Violence, victimisation and parole

Reconciling restorative justice and victim participation

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http://dx.doi.org/10.4314/sacq.v54i1.5

When a crime is committed and an offender is incarcerated, victims and offenders are denied agency in influencing the outcome of the criminal justice process, resulting in harmful consequences for both. On the one hand, there is growing consensus that the criminal justice system does not treat victims well. On the other, high levels of violent crime in the country,[1] coupled with society's call for stiffer sentences, have seen growing numbers of inmates receiving longer prison sentences, due in part to the minimum sentence legislation.[2] Restorative approaches to justice have the potential to recognise the injustice caused not only by the crime itself, but also by the structural injustice experienced by the offender. The key question is how to respond to the intergenerational effects of historical injustices and victimisation that so often result in identity switches: from vulnerable victim to violent offender. This article elaborates on restorative approaches to corrections at the parole phase and the implementation of these approaches through the victim offender dialogue programme, and questions whether due regard is being paid to the needs and rights of victims.

South Africa has one of the highest per capita inmate populations, ranking ninth in the world and the highest in Africa.[3] While there is a persistent belief among the judiciary, ordinary citizens and politicians alike that imprisonment will reduce crime, this approach has had no visible impact either on the rate of violent crime[4] or on the rate of recidivism.[5] In 1995 there were 433 offenders serving life sentences. By the end of 2014 this number had grown to a staggering 13 847.[6] Many will be released on parole at the earliest possible parole date.

It is predominantly young men with disadvantaged class, education and family backgrounds who are responsible for most serious violent crimes.[7] Not only does poverty exacerbate the effect of risk factors for violence, such as exposure to violent subcultures and substance abuse, but it may also increase the likelihood of youth turning to crime in order to 'redress the exclusion felt through not having material goods that define social inclusion'.[8]

Research shows that structural inequity and past maltreatment continues to affect adult offenders.[9] Widespread structural inequality remains firmly entrenched in many communities and neighbourhoods in South Africa, which are still effectively segregated along racial and class lines.[10] Here the majority of young people live in communities that experience high rates of poverty, unemployment, substance abuse, weak social cohesion and

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inequality; thereby establishing the preconditions for the social diffusion of violence.[11] Even today, experiences of marginalisation, impoverishment and relative deprivation continue to frame the lives of young people.[12] It is not surprising that these factors form a recurrent and dominant theme in the profiles of many offenders who are being considered for parole placement.

This article emanated out of experiential learning and research. As a member of the National Council for Correctional Services (NCCS), the author has reviewed more than 1 000 profiles of 'lifers' – offenders serving life sentences – who were eligible to be considered for parole by the NCCS.[13] This exercise allows not only the introduction of numerous generalised insights into the life experiences of offenders, but also a deeper understanding of 'what it takes to make a criminal'. In addition, the author has been integrally involved in the 2013–2014 work sessions for social workers, psychologists and Correctional Supervision and Parole Boards (CSPBs), jointly arranged by the Department of Justice and Correctional Services (DCS) and the NCCS.[14] Evaluation of feedback from these work sessions provided the author with interesting insights into the challenges on the ground relating to the implementation of restorative justice. However, it is envisaged that an in-depth, quantitative and qualitative analysis of offender profiles may assist in revealing further insights on criminogenic risk factors for youth and adult offending in South Africa; thus contributing to and enhancing the national crime prevention agenda.

To parole or not to parole?

Parole is an internationally accepted mechanism that provides for the conditional release of offenders from correctional centres into society before they have served their entire sentence of imprisonment. In South Africa it is referred to as a placement option from a correctional centre into the system of community corrections. This means that the offender is released from the correctional centre prior to the expiry of his or her sentence, to serve the remainder thereof within the community. While parole is always subject to specific conditions that an offender must comply with, it allows an offender to return to normal community life until the sentence expires, albeit under controlled conditions and under the supervision of correctional officials.

The Correctional Services Act of 1998 (Act 111 of 1998) is the law governing parole in South Africa. The White Paper on Corrections sees parole as 'contributing to humane custodial conditions and as a vehicle for social reintegration'.[15] In terms of the act, offenders sentenced to life imprisonment before 1 October 2004 had to serve a minimum detention period of 25 years before being eligible for consideration for placement on parole.

