlying causes of the disagreement.” (Ross 1996:27)

According to Skelton (Skelton 2002:498), Bishop Desmond Tutu mentioned in an interview about the Truth and Reconciliation Commission that retributive justice is largely Western and that the African understanding is far more restorative. Thus, we need sentencing options that are in the best interest of the child and the principle of custody is the last resort. “The justice we hope for is restorative of the dignity of the people.” (Skelton 2002:498)

2.5 RESTORATIVE JUSTICE IN THE SOUTH AFRICA CONTEXT

This section will discuss the concept of restorative justice and the benefits of adopting that approach in the criminal justice environment in South Africa.

Batley in *Beyond Retribution*, argues that there are a number of definitions of restorative justice, but they all contain the following three principles:

- “Crime is seen as something that causes injuries to victims, offenders and communities. It is in the spirit of ‘ubuntu’ that the criminal justice process should seek the healing of breeches, the redressing of imbalances and the restoration of broken relationships.
- Not only government, but victims, offenders and their communities should be actively involved in the criminal justice process.
- In promoting justice, the government is responsible for preserving order and the community is responsible for establishing peace.”

Rev. Don Misener, in Batley, formulated “five R’s” from a specifically Christian perspective, that could be practiced within restorative justice. It connects the offender with those who have been offended and makes the healing of the broken relationships possible. The five R’s are:

- Facing reality.
- Accepting responsibility.
- Expressing repentance.
- Knowing reconciliation.
- Making restitution. (Batley 2005:22).

The question arises what restorative justice could offer South Africa. According to Batley not only can restorative justice provide a practical, coherent and sound response to the moral challenge presented by crime, but this form of justice offers a practical way for families and communities to get involved in responding to crime. (Batley 2005:23)

Although restorative justice can play an important role in South Africa's crime prevention efforts it is necessary to consider the charges against this approach. It is commonly known that: "restorative justice does not fit the thinking of legal practitioners, restorative justice is a soft option that ignores the need for punishment, it leads to net widening in that more offenders get drawn into the system than would otherwise be the case, restorative justice is not appropriate for dealing with more serious cases such as rape, murder and domestic violence and restorative justice overlooks and minimizes the seriousness of crime." (Bratley 2005:24) It is furthermore argued that the mentioned charges have its shortcomings, but restorative justice can addresses some of the shortcomings. Restorative justice creates opportunities for the participation of victims, perpetrators can be confronted with the real consequences of their actions and take responsibility for their wrongdoing.

Restorative justice principles are applied across the world and according to Bratley (2003:42) "points to the creativity that is possible". Therefore restorative justice is a challenge for South Africa and judicial officials and probation officers as well as other practitioners should be prepared to experiment with restorative justice

2.6 RESTORATIVE JUSTICE IN THE SENTENCING OF YOUNG OFFENDERS

There is a scarcity of recent literature on the topic of sentencing youth offenders, bearing in mind that the Child Justice Bill has not been passed as yet.

It is commonly known that retributive justice focuses on punishment as deterrent, especially, imprisonment. Nevertheless, as Bazemore stated, for

more than a decade, the paradigms of individual treatment and retributive justice have set priorities for juvenile justice intervention and fixed the parameters of the policy debate about the juvenile court. (Bazemore 1996:40) Furthermore, overcrowding of prisons creates more crime within the prison, counteracting any possibility for rehabilitation of the young offender.

Skelton mentions that, in South Africa, restorative justice was first promoted by a non-governmental organization, mainly the National Institute for Crime Prevention and Reintegration of Offenders (NICRO). In 1995, an interim policy document was drawn up by the Inter-ministerial Committee on Young People at Risk, to bring about the transformation of the child and youth care system. Simultaneously, the transformation of probation services took place and started focusing on restorative justice.

As part of the transformation of the child and youth care system, rendering of programmes for the combating of crime and the rendering of probation services in dealing with young children, the Probation Service Act was amended to include “restorative justice as part of appropriate sentencing and diversion option.” (Probation Service Amendment Act. No 35 of 2002.) This made it easier to promote restorative justice as a fundamental principle of juvenile justice in the sentencing of youth offenders. (Skelton 2002:496)

According to Branken and Batley “People involved in setting up and running family group conferences should bear in mind that while restorative justice is the philosophy on which family group conferences are based, this is largely foreign to criminal justice staff, who have been trained and socialized firmly within a retributive philosophy.” (Branken and Batley 1998:42). The South African judges and magistrates generally receive no formal training in sentencing criminal offenders. The lack of training in the sentencing of offenders and the lack of information on offender’s, contribute to critics to referred to sentencing in our courts as a “shot in the dark”; “haphazard

process”; or the “rule of thumb”. (Graser, 1981:24). Throughout the criminal justice process the needs of both the victim and the offender are neglected and amongst judicial officials there are differences in their perceptions about what outcomes are appropriate and why. Not only is there a serious lack of uniformity in sentences but magistrates act according to the Criminal Procedure Act, where restorative justice is not provided for.

As mentioned by Skelton the Child Justice Bill supports reconciliation by means of a restorative justice response, and involves parents, families and victims. Restorative justice is defined in the Bill as follows: “Restorative Justice means the promotion of reconciliation, restitution and responsibility through the involvement of a child, the child’s parents, family members, victims and communities.” (Skelton 2002:502) The Probation Service Amendment Act (35 of 2002) emphasizes the importance of a restorative approach by stating that restorative justice is “a response to crime that does nothing about those injuries or that seeks to repair the wounds of only one of the parties, will also fall short of restorative justice”. (Probation Service Amendment Act (35 of 2002:4)

In terms of the Probation Service Amendment Act, the powers and duties of probation officers also include the process of developmental assessment that is necessary if restorative justice is recommended as part of appropriate sentencing and diversion option. “The Minister may in respect of different categories of persons, establish or cause to be established programmes or services which are aimed at:

(l) restorative justice as part of appropriate sentencing and diversion options.” (Probation Services Amendment Act No. 35 of 2002:4)

Developmental assessment is about how the young person can be most effective in that particular situation at that particular time. This effectively means “can the person make the most effective decision possible for self and for others which will enable him or her to move forward towards a greater

sense of well-being and wholeness". Inter-Ministerial Committee 2000:8) This approach is also about highlighting strengths, to build on strengths, to understand the young person and to make an effective recommendation with regard to the least restrictive, most empowering option. Assessment applies to all four levels of the child and youth care system and therefore recommendations of restorative justice as part of appropriate sentencing or a diversion option is included in the process of developmental assessment.

According to Bazemore "Punishment may satisfy the public need for retribution, but it may also have counter deterrent and other negative side effects." Bazemore (1996:42) It is also evident that punishment may encourage lawbreakers to focus on themselves rather than their victims. The offender takes the punishment without taking responsibility for his or her wrongdoing.

Although punishment as a deterrent is inadequate in the public mind, it is at least somewhat interrelated to the offence. This means the offender must be punished in one way or another for his wrongdoing. According to Bazemore "treatment, on the other hand, appears to be related solely to the needs of the offender. But punishment and treatment are not the only options for juvenile justice. It is possible for example, to envision a more empowering, effective and marketable rehabilitative agenda that is also consistent with a non-retributive approach to sanctioning." (Bazemore and Maloney. 1994:42)

Restorative justice in the sentencing of young offenders, in that particular situation depends not only on the support of the victim and the offender. Muntingh, in Sloth-Nielsen, also proposes that the principles can be used to identify good practice: "Firstly, the sentencing option needs to present a real alternative to custodial sentencing. Secondly, the sentencing option must be feasible within a developing country and thirdly, sentencing should be sustainable through intersectoral and civil society". (Sloth-Nielsen et al. 2004:87)

To emphasize the importance of the restorative justice approach in the sentencing of youth offenders, it is necessary to mention the purpose, the objectives and some of the principles of the Child Justice Bill.

2.6.1 The purpose of the Child Justice Bill.

The purpose is to establish a criminal justice process for those children:

- “accused of committing offences so as to protect the rights of children entrenched in the Constitution and provided for international instruments;
- to provide for the minimum age of criminal capacity of such children;
- to incorporate diversion of cases away from the criminal procedures as a central feature of the process;
- to establish assessment of children and a preliminary inquiry as compulsory procedures;
- to provide that children must be tried in child justice courts and to extend the sentencing options available in respect of children and
- to entrench the notion of restorative justice in respect of children.”

(Child Justice Bill 2002:2)

In the Child Justice Bill, the sentencing options set out four pillars namely: community based sentences, restorative justice sentences, sentences involving correctional supervision and sentences with a compulsory residential requirement.

2 6.2 The objectives of the Child Justice Bill.

The objectives were initiated and written by civil society, which makes them appropriate to the child, the family and the community. This effectively means

that the views of the public were requested and their input incorporated in the objectives.

The objectives of the Bill are to:

- “to protect the rights of children as contemplated in section 28(1)(g) and (h) of the Constitution;
- promote ‘ubuntu’ in the child justice system through-
 - fostering children’s sense of dignity;
 - reinforcing children’s’ respect for human rights;
 - supporting reconciliation by means of a restorative justice response; and
 - involving parents, families, victims and communities in child justice processes.
- promote co-operation between all governments departments and other organizations.

2.6.3 General principles of the Child Justice Bill.

The Child Justice Bill promotes a separate restorative justice system that runs alongside the current criminal justice system. An overview of the general principles is provided below in order to emphasize that the rights of the child should be a priority and that any court or person performing any function in term of the Bill must be guided by the principles:

- “Every child must as far as possible be given an opportunity to respond before any decision affecting him is taken.
- Every child should be addressed in a manner appropriate to his or her age and taking into account his or her cultural views.
- Every child has the right to maintain contact with his or her family, and to have access to social services.”

When taking into account any decisions regarding the release of a child from detention, preference must be given to the release of a child into the care of the parents/guardians or an appropriate adult. The above mentioned principles are already adhered to even though the Child Justice Bill has not yet been enacted.

2.7 CONCLUSION

Barberton, in Skelton, argues that, once the Bill is passed and put into operation, more than half of the offences brought to the system will be diverted. (Skelton 2002:505). She concludes that, as the system develops and restorative justice results are demonstrated throughout the country, the number of diversions to restorative justice, and restorative justice in the sentencing of youth offenders is expected to increase.

Although some research has been conducted previously on restorative justice as an approach, the researcher is of the opinion that, as yet, little research has been conducted on the implementation of restorative justice in the sentencing of youth offenders in South Africa.

CHAPTER 3

METHODOLOGY

3.1 INTRODUCTION

The research was undertaken during the period of May to October 2005. The units of analysis of this study are the District Court's magistrates and prosecutors, the Regional Court's magistrates, the prosecutors at selected courts in the Northern Cape Province, and the probation officers at the Department of Social Services who are stationed at these selected courts.

The research problem was the implementation of the restorative justice process in the sentencing of young offenders. As a result, the researcher set out to explore the following: the attitudes of the magistrates, prosecutors and probation officers regarding this matter; the implementation of restorative justice in their sentencing practice; and insight regarding implementation of restorative justice in their sentencing practice.

3.2 THE MAIN OBJECTIVES OF THE STUDY

The main objectives of the study are:

- To explore the attitudes of the magistrates, prosecutors and probation officers to the implementation of restorative justice as a sentencing option.
- To determine the extent of their insight and knowledge on the part of the relevant role players mentioned regarding the implementation of restorative justice in the sentencing of young offenders.

- To investigate to which extent the judicial officials and probation officers apply restorative justice in their sentencing practices.

To explore the attitudes of magistrates, prosecutors and probation officers, questions relating to the effectiveness of the current criminal justice system were inquired into. Questions relating to the magistrates', prosecutors' and probation officers' understanding of restorative justice, as well as the benefits and disadvantages thereof will determine the extent of their insight and knowledge regarding the implementation of restorative justice in their sentencing practices.

The third objective is to investigate to which extent the judicial officials and probation officers apply restorative justice in their sentencing practices. The most important points formulated were their views on which sentences have restorative justice outcomes and which crimes are inappropriate for the restorative justice approach.

Appendix A summarizes the questions covered during the interview, and shows how they were formulated in relation to the above-mentioned objectives.

3.3 FOCUS OF THE STUDY

As indicated above, the research focused on exploring the attitudes of magistrates, prosecutors and probation officers to the implementation of restorative justice in the sentencing of youth offenders, as well as the extent of their knowledge of this concept. It also examined to what extent judicial officials and probation officers apply restorative justice in their sentencing practices. Consequently, the researcher took an inductive research approach. It started with set research questions that sought to gain insight into the implementation of restorative justice in the sentencing of young offenders on the part of magistrates, prosecutors and probation officers in the Northern

Cape Province. According to De Vos: "Inductive research is conducted in an unstructured fashion, in order to observe behavior and behavior patterns" (De Vos 2001:330). During such types of interviews the researcher watches, listens, observes and asks clarifying questions. The researcher can also review tape recordings after the interview, if respondents were asked to elaborate on certain aspects. The mentioned method was used to verify written information gained during the interview.

Brown, in Mouton (2001:51), points out that "the orientation of the practitioner-researcher suggests that topics for social work research, for example, should come from day-to-day activities and interactions in the work situation." The researcher is employed as a Regional Probation Coordinator and a Sentence Recommendation Officer for young children in conflict with the law at the Department of Social Services and Population Development in Kimberley, whose aims are early intervention, rehabilitation and crime prevention. In carrying out my duties, I have encountered probation officers, magistrates and prosecutors who have expressed concern about not having enough sentencing options for children under the age of 18 years. Due to the shortage of resources in the Northern Cape Province, that is, with no reformatory schools and no schools of industries, the magistrates cannot sentence children to these facilities. Having been involved in probation services for a number of years, the researcher thus felt that it was necessary to evaluate the implementation of restorative justice in the sentencing of youth offenders.

According to Mouton (2001:53): "We often formulate research problems in the form of questions as a way of focusing the research problem. An empirical question addresses a real-life problem. To resolve an empirical question, we have to collect new data.

The research problems were expressed in terms of the following four questions:

- (1) What do the role-players (magistrates, prosecutors and probation officers) know about restorative justice?
- (2) What is the attitude of role-players towards using restorative justice in the sentencing of young offenders?
- (3) To what extent do the role-players apply restorative justice in their sentencing practices?

The research was done by means of face-to-face interviews in order to find answers to the above-mentioned questions. Furthermore, the research also included studying the court dockets of young offenders (under the age of 18 years) for the period of July to December 2004.

It was evident from statistics, that for a three-month period (October - December 2004) the implementation of restorative justice as an approach in sentencing was not adhered to by judicial officials and probation officers. The researcher discussed the implementation of restorative justice as an approach with probation officers; but the implementation thereof only became clear once court documents had been studied and recommendations as well as sentences had been identified by the researcher. It is also possible that with oppression on the side of the probation officers the high number of assessments and pre-sentence reports, the shortage of probation officers, and pressure from court can result in probation officers making recommendations that are not in the best interests of the child.

The researcher feels that exploring the implementation of restorative justice in the sentencing of young offenders and gaining clarity on the concept of restorative justice will lead to more recommendations in favor of it and to the improvement of service delivery.

3.4 RESEARCH METHODOLOGY

Three types of research methods were used in this research. The first, documentary evidence. The documentary evidence consists of court files obtained from the clerk of the court on sentencing practices as well as literature on sentencing options.

The other two methods, qualitative and quantitative, will be discussed more extensively below.

3.4.1 Research Design

3.4.1.1 Qualitative Research

The qualitative research design was used because it is seen as a multi-perspective approach that includes social interaction, description and interpretation. According to De Vos (1998:338) there are different strategies of data analysis. One is constructing typologies, which includes the emic and the etic approach. An important characteristic of the emic approach is that it is focused on understanding people within their own context. In this research study, then, the magistrates', prosecutors' and probation officers' personal perspectives on the concept and implementation of restorative justice in sentencing were explored. The main characteristic of the etic approach is that it is connected to the researcher's own concepts and according to De Vos (1998:338) "focuses on secondary concepts." Therefore, the researcher did not use the etic approach. (1998:338)

De Vos argues that qualitative research design differs from quantitative design in that it usually does not provide the researcher with a step-by-step plan to follow (De Vos 2001:252). It was for this reason that the researcher identified magistrates' offices where the magistrates could easily be reached. According to Babbie and Mouton, the qualitative researcher "attempts always to study

human actions from the perspective of the social actors themselves. The primary goal of studies using this approach is defined as describing and understanding rather than explaining human behavior.” (Babbie and Mouton 2001:270) Such a researcher would use certain methods of gaining access to research subjects, for example semi-structured interviews and personal documents. According to Babbie and Mouton, the qualitative researcher normally takes an inductive approach to his or her object of study. Rather than beginning with an existing theory or hypothesis, the qualitative researcher begins by immersing him- or herself in the natural setting, and describing events as accurately as possible, as they occur, seeking to make sense of the observations. (Babbie and Mouton 2001:273).

