

# NOTES

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- 1 For more on crime statistics see T Leggett, The facts behind the figures: Crime statistics 2002/3, *SA Crime Quarterly*, No 6, Institute for Security Studies, Pretoria, Dec 2003; also the SAPS website: [www.saps.gov.za](http://www.saps.gov.za); for more on public perceptions about crime and safety, see P Burton, A du Plessis, T Leggett, A Louw, D Mistry and H van Vuuren, *National Victims of Crime Survey: South Africa 2003*, ISS Monograph Series No 101, Pretoria, Institute for Security Studies, July 2004.
- 2 For an analysis of changing government policy towards crime prevention see J Rauch, Changing step: crime prevention policy in South Africa, in E Pelsler (ed), *Crime Prevention Partnerships: Lessons from practice*, Institute for Security Studies, Pretoria, 2002.
- 3 For more on this and other policing strategies, see T Leggett, The state of crime and policing, in S Buhlungu, J Daniel, J Lutchman and R Southall (eds), *The State of the Nation: South Africa 2004/2005*, HSRC, Pretoria, 2004.
- 4 See for example H Fagan, Curb the vengeance: Laws on minimum sentencing and parole spell worsening prison conditions, *SA Crime Quarterly* No 10, Institute for Security Studies, Pretoria, Dec 2004.
- 5 B Davidson (1969) referred to in J Consedine, *Restorative Justice: Healing the effects of crime*, Ploughshares Publications, Lyttelton, New Zealand, 1999.
- 6 MSW Bapela (1987) referred to in J Consedine, *ibid*.
- 7 D Masilela, Presentation at a training seminar held in Bronkhorstspuit, 24 July 2002.
- 8 J Braithwaite, *Crime, Shame and Reintegration*, New York, Cambridge University Press, 1989.
- 9 Text published on <[www.gov.co.za](http://www.gov.co.za)>
- 10 *Ibid*, p 2.
- 11 *Ibid*, p 5.
- 12 *Ibid*, p 12.
- 13 For a detailed analysis of the Moral Regeneration Movement, see the forthcoming ISS monograph on the topic by J Rauch, March 2005.
- 14 R Carter in *Restorative Justice: A Christian perspective*, Queens University, April 2001.
- 15 Adapted from van DW Ness and K Heetderks Strong, *Restoring Justice*, Anderson Publishing, 1997, pp 37–42.
- 16 R Misener in *Restorative Justice: A Christian perspective*, Queens University, April 2001.
- 17 For more detail on this see M Hadley (ed), *The spiritual roots of restorative justice*, State of New York University Press, 2001.
- 18 H Zehr, *Changing Lenses*, Herald Press, Scottdale, USA, 1990.
- 19 T Marshall, Criminal mediation in Great Britain 1980-1996, in *European Journal on Criminal Policy and Research*, 4(4) 1996: "Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future". Also T Marshall in *Restorative Justice Discussion Paper*, Ministry of Justice, New Zealand, 1996, p 1, quoted by VP Petersen in *Restorative Justice and Victim Rights*, a paper given at the Victim Charter Consultative Workshop, 17–19 September 2001, Pretoria: "Restorative justice is a way of dealing with

- victims and offenders by focusing on the settlements of conflicts arising from crime and resolving the underlying problems that cause it. It is also more widely a way of dealing with crime generally in a rational problem solving way. Central to restorative justice is the recognition of the community, rather than criminal justice agencies, as the prime site of crime control.”
- 20 These are to: promote the victim’s healing from the effects of the crime; engage with offenders to establish accountability and responsibility for the consequences of their actions; develop an appreciation of the impact of the offence on the victim; encourage and facilitate the provision of appropriate forms of reparation by offenders to victims and the community; seek reconciliation between the victim and offender where possible; and strive to integrate the victim and offender into the community, in *New Zealand Restorative Justice Practice Manual*, 2000.