Due to a series of amendments over the years the act's current form is significantly different from previous versions, making the South African parole regime complex and confusing. As Mujuzi has said, 'The law relating to parole has changed several times in South Africa, with the result that many prisoners, correctional officials and parole board members have understandably found it difficult to establish which specific provision governs specific prisoners.'[16] Recent court rulings highlight the effect of amendments to the governing legislation and how the eligibility for parole will be determined for various categories of offenders.[17] In effect, there are two systems of parole applicable to offenders serving life sentences, with one system for those sentenced before 1 October 2004 and a second for those sentenced after this date. Section 136 of the Correctional Services Act is a transitional provision that governs certain minimum periods of incarceration, which sentenced offenders must serve before they can be considered for parole. Section 136(3) (a) of the act[18] creates a mandatory non-parole period of 20 years before a 'lifer' can be considered for release on parole. In the Van Vuuren case,[19] the applicant (Mr van Vuuren) argued that if section 136(3)(a) applied to him, with the consequence being that he would have to serve the prescribed 20 years before being eligible for consideration for parole, that section would be retrospective in operation and, for that reason, unconstitutional.[20]

Acting on a ruling by the High Court in Pretoria in the Van Wyk judgement,[21] and in line with the principle that sentenced offenders must be treated in accordance with the parole system applicable at the time of sentencing, the credit system was applicable

to 'lifers' sentenced between 1 August 1993 and 30 September 2004. Just like other inmates serving lesser sentences, all 'lifers' sentenced before October 2004 were entitled to earn credits to advance their date of parole eligibility. Consequently, the DCS was compelled to award maximum good behaviour credits to close to 5 000 'lifers' sentenced before October 2004 – irrespective of their conduct in prison. In effect this meant that a period of 6 years and 8 months had to be deducted from the minimum of 20 years. After allocation of the maximum credits their consideration dates were advanced from 20 years to 13 years and 4 months. Amnesty provisions brought this down even further to 12 years and 10 months.[22]

The effect of these court cases has been a dramatic increase in the number of 'lifers' becoming eligible for consideration for placement on parole by the CSPBs and the NCCS.[23] Ironically, 'lifers' sentenced *after* 30 September 2004 may not be placed on parole until they have served at least 25 years,[24] which will result in larger numbers of inmates remaining incarcerated for longer periods, placing enormous pressure on already overcrowded correctional facilities,[25] and increasing costs to the state. There is also an increased risk of inmates becoming institutionalised, suffering from mental illness and being exposed to infectious diseases such as tuberculosis and HIV, thus placing a greater financial and social burden not only on the correctional system but also on their own families and communities.[26]

While restorative justice jurisprudence is steadily growing in the trial and sentencing phase of the criminal justice process, there is a great deal of uncertainty on how exactly restorative justice can be part of the post-sentence and post-incarceration phase, and to what extent the victim's cause can be met by adopting a restorative justice approach to how offenders are dealt with in the correctional environment and pre- and post-release.

Restorative justice in custodial settings

One reason for the rediscovery of restorative justice in the last century is that victims of crime were formerly completely excluded by the criminal justice system. With this realisation, many countries, such as Australia, the United Kingdom and South Africa, began adopting restorative approaches to justice alongside or within the formal criminal justice system, especially in relation to child and youth justice.[27] These approaches may be located on a continuum, where at one end efforts are made to bring greater awareness to offenders of the harm they have caused, and of their obligation to desist from further harmful acts in the future (either within the prison or on their release); and, on the other, where there is a fully restorative justice process, where the victim, offender and family/community members voluntarily participate in a facilitated restorative justice process.

The aim of such processes is to orientate offenders towards restorative justice values: victim empathy, making amends, and accepting responsibility for the harm they have caused. This may also include participation in restorative justice programmes, which may entail offenders being assisted to write letters of apology to their victims, or where they themselves request such assistance. Somewhat more idealistic are projects in which restorative justice principles are used as a guide to prison reform, bringing about wider organisational and cultural changes in the prison and the prison system in pursuit of the ultimate goal – a restorative prison.[28]

Restorative approaches to justice in South Africa are largely informed by indigenous and customary responses to crime, and include processes within and outside of the criminal justice system. Hence, the Restorative Justice National Policy Framework follows a broad approach; seeking to connect criminal justice, civil law, family law and African traditional justice.[29] Furthermore, the framework favours the term 'restorative approaches to justice' as it embraces a broader definition of restorative justice, that includes non-custodial sentences, conflict resolution, victim support, and interventions that contain restorative elements.