The qualitative aspect of the research was reflected in the schedule in terms of which the magistrates, prosecutors and probation officers were interviewed. Questions were designed to elicit information on the three themes of the study, namely the attitudes of judicial officials and probation officers; the implementation of restorative justice; and the use of restorative justice in their current sentencing practices.

3.4.1.2 Quantitative Research

Thyer in De Vos (2001:123) views a quantitative research design as a blueprint or detailed plan for how a research study is conducted. This definition is accepted as a point of departure for the present study. The objective of quantitative research herein is thus to gain insights into whether restorative justice is currently applied in the sentencing of young offenders.

Babbie and Mouton claim that, “in their classic methodology text of 1966, Campbell and Stanley rejected the ‘one-shot case study’ as having almost no scientific value. This judgement by two prominent quantitative scholars of the time has perhaps been one of the main reasons why - until very recently, case

studies have been viewed by many social scientists as being less than scientific” (Babbie and Mouton 2001:280).

The quantitative dimension was the data collected from the court files for children under the age of 18 years who are in conflict with the law. A database was developed, using Microsoft Excel. The tables reflect the nature of the offence, previous convictions and the type of sentence passed by the magistrates in various magistrates’ courts of the Northern Cape.

3.4.2 Focus of the study

The research was conducted at the following magistrates’ court: Kimberley, De Aar, Hopetown, Prieska, Groblershoop, Upington, Kathu and Postmasburg. Magistrates and prosecutors of both the district courts and the regional courts were involved. As the Regional Probation Coordinator, the researcher has regular contact with magistrates and prosecutors regarding probation issues. The probation officers at the Regional Office of Kimberley, Upington and De Aar were also included in this study. The researcher has access to the charge sheets and dockets, which are kept and updated by the clerks of the various magistrates’ courts in the Northern Cape. Permission was requested and obtained from the Regional Court President, the Chief Magistrate, the Director of Public Prosecution, the Head of Social Services and Population Development, the Regional Heads of Social Services and Population Development, and the Regional Probation Coordinators in order to interview the relevant role players. Permission was also requested from the relevant magistrates’ court involved in the research to gain access to the court files’ charge sheets.

The Kimberley Magistrates’ Court was selected, as Kimberley is an important urban area and because it is the largest court in the Northern Cape. Furthermore, the researcher is situated in the Kimberley Court and thus the respondents could all be reached easily. This location was chosen because it meant that research would not be excessively time-consuming, or require

traveling and additional expenses. Upington Court was also selected as another urban area, because it is the second largest court in the Northern Cape province, with its own district and regional court magistrates. Upington is about 420 kilometers north-west from Kimberley and thus within traveling distance.

Groblershoop was selected as one of the rural areas. As it was on the way to Upington, it was furthermore cost-effective to include Groblershoop in the study because no extra traveling cost was involved.

De Aar, Postmasburg, Prieska and Kathu are all situated in the rural areas in different regions in the Northern Cape Province within a radius of 300 kilometers from Kimberley and could be reached and the research done within a day or two.

3.4.2.1 The Children

The documentary evidence, consisting of the young offenders' individual files, is stored manually at the registration section of the Department of Social Services and Population Development. The charge sheets are stored at the Department of Justice. The original "J7" (detention order) is kept in the file together with the probation officer's report, the list of previous convictions, the offence, the recommendation by the probation officer and the sentence passed by the magistrate. The charge sheet usually contains information such as the thumbprint of the accused and the different names used by him or her.

The sample included offenders:

- from July 2004 until December 2004;
- under the age of 18 years;
- where probation reports were requested, and

- whose cases had been finalized and whose sentence had been passed by the court.

The charge sheets of young offenders under the age of 18 years are not kept separate from those of the adults. As a result, there were hundreds of charge sheets to work through and, due to time limitations, it was impossible to go through all of them.

Probation coordinators at the selected courts were requested to advise the researcher of the court case numbers of offenders who were awaiting trial. This was done because probation coordinators keep registers of all children awaiting trial and of all cases where probation officers' reports are requested. The clerks of the different courts were extremely helpful in obtaining the charge sheets and handing them to me on my arrival.

The limitation of this method was that not all the young offenders were involved in the research. Offenders whose cases were withdrawn were not part of the research either. Lastly, it is not certain if probation reports are in fact automatically requested for all offenders under the age of 18 years.

3.4.2.2 The Judicial Officials

The magistrates were selected according to the already identified magistrates' court in the Northern Cape Province. A letter was sent to the Chief Magistrate well in advance to obtain permission for the interviews of the district court magistrates and individual letters were sent to the magistrates of the selected magistrates' court to arrange dates for the interviews to take place. The same procedure was followed when writing a letter to the Regional Court President to obtain permission for the interviews of the regional court magistrates. A copy of the letter of permission written by the Chief Magistrate was attached thereto. The researcher asked for a response within 4 weeks, and only the magistrate from the Prieska Magistrate's Office responded to make an

appointment. The researcher had to make telephonic contact with the magistrates and prosecutors of all the other courts to set up appointments with them.

A magistrate at the Groblershoop Magistrate's Office refused to grant the researcher an interview. After interviewing the prosecutor, however, the researcher nonetheless visited the magistrate, introduced herself, and explained the purpose of the research. I explained that the researcher would interview the magistrate in his language of preference. The magistrate became co-operative, asked the researcher to explain the concept of restorative justice, and allowed the interview to take place.

Although appointments had been made with magistrates, some magistrates asked the researcher to come back in the afternoon or even the following day. In Upington, for instance, the magistrates and the prosecutors requested the researcher to reschedule the interview to the afternoon because they had a very busy schedule that day. It was later discovered, however, that the magistrates' office had phoned the probation coordinator and requested her to visit the office and explain the concept of restorative justice to them.

Despite the fact that appointments had been made with the prosecutors at the Upington Court, they were difficult to reach. The researcher had to come back four to five times to interview them.

In contrast, the judicial official and probation officers in De Aar and Hopetown were very helpful and cooperative. The researcher had to reschedule the interviews with the judicial officials and probation officers in the De Aar region to a later date due to illness on the part of the researcher.

3.4.2.3 The Probation Officers

The probation officers of the Department of Social Services and Population Development were selected according to their geographical area and the courts in which they work. Probation officers come into contact with young offenders in the early stage of arrest and thus know the children's circumstances when they appear in court. It is the task of the probation officer to write pre-sentence reports for the court and to make recommendations for sentencing.

The Probation Services Amendment Act No. 35 of 2002 allows a probation officer to recommend "restorative justice as part of an appropriate sentencing and diversion option". It was the intention of this study to determine to what extent this was being done in practice.

3.4.3 Sampling

Kerlinger in De Vos (1998:190) defines sampling as:

"taking any portion of a population or universe as representative of that population or universe. This definition does not say that the sample taken - or drawn, as researchers say - is in fact representative. It says, rather, taking a portion of the population and considering it to be representative."

It is impossible to study every single case that one finds interesting and therefore the probation coordinators were requested to give the court case numbers of the offenders awaiting trial to the researcher.

It is important to mention that qualitative and quantitative researchers approach sampling differently. The quantitative researcher's primary goal is to have a representative sample. The qualitative researcher's primary purpose of sampling is to collect cases or events that will clarify and deepen the researcher's understanding of the subject matter. Reid and Smith in De Vos

state: “the major reason for sampling is feasibility. Even if it were theoretically possible to identify, contact and study the entire relevant population, time and cost considerations would often make this a prohibitive undertaking.” (De Vos 1998:191)

3.4.3.1 Probability Sampling

Two major groups of sampling procedures exist, namely probability sampling, which is based on randomization, and non-probability sampling, which is done without randomisation. Seaberg in De Vos (1998:195) states that a probability sample “is one in which each person has the same known probability of being selected.” (De Vos. 1998:195)

The random sampling method was used in this study, because the word random has a special meaning in mathematics. This process generates a mathematically random result and the researcher can calculate the probability of outcomes. In a true random process, each element has an equal probability of being selected. The first step was to identify and list the research population and then assign a number to every person. It was decided on a 50% sample of judicial officials. A two digit random table was used to draw the sample. This sampling method required more work from the researcher.

The researcher identified specific magistrates and prosecutors to include in the sample. She had to go back four or five times to obtain an accurate random sample. It is important to mention that random sampling does not guarantee that every random sample perfectly represents the population. It means that most random samples will be close to the population most of the time.

De Vos for instance indicates that Seaberg, Grinell and Williams found that in most cases a 10% sample should be sufficient for controlling for sampling errors (1998:192). If the population itself is relatively small, the sample should comprise a reasonably large percentage of the population. This will enable the

researcher to draw more accurate conclusions and also to generalize findings. An overview of the sample population interviewed can be found in Appendix B.

3.4.3.1.1 Judicial Officials

It was decided that a 50% sample of judicial officials would be sufficient to perform basic statistical procedures.

Ten out of twenty magistrates at the Kimberley Court were interviewed, and fourteen out of twenty-nine prosecutors. Four out of eight magistrates, and five out of ten prosecutors at the Upington Court were interviewed. All three magistrates at the De Aar court were interviewed, as were all three prosecutors. As the random sampling method was used, all the magistrates and prosecutors at the Kimberley and Upington courts stood an equal chance of being interviewed.

The remaining magistrates' courts are situated in rural areas and only have one magistrate and one prosecutor each. Consequently, these were all interviewed.

Judicial officials rotate between the youth court and the other district courts, and all have contact with young offenders, therefore they all qualified for the study. The fishbowl method was used to select the magistrates and the prosecutors at the various magistrates offices in the Northern Cape. The names of the research population were listed and a 50% sample drawn.

3.4.3.1.2 Probation Officers

All eight probation officers in Kimberley and all four probation officers in Upington were interviewed. Two probation officers in De Aar and one in Hopetown were interviewed. The remaining probation officers are in the rural areas where only one probation officer is situated. These were all interviewed.

3.4.3.1.3 Charge Sheets

The convenience sampling method was used, to examine the written information of the material in the charge sheets, and although it was stated previously (Page 36) that a 10% sample should be sufficient, a 100% sample was drawn from those of which probation officers had kept record and had written pre-sentence reports. Charge sheets are filed according to case numbers. Furthermore, charge sheets of both adults and offenders under the age of 18 years are filed together. It was time consuming and nearly impossible to work through all the charge sheets in order to find the young offenders' charge sheets for the period July to December 2004. The nearest and most easily available charge sheets were those of which the probation officers had kept a record, and where the probation officer had written a pre-sentence report. Only information obtained from the probation officers were used. Case numbers were obtained from the probation officers residing at the selected magistrates' courts, the relevant charge sheets were drawn, and all the cases that were at hand were studied.

By the time the research was done, the court cases had been finalized by the various courts in the Northern Cape. Although systematic errors can occur, it is better than having no sample at all. By examining the charge sheets and the other documents, the researcher was in a position to determine how many of the recommendations in the pre-sentence reports' had been accepted.

3.4.4 Method of gathering information

De Vos indicates that Benny and Hughes had identified interviewing as the most common method of data collection used by researchers to inform themselves about social life (1998:297). De Vos furthermore mentions that the "technique of face-to-face interviewing treats the interview as a pipeline for extracting and transmitting of information from the interviewee to the interviewer." (De

Vos. 1998:297). The result of the face-to-face interview is understanding the world of individuals, organizations and institutions.

In a face-to-face interview, the researcher conducts the interview with the use of an semi-structured interview schedule. The three main types of unstructured interviews are (1) open-ended interviews, (2) unstructured interviews with a schedule, and (3) in-depth interviews with no questions that are deliberately formulated.

An interview schedule is a guideline for the researcher and as such contains questions and themes that are important to the research. De Vos points out that, although more than one type of qualitative interview could be distinguished in the literature, elements of all types described above are often used in a single research project (1998:300). This also pertains to the current research project, which uses elements of the main types of qualitative interviews.

An open-ended semi-structured interview schedule was formulated and presented to judicial officials and probation officers in a fairly similar way. The role of the researcher was to introduce the general theme on which information was required and then to encourage the interviewees to participate spontaneously.

The process of interviewing first called for careful and emotional preparation (on the side of the researcher, as some magistrates were difficult and not always cooperative) regarding the selection of interviewees for qualitative interviewing. Part of the researcher's emotional preparation is to be aware of the fact that the interviewee could refuse an interview, which should be accepted without argument. Communication is, of course an integral part of the interview, for without communication there can be no interview. In the initial phase of the interview, the interviewees were assured of the fact that any information provided would be treated as confidential, that their names

would not be disclosed, and that they would only be referred to as a magistrate, prosecutor or probation officer.

The interview schedule focused on the implementation of restorative justice in the sentencing of young offenders; it also examined attitudes towards the implementation of restorative justice in their sentencing practice when dealing with young offenders; and lastly, it looked at the impact of previous research at the Kimberley Court on the role-players' understanding and application of restorative justice.

The findings of this study will provide a better understanding of the attitudes of judicial officers and probation officers in respect of the implementation of restorative justice in the sentencing of young offenders. The charge sheets will also reflect whether sentences do in fact reflect restorative justice where recommended by the probation officers, and whether the magistrates made use of sentences with restorative justice outcomes.

3.4.5 Pilot Study

The researcher had previously conducted research at the Kimberley Court and written a report as the prerequisite for an Honours degree in Probation and Correction Practice. The research question concerned the application of restorative justice in dealing with young offenders and the attitudes of magistrates, prosecutors and probation officers at the Kimberley Court. The main objective of the study was to evaluate whether restorative justice is applied, and if so to what extent, and to determine the attitude and knowledge of magistrates, prosecutors and probation officers towards restorative justice.

One of the findings of the study was that the magistrates, prosecutors and probation officers were attempting to apply restorative justice, but were unsure of how to do so. This is why the researcher wanted to research the topic

of the implementation of restorative justice in the sentencing of young offenders in more depth.

3.4.6 Method of data analysis

Babbie and Mouton (2001:101) state that data analysis is the “interpretation of the collected data for the purpose of drawing conclusions that reflect on the interests, ideas, and theories that initiated the research.” They note, furthermore, that the results of the analyses feed back into the initial interests, ideas, and theories.

Unstructured interviews tend to elicit fragmented information. Thus, according to De Vos, the researcher should analyze and interpret information throughout the interviews and reflect it back to interviewees for further elaboration. “Related to this is the ability to evaluate the interaction during the interviewing retrospectively. Interviewers should also be able to evaluate the interviewing situation in terms of verbal and non-verbal communication” (De Vos 1998:311). This information enables one to compare the attitudes of the various role-players to the option of restorative justice.

The interview schedules were divided into those completed by the magistrates, those completed by the prosecutors and those completed by the probation officers. All the questions from the interview schedule were coded with the research objectives in mind, according to the following criteria:

- Knowledge of restorative justice;
- Implementation of restorative justice in sentencing options;
- Statistics for six months on economic offences, sexual offences and violent offences;
- The judgment and final sentence passed; and
- Magistrates, prosecutors and probation officers not previously involved in research on restorative justice, showing how this influenced their judgments/sentences.

From the information obtained, tables were drawn up to reflect on the respective respondents' attitudes towards restorative justice, and to determine to what extent the option of restorative justice is actually used in their sentencing practices.

3.5 LIMITATIONS OF THE STUDY

The following limitations were encountered:

The researcher could find no literature on the implementation of restorative justice in the sentencing practices relating to young offenders in South Africa.

The time factor became a problem, especially the time allocated to conduct the research, because magistrates, prosecutors and probation officers were not available at specific times due to unforeseen circumstances. Even when they were available and the interview started, they often could not be finalized due to urgent court cases, so the researcher had to reschedule appointments, sometimes up to four or five times. Distance also became a problem when appointments had to be rescheduled and overnight arrangements had to be made.

The researcher intends to generalize her findings regarding the implementation of restorative justice in sentencing young offenders from the responses of her sample. Due to the vastness of the province, however, it was not possible to conduct the research in the Namaqwa area of the Northern Cape Province; for instance, Springbok is 800 kilometers from Kimberley and was, therefore, not cost effective to visit.

Another limitation was that not all the arrested young offenders were involved in the research, but only those who were prosecuted. It is also not sure if pre-sentence reports had been requested for every offender under the age of 18 years who is prosecuted.

Some of the young arrested offender's cases were withdrawn and, therefore, no sentences had been passed. It also came to the attention of the researcher, that those cases where the prosecutor did not request a probation officers report were finalized without the involvement of a probation officer.