- 21 These are to: foster awareness; avoid scolding or lecturing; involve offenders directly; accept ambiguity; separate the deed from the doer; see every instance of wrong-doing and conflict as an opportunity for learning, in J Braithwaite and H Strang (eds), *Restorative Justice and Civil Society*, Cambridge University Press, 2001, pp 127–128.
- 22 H Zehr, *The Little Book of Restorative Justice*, Good Books, 2002.
- 23 J Braithwaite and H Strang (eds), op cit, p 11.
- 24 CG Brunk, Restorative justice and the philosophical theories of criminal punishment, in M Hadley (ed), *The Spiritual Roots of Restorative Justice*, State of New York University Press, 2001, pp 31–56.
- 25 Adapted from T Wachtel, *Restoring Community in a Disconnected World*, International Institute for Restorative Practices, <www.restorativepractices.org>
- 26 This material was extracted from B Naudé, Changing punishment and restorative justice, in *Canadian Journal of Criminology*, 42(3), July 2000, pp 256–273, with additional input by the RJC staff and Reference Board July 2001.
- 27 D Tutu, *No Future Without Forgiveness*, Random House, 1999, pp 218–219.
- 28 Marshall in *Restorative Justice Discussion Paper*, Ministry of Justice, New Zealand, 1996, quoted by VP Petersen in Restorative Justice and Victim Rights, a paper given at the Victim Charter Consultative Workshop, 17–19 September 2001, Pretoria.
- 29 Ibid.
- 30 See the following sources for detail on these principles: *Restorative Conferencing: Philosophy and Practise Training Manual*, NACCW and Technikon Natal, South Africa, 2001; and I Epstein, *Step by Step in the Jewish Religion*, Soncino Press, London, 1959, p 8; and H Zehr, *Changing Lenses*, Herald Press, Scottsdale USA, 1990, pp 126–157.
- 31 A local website that provides links to most of these documents as well as the key international sites is [www.rjc.co.za](http://www.rjc.co.za).
- 32 Adopted by the UN General Assembly, Resolution 40133 of 29 November 1985.
- 33 <nicro@wn.apc.org>
- 34 <npat@wn.nu.ac.za>
- 35 <educ@ifrica.com>
- 36 B Stuart, *Building Community Justice Partnerships: Community Peacemaking Circles*, Department of Justice, Canada, 1997.
- 37 Ibid.
- 38 HF Snyman, An International Perspective on Victim’s Rights, paper presented at the Victims’ Charter Consultative Workshop, Pretoria, 17–19 September 2001.
- 39 Ibid.
- 40 See <[www.hants.gov.uk](http://www.hants.gov.uk)>
- 41 See <[www.familieraadslogning.dk](http://www.familieraadslogning.dk)>
- 42 It should be noted that not all Alternative Dispute Resolution practises are restorative in nature.

- 43 D Tutu, *No Future Without Forgiveness*, Rider, Random House, 1999.
- 44 See the website of the Institute for Justice and Reconciliation for further details: <[www.ijr.org.za](http://www.ijr.org.za)>
- 45 *Labour Relations Act*, 66 of 1995, 1(3) Schedule 8.
- 46 For a helpful discussion about some of these issues, see M Umbreit, How to increase referrals to victim offender mediation programs, <[Ssw.che.umn.edu/rjp](http://Ssw.che.umn.edu/rjp)>
- 47 Adapted from H Zehr, op cit, pp 230–231.
- 48 M Schonteich, *Justice versus retribution: Attitudes to punishment in the Eastern Cape*, ISS Monograph Series No 45, Institute for Security Studies, Pretoria, Feb 2000.
- 49 P Burton, *Assessment of public and client opinion of the National Prosecuting Authority*, unpublished data report, Institute for Security Studies, Pretoria, 2001.
- 50 See P Burton, A du Plessis, T Leggett, A Louw, D Mistry and H Van Vuuren, *National Victims of Crime Survey: South Africa 2003*, ISS Monograph Series No 101, Institute for Security Studies, Pretoria, May 2004.
- 51 For the full results of the survey, see T Leggett, *Rainbow Tenement: Crime and policing in inner Johannesburg*, ISS Monograph Series, No 71, Institute for Security Studies, Pretoria, April 2003.