While restorative justice activity in prison settings is gradually on the increase globally,[30] there is scepticism and ambivalence about the 'possibility of integrating the constructive ethos of restorative justice within a punishment-based social institution such as the prison'.[31] Some writers and practitioners suggest that a choice has to be made between the two, while others visualise both working together, and

hold that these 'tensions' should not be seen as an obstacle to transforming the ethos of prisons.[32] This is because restorative justice challenges the belief that 'wrongdoers deserve pain' and suggests that 'the practice of imprisonment might itself be reformed so that it serves restorative rather than punitive functions'.[33]

Guidoni suggests it is more likely that limited aspects of restorative justice will be temporarily adopted, 'which are then used to add legitimacy to an institution which remains essentially punitive', than that prisons can be transformed in line with restorative justice principles.[34] Restorative justice in the prison context may appear as prison programmes that teach skills such as alternatives to violence and victim awareness, community service work performed by prisoners and victim offender mediation, and may even see prisons adopting, albeit rarely, a complete restorative justice philosophy.[35]

Of relevance to this article are the insights provided by Gail Super in the South African context. The author posits that prison in the 'new' South Africa is 'chameleon-like in its symbolism', with a 'seemingly endless capacity to reform'.[36] While capital punishment for the most serious of offenders has been abolished, imprisonment is justified and characterised as part of an overall humanising process, closely associated with the concept of ubuntu, all while conditions in many facilities remain dire.[37]

Restorative justice was launched by the DCS as early as 2001[38] and became formalised with its incorporation into the White Paper in 2005.[39] Since then, restorative justice programmes for offenders have been available at most correctional facilities in South Africa as part of the rehabilitation process.[40] These do not involve the victim and are one of many rehabilitation programmes offered to the offender.

The CSPBs take a number of factors into account during the parole decision-making process: participation in restorative justice programmes, letters of apology for the crime, Victim Offender Mediation (VOM), and Victim Offender Dialogues (VODs), among others. The parole process also necessitates a proper risk assessment of the offender in relation to the risk of reoffending. Hence, the offender's rehabilitation pathway is carefully scrutinised; looking at, inter alia, the offender's history of substance abuse, the seriousness of the crime, the age of the offender, support from his family, offers of employment, his educational advancement during incarceration, and his disciplinary offences while in prison.

The VOD programme, launched on 28 November 2012, adopted a broad definition of victim to include not only the family and community of victims, but those of the offender as well. In this framework, crime and wrongdoing are considered to be an offence against an individual or community, rather than against the state.[41] At the heart of the process are the values of ubuntu. It attempts to hold offenders accountable for what they have done, help them understand the real impact of their crime, take responsibility, and make amends. While the DCS Draft Policy Procedures on Restorative Justice[42] outlines processes and responsibilities at every level, there is still a lack of clarity on the ground on many issues. It is unclear exactly how restorative justice should be incorporated into the parole decision-making process and how much weight should be placed on whether the offender has completed a restorative justice programme or process (such as VOD), or not.

Chairpersons of parole boards have expressed the need for clarity on the following: Who is responsible for tracing the victim? Who should be facilitating a process where all participants are willing? What happens when victims cannot be found? Is VOD the same as restorative justice? 'We are not sure what details are required in terms of VOM or VOD. It would assist if we could have a policy gazette in respect of both so that inputs requested are guided by an adopted and published policy of the department.' 'Who needs to make contact with victims during cases of VOD? Is it social workers or ordinary DCS members, who are not trained to engage with victims?'[43]

Part of the confusion may be attributed to the fact that VODs were conceptualised as a policy and practice distinct from restorative justice and not as *one of many* restorative justice approaches that have the potential to achieve restorative outcomes for the offender and the victim.[44] VODs may well aim to provide victims with an opportunity to explain to offenders the real impact of the crime and get answers to their questions, as well

as an apology. The vexing question is whether the implementation of departmental policy on VODs has created release pathways for offenders or whether it has placed obstacles in the way of potentially good candidates for parole. In some instances the decision to grant parole may be negatively influenced if there is no evidence of 'restorative justice', meaning VOD, or if attempts at locating victims are unsuccessful, or if victims are unwilling to participate. Offenders may be also be unduly prejudiced if there is a delay in the parole process, where all other indicators for rehabilitation are positive and the only reason for a delay in considering parole is the fact that 'restorative justice' (or VOD) has not been completed, for the abovementioned reasons.