This could imply that young arrested offenders whose cases were withdrawn, were part of diversion and could have been an indication that restorative justice does take place. On the other hand, those cases that were finalized without the involvement of the probation officer could have been dealt with through restorative justice processes.

CHAPTER 4

FINDINGS AND DISCUSSION

4.1 INTRODUCTION

The success of the restorative justice approach depends on the attitude and knowledge of justice officials and probation officers. It is, therefore, important to assess the respondents' existing perceptions of restorative justice.

This chapter discusses the views of magistrates, prosecutors and probation officers in response to the semi-structured interview schedule.

The questions that appear on the semi-structured interview schedule, have been used as a guideline. The schedule contained open-ended questions, and the participants were encouraged to express their feelings. This data collection method was also used to create statements based on the responses of the respondents.

4.2 FINDINGS

4.2.1 Profile of the respondents

Twenty-two magistrates, twenty-seven prosecutors and twenty probation officers participated in the study, amounting to a total sample of sixty-nine respondents. With regard to their gender distribution, sixteen (73%) of the magistrates were male and six (27%) were female. Seventeen (63%) of the prosecutors were male and ten (37%) were female. The ratio of male to female

was reversed in the case of the probation officers, where only nine (45%) of the probation officers were male and eleven (55%) were female.

With regard to the main language spoken by the respondents, the predominant language was Afrikaans, which was spoken by forty three (62%) respondents. The other languages spoken were Tswana (eleven = 16%), Xhosa (nine = 13%) and English (six = 9%).

It was decided to use a 50% sample of judicial officials because it is sufficient to perform statistical procedures. The remaining magistrates' courts were in rural areas, where only one magistrate and one prosecutor are situated. These were all interviewed. All eight probation officers in Kimberley, all seven probation officers in the Upington region and five out of seven probation officers at the De Aar Court were interviewed. The majority of the respondents were prosecutors (twenty seven) and the majority of these prosecutors (nineteen) were serving at the district court level. Fifty percent of the prosecutors had less than ten years experience in court. Prosecutors are responsible for deciding which cases to divert and which to prosecute. In order to assess the knowledge and perceptions of newly appointed prosecutors in contrast with experienced prosecutors, it was essential to have information about their level of court experience.

Most of the magistrates (70%) were operating at district level and they are involved in the sentencing of offenders who have committed petty crimes, whereas 30% served at regional level. Magistrates at regional level are involved in the sentencing of offenders who have committed serious crimes and of offenders who have committed multiple offences. These magistrates are more likely to give harsher punishments, such as prison sentences. It is therefore necessary to determine if regional magistrates know about and understand the philosophy underlying the concept of restorative justice, and if they implement restorative justice in the sentencing of youth offenders.

Only 27% of the probation officers had more than 10 years of social work experience in the field. Probation officers were most likely to have between three and eight years of court experience.

4.2.2 Categories of respondents

In this section, we will look more closely at the profile of the respondents in each category. The findings are summarized in Table 1 below.

Table 1:

	Magistrate		Prosecutor		Probation officer	Male *	Female *	Positive *	Negative *	Positive *	Negative *	Yes	No
	Regional *	District *	Regional *	District *									
Kimberley	3	7	3	12	8	14	19	33	0	33	0	29	4
Uptington	2	2	2	2	4	9	3	12	0	4	8	4	8
De Aar	1	2	1	2	2	6	2	8	0	5	3	4	4
Groblershoop	0	1	0	1	1	3	0	2	1	2	1	2	1
Hopetown	0	1	0	1	1	3	0	3	0	2	1	2	1
Kathu	0	1	0	1	1	2	1	3	0	2	1	0	3
Postmasburg	0	1	0	1	2	2	2	2	2	2	2	2	2
Prieska	0	1	0	1	1	0	3	3	0	3	0	3	0
Total	6	16	6	21	20	39	30	66	3	53	16	46	23

* An explanatory discussion on the profile of the respondents in each category will follow below. Positive and negative attitude as well as positive and negative knowledge will follow under point 4.2.2.3 and 4.2.2.4 (page 6 - 9)

4.2.2.1 Distribution of the various categories of respondent in the different centres

Magistrates

Judicial officials rotate between the youth court and the other district courts, and all have contact with young offenders, therefore they all qualified for the study. Judicial officials at the regional courts also have contact with young offenders and were included in the selection of the magistrates. Three out of six regional court magistrates and seven out of fourteen district court magistrates at the Kimberley Court were interviewed. Two out of four regional court magistrates and two out of four district court magistrates at Upington Court were interviewed. Except for De Aar, where three magistrates are situated, the remaining magistrates' courts are in rural areas where only one magistrate is situated. These were all interviewed.

Prosecutors

Three out of six regional court prosecutors and twelve out of twenty-four district court prosecutors at the Kimberley Court were interviewed. Two out of four regional court prosecutors and two out of five district court prosecutors at the Upington court were interviewed. All prosecutors in the selected rural areas were interviewed.

Probation officers

All eight probation officers in Kimberley court were interviewed, as well as all four probation officers in Upington court. Two probation officers in De Aar, one in Groblershoop, one in Hopetown, one in Kathu, two in Postmasburg and one in Prieska were also interviewed.

Discussion

Six of the regional court magistrates and six regional court prosecutors were involved in the researchers' research. A distinction is made between the regional court magistrates and prosecutors and the district court magistrates, because the former are involved in the sentencing of offenders who have committed more serious crimes or multiple crimes, whereas the latter (i.e. the district court magistrates) are mainly involved in housebreaking, theft and petty crimes. The six regional court magistrates and prosecutors are of the opinion that there is limited scope for them to implement restorative justice due to the seriousness of crimes. It would appear, therefore, that they are of the opinion that restorative justice is not appropriate for more serious crimes.

4.2.2.2 Distribution according to gender

Magistrates

Six of the magistrates were female and sixteen of the magistrates were male. A distinction was made between male and female respondents because of the Equity Act that was implemented.

Before 1994 the perception of government was that magistrates should be male whereas female officials should do the administrative work. The Equity Act was developed to urge government to address imbalances of the past.

There were still imbalances in the ratio of male to female amongst magistrates, but at least female magistrates were appointed in the Northern Cape Province.

Prosecutors

Seventeen of the prosecutors were male and ten were female. The ratio of male to female was more balanced in this category. It would

seem that the Equity Act was adhered to in the case of prosecutors, when taking into account the ratio of male to female respondents.

Probation Officers

The ratio of male to female was reversed in the case of probation officers, where only seven of the probation officers were male and thirteen were female. Although the difference of the ratio of male (35%) to female (65%) respondents is not overwhelming, there is an overall difference between male and female probation officers in the Northern Cape, 30% male and 70% female. This implies that the occupational class of social work is still seen by students to be a female career path.

Discussion

The purpose of differentiating between male and female was because of the fact that females were previously not readily accepted as magistrates, whereas female prosecutors were accepted as part of the justice system. Although not part of the researchers' research, it was significant to have information about sentencing options the magistrates implemented. The question arises as to whether male magistrates impose harsher punishment than female magistrates. Female magistrates were more familiar with the concept and process of restorative justice and tended to consider whether there was scope for them to implement restorative justice.

In the case of probation officers, it appears that it is still seen by the public, and especially by students, as a female career path.

4.2.2.3 Attitudes of respondents towards restorative justice

Sixty six (96%) of the sixty nine respondents' attitudes towards restorative justice were positive. Only three respondents (4%) were

negative. Of these three, two had negative experience, as victims, whereas the third respondent would retire in a year's time. It appears that two of these respondents only have faith in the retributive justice system, while the third respondent was trained and steeped in the retributive justice system and would continue in this way.

Although the sixty-six respondents' attitudes are positive towards restorative justice, it does not mean that all of these respondents are ready to implement restorative justice, neither do they think restorative justice is appropriate for all offences.

Magistrates

Twenty respondents (91%) had a positive attitude towards the application of restorative justice. In their view, however, restorative justice is not applicable in serious and violent crimes. It is restricted to instances where a magistrate feels it necessary to impose a sentence that aims to restore both the victim and the accused. The remaining two magistrates believed that the possibilities of rehabilitation or restitution were extremely narrow and that therefore, restorative justice was not an option in their sentencing practices.

Prosecutors

The responses of all twenty-seven respondents were that restorative justice could alleviate case backlogs and overcrowding of prisons if they, the prosecutors, were properly trained in the implementation of restorative justice. The community however regards restorative justice as an easy option for criminals to avoid imprisonment and thus hold the prosecutor liable for ensuring justice. As a result, most of the prosecutors have not explored or recommended restorative justice: 44% believed that it should be the task of the police service to employ more police officials to educate the community on restorative justice. Another 44% believed that it is the duty of the probation officer to render

restorative justice services before youth offenders enter the system, and only 12% supporting restorative justice, were actively working towards it and started implementing it.

Probation Officers

All twenty participants had positive attitudes towards restorative justice. In their view, though, it is difficult to recommend restorative justice in their sentencing practices if offenders have committed multiple offences. They believed that restorative justice had been applied when criminal cases were diverted and if victim-offender mediation was part of the postponed or suspended sentence.

This means that either probation officers have not yet changed their mindset or that they are not clear what restorative justice really is. It could also mean that probation officers think the same way as the magistrates, namely that restorative justice is a sentencing option or that restorative justice is only part of a diversion programme, because of inadequate understanding of the concept of restorative justice

4.2.2.4 General knowledge of respondents regarding restorative justice

Magistrates

All the respondents knew about restorative justice, and ten had recently attended a workshop on restorative justice at the Restorative Justice Centre in Pretoria. Eight had heard of restorative justice, but said during the interview that they wanted more background on it. The magistrates in Upington and in the rural areas indicated that they needed to learn more about implementing restorative justice practically. Therefore it is obvious that they have limited and inadequate understanding of restorative justice.

Prosecutors

All the respondents knew about the concept of restorative justice, but they saw it mainly as a form of compensation to the victim and as a practice that could be used before prosecuting the offender, such as in diversion programmes. All but two prosecutors felt that the probation officer needs to discuss restorative justice with the prosecutor at the specific court of appearance before writing his or her report. This effectively means that the probation officer would be the main role player in the application of restorative justice.

Probation Officers

Eighteen out of twenty (90%) of the more experienced probation officers had attended training on restorative justice. The two newly appointed probation officers were to be trained with the new intake of probation officers starting in April 2006. Probation officers felt that a steering committee consisting of the three main role players at the national level (Department of Justice, Department of Public Prosecution and the Department of Social Services and Population Development) should market the process and create greater clarity on the respective roles of the magistrate, prosecutor and probation officer.

4.2.2.5 The implementation of restorative justice

Magistrates

Eleven participants indicated that they are implementing restorative justice in their sentencing practices, whereas another eleven are not doing so. The latter either had not attended workshops on restorative justice or saw their role as monitoring the restorative justice process in an advisory capacity. On the one hand, this could imply that magistrates realise that they have a role to play in the implementation of restorative justice in the sentencing of young offenders, but uncertainty on how to

implement restorative justice made them minimize their role by only being involved once the Child Justice Bill has been enacted. On the other hand magistrates could see restorative justice as the role of the prosecutor.

Prosecutors

Nineteen prosecutors (70%) were of the opinion that restorative justice had been implemented in one way or another by some of the magistrates, some of the prosecutors and some of the probation officers. They felt that it was a good idea and that magistrates were also working more and more towards applying restorative justice.

Probation Officers

Eighteen of the twenty respondents believed that restorative justice had been implemented in some cases, especially where a postponed or suspended sentence was recommended by the probation officer and restorative justice was included. However, they felt that the prosecutors and magistrates generally tended to disregard the recommendations made by probation officers. Therefore probation officers, as seen in the actual application (page 52) of restorative justice tend to recommend sentences they think the magistrates would impose.

Conversely, prosecutors felt that probation officers often did not take the seriousness of the crime into consideration. The probation officers on the other hand felt that prosecutors did not take the offenders background and home circumstances into consideration. Therefore, it could be said that these role-players, namely prosecutors and probation officers, are waiting on one another to apply restorative justice. This also explains why the implementation of restorative justice is so slow.

4.2.3 The views of respondents regarding the effectiveness of the current criminal justice system in achieving the objectives of punishment

The tables are a combined representation of the results obtained by means of the interview schedule. They serve as an introduction to the respondents' views and attitudes to and knowledge of the current criminal justice system and of the concept of restorative justice in the sentencing of youth offenders.

The views held by magistrates, prosecutors and probation officers with regard to the current criminal justice process, and the interpretation of the findings in this regard, will be explained more fully.

Tables 2 - 16 below present the views of respondents regarding the application of the current criminal justice system and the attitudes of the respondents on the implementation of the current criminal justice process.

4.2.3.1 The extent to which the criminal justice system is effective in preventing crime.

Magistrates

Table 2.	Magistrates	
	Numbers	Percentage
- The criminal justice system is effective in imposing harsher punishment	5	23%
- Effectiveness is limited as a form of crisis management.	11	50%
- The system is limited with regard to not being able to handle cases in depth.	2	9%
- The system is not effective at all.	4	18%

Five of the magistrates (23%) believed that the criminal justice system was effective in imposing harsher sentences on hardened criminals especially for crimes such as violent rape and murder. They furthermore felt that the current Criminal Procedure Act 51 of 1977 was effective in imposing sentences, and that it sent out a clear message with regard to the effectiveness of such sentences in deterring offenders and potential offenders.

Thirteen magistrates (59%) however said that the effectiveness of the current criminal justice system is limited for the following reasons: firstly, five magistrates (23%) said it is seen as a crisis management tool due to the fact that options for sentencing youth offenders are limited. Furthermore, there is the lack of availability of reformatory schools. Secondly, three magistrates (13.6%) said the majority of people do adhere to the norms and standards of society. Thirdly, another five magistrates (23%) said the effectiveness of the current justice system is limited due to the large numbers of court cases. The lack of manpower creates problems for effective service delivery.

The remaining four participants (18%) viewed the current justice system as ineffective. Offenders are not aware of the consequences of their actions and continue re-offending, and the community is not aware of sentences passed and therefore not involved in the justice system.

Prosecutors

Table 3.	Prosecutors	
	Numbers	Percentage
- The criminal justice system is effective in imposing harsher punishment	5	19%
- Effectiveness is limited as a form of crisis management.	12	44%
- The system is not effective due to a lack of knowledge on the side of the community.	9	33%
- The system is not effective at all.	1	4%

Prosecutors

Five of the prosecutors (19%) were of the opinion that the current criminal justice system is effective in preventing crime, due to its aims, ambitions and objectives. Twelve prosecutors (44%) regarded its effectiveness as limited, however, and as a form of crisis management. They maintained that the justice system is good but that it is not being effectively implemented and that communities are not informed of the outcome of cases.

Nine prosecutors (33%) stated that the criminal justice system is not effective, because offenders re-offend and tend to commit more serious crimes. One prosecutor (4%) believes that the criminal justice system is not effective due a lack of knowledge on the side of the community.

Probation Officers

Table 4.	Prosecutors	
	Numbers	Percentage
- The criminal justice system is effective when longer periods of imprisonment is recommended.	4	20%
- The criminal justice system is sometimes effective.	1	5%
- Effectiveness is limited as a form of crises management.	1	5%
- Effectiveness is limited because the system is reactionary.	9	45%
- The system is not because the statistics showed an increasing number of criminal cases.	4	20%
- The system is not effective at all.	1	5%

Probation Officers

When the participating probation officers were asked whether they thought the criminal justice system was effective in deterring offenders, four (20%) said that it was effective when longer periods of imprisonment are recommended, and that their own statistics reveal a reduction in crime, which suggests that it does deter offenders.

Nine respondents (45%), however, held the view that the effectiveness of the justice system is limited because it is currently reactionary, which means that it reacts after the crime has been committed. One probation officer said the effectiveness is limited as a form of crises management. One respondent said the criminal justice system is sometimes effective. The remaining five respondents said that it was not effective because their statistics showed an increasing number of criminal cases.

Discussion

The various categories of the respondents showed a similar view regarding the effectiveness of the current criminal justice system in either imposing harsher punishment on hardened criminals or when longer periods of imprisonment are recommended. The results indicate that the respondents continue with what they are familiar with and what they were trained at, which is retributive justice. This could also reflect the uncertainties the respondents have about various aspects of the restorative justice approach.

Less magistrates agreed that the criminal justice system is not effective at all, while the majority of the prosecutors and probation officers were of the opinion that the current system is not effective at all. However, some magistrates felt that the ineffectiveness of the current approach is due largely to the large number of court cases.