- 52 P Burton et al, op cit.
- 53 A selection of categories only are discussed in detail in the next section. The crimes selected are those for which the most data was available.
- 54 All percentages are rounded off in the text. The categories ‘agree’ and ‘definitely agree’ and ‘disagree’ and ‘definitely disagree’ were integrated for the purpose of the discussion.
- 55 H Zehr, *The Little Book of Restorative Justice*, Intercourse, Illinois Good Books, 2002, p 23.
- 56 *The New Zealand Restorative Justice Practice Manual*, Restorative Justice Trust, May 2000, <[www.restorativejustice.org.nz](http://www.restorativejustice.org.nz)>
- 57 See, for example M Kilching and M Löschnig-Gespanndl, Legal and practical perspectives on victim/offender mediation in Austria and Germany, *International Review of Victimology*, 7, 2000, pp 305–332; K Roach, Changing punishment at the turn of the century: Restorative justice on the rise, *Canadian Journal of Criminology*, 42(3), 2000, pp 249–279; M S Umbreit, Victim–offender mediation in Canada: The impact of an emerging social work intervention, *International Social Work Journal*, 42(2), 1999, pp 215–227; as well as the study reported on in Chapter 8 of this book.
- 58 Criminal Justice Monitor, *Nedbank ISS Crime Index*, 1, Institute for Security Studies, Pretoria, 2000.
- 59 The TRC defined gross human rights violations as acts of murder, severe ill-treatment, rape, unfair imprisonment, severe torture, kidnapping and disappearance.
- 60 *Truth and Reconciliation Commission Final Report*, Volume Five, Chapter One, 1998.
- 61 S Kimane, *Report of the National Strategy workshop on Reparations*, Centre for the Study of Violence and Reconciliation, Johannesburg, <<http://www.csvr.org.za>>
- 62 Ibid, p 5.
- 63 B Hamber, T Maepa et al, *Survivors’ perceptions of the Truth and Reconciliation Commission: A submission to the TRC Final Report*, Centre for the Study of Violence and Reconciliation, Johannesburg, 1998, p 8.
- 64 See Tutu: Pardons mockery of the TRC, *The Sunday Independent*, 19 May 2002.
- 65 *Khulumani* is a Zulu word meaning ‘speak out’. This is a self-help structure offering emotional, logistical and material support to victims of apartheid and their families. The KSG introduced the TRC to some victims and lobbied the Commission concerning the rights and concerns of victims.
- 66 See Tutu: Pardons mockery of the TRC, op cit.
- 67 See The Promotion of National Unity and Reconciliation Act No 34 of 1995.

- 68 Farouk Hussein from the President's Fund that is responsible for disbursing this money provided these figures. This process is housed in the Department of Justice and Constitutional Development.
- 69 Ibid.
- 70 See B Hamber, Repairing the irreparable: Dealing with the double binds of making reparations for crimes of the past, *Ethnicity and Health*, 5(3&4), 2000, pp 215–226.
- 71 Ibid, p 5.
- 72 Interview with Piers Pigou, former member of the TRC investigation unit, March 2002.
- 73 Ibid.
- 74 G Simpson, *A brief evaluation of South Africa's Truth and Reconciliation Commission: Some lessons for countries in transition*, Centre for the Study of Violence and Reconciliation, Johannesburg, 1998, p 4.
- 75 Ibid, p 5.
- 76 The National Institute for Crime Prevention and Reintegration of Offenders is partly state subsidised. In 1992 NICRO started offering diversion services to courts. During 2001 NICRO diverted approximately 12,000 children away from the criminal justice system and this was achieved without a legislative framework.
- 77 According to the National Department of Social Development a further 4,000 children were diverted by prosecutors to programmes run by the department.
- 78 For more information on this audit see H Mukwevho, The role of prosecutors in enabling diversion, *Article 40*, 3(3) September 2001.