Offenders may also believe they are entitled to be considered for parole, and granted parole, if they have participated in a restorative justice programme or process (such as VOD), even if other indicators for successful rehabilitation are negative and/or the risk for reoffending is still high.[45]

Victim participation and parole

Many countries have recognised the importance of involving victims during the parole process.[46] On 1 August 2013, the United Kingdom's new victims' commissioner called for less secrecy surrounding parole board hearings to decide on the release of offenders. In highlighting the need for greater cognisance of victims' rights and needs, she stated that 'the criminal justice system is a blunt system which is sometimes out of touch with victims' emotional needs and must do more to involve victims in the process … victims need to be personally reassured that the offender had been rehabilitated and that their family would be safe'.[47]

Since the advent of democracy, South Africa has ratified various international declarations and conventions and implemented numerous strategies and policies to highlight the needs and rights of victims in the criminal justice process. Most notably, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[48] together with the Handbook on Justice for Victims, provides useful strategies and models for victim-centred responses to crime from both criminal justice personnel and other service providers.[49] More detailed and practical best practice guidelines for the treatment of victims of crime were drafted in 2002.[50] The Integrated Victim Empowerment Policy (VEP) 'attempts to shift the emphasis of state responses to crime from conviction of the perpetrator to services for the victim'.[51] The Services Charter for Victims of Crime (Victims Charter), and the Minimum Standards for Service Delivery in Victim Empowerment (Minimum Standards) emphasise quality assurance in the provision of services for victims of crime. However, initiatives relating to victims go beyond merely the provision of services to promoting the participation of the victim in the criminal justice process, and include victims' contributions to decision-making; for example by means of victim impact statements around sentencing, and by making written submissions to parole boards.

The Minister of Justice and Correctional Services, Advocate Michael Masutha, played his part in shifting the lens towards victim participation when he said:

> We will not approve a single application for parole where there is no evidence of some effort to locate or to engage and to involve affected victims or the community affected ...[52]

and

> I am of the view that it is fair and in the interests of the victims and the broader community, that the families of the victims are afforded an opportunity to participate in the parole consideration process.[53]

This places increased pressure on parole boards to locate victims, inform them timeously of parole proceedings, and encourage their participation. In many instances parole boards do not have the capacity or the expertise for victim tracing and/or engaging with victims.

In order to facilitate the involvement of victims in parole board hearings, provision has been made in both Section 75(4) of the Correctional Services Act and S299A of the Criminal Procedure Act of 1977 (Act No. 51 of 1977). The amendment to S299A of the Criminal Procedure Act came into effect with the Judicial Matters Second Amendment Act of 2003 (Act No. 55 of 2003) on 31 March 2005, and provides

for the right of a complainant to make representation in certain matters relating to the placement of an imprisoned offender on parole, day parole, or under correctional supervision. Section 299A (4) deals with the issuing of directives by the commissioner of correctional services regarding the manner and circumstances in which a complainant[54] may exercise this right.[55]

While these directives have the same legal standing as regulations issued in terms of an act, and must be adhered to, they place an undue burden on victims. Victims are expected to register their desire to be involved in the parole consideration process. In addition they must notify the parole board in the area where the offender is being detained of their desire to make representations in writing. They must also, among others, provide information on the name of the offender, the offence committed, the case number, and the name of the court where the offender was convicted. If a victim is dissatisfied with the decision of the parole board s/he may also write to the Correctional Supervision Parole Review Board. The directives also outline some of the requirements for victims who want to make a submission against the granting of parole, for example, how the crime has affected the victim or family of the victim.

However, it remains difficult to trace victims (see discussion below) and it is likely that most victims are not aware of these provisions. In addition, even where victims can be traced, some are reluctant or unwilling to make submissions to the parole board or even participate in restorative justice processes. A possible reason for this is that victims may be assuming that participation entails meeting the offender and engaging in a process, when, in fact, there is no compulsion on the victim to participate in the parole process or meet with the offender.

Challenges to implementing restorative justice in parole procedures

There are many risks to victims in the way restorative justice is currently being implemented. With inmates realising that VOD is the pathway to release on parole for them, offenders, their family members and even their legal representatives have attempted to locate victims and put pressure on them to participate.[56] This can lead to harassment and secondary victimisation of the victim.[57]

While VODs may involve victims, there are instances where victims may wish to participate in the parole process but have nothing to do with the offender. These two aspects are often conflated and victim participation is understood to mean a VOD process with the offender.