The findings reflect a lack of regular consultation among the relevant role players. It would appear that magistrates, prosecutors and probation officers are not having regular meetings to discuss views, trends and problems arising from their day to day activities. This could be the reason why judicial officials are not aware of all the new appointees at the probation service section who are involved in service delivery.

The inadequate understanding of restorative justice could be the reason why prosecutors do not often recommend restorative justice in the sentencing of youth offenders, although they realise that the criminal justice system is not effective.

The new generation of prosecutors and probation officers were trained more in a restorative justice approach and not solely in a retributive paradigm. This could be the reason why they are positively inclined towards restorative justice, but are uncertain how to apply restorative justice in practise.

4.2.3.2 The extent to which the criminal justice system is effective in deterring offenders and potential offenders.

Magistrates

Table 5.	Magistrates	
	Numbers	Percentage
- Is to a large degree effective with regard to sentence.	8	36%
- Effectiveness is limited due to lenient sentences.	2	9%
- Effectiveness is limited due to political involvement	3	14%
- System is not effective - offenders take risks for financial reasons	6	27%
- System is not effective - offenders believe they will not be caught.	2	9%
- System is not effective, as reflected by the re-offending of offenders.	1	5%

The perception of eight respondents (36%) was that the criminal justice system is effective in deterring offenders and potential offenders only if they know that a heavy sentence will be passed and if the risk of being caught for a crime is very high.

Three respondents felt that young offenders and first offenders can and should be kept out of jail by giving them alternative sentences, such as fines and correctional supervision, but because of these lenient sentences, the effectiveness of deterring offenders is limited. This view is held by most magistrates.

Six magistrates (27%) are of the opinion that offenders take risks for financial reasons and two magistrates (9%), because they believe that they will most likely not be caught. This is why offenders often re-offend. As a result of offenders often re-offending, one respondent (5%) held the view that the justice system is not effective in deterring offenders.

It would appear from the findings that magistrates have an unwavering faith in the effectiveness of punishment as a deterrent. Yet, there is little research evidence of the effectiveness of punishment as a deterrent.

Prosecutors

Table 6.	Prosecutor	
	Numbers	Percentages
- Is to, a large degree, effective with regard to sentence.	5	19%
- Effectiveness is limited due to lenient sentences.	10	37%
- System is not effective - offenders take risks for financial reasons	2	7%
- System is not effective - offenders believe they will not be caught.	9	33%
- System is not effective, as reflected by the re-offending of offenders.	1	4%

Five respondents (19%) believed that the justice system is effective in deterring offenders who have committed serious crimes, by imposing harsher sentences. But it does not have the same effect on offenders who have committed petty crimes. This may be why ten respondents (37%) believed that the effectiveness of the so-called 'lenient' sentences (fines suspended and postponed sentences) is limited in deterring offenders. Nine respondents (33%) mentioned that offenders tend to take risks because the chance of being caught is much lower than the financial gain.

Probation Officers

Table 7.	Probation Officers	
	Numbers	Percentages
- Is, to a large degree, effective with regard to sentence.	2	10%
- Effectiveness is limited due to lenient sentences.	4	20%
- System is not effective - offenders take risks for financial reasons.	4	20%
- System is not effective - offenders believe they will not be caught.	5	25%
- System is not effective, as reflected by the re-offending of Offenders	5	25%

Only two respondents (both newly appointed) regarded the criminal justice system as effective in deterring offenders and potential offenders. They believe that punishment is justified by the harm crime causes. This could be an indication of their ignorance/uncertainty regarding the implementation of restorative justice. Furthermore they felt that, when a sentence is passed, the young offender is compelled to participate in certain programmes whereas with restorative justice the offender can decide whether he will participate in the programme or not. Four participants (20%) felt that a fine is too lenient, especially if the parent pays the fine, and for this reason they believed that the effectiveness of the system in deterring offenders is limited. A majority of fourteen respondents (70%) stated that the system is not effective as demonstrated by the high rate of re-offending of offenders, with sometimes up to seven offences being committed by an offender, and offenders believing they will not be caught.

Discussion

Eight of the magistrates (36%) felt that the current justice system is effective with regard to deterring offenders from re-offending. Five of the prosecutors and two probation officers shared the same view as the magistrates.

Less prosecutors and probation officers shared the view that the criminal justice system is effective in deterring offenders from re-offending. It could be that prosecutors and probation officers were changing their mindsets. It appears that the latter could be a result of continues training on restorative justice by the Justice College and the probation training.

This led to the majority of the respondents agreeing that the current justice system is not effective in deterring offenders from re-offending and that the courts must give meaningful attention to restorative justice.

4.2.3.3 The extent to which the criminal justice system is effective in protecting society

Magistrates

Table 8.	Magistrates	
	Numbers	Percentages
- Is, to large degree, effective with regard to hardened criminals who are sentences to imprisonment.	9	41%
- Effectiveness is limited and for a short period of time.	4	18%
- Is not effective due to first offenders becoming hardened criminals in prison.	9	41%

Nine respondents (41%) believe that the criminal justice system is effective in protecting society, especially when it comes to hardened criminals who are

sentenced to long-term imprisonment. A slight majority of the respondents (thirteen: 59%), however, said that its effectiveness in protecting society is limited or completely lacking for the following reasons: 1) imprisonment is only for a short period of time, which in fact means that the offender is only briefly removed from the community; 2) offenders often receive amnesty; and 3) young offenders become hardened criminals in prison.

Prosecutors

Table 9.	Prosecutor	
	Numbers	Percentages
- Is to, large degree, effective with regard to hardened criminals who are sentenced to imprisonment.	5	19%
- Effectiveness is limited and for a short period of time.	7	26%
- Is not effective due to first offenders becoming hardened criminals in prison.	13	48%
- Is not effective - children are stigmatized.	2	7%

Five prosecutors (19%) stated that the criminal justice system is effective in protecting society because it is more difficult for offenders to obtain bail. Thirteen respondents (48%) however believed that the criminal justice system is not effective. They agreed that no programmes were in place for witness protection, but they also thought that the criminal justice process is currently being minimized because some sentences such as a fine, is a 'soft' way of dealing with an offender. This in turn involves understanding of the new approach, but the impression obtained, is that the magistrates view the alternative approach less punitive.

Effectively this means that the objective of retribution through punishment helps to enhance unity of the law-abiding group.

The results of the findings indicate that prosecutors are aware of the fact that new programme options (such as family group conferencing and victim-offender mediation) should be accessible and more frequently used. The low utilisation of restorative justice in the sentencing of young offenders could be as a result of their uncertainty regarding the implementation thereof.

Probation Officers

Table 10.	Probation Officers	
	Numbers	Percentages
- Is effective to large degree with regard to hardened criminals who are sentences to imprisonment.	2	10%
- Effectiveness is limited and for a short period of time.	4	20%
- Is not effective due to first offenders becoming hardened criminals in prison.	9	45%
- Is not effective and society is complaining that the justice System is failing them.	5	25%

Most (fourteen out of twenty) of the respondents agreed that the criminal justice system is failing society with regard to giving protection to society in general. Not only are offenders becoming hardened criminals but the system is failing society too. Only six respondents (30%) felt that society is indeed being protected from hardened criminals, especially when maximum sentences are applied.

Discussion

Although many of the respondents agreed, that the criminal justice system is not effective in protecting society, fifty six percent of the prosecutors, forty five percent of the probation officers and nine of the magistrates (41%) still view the criminal justice system effective in protecting society. This implies

that a lack of knowledge about restorative justice most certainly led to magistrates implementing what they are familiar with, the retributive approach.

4.2.3.4 The extent to which the criminal justice system is effective in rehabilitating offenders.

Magistrates

Table 11.	Magistrates	
	Numbers	Percentages
- Is to a large degree effective if sentenced to correctional supervision.	4	18%
- Effectiveness is limited and depends on offender's willingness to rehabilitate as well as the availability of manpower.	7	32%
- Is not effective due to overcrowding of prisons, and a lack of resources and programmes such as life skills programmes, victim-offender mediation programmes, anger management and perpetrator programmes.	11	50%

As expected, the results with regard to whether the criminal justice system is successful in rehabilitating offenders if they are sentenced to correctional supervision show that only a minority of the respondents (18%), felt that it is effective. These magistrates felt that correctional supervision is effective because the offender is punished for the wrong he has done within the community. Seven respondents believed that effectiveness is limited because it depends on the willingness of the offender to rehabilitate. However, half of the respondents (50%) felt that the criminal justice system is not effective and that overcrowding of prisons, lack of resources and programmes, and the absence of positive role models are all contributing factors to the failure of the system.

Prosecutors

Table 12.	Prosecutor	
	Numbers	Percentages
- Is to a large degree effective if sentenced to correctional supervision.	4	15%
- Effectiveness is limited and depends on offender's willingness to rehabilitate as well as the availability of manpower	16	59%
- Is not effective due to overcrowding of prisons, and a lack of resources and programmes such as life skills programmes, victim-offender mediation programmes, anger management and perpetrator programmes.	7	26%

A significant portion of the respondents (59%) indicated that the effectiveness of the criminal justice system in rehabilitating offenders is limited. Although opportunities are available, especially for young offenders, a lack of motivation keeps them from rehabilitation.

Probation Officers

Table 13.	Probation Officers	
	Numbers	Percentages
- Is effective when programmes are included	2	20%
- Effectiveness is limited and depends on offender's willingness to rehabilitate as well as the availability of manpower.	8	40%
- Is not effective due to overcrowding of prisons, and a lack of resources and programmes such as life skills programmes, victim-offender mediation programmes, anger management and perpetrator programmes.	10	50%

A minority of the respondents (20%), felt that the criminal justice system is effective when programmes are attended. Eight respondents (40%) believed that the criminal justice system has limited effectiveness in rehabilitating offenders because it is focusing more on punishment than on rehabilitation. Half of the respondents (50%) were of the opinion that there are no rehabilitating factors in the system and that offenders are re-offending because of social circumstances.

Discussion

Twenty seven of the respondents (40%) are of the opinion that the criminal justice system is not effective in rehabilitating offenders. In previous discussions it emerged that it was mostly the prosecutors and probation officers that held similar views. However, now it was the magistrates and probation officers that agreed to the lack of resources and programmes as contributing to the failure in the rehabilitation of offenders. This could become a starting point to enter into discussions with judicial officials. The lack of resources seem to cause magistrates to hold on to what was done in the past. Therefore it appears that magistrates should be convinced towards the practical implementation of restorative justice by giving regular feedback on cases, and also by providing them with monthly statistics on restorative justice. From the findings it is evident that magistrates are not careless about the implementation of restorative justice; it is rather a matter of inadequate understanding of the concept.

4.2.3.5 The role the victim should play in the justice system.

Magistrates

Table 14.	Magistrates	
	Numbers	Percentages
- To indicate how the offence affects their quality of life, whether compensations is needed, and to play a role before the Parole Board and in decision making re. mediation and pre-trial preparation.	15	68%
- To play a role in the investigation of the case.	1	4.5%
- To be part of the entire justice process, and the magistrate should explain to the victim why a specific sentence was passed.	5	23%
- To play no role.	1	4.5%

When the respondents were asked what they thought the role of the victim should be, other than giving evidence, the large majority (68%) agreed that the victim should describe how the offence has affected (or is affecting) their quality of life. This will reveal whether the victim is in need of compensation. If so, how much is needed, and what role the victim should play before the parole board? This will definitely play a role in the sentencing of the offender, which means if the offender could afford it he might be sentenced to a compensation order. It appears that by changing the mindsets of magistrates compensation orders could be used more frequently in passing sentence. At the same time restorative justice will also be implemented. Only one respondent felt that the victim should play no role other than giving evidence.

Prosecutors

Table 15.	Prosecutor	
	Numbers	Percentages
- To indicate how the offence affects their quality of life and whether compensations is needed.	16	59%
- To play a role before the Parole Board and in decision making re. mediation and pre-trial preparation.	1	4%
- To play a role in the investigation of the case.	7	26%
- To be part of the entire justice process, and the magistrate should explain to the victim why a specific sentence was passed.	3	11%

The findings here were similar as those in respect of magistrates. All the respondents (twenty-seven) agreed that the victim should play a significant role when it comes to pre-trial preparation, mediation between victim and offender, and even sentencing of the offender. As an overall comment from 50% of the prosecutors, they feel that the victim's attitude and positive involvement could have a positive effect on the rehabilitation of the offender.

Probation Officers

Table 16.	Probation Officers	
	Numbers	Percentages
- To indicate how the offence affects their quality of life, whether compensations is needed.	9	45%
- To play a role before the Parole Board and in decision making re. mediation and pre-trial preparation	9	45%
- To be part of the entire justice process, and the magistrate should explain to the victim why a specific sentence was passed.	1	5%
- To play no role.	1	5%

Except for one respondent, who stated that the victim should play no role in the criminal justice system, all probation officers (nineteen) (95%) believed that the victim does have a role to play, by involving both the victim and the offender in the criminal justice process, as this is more likely to attend to the victim's needs.

Discussion

The findings gained from the interviews with regard to the attitude of the magistrates, prosecutors and probation officers towards the criminal justice system revealed the following: All three categories of respondents were able to state what the main aim of the criminal justice process is and all were familiar with retributive justice. However, only a minority still believes that the current justice system is effective in preventing crime. This minority still believes that revenge in punishment is justified and that sentences under the current Criminal Procedure Act (51 of 1977) is implied, are effective in deterring offenders and potential offenders. It is therefore important that magistrates should changed their mindset which could be done through continues training on restorative justice by the Justice College.

The above data indicated that 41% of the judicial officials as well as 25% of the probation officers are of the opinion that the criminal justice system is not effective in preventing crime, deterring offenders from committing crime, protecting society against criminals, and rehabilitating offenders. The lack of knowledge on the part of some respondents and the misunderstanding regarding restorative justice on the other hand, led to judicial officials and probation officers to be uncertain on how to implement restorative justice. Therefore, they were much less sure whether they should focus on the harm suffered by the victims rather than on the laws that had been broken. This suggests that in the future the criminal justice system should focus more on applying restorative justice. Imposing restorative justice sentences would most

probably contribute to reducing overcrowding in prisons as well as to reducing the backlogs of court cases.

Furthermore, the findings show that the vast majority of judicial officials and probation officers (97%) support the fact that victims should play a role in the criminal justice process, in that victims' material, financial, emotional and social needs should be fully attended to. Although the findings reveals that the respondents support the fact that the victim should play a role in the criminal justice process, they intend to forget this fact when the hearing starts.

4.2.4. The understanding of respondents of restorative justice and its application in the sentencing of young offenders.

The following tables, table 17 - 43, reflects the knowledge and understanding of respondents regarding restorative justice and the application thereof. The statements under the headings of the various tables were made during the interviews by the magistrates, prosecutors and probation officers.

The word for word answers from the different respondents were written down and afterwards grouped together. The various role-players who said the same thing were grouped together and assimilated into percentages.

4.2.4.1 The understanding of respondents of the concept of restorative justice

Magistrates

Table 17.	Magistrates	
	Numbers	Percentages
- Restorative justice means 'to make things right'.	12	55%
- It means that financial assistance is given to the victim.	2	9%
- It is an approach within the criminal context that strives for restitution.	6	27%
- Its aim is to keep the youth and first offenders out of prison.	2	9%

When the respondents were asked what their understanding of restorative justice was, twelve (55%) said that it was to make things right and to seek solutions together; two (9%) said that it involves giving financial assistance to the victim, and six (27%) said that it is an approach within the criminal context that strives for restitution of both offender and victim, which in turn benefits the community as a whole. Only two (9%) respondents were of the opinion that it is to keep first offenders out of prison. A slight majority of the respondents (55%) saw the concept of restorative justice as making things right. In their terms of reference this essentially means compensating the victim.

Prosecutors

Table 18.	Prosecutors	
	Numbers	Percentages
- Restorative justice means 'to make things right'.	7	26%
- It means that financial assistance is given to the victim.	6	22%
- It is an approach within the criminal context that strives for restitution.	1	3.7
- Its aim is to keep the youth and first offenders out of prison.	11	41%
- It gives recognition to the victim.	1	3.7%
- Not familiar with the concept restorative justice.	1	3.7%

Eleven of the respondents (41%) regarded the concept of restorative justice as an approach that strives for restitution and redresses the imbalances that have occurred between the victim and the offender. Its aim is to restore parity between the victim, the offender and the community. Seven (26%) and six (22%) respondents respectively agreed that the concept of restorative justice is to make things right and that this means giving financial assistance to the victim. Only one respondent had a limited understanding of restorative justice; more limited than the thirteen (48%) others. The other 52% had an understanding of the concept of restorative justice.