- 79 L Muntingh, *The effectiveness of diversion programmes: A longitudinal evaluation of cases*, NICRO, Cape Town, 2002.
- 80 These are cases that attracted media attention. For more information see *Retributive community justice: A field study exploring why alleged child offenders sometimes become victims of communities taking the law into their own hands*, Restorative Justice Centre, Pretoria, May 2001, <www.rjc.co.za>
- 81 These NGOs were Wilgerspruit Fellowship Centre (WFC), Community Dispute Resolution Trust (CDRT), and Centre for the Study of Violence and Reconciliation (CSVR). In the second two years the VOC project was run by the Restorative Justice Initiative, a consortium made up of the following organisations: Restorative Justice Centre, Odi Community Law Centre, Peace Building Network of the Mennonite Central Committee, Conquest for Life, Alexandra Community Law Clinic, Community Dispute resolution Trust, and the Centre for the Study of Violence and Reconciliation.
- 82 The project was run during three 12-month periods in the years 1999/2000, 2001/2002, and 2002/2003.
- 83 Mediators were paid a small fee for each mediation.
- 84 C Stauffer, Victim Offender Conferencing Funding Proposal, Unpublished, 1999.
- 85 Several of these cases arose out of the same dispute. This occurred mainly at the West Rand site where three disputes resulted in two separate charges and separate referrals to VOC. Another dispute resulted in three separate criminal charges and three separate referrals to VOC. This happened because the parties to a dispute were sometimes victim *and* offender. The victim would lay a criminal charge against the offender, and the 'offender' would then also lay a charge against the 'victim'.
- 86 This offence category was only added to our database in the second year. It refers to cases that were referred by community structures or the Domestic Violence Unit of the courts where no charges had been formally laid against the offender.
- 87 This category was also added in the second year. It refers to cases referred by community structures, where no formal charge had been laid, and indeed where it appeared that no criminal offence had taken place.

- 88 *Crimen injuria* is when a person unlawfully, intentionally and seriously impairs the *dignitas*, or self-respect of another. Although criminal defamation of character is also a form of *injuria*, it constitutes harm to the reputation of a person. Defamation of character is the unlawful and intentional publication of matter concerning another that tends to injure his reputation. Publication can occur through written or verbal means (Snyman, 1984, p 404).
- 89 See A Dissel, *Restorative Justice Initiative: Research Report on the Victim Offender Conferencing Project November 2002 to October 2003*, Centre for the Study of Violence and Reconciliation, 2004, p 5 -7, available at <<http://www.csvr.org.za/papers/papvoc2.htm>>, for a discussion of the rape cases.
- 90 H Zehr, cited in Galway, et al, *Criminal Justice, Restitution, And Reconciliation*, Monsey, New York, Criminal Justice Press, 1990, p 10.
- 91 There were slight differences in each site regarding the relationships between the parties. Married couples formed the largest percentage (33%) of the parties referred to VOC in Westbury. However, married couples represented 15% of the parties in West Rand, and 20% in Alexandra.
- 92 A domestic relationship is defined in the Domestic Violence Act 116 of 1998 as a relationship between a complainant and a respondent in any of the following circumstances: they are married to one another, including any marriage according to any law, custom or religion; they live or lived together in a relationship in the nature of marriage, although they are not, or were not married, or were not able to be married to one another; they are the parents of a child or are persons who have had a parental responsibility for that child; they are family members related by consanguinity, affinity or adoption; they are, or were, in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or they share or recently shared the same residence.
- 93 Complaints between neighbours were most frequent in Alexandra at 29%, followed by 20% in West Rand, and 12% in Westbury.
- 94 Interview with Westbury mediators at Newlands magistrate's court, 29 February 2000.
- 95 Interview with control prosecutor from Wynberg magistrate's court, 28 August 2000.
- 96 L Walgrave, Extending a Victim Perspective Towards a Systematic Restorative Alternative, in A Crawford and J Goodey (eds), *Integrating a Victim Perspective within Criminal Justice*, England, Dartmouth Publishing Company Limited, 2000, p 260.