Currently there is also no structure for victim tracing and keeping victims informed about the rehabilitation pathway of the offenders, or of upcoming parole hearings.[58] While some management areas have developed an interim structure within the correctional facility to trace victims, others have placed the responsibility for tracing victims on case management committee (CMC) officials, parole board members or community corrections. A centralised database of all victims of crime would not only assist in tracing victims, but also in updating the victim on the status of the offender's incarceration, possible eligibility for parole and parole release dates.[59]

Special Victim Service Units, with dedicated Victim Liaison Officers (VLOs), would greatly enhance services for victims. These officers would provide services such as:

- Assisting victims in their interactions with parole boards
- Collaborating with the Department of Social Development and the SAPS to trace victims
- Keeping the board informed about registered victims
- Assisting victims to develop submissions or make representations
- Providing general information and support
- Referring victims to appropriate professionals such as social workers or psychologists if the need arises
- Appointing especially trained professionals to screen and prepare victims for possible restorative justice processes

Increased public awareness programmes, as well as a dedicated website that provides victims with detailed

information on the parole process, would go a long way towards encouraging more victims to participate.

The lack of procedural protection for victims, including proper screening of cases, preparation, and a lack of information about what to expect during the process and consequent trauma if the process fails, can cause further harm to the victim. The development of practice guidelines for restorative justice in corrections, including ethical codes of conduct for all role players, complaints mechanisms for victims and offenders, and quality assurance mechanisms such as the proper monitoring and evaluation of cases, would greatly enhance victim participation during parole.

In-depth, qualitative evaluative research on all VODs conducted since the implementation of the programme is yet to be undertaken. This would assist in identifying good (and bad) practice, develop new models of practice, contribute to policymaking, develop practice guidelines and codes of conduct for restorative justice practitioners, and enhance quality assurance mechanisms through provisions for monitoring and evaluation of cases.

A number of services are available to offenders during pre-trial, trial (access to legal aid), incarceration (rehabilitation programmes, vocational/skills training, therapeutic programmes, restorative justice programmes), pre-release (pre-release programmes, including an opportunity to apologise to the victim through a restorative justice process), and post-release. However, there are minimal, if any, services available to victims. By creating a separate path to justice for victims, one that stands apart from the criminal justice system yet at the same time is linked to it at various points, the criminal justice process can ensure that victims' rights and needs are respected from the moment a crime is committed to the point when the offender is released back into the community. This would ensure services for offenders *and* victims.

Conclusion

The move to restorative justice in South Africa may be seen as part of a larger process of redress, particularly with regard to racial discrimination and disadvantage. Restorative justice is also meant to reduce the traditional and entrenched location of power in the criminal justice institutions in South Africa, namely, the police, the courts and corrections. The question that remains to be answered is whether restorative approaches at the parole phase such as VOD, FGC and VOM have the potential to reconcile decades of structural inequality, marginalisation, deprivation and poverty, which have had a direct bearing on the high rates of violence and victimisation in South Africa. How can these offenders/victims benefit from restorative justice, and will restorative justice processes be able to rise to the challenge? The powerlessness of offenders, victims and their families, associated with long-term incarceration and years of unresolved pain for the victim in the aftermath of the crime, cannot be ignored. Therefore it is heartening to note that the process is underway for the development of a new framework for the management of parole in the country, including 'a separate Parole Act, with guidelines and procedures on decision-making', and benchmarking against international best practice.[60]

Restorative approaches to corrections must be seen as part of a wider approach in corrections, where it eventually becomes part of the ethos of the correctional centre; mainstreamed within the content of orientation programmes upon entry; and incorporated into all programmatic interventions during the rehabilitation pathway and at the pre-release and release phase. Restorative justice (or VOD) is not 'a single event' at the end of the value chain, but rather a possible route for offenders to make amends and be successfully reintegrated back into their communities; and for victims to embark on a journey of psychological and emotional healing.

Recommendations:

- S 299A of the Criminal Procedure Act provides for the right of a complainant to make a written representation in certain matters relating to the placement on parole, day parole or under correctional supervision of an imprisoned offender, or attend board hearings. However, a major challenge is that the sentencing officer has to inform the victim, who has to be present in court to receive the information. The procedure does not make provision for a situation where

the victim is not present during sentencing. The recommendation is to simplify the directives, which are both onerous and prohibitive, as they assume a level knowledge of the perpetrator's case on the part of the victim. Given the fact that many victims may be illiterate or unaware of the requirements to make an application, the victim's right is effectively denied. While the department approved the guidelines on 'Victim/ Complainant Involvement in Parole Boards' in September 2009,[61] these have not been widely disseminated to parole boards, correctional centres, and the public at large. [62]