Probation Officers

Table 19.	Probation Officers	
	Numbers	Percentages
- Restorative justice means 'to make things right.'	8	40%
- It is an approach within the criminal context that strives for restitution.	9	45%
- It gives recognition to the victim.	1	5%
- It means a balanced concern for the victim and the offender by involving both in the criminal justice process, and thus also attending to the needs of the victim.	2	10%

Nine of the respondents (45%) supported the concept of restorative justice as an approach that strives for restitution. In other words, relationships are restored and the needs of the victim are attended to. Eight respondents supported it as an approach that strives for restitution (meaning restore/correct) Their wording was 'to make things right'. One respondent mentioned that restorative justice needs to give recognition to the victim, while two respondents viewed it as achieving a balance between the offender and the victim.

Discussion

All the respondents, except for one prosecutor, were familiar with the concept of restorative justice. The majority (88%) had attended workshops on restorative justice. It is encouraging that the respondents were generally familiar with the concept, even if 35% saw it primarily as giving compensation to the victim.

It is encouraging that the respondents were generally familiar with the concept, even if 35% saw it primarily as giving compensation to the victim.

The above data indicates that the magistrates viewed the sole purpose of this approach as restitution to the victim (to make things right), whereas the prosecutors felt that the victim should be compensated or that some service should be delivered to the victim. In contrast, probation officers felt that the approach was giving restitution to both the victim and the offender, and that it involves both parties in the restorative justice process. Restitution to both the victim and the offender means reparation for the damage done to the victim, rehabilitation of the offender and restoration of relationships.

Ninety-seven percent of the prosecutors, all the magistrates and all the probation officers interviewed agreed that the principles of restorative justice should be the basis for the sentencing practices of young offenders. They indicated that these principles are utilized much more readily when sentencing juveniles than adults, and agreed that restorative justice is indeed an appropriate approach in the sentencing of young offenders.

This discrepancy with regard to the judicial officials' and probation officers' perceptions may indicate not only that different perceptions exist among the respondents, but also a lack of communication.

It would appear that the magistrates definitely have knowledge on restorative justice, but currently they do not see it as an appropriate approach within the criminal justice system. The question arises as to whether they practise what they know.

4.2.4.2 Knowledge of the respondents on the main objectives of restorative justice.

Magistrates

Table 20.	Magistrates	
	Numbers	Percentages
- It focuses on the restitution of the complainant.	12	55%
- It is restitution to the victim	2	9%
- It involves the offender through the process of reparation and rehabilitation.	6	27%
- Victim and offender together seek solutions.	1	4.5%
- Its objective is to protect the victim.	1	4.5%

When asked to identify the main objectives of restorative justice, most respondents (55%) said it was to focus on the restitution of the complainant. Other objectives selected by the majority of the magistrates were: the victim and offender are encouraged to seek solutions together, and the offender is involved in the process of reparation and rehabilitation. Two respondents agreed that the main objective of restorative justice is restitution to the victim. This means that the offender should start with the process of making right the wrong, because he wants to and not because he is compelled to do so by court. Where necessary, the victim should also be involved.

Prosecutors

Table 21.	Prosecutors	
	Numbers	Percentages
- It focuses on the restitution of the complainant.	8	30%
- It involves the offender through the process of reparation and rehabilitation.	7	26%
- Victim and offender together seek solutions.	10	37%
- Its objective is to protect the victim.	2	7%

Ten respondents (37%) agreed that the main objective of restorative justice is to encourage the victim and offender to seek solutions together. Eight of the other respondents (30%) felt that the second principle and objective of restorative justice is to focus on the restitution of the complainant, while seven (26%) and two respondents (7%) respectively said it is to involve the offender through the process of reparation and rehabilitation.

Probation Officers

Table 22.	Probation Officers	
	Numbers	Percentages
- It focuses on the restitution of the complainant.	3	15%
- It involves the offender through the process of reparation and rehabilitation.	4	20%
- Victim and offender together seek solutions.	6	30%
- Its objective is to protect the victim.	4	20%
- It seeks to heal relationships between the victim and the offender.	3	15%

Thirty percent of the respondents said the victim and offender need to seek solutions together; four respondents (20%) said that the objective was to protect the victim and another four respondents (20%) said that it was to involve the offender through the process of reparation and rehabilitation. The remaining three (15%) said that it is to heal relationships between the victim and the offender.

Discussion

The majority (86%) of the respondents viewed the objectives of restorative justice as: firstly, restitution of the complainant; secondly, the victim and the offender together seeking solutions and limiting the consequences of the crime; and thirdly, restitution of the offender through rehabilitation.

All the respondents mentioned the above objectives but in order of preference. The percentage consist of those respondents (31%) who agreed on the first objective as restitution of the complainant, those respondents (36%) who agreed on the second objective where the victim and the offender seek solutions and those respondents (19%) who agreed on the third objective, namely restitution of the offender through rehabilitation.

Fifty five percent of the magistrates, thirty seven percent of the prosecutors and thirty five percent of the probation officers maintained that the main aim of restorative justice is to focus on the harm suffered by the victim, but two magistrates were of the opinion that the focus should rather be on the laws that were broken.

It emerges from the above, that there is no single definition of restorative justice, because different persons give different meaning to the term. According to Zehr "Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation and re-assurance." (Zehr 1990:181) He felt that the key elements of restorative are, therefore:

- recognition of the violation of people and relationships (making it necessary to attend to the needs of the victim);

- the obligation to make things right (referring to the responsibilities of the offender)
- the involvement of the victim, the offender and the community in a search for solutions.

Taking into account the definition of restorative justice by Zehr, as well as the objectives noted by 89% percent of the respondents, one of the most important aims of restorative justice is to focus on repair and restitution. This primary aims of restorative justice as identified by twenty of the magistrates (90%), twenty three of the prosecutors (86%) and twenty probation officers (90%) thus reflects a very good understanding of the core elements of the approach.

4.2.4.3 The extent to which restorative justice principles are considered when sentencing a young offender

Magistrates

Table 23.	Magistrates	
	Numbers	Percentages
- The principles are mainly considered for first offenders.	2	9%
- The principles should be utilized more readily.	2	9%
- Youth offenders and adult offenders should be punished equally.	13	59%
- The principles should be considered, but cannot be implemented due shortage of manpower.	5	23%

Thirteen (59%) of the respondents interviewed agreed that youth offenders and adults should be punished equally. Two respondents (9%) admitted that restorative justice is mainly considered for first offenders, and a further two (9%) feel that it should be utilized more readily. Although five (23%) admitted that restorative justice should be considered, they also said that it cannot be

implemented because of a lack of manpower and because of the existing backlogs within the criminal justice system.

Prosecutors

Table 24.	Prosecutors	
	Numbers	Percentages
- The principles are considered to a large extent if the offender show remorse.	3	11%
- The principles are mainly considered for first offenders.	7	26%
- The principles should be utilized more readily.	6	22.2%
- Youth offenders and adult offenders should be punished equally.	2	7.4%
- The principles should be considered, but cannot be implemented due to a shortage of manpower.	3	11%
- The principles are not considered if the offender has committed previous offences	6	22.2%

Seven (26%) of the prosecutors interviewed felt that restorative justice is primarily considered in the sentencing of youth offenders, but six (22%) felt that it should be utilized more readily. At the time of the interview, six prosecutors (22%) admitted that restorative justice principles are often not considered due the offenders' previous offences. Overall, respondents were of the opinion that restorative justice principles are mainly considered for first offenders.

Probation Officers

Table 25.	Probation officers	
	Numbers	Percentages
- The principles are considered to a large extent if the offender show remorse.	5	25%
- The principles are mainly considered for first offenders.	7	35%
- The principles should be utilized more readily.	4	20%
- The principles are not considered if the offender has committed previous offences	4	20%

Most of the probation officers felt that restorative justice principles are considered mainly for first offenders. Except for two respondents who indicated that restorative justice principles are not considered if offenders have previously committed offences, the majority agree that the principles are in fact taken into consideration if the offender shows remorse.

Discussion

The research revealed that magistrates, prosecutors and probation officers have different perceptions of the extent to which restorative justice principles should be considered when sentencing youth offenders. The majority of the judicial officials were of the opinion that youth offenders and adult offenders should be punished equally, which means in the same way, but they also agreed that restorative justice has an important role to play because the courts must consider the victim's needs.

Overall, the respondents were far more uncertain about the principles of restorative justice when sentencing a youth offender than they were about the

concept and aims of restorative justice itself. This means that magistrates, prosecutors and probation officers have knowledge of the concept of restorative justice, but lack understanding in the implementation thereof. Magistrates also realized that it does have a role to play, but also acknowledged that this role is often minimised by not implementing restorative justice because of a lack of manpower.

As reflected in Tables 20 to 25, most prosecutors and probation officers have knowledge of restorative justice and reflect that the principles of restorative justice should be considered when sentencing a young offender.

Communication between these two role-players is of paramount importance in applying the principles. Feedback from judicial officials and probation officers, in fact, is important, and failure to do so can lead to the principles of restorative justice not being considered.

4.2.4.4 The benefits of restorative justice for the victim

In this section, (tables 26,27 and 28) the respondents' views on the advantages of restorative justice will be considered according to the three categories affected by the crime: namely the victim, the offender and the community.

Magistrates

Table 26.	Magistrates	
	Numbers	Percentages
- Compensation for the victim.	9	41%
- Vindication for the victim.	2	9%
- Healing process for the victim, which means some sort of closure at the end.	4	18%
- Reinforcing a positive view of the justice system by the victim.	7	32%

When the respondents were asked to identify the benefits of restorative justice for the victim, nine magistrates (41%) said that it was compensation to the victim, in other words, attending to the victim's needs. Seven of the respondents (32%) reported that restorative justice would reinforce a positive image of the justice system. Four magistrates (18%) and two magistrates (9%) respectively agree that the benefit would be a healing process for the victim or a form of vindication for the victim.

The victim could thus consider restorative justice as a way of righting the wrong done to him or her.

Prosecutors

Table 27.	Prosecutors	
	Numbers	Percentages
- Compensation for the victim.	6	22%
- Vindication for the victim.	1	4%
- Healing for the victim from the effects of the crime.	13	48%
- Reinforcing a positive view of the justice system by the victim.	7	26%

Thirteen prosecutors (48%) said that one of the benefits of restorative justice for the victim was that it is a healing process, which means that there is some

sort of closure at the end. It gives the victim an opportunity to express their feelings about the offence. Seven (26%) respondents were of the opinion that the view of the victim will reinforce the image of a positive justice system, while magistrates agree that the benefit for the victim is compensation, because it will help the victim to be remedied more speedily.

Probation Officers

Table 28.	Probation Officers	
	Numbers	Percentages
- Compensation for the victim.	3	15%
- Vindication for the victim.	6	30%
- Healing process for the victim, which means some sort of closure at the end.	10	50%
- The victim should have a positive view of the justice system.	1	5%

Half of the probation officers (ten) felt that the main benefit of restorative justice for the victim is that it is a healing process for the victim. This gives the victim an opportunity to acknowledge the offender as a person and to make the offender aware of the consequences of his actions.

The other benefits identified by the probation officers were: vindication for the victim and compensation for the victim.

Discussion

In the light of the benefits noted by the key sources namely the prosecutors and probation officers, one of the most important benefits of restorative justice for the victim is the healing process. This starts with the need for support and a sense of safety. The magistrates were the least likely to agree on this issue, however.

The above data indicated that the judicial officials and probation officers are aware of the fact that the needs of those who have been violated must be met. Judicial officials saw restitution as one form of vindication. The data also reveals that the magistrates wanted the view of the victim to reinforce a positive image of the justice system.

Although not part of the research, it is evident from experience through service delivery that victims are currently negative about the criminal justice system and feel that the criminal justice system is benefiting the offender when sentences such as correctional supervision are passed.

Furthermore, the results of the findings reveal that a significant number of prosecutors (48%) and probation officers (50%) share a similar view on the benefit of restorative justice as a healing process for the victim. Only eighteen percent (18%) of the magistrates share this view with the other respondents. This can be an indication that financial compensation to the victim is much more important to the magistrates which may reflect a misinterpretation of restorative justice.

4.2.4.5 The benefits of restorative justice for the offender.

Tables 29, 30 and 31 below consider the magistrates', prosecutors' and probation officers' views on the benefits restorative justice holds for the offender.

Magistrates

Table 29.	Magistrates	
	Numbers	Percentages
- Offenders could misuse the system, which means it will have no benefit.	3	14%
- It keeps offenders out of prison by using more rehabilitative sentences.	7	32%
- Offenders learning to take responsibility and be accountable for their own actions.	6	27%
- It is a more positive form of sentencing and can be served in the community, but it is not necessarily a benefit to the society.	6	27%

When the magistrates were asked what they thought the benefits of restorative justice for the offender were, seven (32%) were of the opinion that it is to keep offenders out of prison for a more rehabilitative sentence. Six (27%) respondents understand it as an opportunity for the offender to learn to take responsibility and be accountable for his actions, and another six (27%) magistrates interpret it as a more positive form of sentence, that could be served in the community. However, this does not necessarily benefit society. Surprisingly, a low percentage of the respondents predicted that offenders could misuse the system.

Prosecutors

Table 30.	Prosecutors	
	Numbers	Percentages
- Offenders could misuse the system, which means it will have no benefit.	6	22%
- It keeps offenders out of prison by using more rehabilitative sentences.	8	30%
- Offenders learning to take responsibility and be accountable for their own actions.	9	33%
- It is a more positive form of sentencing and can be served in the community, but it is not necessarily a benefit to the society.	4	15%

Nine respondents (33%) agreed that the benefit for the offender is to learn to take responsibility and be accountable for his/her own actions. Other benefits identified by the prosecutors were: restorative justice keeps offenders out of prison in favour of a more rehabilitative sentence; it is a more positive form of sentence and can be served in the community. However, if restorative justice is misused by the offender, it will not be of any benefit for him or her. This means the offender did not rehabilitate and re-offending will most probably occur. Furthermore, the offender might be in a position of not getting a criminal record which will result in an advantage for the offender.

Probation Officers

Table 31.	Probation officers	
	Numbers	Percentages
- Offenders could misuse the system, which means it will have no benefit.	2	10%
- It keeps offenders out of prison by using more rehabilitative sentences.	2	15%
- Offenders learning to take responsibility and be accountable for their own actions.	12	60%
- It is a more positive form of sentencing and can be served in the community, but it is not necessarily a benefit to society.	3	10%
- It provides an opportunity for the offender to apologize to the victim.	1	5%

A majority of the respondents (60%) said that the benefit of restorative justice is that the offender learns to take responsibility for his/her wrongdoing. Five probation officers (25%) agreed that restorative justice is a more rehabilitative sentence than a normal prison sentence, as it is positive and can be served in the community. Only two probation officers (10%) were of the opinion that the system could be misused, by the offender, which means it will have no benefit, because rehabilitation is one of the main principles.

Discussion

Overall, respondents were far more certain about the benefits of restorative justice for the victim, as they were for the benefits held for the offender. Firstly, because the sentence focuses on the person and not the wrong done by the person. This means that it focuses on the harm suffered rather than on the laws broken. Restorative justice will allow the victim to view the offender as a person, whereas the offender will appreciate the harm he has done. This can

result in positive rehabilitation of the offender. Twenty-eight respondents (41%) agreed that the offender needs to take responsibility for his actions and that he must be accountable for his wrongdoing.

The findings raise an interesting fact, namely that the same percentage of magistrates and prosecutors (32%) share the view that a benefit of restorative justice for offenders is to keep them out of prison.

Although judicial officials know that it is the correct answer, they do not necessarily implement restorative justice in their sentencing practices.

Only 15% of probation officers agree to this view. It appears, therefore, that it is much more important for probation officers that offenders take responsibility for their actions. The reason could either be that probation officers were victims in the past or they render services to victims and know the harm that is done to victims.

4.2.4.6 The benefits of restorative justice for the community.

The benefits restorative justice holds for the community will be discussed in tables 32, 33 and 34.

Magistrates

Table 32.	Magistrates	
	Numbers	Percentages
- Sentences served within the community make the community part of the justice process.	10	45%
- The process shifts responsibility to the community in that it plays a monitoring role.	4	18%
- This approach does not place a financial burden on the community.	5	23%
- There are no benefits of the system because the community lacks knowledge about restorative justice.	3	14

Ten magistrates (10%) said that the benefit of restorative justice for the community is that the sentence is served within the community, which makes the community part of the justice process. Furthermore, five (23%) magistrates held the view that the approach places no financial burden on the community. Four (18%) magistrates were of the opinion that the process shifts the responsibility to the community, which must play a monitoring role. Three (14%) respondents said that, due to the lack of knowledge on restorative justice on the part of the community, there are no benefits for the community.