- 97 A Morris and G Maxwell, The practice of family Group conferences in New Zealand, in A Crawford and J Goodey (eds), *ibid*.
- 98 Ibid.
- 99 *ibid*.
- 100P Mafani, *The Meaning of Forgiveness and How it relates to Reconciliation: Victims' Perspectives*, Centre for the Study of Violence and Reconciliation, Johannesburg, 2000.
- 101 Ibid, p 5.
- 102 De-briefing meeting with VOC mediators, 2 October 2000.
- 103 Mediator's briefing meeting, 2 October 2000.
- 104 Ibid.
- 105R Paschke and H Sherwin, *Qualitative Research report on Sentencing: an empirical quantitative study on sentencing in South African courts and an assessment of the impact of the Criminal Law Amendment Act 105 of 1997 on behalf of the South African Law Commission*, South African Law Commission Appendixes to Discussion Paper 91 on Sentencing, 2000.
- 106 See A Dissel, *Giving a Face to Crime: a report on Phase 2 of the RJJ (VOC) Project*, Restorative Justice Initiative, Johannesburg, 2003. Available at <<http://www.csvr.org.za/papers/papdis11.htm>>, and A Dissel, 2004, *op cit*, for more details of victim and offender feedback on the process.

- 107 Y Mokgoro, *Ubuntu and the Law in South Africa*, The African Renaissance, Konrad Adenauer Stiftung Occasional papers, Johannesburg, 1998.
- 108 Ibid.
- 109 M Umbreit, *Victim meets Offender: The Impact of Restorative Justice and Mediation*, New York, Willow Tree Press, 2000, p 4.
- 110 UN Standard Minimum Rules for Non-custodial Measures, para 8.2.
- 111 A Dissel and M Mnyani, *Sentencing Options in South Africa*, Occasional Paper Series 2-95, Institute of Criminology, University of Cape Town, 1995, <<http://www.uct.ac.za/depts/sjrp/publicat/sentenc.htm>> For a more detailed analysis and description of the blockages with regard to the more extensive use of non-custodial sentencing options in South Africa, see A Skelton, *A Review of Alternative Sentencing in South Africa*, Research Paper No 6, CSPRI, Cape Town, 2004.
- 112 U Zvekic, International trends in non-custodial sanctions, in *Promoting probation internationally*, Publication No 85, UNICRI, Rome, 1997, p 23.
- 113 Ibid, p 23.
- 114 L Muntingh, *Community Service Orders: An evaluation of cases supervised in Cape Town between 1983 and 1994*, HSRC, Pretoria, 1997, p 16.
- 115 Ibid.
- 116 Ibid, p 48.
- 117 Department of Correctional Services Annual Report, 1999/2000, p 16.
- 118 U Zvekic, op cit, p 36.
- 119 Department of Correctional Services, *Trends in the prison population: January 1995 to January 2002*, unpublished report, 2002; and Judicial Inspectorate for Prisons, Cape Town, unpublished monthly statistical report.
- 120 See H Fagan, Curb the vengeance: Laws on minimum sentencing and parole spell worsening prison conditions, *SA Crime Quarterly* No 10, Institute for Security Studies, Pretoria, Dec 2004.
- 121 DCS Annual Report 1999.
- 122 Judicial Inspectorate of Prisons, Cape Town, unpublished monthly statistical report.
- 123 L Muntingh, *Sentencing trends 1997/8 to 1995/6*, NICRO Occasional Paper, NICRO, Cape Town, 1997.
- 124 Ibid.
- 125 This section draws on A Dissel and M Mnyani, op cit.
- 126 S 69 Additional conditions for children:  
 (1) A child who is subject to community corrections in terms of section 52 (1) (g), may be required to attend educational programmes whether or not he or she is otherwise subject to compulsory education.  
 (2) Where any child is subject to supervision in terms of this Chapter, the Commissioner must, in addition to any programmes which the child in terms of section 52 (1) (f) may be required to take part in, ensure that if the child requires support he or she has access to adequate social work services, religious care, recreational programmes and psychological services.