- Appoint a national victims' commissioner/ advocate to deal with all matters relating to victims of crime throughout the criminal justice process, a person to whom victims can turn to in cases of non-compliance or unethical practice. This office would also serve an oversight function on the implementation of the Services Charter and adherence to the Minimum Standards on Services for Victims of Crime.
- Develop proper guidelines and minimum standards on restorative approaches to justice, and, especially, restorative approaches to corrections. The Restorative Justice National Policy Framework (2011) and the United Nations Handbook on Restorative Justice Programmes[63] can serve as useful tools. These guidelines should provide greater clarity on restorative approaches during the parole phase, while the minimum standards would go a long way to ensure that quality assurance is maintained.
- In addition, the shortage of professionally trained restorative justice facilitators is a major challenge. Correctional officers, social workers, psychologists, pastors and parole board members are regularly expected to facilitate VODs; many do so without the necessary skills or training. Proper implementation of departmental policy on VOD or victim participation necessitates the involvement of professionally trained restorative justice facilitators. Facilitators need to be trained to manage restorative justice processes, ensure that participation is voluntary and victim centred, and that cases are properly screened for appropriateness, and participants are adequately prepared. Dedicated restorative justice units at all correctional facilities would go a long way towards addressing this gap. Such units could oversee all matters relating to restorative justice from reception to reintegration; including orientation programmes for offenders upon entry to create an awareness of the value of restorative justice, such as accepting responsibility for the harm that s/he has caused to the victim, his/ her family and the community, victim empathy and making amends, and, most importantly, the facilitation of restorative justice processes by skilled facilitators.
- Develop partnerships and collaborative arrangements with respected community elders such as retired professionals (social workers, teachers and school principals), traditional leaders and ward councillors. They are significant role players when it comes to creating and strengthening support mechanisms, not only for victims, but also for offenders returning to their communities after a lengthy period of incarceration. During parole processes they can also play an important role in public education, awareness campaigns on victims' rights, and services for victims of crime.

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Notes

1 Incidents of murder increased from 16 259 in 2012/13 to 17 068 in 2013/14. See Institute for Security Studies (ISS), Explaining the official crime statistics for 2013/14, fact sheet, 19 September 2014, http://www.issafrica.org/uploads/ISS-crime-statistics-factsheet-2013-2014.pdf.

2 See L Muntingh, Sentencing, in C Gould (ed.), *Criminal (in) justice in South Africa: a civil society perspective,* Pretoria: ISS, 2009. See also Jean Redpath, Unsustainable and unjust: criminal justice policy and remand detention since 1994, *South African Crime Quarterly,* 48, June 2014.

3 See G Super, Twenty years of punishment (and democracy) in South Africa: the pitfalls of governing crime through the community, *SA Crime Quarterly,* 48, June 2014, 7, http://www.issafrica.org/uploads/SACQ48_SuperV2.pdf. See also *Mail & Guardian,* Ndebele: SA has highest prison population in Africa, 11 February 2013, http://mg.co.za/article/2013-02-11-south-africa-has-highest-prison-population-in-africa-says-ndebele.

4 See L Muntingh, Punishment and deterrence: don't expect prisons to reduce crime, *South African Crime Quarterly,* 26, December 2008, 3.

5 See G Gaum, S Hoffman and JH Venter, Factors that influence adult recidivism: an exploratory study in Pollsmoor prison, *South African Journal of Psychology,* 36:2, 2006, 407–42, for an explanation of some of the factors that contribute to high rates of recidivism in South Africa.

6 Leon Marren, Department of Correctional Service (DCS), email correspondence, 27 January 2015.

7 D Foster, Gender, class, 'race' and violence, in CL Ward, A van der Merwe and A Dawes (eds), *Youth violence: sources and solutions in South Africa,* Cape Town: UCT Press, 2012, 38.

8 Ibid., 53.

9 E Shpungin, The fluidity of victimhood, in T Gavrielides (ed.), *A victim-led criminal justice system: addressing the paradox,* Independent Academic Research Studies (IARS), London: IARS Publications, 2014, 28.

10 Ibid., 4.

11 See T Emmet, Social disorganisation, social capital and violence prevention in South Africa, Human Sciences Research Council, Child, Youth and Family Development Research Programme, 2001, http://www.unisa.ac.za/contents/faculties/humanities/sosw/docs/ASPJ-2003/ASPJ2003-1-2-02-Social-disorganisation-social-capital-and-violence.pdf, for an analysis of the causes of social disintegration in black communities in South Africa.

12 Foster, Gender, class, 'race' and violence, 46.

13 The author has served as a member of the National Council for Correctional Services from March 2010 to the present. In terms of Chapter viii, Section 83(1) of the Correctional Services Act of 1998, the National Council for Correctional Services is a multi-disciplinary statutory body with the primary aim of guiding the minister of justice and correctional services in developing policy relating to the correctional system and the sentence-management process. However, the council is also called upon to consider the cases of all offenders serving life sentences who are eligible to be considered for parole. The council makes a recommendation to the minister, who then makes a final decision.