Prosecutors

Table 33.	Prosecutors	
	Numbers	Percentages
- Sentences served within the community make the community part of the justice process.	11	41%
- The process shifts responsibility to the community in that it plays a monitoring role.	10	37%
- This approach does not place a financial burden on the community.	3	11%
- There are no benefits of the system because the community lacks knowledge about restorative justice.	3	11%

Eleven of the respondents (41%) indicated that the benefit of restorative justice for the community is that the sentence is served in the community, which means that the community is part of the justice process. More importantly, it allows the victim to see the offender focusing on repairing wrong and making things right. Ten prosecutors (37%) agreed that the process shifts the responsibility to the community. Getting the community involved is good in order for them to realise that justice was done to the victim and the offender. Three prosecutors (11%) held the opinion that the approach does not

place a financial burden on the community, and another three (11%) felt that it is of no benefit to society due to a lack of knowledge on restorative justice.

Probation Officers

Table 34.	Probation Officers	
	Numbers	Percentages
- Sentences served within the community make the community aware of such sentences.	6	30%
- The process shifts responsibility to the community in that it plays a monitoring role.	10	50%
- This approach does not place a financial burden on the community.	2	10%
- There are no benefits of the system because the community lack knowledge about restorative justice.	2	10%

Ten probation officers (50%) viewed the most important benefit for the community as being that the process of restorative justice shifts the responsibility to the community. The other benefits selected by the respondents were: firstly, that sentences, which are served within the community, means that the community is part of the justice process, and secondly, that the approach places no financial burden on the community.

Discussion

When the respondents were asked what they thought the main benefits of restorative justice for the community were, 45% of the magistrates felt that the community would become part of the justice process, whereas half of the probation officers and 37% of the prosecutors felt that the responsibility was shifted to the community, which was required to play a monitoring role.

The findings reveal that it is still important for the magistrates that the victim and the community must have faith in the criminal justice system, whereas prosecutors and probation officers believed that communities play an important role. On the one hand, the community should take responsibility for the process, and on the other hand, it should prevent crime through positive interventions.

4.2.4.7 Disadvantages of restorative justice for the victim.

In this section (Tables 35 - 43) the respondents' views on the disadvantages of restorative justice will be considered according to the three categories affected by the crime: namely the victim, the offender and the community.

Magistrates

Table 35.	Magistrates	
	Numbers	Percentages
- It holds disadvantages for the victim if compensation is not possible and if the victim is victimized by the offender.	10	45%
- There are limited disadvantages for the victim.	2	10%
- There are no disadvantages for the victim, but the process must be handled professionally.	10	45%

The magistrates were not sure whether the main disadvantage of restorative justice was the situation where it is not possible to compensate the victim or whether there is no disadvantage for the victim at all. All of the respondents agreed, though, that it is of utmost importance to handle the process professionally.

Prosecutors

Table 36.	Prosecutors	
	Numbers	Percentages
- It holds disadvantages for the victim if compensation is not possible and if the victim is victimized by the offender.	19	70%
- There are limited disadvantages for the victim.	3	11%
- There are no disadvantages for the victim, but the process must be handled professionally.	5	19%

The majority of the prosecutors (70%) believed that restorative justice has disadvantages if the victim is not compensated and if the victim is victimized by the offender. In contrast, five (19%) respondents agreed that there are no disadvantages for the victim, and five (15%) respondents are of the opinion that there are limited / few disadvantages. In some instances, the victim will not be satisfied by the sentence passed.

Probation Officers

Tables 37.	Prosecutors	
	Numbers	Percentages
- It holds disadvantages for the victim if compensation is not possible and if the victim is victimized by the offender.	16	80%
- There are no disadvantages for the victim, but the process must be handled professionally.	4	20%

Most of the respondents (sixteen) (80%) said that the only disadvantage of restorative justice for the victim is the situation where the offender cannot financially compensate the victim due to the high rate of unemployment. Four respondents (20%) feel that there are no disadvantages at all, explaining that it allows the victim to be heard, which means the healing process can start.

Discussion

The findings reveal that 45% of the magistrates felt that the victim must compromise on the suffering and pain and participate in the process in order for the process of restorative justice to be effective. Seventy percent of the prosecutors and eighty percent of the probation officers were of the opinion that the victim is not prepared for restorative justice beforehand, which means that they might feel the system is failing them if compensation is impossible.

It would appear from the findings that magistrates are concentrating on the laws broken rather than on the harm that was done to the victim. This again reveals that magistrates have strong faith in punishment and continue to practice what they were trained in. The findings reveal that magistrates had views and knowledge regarding the interview schedule, but do not necessarily implement what they know.

A very low percentage of the prosecutors (19%) and probation officers (20) share the same view that there are not disadvantages for the victim. The victim can only benefit from restorative justice. It therefore appears as if practical implementation is the problem as well as they are waiting on one another to implement restorative justice.

4.2.4.8 The disadvantages of restorative justice for the offender.

The magistrates, prosecutors and probation officers views on the disadvantages of restorative justice for the offender will follow in tables 37,38 and 39.

Magistrates

Table 38.	Magistrates	
	Numbers	Percentages
- It holds disadvantages for the offender if it leads to victimization of the offender.	2	9%
- It holds disadvantages for the offender if it is seen as an easy option to avoid imprisonment.	4	18%
- Restorative justice holds limited disadvantages for the offender.	1	5%
- There are no disadvantages for the offender and it is, instead, an opportunity to right the wrongs.	15	68%

Fifteen respondents (68%) felt that there are no disadvantages for the offender. Instead, they felt that it gives the offender a second chance and an opportunity to make right the wrongs he or she has caused. Four magistrates (27%) were of the opinion that it would, however, be a disadvantage if the offender were to see restorative justice as an easy option to avoid imprisonment and not adhere to the conditions of the restorative justice sentence. This implies that rehabilitation did not take place.

Prosecutors

Table 39.	Prosecutors	
	Numbers	Percentages
- It holds disadvantages for the offender if it leads to victimization of the offender.	5	19%
- It holds disadvantages for the offender if it is seen as an easy option to avoid imprisonment.	6	22%
- Restorative justice holds limited disadvantages for the offender.	1	4%
- There are no disadvantages for the offender and it is, instead, an opportunity to right the wrongs.	15	55%

Fifty-five percent (55%) of the prosecutors agreed that there are no disadvantages for the offender. Instead, this approach could lead to the offender rectifying the personal harms and interpersonal relationships that were disturbed. Eleven (41%) respondents agreed that restorative justice would be disadvantageous, however, if the offender sees it as an easy way of avoiding imprisonment. This can lead to the offender thinking that money may buy anything, even in serious offences. In other words, the offender might think that all wrongs can be corrected by financial compensation.

Probation Officers

Table 40.	Magistrates	
	Numbers	Percentages
- It holds disadvantages for the offender if it leads to victimization of the offender	4	20%
- It holds disadvantages for the offender if it is seen as an easy option to avoid imprisonment	8	40%
- Restorative justice holds limited disadvantages for the offender.	5	25%
- There are no disadvantages for the offender and it is, instead, an opportunity to right the wrongs.	3	15%

When asked what the respondents viewed as the disadvantages of restorative justice for the offender, a slight majority of 60% agreed that it would be if the offender sees restorative justice as an easy option to avoid imprisonment and if the offender is victimize. The other eight (40%) respondents felt that there are few or no disadvantages. Instead, it is an opportunity for the offender to take full responsibility for his actions and make amends

Discussion

The findings suggest that most of the magistrates (68%) and prosecutors (55%) agreed that there are no disadvantages for the offender. Rather, it offers him a second change to rehabilitate. Magistrates and prosecutors were of the opinion, however, that offenders may minimize the violation and not learn from past mistakes and that they may in fact misuse the system.

To a large extent the probation officers The probation officers were of the opinion that restorative justice has no disadvantages for the offender, except

when the offender sees it as an easy option to avoid imprisonment. This means that the offender may feel powerful in the sense of them believing that they could misuse the justice system to their benefit, when he or she does not receive a sentence of imprisonment. In very exceptional cases, it might also happen that the victim is not prepared to except an apology, in which case the healing process will be very slow.

4.2.4.9 The disadvantages of restorative justice for the community.

The respondents' views on the disadvantages restorative justice holds for the community will follow in tables 41, 42 and 43.

Magistrates

Table 41.	Magistrates	
	Numbers	Percentages
- The process holds disadvantages for the community if it is misled by the offender and does not take responsibility for the process.	6	27%
- It holds limited disadvantages for the community when the community is part of the process and fully understands restorative justice.	2	9%
- There are no disadvantages for the community.	14	64%

A majority of the respondents (fourteen:64%) were of the opinion that there are no disadvantages for the community. Disadvantages selected by the remaining magistrates were: that the community may be misled by the offender; that the community may not take responsibility for the process; and that the community may not fully understand restorative justice and /or that it may not be part of the process.

Prosecutors

Table 42.	Prosecutors	
	Numbers	Percentages
- The process holds disadvantages for the community if it is misled by the offender.	5	19%
- The process holds disadvantages for the community if the offender does not take responsibility for the process.	15	55%
- There are no disadvantages for the community	7	26%

Twenty respondents (74%) stated that the process of restorative justice only has disadvantages for the community if the offender misleads the community and if the community does not take responsibility for the process. Seven (20%) of the respondents, however, said that there are few or no disadvantages for the community. Some respondents felt, furthermore, that the community might mistakenly think that restorative justice is only for the rich and famous. In this regard, they mentioned the Thatcher case.

Probation Officers

Table 43.	Probation Officer	
	Numbers	Percentages
- The process holds disadvantages for the community if it is misled by the offender and does not take responsibility for the process.	13	65%
- It holds limited disadvantages for the community when the community is part of the process and fully understands restorative justice.	4	20%
- There are no disadvantages for the community.	3	15%

Although most respondents (thirteen:65%) stated that restorative justice only has disadvantages for the community if it does not take responsibility for the process. The remaining eight (40%) said that there are few or no disadvantages for the community.

Discussion

Overall the magistrates were of the opinion that the community could benefit from restorative justice, because restoration occurs within the community, which allows the latter to accept the wrong the offender had done, but also witness the restitution of that wrong. It also makes the community part of the justice system.

It was clear from the above discussion that the prosecutors had a positive attitude towards restorative justice, because the disadvantages of this approach are limited. Some of the participants see restorative justice mainly as compensation of the victim, and therefore view the process as being limited to the rich who can afford to pay compensation and bail, whereas the poor have to go to jail. They, nonetheless, admitted that they needed more guidance on restorative justice and its implementation.

Prosecutors (74%) and probation officers (65%) share the same view that restorative justice is only disadvantage to the community when the offender misled the community and does not take responsibility, while 64% of the magistrates said there are no disadvantages. Therefore, it could be said that respondents agreed that communities benefit, but that the judicial officials and probation officers lack knowledge how to educate them.

The probation officers, in contrast, were of the opinion that the community needs to be better informed about restorative justice. The community may feel that this type of punishment is too lenient, and that the justice system is in

favour of the offender. As a result of this lack of knowledge, the community may not be willing to take responsibility for the process. Although the community's wishes were ignored in the past by the justice system it can now be rectified through the restorative justice approach.

4.2.5 Views of the respondents with regard to the implementation of restorative justice in the sentencing of youth offenders

Roughly two-thirds of the respondents interviewed felt that restorative justice was appropriate to implement in the sentencing of young offenders. Most supported restorative justice as a means of attending to the needs of the victim. The following tables, (tables 44 - 52), reflect the view of respondents regarding those crimes that are appropriate for restorative justice.

4.2.5.1 Respondents' views on particular sentences that have restorative justice outcomes.

The magistrates, prosecutors and probation officers views on the above mentioned will follow in tables 44, 45 and 46 below.

Magistrate

Table 44.	Magistrates	
	Numbers	Percentages
- No particular sentences have restorative justice outcomes.	6	27%
- Compensatory orders, suspended sentence, correctional supervision, postponed sentence and community sentence.	16	73%
Reasons why the above sentences have restorative justice outcomes:		
- The aim of the sentence is restorative.	6	27%
- A service can be rendered to the community/victim.	5	23%
- The offender needs to abide by the conditions and at the same time take responsibility for his actions as well as his own life.	11	50%

A slight majority of the magistrates (fourteen:64%) are of the opinion that compensatory orders, suspended sentences, postponed sentences, correctional supervision and community service have restorative justice outcomes. The respondents agreed that the offender has to abide by certain conditions and at the same time take responsibility for his actions as well as for his own life. Six respondents (27%) felt that there are no particular sentences, which have restorative justice outcomes, while the remaining two (9%) respondents said that it is not appropriate for serious crimes.

Prosecutors

Tables 45.	Prosecutors	
	Numbers	Percentages
- No particular sentences have restorative justice outcomes.	6	0%
- Compensatory order, suspended sentence, correctional supervision, postponed sentence and community.	16	100%
Reasons why the above sentences have restorative justice outcomes:		
- The aim of the sentence is restorative	3	11%
- A service can be rendered to the community/victim.	6	22%
- The offender needs to abide by the conditions and at the same time take responsibility for his actions as well as his own life.	7	26%
- The offender needs to compensate the victim and render a service to the victim who is part of the community.	10	37%
- The offender can rehabilitate in the community	1	4%

All the respondents maintained that compensatory orders, suspended sentences, postponed sentences, correctional supervision and community service have restorative justice outcomes. Ten of these respondents (37%) were of the opinion that the offender needs to compensate the victim and render a service to the victim if he/she cannot afford to compensate the victim financially. Other views as to how the outcomes would be restorative were the following: seven respondents (26%) said that the offender needs to abide by certain conditions and take responsibility for his actions; one (4%) said that the offender can rehabilitate in the community' six (22%) said that a service can be rendered to the victim, and three (11%) agreed that the aim of such sentences was restorative.

Probation Officers

Table 46.	Probation Officers	
	Numbers	Percentages
- No particular sentences have restorative justice outcomes.	3	15%
- Compensatory order, suspended sentence, correctional supervision, postponed sentence and community.	17	85%
Reasons why above sentences have restorative justice outcomes:		
- A service can be rendered to the community/victim.	2	10%
- The offender needs to compensate the victim and render a service to the victim who is part of the community.	13	65%
- The offender can rehabilitate in the community	5	25%

Most of the respondents (85%) viewed compensatory orders, suspended sentences, correctional supervision, postponed sentences and community service as sentences that have restorative justice outcomes. They saw the outcomes as restorative because the offender should compensate the victim or render a service to the victim who is part of the community. Five of the respondents (25%) agreed that the offender could be rehabilitated within the community.

Discussion

Although twenty-one magistrates and prosecutors thought the sentences that have restorative justice outcomes would have restitution and healing in mind, few respondents believed that restorative justice is appropriate in the sentencing of young offenders who have committed serious crimes.

Furthermore, magistrates believed that probation officers should take the lead in the process because they would be the main role-players. The findings indicate that the respondents were uncertain when and how to apply restorative justice if it was not automatically coupled with a specific sentence in the Criminal Procedure Act.

4.2.5.2 Crimes which are appropriate for restorative justice.

The respondents' views on the crimes that are appropriate for restorative justice are discussed in table 47, 48 and 49.

Magistrates

Table 47.	Magistrates	
	Numbers	Percentages
- No crimes should be considered for restorative justice	6	27%
- Assault common / Common assault	2	9%
- Housebreaking, theft and shop- lifting.	8	36%
- Domestic violence	2	9%
- White collar crimes	1	5%
- It should not be the crime, but the person that should be considered for restorative justice.	3	14%

Eight magistrates (36%) were of the opinion that housebreaking, theft and shoplifting are the only crimes that could be considered for restorative justice, whereas six (27%) felt that no crime at all was appropriate for restorative justice.

The results furthermore indicate that three respondents (14%) felt that it was not the crime that was appropriate for restorative justice but rather the person who should be considered for restorative justice. One (5%) said that white-

collar crime was appropriate, whereas two (9%) said that common assault was appropriate and two (9%) said domestic violence was appropriate.

Prosecutors

Table 48.	Prosecutors	
	Numbers	Percentages
- No crimes should be considered for restorative justice	1	4%
- Assault common / Common assault	4	15%
- Housebreaking, theft and shop- lifting.	5	19%
- Domestic violence	3	11%
- White collar crimes	3	11%
- Drunken driving	2	7%
- Murder	2	7%
- Drug offences	2	7%
- Damage to property	2	19%

Sixteen prosecutors respectively stated that the following crimes were appropriate for restorative justice: common assault, housebreaking, theft, shoplifting, domestic violence, white collar crimes, drunken driving, murder, drug offences and damage to property. Only one prosecutor (4%) was of the opinion that no crimes at all should be considered for restorative justice.

Probation Officers

Table 49.	Probation Officers	
	Numbers	Percentages
- Assault common / Common assault	4	20%
- Housebreaking, theft and shop- lifting.	2	50%
- Domestic violence	8	10%
- It should not be the crime, but the person that should be considered for restorative justice.	2	10%
- Drunken driving	1	10%

The findings indicate that probation officers and magistrates responded similarly. The majority of the respondents stated that housebreaking, theft and shoplifting were appropriate crimes to be considered for restorative justice. They believed that murder, drug offences and damage to property should not be considered for restorative justice. Two respondents view common assault, as appropriate for restorative justice, whereas one respondent felt that domestic violence, and another drunken driving is appropriate for restorative justice.

Discussion

The respondents were far more certain about the objectives of restorative justice than they were of which crimes are appropriate for restorative justice. Sixty percent of the magistrates, ninety percent of the prosecutors and ninety percent of the probation officers believed that restorative justice is an appropriate approach in the sentencing of youth offenders. The magistrates (thirty-six percent) and the probation officers (fifty percent) said that it was more appropriate for petty crimes, such as housebreaking, theft and shoplifting. The findings indicate that probation officers need to have a common

understanding of restorative justice as the magistrates in order for the latter to accept their recommendations. Magistrates, prosecutors and probation officers should be made aware that the principles of restorative justice can be applied at all stages of the criminal justice process, namely sentencing, pre-trial, pre-sentencing and post-sentencing. The findings also reveal that respondents were not sure how to apply restorative justice during the sentencing phase. All respondents believed, furthermore, that restorative justice must be coupled with a sentence in terms of the Criminal Procedures Act.

4.2.5.3 The respondents' views on crimes that are inappropriate for restorative justice.

In table 50, 51 and 52 the views of the magistrates, prosecutors and probation officers on crimes that are inappropriate for restorative justice will be discussed.

Magistrates

Table 50.	Magistrates	
	Numbers	Percentages
- Murder, rape, violent crimes, armed robbery and drug offences.	15	68%
- If it is a third offence, then all offences are inappropriate for restorative justice.	2	9%
- Each case must be handled on its own merits.	2	9%
- The approach can result in more community based sentence	3	14%

Fifteen respondents (68%) felt that serious crimes, such as murder, rape, violent crimes, armed robbery and drug offences are inappropriate for restorative justice, but they also mentioned that each case should be treated on its own merits. They gave as their reasons the fact that no sentence can bring someone back to life, and that the community will lose faith in the criminal justice system if sentences are too lenient.

With regard to other offences, such as armed robbery and car hijackings, four respondents (18%) felt that such people do not have any respect for human life, nor do they respect other people's property. Three respondents (14%) felt that restorative justice is inappropriate when the offender has three or more cases against him.

Prosecutors

Table 51.	Prosecutors	
	Numbers	Percentages
- Murder, rape, violent crimes, armed robbery and drug offences.	22	81%
- Fraud, but cases must be treated on their own merits.	2	7.4%
- If it is a third offence, then all offences are inappropriate for restorative justice.	1	4%
- Each case must be handled on its own merits.	1	4%
- The approach can result in more community based Sentences.	1	4%

Twenty-two prosecutors (81%) were of the opinion that restorative justice is inappropriate for murder, rape, violent crimes, armed robbery and drug offences. The nature and gravity of the offence and protection of society as a whole should also be a consideration. If the offender is likely to pose a threat to society, then restorative justice should not be considered. Other crimes

selected by the respondents as inappropriate for restorative justice were the following: if it is the offender's third offence (one respondent), and if it is a case of fraud (two respondents). However two respondents, (7%) felt that each case must be handled on its own merits, and this approach can result in a more community based sentence.

Probation Officers

Table 52.	Probation Officers	
	Numbers	Percentages
- Murder, rape, violent crimes, armed robbery and drug offences.	8	40%
- If it is a third offence, then all offences are inappropriate for restorative justice.	4	20%
- Each case must be handled on its own merits.	2	10%
- The approach can result in more community based sentence.	6	30%

Eight probation officers (40%) viewed murder, rape, violent crimes, armed robbery and drug offences as inappropriate crimes for restorative justice. Serious crimes need harsher punishment than restorative justice, but no crime should be excluded from restorative justice. Even if the offender receive a sentence, restorative justice can be implemented at a later stage, when the victim is ready and has been prepared for the process. Two respondents (10%) were of the opinion that each case should be handled on its own merits, and 6 probation officers felt that this approach will result in more community based sentence. Four respondents (20%) agreed that restorative justice is inappropriate if the offender has committed a third offence.

Discussion

Most of the magistrates, prosecutors and probation officers (sixty-three percent) believed that restorative justice is inappropriate for certain sentences, such as murder, rape, violent crimes, armed robbery and drug offences. Although judicial officials supported the principles of restorative justice in the sentencing of youth offenders, they still felt that certain crimes - mainly serious ones- are inappropriate for restorative justice. Probation officers, in contrast, felt that judicial officials should be made aware of the fact that restorative justice can be applied, but that the magistrates were uncertain on how to apply it in practice. Clearly, more workshops should be run and attended by all respondents. Probation officers should be careful not to make a recommendation that is in favour of the magistrate instead of being in the best interests of the young offender.

4.2.5.4 Other views of the respondents on applying restorative justice in respect of young offenders.

Tables 53, 54 and 55 will reflect the views of the magistrates, prosecutors and probation officers on applying restorative justice in respect of young offenders.

Magistrates

Table 53.	Magistrates	
	Numbers	Percentages
- The Justice Bill needs to be passed to implement more legally applicable sentences for young offenders.	4	18%
- Restorative justice is difficult to implement due to a lack of resources, facilities and manpower.	4	18%
- There is a need for more collaboration between judicial officials and social services.	2	9%
- Practical information is needed on the implementation of restorative justice.	2	10%
- No further views.	10	45%

Ten of the respondents (45%) had no further views on restorative justice. Four magistrates (18%) were opinion that Child Justice Bill needs to be passed to enable them to implement more legally applicable sentences for youth offenders. Another four respondents (18%) agreed that restorative justice is difficult to implement due to a lack of resources, facilities and manpower. Two (9%) respondents said that more collaboration was needed between judicial officials and probation officers.

Prosecutors

Table 54.	Prosecutors	
	Numbers	Percentages
- The Justice Bill needs to be passed to implement more legally applicable sentences for youth offenders.	3	11%
- Restorative justice is difficult to implement due to a lack of resources, facilities and manpower.	7	26%
- Probation officers should co-ordinate and recommend restorative justice.	10	37%
- Victim/offender mediation is implemented.	2	7%
- Practical information is needed on the implementation of restorative justice.	1	4%
- No further views.	4	15%

Ten prosecutors (37%) said that the probation officer should co-ordinate the implementation of restorative justice. This means that the probation officer must take the initiative and start with the implementation of restorative justice and recommend restorative justice in the sentencing of young offenders. Seven (26%) respondents agreed that restorative justice is difficult to implement due to a lack of resources, facilities and manpower. According to two (7%) respondents, victim-offender mediation has been implemented on two occasions where they specifically requested the probation officers to facilitate the process, and one respondent was of the opinion that more practical information on the implementation of restorative justice had to be made available. This needs to be done by the National Departments. Five respondents (19%) had no further views on restorative justice.

Probation Officers

Table 55.	Probation Officers	
	Numbers	Percentages
- The Justice Bill needs to be passed to implement more legally applicable sentences for youth offenders.	4	20%
- There is a need for more collaboration between judicial officials and social services.	2	10%
- Probation officers should co- ordinate and recommend restorative justice.	2	10%
- Victim/offender mediation is implemented.	2	10%
- Practical information is needed on the implementation of Restorative justice.	4	20%
- No further views.	6	30%

Six respondents (30%) had no further views on applying restorative justice, while four respondents (20%) insisted that more practical information should be made available on the implementation of restorative justice. Two respondents (10%) agreed that the probation officer should co-ordinate the process of restorative justice and recommend restorative justice in the sentencing of youth offenders. However, two respondents (10%) emphasised a need for more collaboration between judicial official and probation officers, while four respondents (20%) agreed that passing of the Child Justice Bill could help with more legally applicable sentences for youth offenders.

Discussions

The research revealed that the magistrates, prosecutors and probation officers have different perceptions of applying restorative justice in respect of youth offenders.

The probation officers viewed the implementation of restorative justice as the task and responsibility of the judicial officials, whereas the judicial officials

view the implementation of restorative justice as the responsibility of the probation officer and the latter should recommended a sentence with a restorative justice outcome.

The significance of this is that magistrates are not prepared to discuss individual cases beforehand. Therefore, should probation officers recommend sentences with a restorative justice outcome, magistrates are likely to disregard the recommendation.

The above data furthermore indicated that judicial officials see their role in the implementation of restorative justice in an advisory capacity. Hence they cannot pass sentences with a restorative justice approach which are not included in the Criminal Procedure Act. The judicial officials have to abide by acts and regulations and are therefore of the opinion that the Child Justice Bill needs to be passed. Four probation officers (20%) shared this opinion of the magistrates.

Although eleven judicial officials felt that restorative justice is difficult to implement due to a lack of resources, facilities and manpower, four probation officers insisted that more practical information should be made available to address the difficulties of implementation. Furthermore, the findings indicate that more collaboration was needed between judicial officials and probation officers.

4.2.6 The actual application of restorative justice in the sentencing of young offenders.

A total number of 308 court files were consulted in order to ascertain whether restorative justice was used in the sentencing of youth offenders.

The following table reflects the offence committed as well as the recommendation made by the probation officers, followed by the sentence that was passed by the magistrates.

For the purpose of understanding the table the following explanatory abbreviations were used:

Correctional Supervision	= cor. sup.
Suspended Sentence	= susp.
Postponed Sentence	= post.
Imprisonment	= imp.
Withdrawal	= w,d.
Fine	= fine.
Rehabilitation	= rhab.

Table 55: Statistics for the period 1 July 2004 to 31 December 2004 on youth offenders who were prosecuted as well as the recommendation made by the probation officer and the sentence passed by the magistrate

OFFENCES	PROBATION OFFICER'S RECOMMENDATION	NUMBER	SENTENCE	NUMBER
Assault	Withdrawal	12	Withdrawal	14
	Correctional sup.	5	Correctional sup.	6
	Imprisonment	8	Imprisonment	6
	Imprisonment and Correctional sup.	4	Imprisonment and Correctional sup.	0
	Suspended	6	Suspended	7
	Fine	0	Fine	2
	Car theft	Suspended	2	Suspended
Child Abuse	Suspended	1	Suspended	0
	Imprisonment & C.S.	1	Imprisonment C.S.	0
	Correctional Sup.	0	Correctional Sup.	1

	Imprisonment	0	Imprisonment	1
Drunken driving	Withdrawal	3	Withdrawal	3
	Correctional Sup.	2	Imprisonment	2
Escape	Postponed	5	Postponed	0
	Suspended		Suspended	5
Fraud	Withdrawal	2	Withdrawal	2
	Correctional Sup.	4	Correctional Sup.	4
	Suspended	6	Suspended	6
Housebreaking and Theft	Withdrawal	36	Withdrawal	27
	Correctional Sup.	13	Correctional Sup.	12
	Imprisonment	16	Imprisonment	23
	Suspended	14	Suspended	21
	Rehabilitation	4	Rehabilitation	10
	Postponed	29	Postponed	19
Injury to property	Withdrawal	1	Withdrawal	1
	Suspended	2	Suspended	2
	Postponed	2	Postponed	2
Murder / attempted Murder	Withdrawal	1	Withdrawal	1
	Correctional Sup.	9	Correctional Sup.	8
	Imprisonment	4	Imprisonment	5
Possession of stolen property	Suspended	5	Suspended	5
	Postponed	4	Postponed	4
	Withdrawal	1	Withdrawal	1
Rape / Attempted Rape	Withdrawal	0	Withdrawal	3
	Correctional Sup.	10	Correctional Sup.	6
	Imprisonment	9	Imprisonment	9
	Suspended	0	Suspended	5
	Postponed	2	Postponed	0
	Fines	2	Fines	2
	No reports	2	No reports	0
Robbery/aggravation	Withdrawal	1	Withdrawal	1
	Imprisonment	8	Imprisonment	8
	Suspended	5	Suspended	5
	Postponed	3	Postponed	3

	Correctional Sup.	2	Correctional Sup.	2
Shoplifting	Suspended	6	Suspended	4
	Correctional Sup.	7	Correctional Sup.	2
	Fine	2	Fine	2
	Postponed	2	Postponed	4
	Imprisonment	0	Imprisonment	5
Stock Theft	Postpone	4	Postpone	3
	Suspended	3	Suspended	4
Theft	Suspended	6	Suspended	5
	Withdrawal	2	Withdrawal	6
	Correctional Sup.	4	Correctional Sup.	7
	Postponed	9	Postponed	2
	Fine	0	Fine	1
Trespassing	Suspended	2	Suspended	2
	Fine	4	Fine	4
Driving of motor vehicle without license	Withdrawal	1	Withdrawal	1
Dealing in drugs	Fine	2	Fine	2
	Correctional Sup.	2	Correctional Sup.	0
	Suspended	6	Suspended	8
TOTAL		308		308

Discussion

It was found that the probation officers have a tendency to make recommendations that were acceptable to magistrates, rather than to influence them to assume more restorative thinking in the sentencing of young offenders.

Prosecutors were of the opinion that probation officers are neglecting the seriousness of the offence and concentrating on the background of the offender. They felt that this results in probation officers recommending lenient sentences for serious crimes, for example a suspended sentence murder.

The findings further reveal that magistrates were of the opinion that they are using restorative principles in the sentencing of young offenders by making use of sentences such as fines and correctional supervision. They, furthermore, were sometimes more lenient with sentencing offenders than the recommendations made by the probation officer.

4.2.7 Summary

The above data indicated that the judicial officials see their current role in the implementation of restorative justice as an advisory capacity. Restorative justice is not part of the Criminal Procedure Act, therefore, the implementation of restorative justice in their sentencing practices is not always possible.

This, on the one hand, implied that the magistrates realize that there is a role to play, but minimize the role by seeing themselves as being involved only in an advisory capacity. Probation officers on the other hand felt that magistrates could implement restorative justice at a much earlier stage, because from the offender's first or second appearance in court, the magistrate has contact with the offender, and can thus refer/intervene with a restorative justice approach. This discrepancy with regards to their perceptions could seem to indicate not only different perceptions among the magistrates, prosecutors and probation regarding restorative justice, but also a lack of communication concerning issues in this area.

Communication between the role-players is of paramount importance in applying restorative justice. However, the findings suggest that magistrates, prosecutors and probation officers are not having regular meetings to discuss views, concerns and problems arising from their day-to-day activities. Feedback from all sides is important and failure to do this can often lead to misunderstanding and misinterpretation.

Another factor that could also have influenced the application of restorative justice is the different perception of the different role-players' regarding each other's responsibilities and duties, as well as uncertainties regarding the nature of restorative justice. Therefore, it would appear that the role-players are waiting on one another to implement restorative justice due to the fact that they are uncertain on how to implement it. Clearly more training on restorative justice is needed.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 INTRODUCTION

The aim of this research was, firstly, to explore the attitudes of the magistrates, prosecutors and probation officers in the implementation of restorative justice when sentencing young offenders. Secondly, it was to explore the knowledge and insight of judicial officials and probation officers. Thirdly, it was to investigate to what extent restorative justice was applied in their sentencing practices. This study set out to determine the experiences of judicial officials and probation officers with regard to achieving the objectives of punishment in the current criminal justice system.

From the findings, it appears that most of the respondents are positively inclined towards the application of restorative justice, but that they still believe that restorative justice is not applicable in serious and violent crimes. It is restricted to instances where magistrates feel it necessary to impose sentences that aim to restore both the victim and the offender.

All the prosecutors were certain that restorative justice could alleviate case backlogs and overcrowding of prisons if they, the prosecutors, were properly trained in the implementation of restorative justice. The prosecutors are, furthermore, of the opinion that the community regards restorative justice as an easy option for criminals to avoid imprisonment and thus holds the prosecutor liable for ensuring justice. That is, in a retributive sense.

All twenty probation officers had positive attitudes towards restorative justice, but also felt that it is difficult to recommend restorative justice in their pre-sentence reports when offenders have committed multiple offences.