- 127 DCS Annual Reports for 2001/2 and 2003/4.
- 128 Department of Correctional Services, *Community Corrections*, unpublished report, 2000.
- 129 Ibid
- 130 Ibid.
- 131 Ibid.
- 132 See the 2001/2 DCS Annual Report, p 102.
- 133 A critical review of this sentencing option is provided by C Olivier, *Rehabilitative Efforts in Correctional Supervision: Window dressing or can it actually work?*, *Acta Criminologica*, Vol

- 11(1), 1998.
- 134 Ibid.
- 135 This section draws on L Muntingh, *Community Service Orders: An evaluation of cases supervised in Cape Town between 1983 and 1994*, HSRC, Pretoria, 1997, pp 3- 4.
- 136 Ibid.
- 137 A local website that provides links to most of these documents, as well as to key international sites, is [www.rjc.co.za](http://www.rjc.co.za). The SA Government website address is [www.gov.za](http://www.gov.za).
- 138 See the discussions in Chapter 1 referring to van Ness and Strong (2002) and Zehr (2003).
- 139 Department of Safety and Security, *National Crime Prevention Strategy*, Pretoria, 1996, pp 6–7.
- 140 Ibid, p 66.
- 141 See the information brochure on the department's website: <[www.dcs.gov.za](http://www.dcs.gov.za)>
- 142 D Pinnock, A Skelton, R Shapiro, New juvenile justice legislation for South Africa - giving children a chance, *SACJ* 3, 1994, p 338.
- 143 Juvenile Justice Drafting Consultancy, *Juvenile Justice for South Africa: Proposals for Policy and Legislative Change*, Allies Printers, Cape Town, 1994.
- 144 See L Muntingh and R Shapiro, *Diversions*, NICRO, Cape Town, 1993. See also L Muntingh (ed), *Perspectives on Diversion*, NICRO, Cape Town, 1995.
- 145 N Branken and M Batley, *Family group conferences: putting the wrong right*, Inter-Ministerial Committee on Young People at Risk, Pretoria, p 42.
- 146 Diversion has been recognised in a number of reported cases, however. See *S v Z* 1999 (10) SACR 427 E, *S v J* and others 2000 (2) SACR 310 C. For a comprehensive discussion on the history of diversion in South Africa and the recognition of the concept by the high courts see J Sloth-Nielsen, *The Role of International Law in Juvenile Justice Reform in South Africa*, Unpublished LLD thesis, University of the Western Cape, 2001, pp 242-261.
- 147 For a more detailed discussion of family group conferencing in South Africa see A Skelton and C Frank, Conferencing in South Africa: Returning to our future, in A Morris and G Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Hart Publishing, Oxford, 2001.
- 148 South African Law Commission, *Report on Juvenile Justice*, Project 106, 2000.
- 149 S de Villiers, *A People's Government: The People's Voice*, commissioned by the Parliamentary Support Programme, Cape Town, 2001, p 49.
- 150 H Zehr, *Changing Lenses*, Herald Press, Scottsdale, Pa, 1990, pp 215-222.
- 151 A Skelton, Restorative Justice as a Framework for Juvenile Justice Reform: A South African Perspective, *British Journal of Criminology* 42, 2002, pp 496-513.
- 152 G Johnstone, *Restorative Justice: Ideas, Values, Debates*, Willan Publishing, Cullompton, Devon, 2002, p 164.
- 153 L Walgrave, On Restoration and Punishment: Favourable Similarities and Fortunate Differences, in A Morris and G Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Hart Publishing, Oxford, 2001, p 30.
- 154 MK Harris, Reflections of a Sceptical Dreamer: Some Dilemmas in Restorative Justice Theory and Practice, *Contemporary Justice Review*, 1(1), 1998, pp 57-69.
- 155 Ibid.
- 156 C Barberton, J Stuart, and T Ajam, *Costing the Implementation of the Child Justice Bill*, Applied Fiscal Research Centre, Cape Town, 1999, p 15.