14 Work sessions were held for Gauteng, Limpopo, Northern Cape and Free State (inland regions): Benoni, Gauteng on 4–5 February 2014; Eastern Cape and KwaZulu-Natal (coastal regions): East London on 11–12 February 2014; Western Cape: Brandvlei Correctional Centre on 18–19 February 2014.

15 See White Paper on Corrections, 2005, Chapter 5 at 5.5.

16 See JD Mujuzi, Unpacking the law relating to parole, *Potchefstroom Electronic Law Journal/Potchefstroom Elektroniese Regstydskrif (PER),* 14:5, 219, http://dspace.nwu.ac.za/bitstream/handle/10394/4692/MujuziDOC2011%2814%295.pdf?sequence=1.

17 See *Van Vuuren v Minister of Correctional Services and Others* 2010 (12) BCLR 1233 (CC); *Derby-Lewis v Minister of Correctional Services* (2009) 3 All SA 55 (GNP); *Van Wyk v Minister of Correctional Services*, unreported, referred to as [2011] ZAGPPHC 125, 26 July 2011.

18 Correctional Services Act of 1998 (Act 111 of 1998).

19 On 31 March 2011, the Constitutional Court handed down judgement in the Van Vuuren case *(Paul François Van Vuuren v Minister of Correctional Services and Others* [2010] ZACC 17).

20 See case summary at Polity.org.za, Legal briefs, *Van Vuuren v Minister of Correctional Services and Others* [2010] ZACC 17, http://www.polity.org.za/article/van-vuuren-v-minister-of-correctional-services-and-others-cct-0710-2010-zacc-17-2010-09-30.

21 *Cornelius Johannes Van Wyk v Minister of Correctional Services and Others,* case no. 40915/10.

22 DCS, *Annual report 2013/2014,* 23, http://www.dcs.gov.za/docs/2015%20doc/DCS%20Annual%20Report%202013-14.pdf.

23 From December 2012 (when cases became eligible to be considered in terms of the Van Wyk judgement) until the present, a total of 1 209 cases have been considered by the National Council for Correctional Services (information obtained from the DCS on 17 November 2015).

24 Correctional Services Act of 1998, Section 73 (iv).

25 According to Minister of Justice Michael Masutha, on 20 May 2015 there were 159 241 people in South Africa's prisons, but prisons have bed space to accommodate around 120 000 prisoners. See Xolani Koyana, Inter-departmental issues add to prison overcrowding, *Eyewitness News,* 20 May 2015, http://ewn.co.za/2015/05/20/Inter-departmental-shortcomings-add-to-prison-overcrowding.

26 See Clare Ballard, Crime and punishment don't add up, *Mail & Guardian,* 8 May 2015, http://mg.co.za/article/2015-05-07-crime-and-punishment-dont-add-up, where Ballard provides interesting insights into the social and economic cost consequences of long-term imprisonment.

27 H Hargovan, Doing justice differently: prosecutors as 'gatekeepers' of restorative justice, *Acta Criminologica,* Conference Special Edition, 1, 2010; H Hargovan, Knocking and entering: restorative justice arrives at the courts, *Acta Criminologica,* Special Edition, September 2008; G Bazemore and L Walgrave, Restorative juvenile justice: in search of fundamentals and an outline for systemic reform, in G Bazemore and L Walgrave (eds), *Restorative juvenile justice: repairing the harm of youth crime,* Monsey: Criminal Justice Press, 1999; D Clairmont, Penetrating the walls: implementing a system-wide restorative justice approach in the justice system', in E Elliott and RM Gordon (eds), *New directions in restorative justice issues, practice, evaluation,* Cullompton: Willan Publishers, 2005; J Dignan, Restorative justice and the law: the case for an integrated, systemic approach, in L Walgrave (ed.), *Restorative justice and the law,* Cullompton: Willan Publishing, 2002.

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31 See O Guidoni, The ambivalences of restorative justice: some reflections on an Italian prison project, *Contemporary Justice Review,* 6:1, 2003, 55–68.

32 Johnstone, Restorative justice and the practice of imprisonment, 20.

33 Ibid., 20.

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35 See MP Dhami, G Mantle and D Fox, Restorative justice in prisons, *Contemporary Justice Review,* 12:4, 433–448, 1999. 'Most of these RJ practices have taken place in prisons in Europe, North America, South Africa, Australia, and New Zealand', 438.