All the respondents (magistrates, prosecutors and probation officers) knew about restorative justice. Most of them emphasized the absolute necessity of restorative justice, but said during the interview that they wanted more background on it. Some of the magistrates' responses reflected that they needed to learn more about the principles of implementation of restorative justice practically. In contrast, most of the prosecutors felt that probation officers needed to discuss restorative justice with the various prosecutors, before writing his or her report. This effectively means that prosecutors are of the opinion that, the probation officers would be the main role player in the application of restorative justice. This is unrealistic and greater clarity should be created on the respective roles of judicial officials and probation officers.

Probation officers felt that a steering committee, consisting of the three main role players at the national level (Department of Justice, Department of Public Prosecutions and the Department of Social Services and Population Development), should market the process and create greater clarity on the respective roles of judicial officials and probation officers.

When considering the findings of the research, it was clear that the perception of the respondents was one of support for restorative justice and the realization that the courts must give greater attention to the implementation of restorative justice.

The conclusions of the study will be discussed according to the objectives as stated in Chapter 1.

5.2 CONCLUSIONS

The main views of respondents regarding the effectiveness of achieving the objectives of punishment in the current criminal justice system, as well as the understanding of respondents of the concept of restorative justice and its application in the sentencing of young offenders, will be presented herein.

5.2.1 The attitude of respondents regarding the effectiveness of the current criminal justice system in achieving the objectives of punishment.

The results of the study show that five magistrates, five prosecutors and four probation officers are of the opinion that the current criminal justice system imposes harsher punishment on hardened criminals. They see this as a form of crisis management, because it means that, according to the Criminal Procedure Act, young offenders can be sent to Schools of Industries and Reform Schools; however, no such schools exist in the Northern Cape. They furthermore view the current criminal justice system as effective in imposing sentences and that it sends out a clear message with regard to the effectiveness of such sentences in deterring offenders. Thus, they felt, the latter is the best they can do with in the current situation, because restorative justice is not yet enacted. The views of most of the remaining magistrates, prosecutors and probation officers are that the effectiveness of the current criminal justice system is limited and that it is not always possible for them to execute their functions effectively when sentencing young offenders.

The majority of the magistrates, however, said that the current criminal justice systems' effectiveness in protecting society is limited or completely lacking for the following reasons:

- 1) Imprisonment is only for a short period of time, which in fact means that the offender is only briefly removed from the community;
- 2) offenders often receive amnesty; and
- 3) young offenders become hardened criminals in prison.

Half of the prosecutors are of the opinion that the effectiveness of the criminal justice system is limited and they feel that no programme is in place for witness protection. Most of the probation officers believe that the system is failing society.

The research also shows that judicial officials as well as probation officers are of the opinion that the criminal justice system is not effective in preventing crime, deterring offenders from committing crime, protecting society against criminals, or rehabilitating offenders. This suggests that, in future, the criminal justice system should include restorative justice. Furthermore, the research shows that judicial officials and probation officers support the fact that victims should play a role in the criminal justice system, in terms of their material, financial, emotional and social needs being attended to.

The inputs received from the judicial officials and probation officers clearly indicate that more in-depth knowledge on restorative justice in the sentencing of young offenders is needed.

5.2.2 The knowledge of the magistrates, prosecutors and probation officers on the implementation of restorative justice.

All the respondents, except one, were familiar with the concept of restorative justice. The majority of the respondents could identify the outcomes of restorative justice such as making the offender aware of the harm he or she has caused, making things right, and being accountable for his or her behaviour. The prosecutors felt that the victim should be compensated or that

services should be delivered to the victim, whereas the probation officers felt that the approach must involve both parties in the restorative justice process. The different perceptions of magistrates, prosecutors and probation officers may indicate a lack of knowledge on the implementation of restorative justice.

The results of the interviews with the judicial officials and probation officers furthermore indicate that they agree that the principles of restorative justice should form the basis for the sentencing practices of youth offenders. They also indicated that these principles should be utilized much more readily in the sentencing of juveniles.

The study reveals that the majority of the respondents see restorative justice as firstly, granting restitution for the complainant; secondly, they feel that the victim and the offender should together seek solutions that will limit the consequences of the crime; and thirdly, it involves the offender through the process of reparation and rehabilitation.

Restorative justice, as identified by the respondents, reflects a very good understanding of the core elements of the approach. They also agreed that restorative justice has an important role to play, because the courts should consider the victim's needs.

Most prosecutors and probation officers agree that the principles of restorative justice should be considered when sentencing a young offender. Communication between the role-players is of paramount importance in applying the principles. Feedback, in fact, is important and failure to do so can lead to the principles of restorative justice not being considered.

The research also indicates that judicial officials and probation officers are aware of the fact that the needs of those who have been violated must be met. They see restitution as a form of vindication.

The respondents furthermore feel that the community should become part of the justice process and that it should take responsibility for the process. The community can benefit from restorative justice, because restoration occurs within the community. Four magistrates, ten prosecutors and ten probation officers agree that the community will benefit from restorative justice, but they do not know how to educate the community. They do, nonetheless, admit that they need more guidance on restorative justice and its implementation. Judicial officials and probation officers feel that the community needs to be informed about restorative justice. Although the community's wishes were ignored in the past by the justice system, to some extent this can now be rectified through the restorative justice approach.

5.2.3 Views with regard to the implementation of restorative justice in the sentencing of young offenders.

It emerges from the study that the majority of the respondents believe that restorative justice is an appropriate approach in the sentencing of young offenders, but say that it is more appropriate for petty crimes, such as housebreaking, theft and shop-lifting. They also believe that restorative justice is inappropriate for certain sentences, such as murder, rape, violent crimes, armed robbery and drug offences. Judicial officials support the principles of restorative justice, but feel that serious crimes are inappropriately dealt with through restorative justice. They should be made aware of the fact that restorative justice is a philosophy and not a type of sentence. In other words, even a harsh sentence can have a restorative approach. However, they are uncertain how to apply it in practice. Clearly, more workshops should be conducted and all respondents should be encouraged to attend. Probation officers should be careful not to make recommendations that satisfy the magistrate, instead of being in the best interests of the young offender.

The research reveals that magistrates, prosecutors and probation officers have different perceptions of applying restorative justice in respect of youth offenders. Magistrates see their role as passing sentence and because restorative justice is not enacted, they cannot implement restorative justice in their sentencing practices, whereas probation officers view the implementation of restorative justice as the responsibility of the judicial officials.

Magistrates cannot pass sentences with a restorative approach, that are not included in the Criminal Procedure Act. Judicial officials have to abide by acts and regulations and they are, therefore, of the opinion that the Child Justice Bill needs to be promulgated before they can implement its provisions.

Furthermore, most of the respondents feel that restorative justice is difficult to implement due to a lack of resources, facilities and manpower. It is clear that more practical information must be made available to address the difficulties of implementation. The research also indicates that more collaboration is needed between judicial officials and probation officers.

It emerges from the study that judicial officials and probation officers have a positive attitude towards restorative justice and are knowledgeable on this concept. However, there is a lack of insight on how to implement it in practice. They also acknowledge the importance of more training on restorative justice - to enable them to function more adequately in their sentencing practices.

As a result, the general view of the role-players is that restorative justice should be implemented in all the courts.

BIBLIOGRAPHY

1. Babbie, Earl and Mouton, J. (2001). *The Practice of Social Research* Oxford University Press, London.
2. Bazemore, G and Umbreit, M. (1995). "Rethinking the sanctioning function in juvenile court. Retributive or restorative responses to youth crime." Crime and Delinquency. Vol. 41. No.3. 296-316
3. Bazemore, G. and Moloney, D. (1994). "Rehabilitating Community Service. Toward Restorative Service Sanctions in a Balanced Justice System". Federal Probation. Atlantic University. Florida
4. Batley, M. and Muntingh, L. and Skelton, M. et.al. (2005). Beyond Retribution: Prospects for Restorative Justice in South Africa. Institute for Security Studies. Brooklyn Square. Pretoria.
5. Consedine, J. 1995. Restorative Justice: Healing the effects of Crime. Ploughshares Publications. Lyttleton, New Zealand.
6. Criminal Procedure Act: (no. 51 of 1977).
7. De Vos, A. (1998). *Research at Grass Roots: A Primer for the Caring Professions* Van Schaik Publishers, Pretoria.
8. Fine, N. (1996). *Through the Walls*. Community Law Centre, Bellville.
9. Grinell, R. Jr. (1997). *Social Work Research* University. Calgary.

10. Holtquist, S. (1999). "Nurturing the Seeds of Restorative Justice". Journal of Community Practice. Vol 6. No. 2. 63 - 65.
11. Inter-Ministerial Committee on Young People at Risk. Interim Policy Recommendations. November 1996
12. Mouton, J. (2001) How to Succeed in Your Master's & Doctoral Studies. Van Schaik Publishers, Pretoria.
13. Probation Service Act. (No.116 of 1991.)
14. Probation Service Amendment Act. (No. 35 of 2002.)
15. Ross, R (1996) Returning to the Teachings: Exploring Aboriginal Justice Penguin Books Toronto.
16. Skelton, A. (1996). Developing a juvenile justice system for South Africa: International instruments and restorative Justice. Acta Juridica
17. SKelton, A. (1994). Juvenile Justice for South Africa. Allies Printers Elsie's River Cape Town.
18. Skelton, A. (2002). Restorative Justice as a Framework for Juvenile Justice Reform. British Journal of Criminal Justice. Vol. 42. 496-513
19. Sloth- Nielsen, J. and Gallinetti, J. 2004. Child Justice in Africa. USAID. South Africa mission. Bellville.
20. Van Ness, D. and Heerderks Strong, K. (1997). Restoring Justice. Anderson Publishing. Cincinnati.

20. Walgrave-Tode. (1995). " Restorative Justice for Juveniles: Just a technique or a fully fledged alternative?" Howard Journal of Criminal Justice. Vol. 34. No. 3. 228-249.
21. Wright, M. 1991 Justice for Victims and Offenders. Restorative Justice Respond to Crime. Waterside Press. Winchester.
22. Zehr, H. (1990). Changing Lenses A New Focus for Crime and Justice: Herald Press Pennsylvania.

Appendix 1

The interview schedule used on the magistrates, prosecutors and probation officers.

AIMS	Questions in the Interview Schedule
<p><i>To explore the attitudes of the magistrates, prosecutors and probation officers to the implementation of restorative justice in the sentencing of young offenders</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> To what extent, in your view, is the current criminal justice process effective in: <ul style="list-style-type: none"> (a) preventing crime? (b) deterring offenders and potential offenders? (c) protecting society? (d) rehabilitating offenders? <input type="checkbox"/> What role, if any, other than giving evidence, should the victim play in the criminal justice process?
<p><i>To determine insight and knowledge on the part of the relevant roleplayers regarding the implementation of restorative justice in their sentencing practices.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> What is your understanding of "restorative justice"? <input type="checkbox"/> What would you regard as the main objectives of "restorative justice"? <input type="checkbox"/> In your view, what benefits, if any, does restorative justice hold for? <ul style="list-style-type: none"> (a) the victim (b) the offender (c) the community <input type="checkbox"/> Do you feel that restorative justice holds disadvantages for: <ul style="list-style-type: none"> (a) the victim (b) the offender (c) the community?
<p><i>To investigate to which extent the judicial officials and probation officers apply restorative justice in their sentencing practices.</i></p>	<ul style="list-style-type: none"> <input type="checkbox"/> Are there particular sentences that, in your view, have restorative justice outcomes? If so, which, and how would their outcomes be restorative? <input type="checkbox"/> In your view, for which crimes would the restorative justice approach be most appropriate? <input type="checkbox"/> Do you feel that restorative justice would be inappropriate for certain crimes? If so, please indicate which, and give reasons. <input type="checkbox"/> Do you have any other views on the matter of applying restorative justice in respect of youthful offenders?

Appendix 2:
Sampling Sheet.

Role-players	Total number	No. interviewed	% of Total
Probation Officers:			100
Kimberley	8	8	100
Upington	8	8	100
De Aar	7	4	71
Magistrates:			
Kimberley	20	10	50
Upington	8	4	50
De Aar	3	3	100
Hopetown	1	1	100
Prieska	1	1	100
Postmasburg	1	1	100
Kathu	1	1	100
Prosecutors:			
Kimberley	29	14	50
Upington	10	5	50
De Aar	3	3	100
Prieska	1	1	100
Groblershoop	1	1	100
Postmasburg	1	1	100
Kathu	1	1	100

Appendix 3

Enq: E. Moorcroft
Tel: (053) 807 5910
Ref: Research
Date: 8 February 2005

**The Chief Magistrate
Magistrates Court
Private Bag X5014
KIMBERLEY
8300**

For Attention: Mr. C. Bezuidenhout

I am currently enrolled as a student at the University of Cape Town, doing my Masters Degree in Probation and Correctional Practice.

My research project will be the implementation of Restorative Justice as a sentencing option for young offenders at the Kimberley Court, Upington Court, De Aar Court, Prieska Court, Groblershoop Court, Kuruman Court and Postmasburg Court.

I would like to request permission to interview Magistrates from the District court as well as the Regional Court in the selected Magistrate districts.

I would appreciate a response from your office to my request within the next three weeks.

Yours truly

.....
E. Moorcroft (Mrs)

Enq: E. Moorcroft
Tel: (053) 807 5910
Ref: Research
Date: 8 February 2005

The Head of Administration
Magistrates Court
Private Bag X5014
KIMBERLEY
8300

For Attention: Mrs. S. Taljaard

I am currently enrolled as a student at the University of Cape Town, doing my Masters Degree in Probation and Correctional Practice.

My research project will be the implementation of Restorative Justice as a sentencing option for young offenders at the Kimberley Court, Upington Court, De Aar Court, Prieska Court, Groblershoop Court, Kuruman Court and Postmasburg Court.

I would like to request permission to have access to the charge sheets for the recent six month period, July 2004 to December 2004.

I would appreciate a response from your office to my request within the next three weeks.

Yours truly

.....
E. Moorcroft (Mrs)

Appendix 5

Enq: E. Moorcroft
Tel: (053) 807 5910
Ref: Research
Date: 8 February 2005

The Deputy Director General
Department Social Services
Private Bag X5063
KIMBERLEY
8300

For Attention: Ms. Y. Botha

I am currently enrolled as a student at the University of Cape Town, doing my Masters Degree in Probation and Correctional Practice.

My research project will be the implementation of Restorative Justice as a sentencing option for young offenders at the Kimberley Court, Uppington Court, De Aar Court, Prieska Court, Groblershoop Court, Kuruman Court and Postmasburg Court.

I would like to request permission to interview Probation Officers working in the selected Magistrate districts.

I would appreciate a response from your office to my request within the next three weeks.

Yours truly

.....
E. Moorcroft (Mrs)

Appendix 6

Enq: E. Moorcroft
Tel: (053) 807 5910
Ref: Research
Date: 8 February 2005

The Regional Head
Department of Social Services
Frances Baard, Pixley Ka Seme and Siyanda

For Attention: Mr. D. Whitebooi
Mr. M. October
Mr. Ambross

I am currently enrolled as a student at the University of Cape Town, doing my Masters Degree in Probation and Correctional Practice.

My research project will be the implementation of Restorative Justice as a sentencing option for young offenders at the Kimberley Court, Upington Court, De Aar Court, Prieska Court, Groblershoop Court, Kuruman Court and Postmasburg Court.

I would like to request permission to interview Probation Officers working in the selected Magistrate districts.

I would appreciate a response from your office to my request within the next three weeks.

Yours truly

.....
E. Moorcroft (Mrs)

INTERVIEW SCHEDULE

1. To what extent, in your view, is the current criminal justice process effective in:
 - a) preventing crime,
 - b) deterring offenders and potential offenders
 - c) protecting society
 - d) rehabilitating offenders.
2. What role, if any- other than giving evidence – should the victim play in the criminal justice process.
3. What is your **understanding** of 'Restorative Justice'?
4. What would you regard as the **main objectives** of 'Restorative Justice'?
5. To what extent do you consider **Restorative Justice principles** when **sentencing** a youthful offender?
6. In your view, what **benefits**, if any, does Restorative Justice hold for:
 - a) the victim of crime?
 - b) the offender?
 - c) the community?

Please elaborate.
7. Do you feel that Restorative Justice holds any disadvantages for:
 - a) the victim?
 - b) the offender?
 - c) the community?

Please elaborate.
8. Are there particular sentences that, in your view, have Restorative Justice outcomes? If so, which, and how would their outcomes be restorative?
9. In your view, for which crimes would a Restorative Justice approach be most appropriate?
10. Do you feel that Restorative Justice would be **inappropriate** for certain crimes? If so, please indicate which, and give reasons.
11. Do you have any other views on the matter of applying Restorative Justice in respect of youthful offenders?