36 G Super, Punishment and the body in the 'old' and 'new' South Africa: a story of punitivist humanism, *Theoretical Criminology,* 15:4, 2011.

37 Ubuntu featured prominently in the watershed judgement of Makwanyane where Justice Albie Sachs likened it to a 'humane justice system'.

38 DCS, *Annual report 2001/2002,* 4, http://www.dcs.gov.za/Publications/Annual%20Reports/DCS%20Annual%20Report%202002.pdf.

39 DCS, White Paper on Corrections in South Africa, Pretoria: DCS, 2005.

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41 DCS, *Annual report 2012/2013,* 13, http://www.dcs.gov.za/Publications/Annual%20Reports/DCS%20Annual%20Report%202012-2013.pdf.

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43 Taken verbatim from evaluation of feedback forms for work sessions held for parole boards by the DCS and NCCS for parole board chairpersons throughout the country [Restricted: Ms T Tsetsewa].

44 The draft policy states, 'One of the general principles of the DCS policy on restorative justice is the preparation for VOM/Dialogue'.

45 These are insights gained from the examination of 'lifer' profiles that were considered for parole.

46 There is little consistency in Australian law regarding victim input into the parole process. While some jurisdictions make no provision for it, others have comprehensive arrangements. However, in Canada, the Corrections and Conditional Release Act (CCRA) marked a significant milestone in human rights development in corrections. Under this act victims have a right to be kept informed of an offender's prison and parole status; to have information from victims taken into account at parole reviews; and to attend parole hearings, at the discretion of the National Parole Board rather than that of the offender. It is also possible for a person to receive information even though that offender was not prosecuted for or convicted of the offence in which he/she was harmed.

47 The role of the victims' commissioner is to promote the interests of victims and witnesses, encourage good practice in their treatment, and regularly review the Code of Practice for Victims, which sets out the services victims can expect to receive. See United Kingdom government, Victims' Commissioner, https://www.gov.uk/government/organisations/victims-commissioner.

48 See http://www.un.org/documents/ga/res/40/a40r034.htm.

49 The United Nations Office for Drug Control and Crime Prevention (UNODC), Centre for International Crime Prevention, *Handbook on justice for victims,* New York: UNODC, 1999, https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf.

50 L Artz and D Smythe, South African law and policies supporting victims' rights, in R Peacock (ed.), *Victimology in South Africa,* Pretoria: Van Schaik Publishers, 2013, 51.

51 Ibid., 55.

52 Justice and Correctional Services Minister Michael Masutha on *eNCA*: De Kock case sees change to SA parole system, 28 November 2014, https://www.enca.com/south-africa/de-kock-case-sees-change-sa-parole-system.

53 Addressing the media in Cape Town, ahead of his department's budget vote, Masutha said it is crucial that victims of crime be involved in parole processes, 16 July 2014. See SA Government News Agency, Victims should be involved in parole processes, http://www.sanews.gov.za/south-africa/victims-should-be-involved-parole-processes.

54 A complainant is understood to be the victim of the crime, or an immediate relative of the deceased.

55 DCS, Correctional supervision and parole boards, www.dcs.gov.za/Services/CorrectionalSupervisionandParoleBoards.aspx.

56 Information obtained from Ms N Tsetsewa, DCS, 20 August 2015.

57 See *Sowetan,* Shot woman fears ex-hubby: Benoni beast to get parole, 2 September 2015, for a report on a case where the victim was being harassed by the offender and where DCS officials from Leeukop Prison called the victim to inform her that it was important for her to participate in a VOD as the offender would be released on parole soon.

58 A partnership between the department and the Foundation of Victims of Crime (FOVOC) assists with locating victims of crime and enabling them to appear before parole boards to make representations. See DCS, *Annual report 2013/2014,* 52.

59 See also T Ramagaga, Is South Africa making strides in the participation of victims of crime in parole processes? *ISS Today,* 14 February 2012, https://www.issafrica.org/iss-today/is-south-africa-making-strides-in-the-participation-of-victims-of-crime-in-parole-processes.

60 See *Mpumalanga News,* 'Task team evaluates South Africa's parole process', 8 July 2015. See also http://www.gov.za/speeches/minister-michael-masutha-sets-task-team-evaluate-parole-process-3-jul-2015-0000.

61 Document obtained from the DCS. Access restricted.

62 See United Kingdom government, Practice guidance on duties towards victims, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317777/practice-guidance-on-duties-towards-victims.pdf.

63 See UNODC, *Handbook on restorative justice programmes,* https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf.