**The Dignity of Prisoners and their Families: A Theological Response**

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# DECLARATION

I declare that this dissertation/thesis is my own unaided work. All citations, references and borrowed ideas have been duly acknowledged.  It is being submitted for the degree of MTh (Theology and Development) in the Faculty of Humanities, Development and Social Sciences, Pietermaritzburg, South Africa.  None of the present work has been submitted previously for any degree or examination in any other University.

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# Abstract

The research focuses on the human dignity of prisoners and their families. The dominant human rights perspective of human dignity in terms of retributive justice is critiqued for its punishment approach of imprisonment which does not meet the benchmark of respecting human dignity but instead perpetuates experiences of indignity for prisoners and their families. While the approach of human rights under restorative justice as opposed to retributive justice is supported as a better approach to counter indignity, it's dominant approaches are also shown to particularly overlook the dignity of prisoners and their families by often not focusing on their plight, and neglecting the very values of restorative justice.

A case study of the Phoenix Zululand restorative justice programme, in KwaZulu-Natal South Africa confirms that a restorative justice approach that respects these values can re-humanise prisoners and their families. The study includes a discussion of the Christian perspective on human dignity, which forms a basis for a theological response to the indignity experienced by prisoners and their families. The concepts of *Imago Dei* and *Imago Trinitatis as* fully revealed in Jesus Christ lay the foundation for human dignity in the Christian perspective.

The study concludes by showing how this theological basis has implications for the Church in working with prisoners and their families and also highlights some areas for future research.

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**Chapter One**

**Introducing the study**

## 1.1    Background to the study

This study focuses on the dignity of prisoners and their families and the involvement of the Church in ensuring this dignity. It is concerned with how their dignity is impaired as prisoners and specifically as prisoners with families[1]. In addition, the study shows that the implementation of human rights is difficult in the current prisons theoretical and resultant policy frameworks, in particular in relation with prisoners' families (Shaw1994: 114). The study however, highlights the important contribution of human rights in international law by acknowledging human dignity as a right (Oyero 2004: 1). It also highlights how this acknowledgement can best be put into practice under the restorative justice framework. This would require the restorative justice framework to apply the values espoused by restorative justice across the board so that both prisoners and their families can benefit from these rights. Following such thinking would also allow the Church to respond from its social theological base. Thus this study suggests social theological resources that can be used by the Church to respond to the indignity of prisoners and their families in criminal justice discourse in general and restorative justice in particular.

Some of the international human rights instruments relevant to this study include the following: the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic Social and Cultural Rights (ICESCR); and the Standard Minimum Rules for the treatment of offenders (SMR 1997; Muller 2005: 57; Oyero 2004: 1). The conventions try to guard against physical torture (Rapoport 2006: 8-9) and neglect. However, prisons in many African countries tend to be constrained by overcrowding, the limited human rights education of many prison guards and economic factors

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[1] Prisoners with families will be used here to mean male partners in prison with a wife and children on the outside, while in a few instances families will include the parents, sisters, brothers and even grandparents of a male prisoner. "Wife" in this case refers to a female partner considered by the prisoner as such.

(Oyero 2004: 46). The dignity of prisoners therefore tends not to be respected and physical torture while in prison is the norm in some countries (Oyero 2004: 24).

Human dignity from the legal perspective is understood from the position of state retributive justice which focuses on the punishment of the offender in equivalence to the crime committed and not on the restoration of relations of the offender (Hill 2007: 16). Under this punishment arrangement, the offender is supposed to be treated in a humane way in prison in accordance to international conventions and guidelines (Oyero 2004: 12). This is purported to restore the dignity of the community which prisoners violate through their crime and to restore order in society (Hill 2007: 49).

This retributive justice system is influenced by utilitarian and Kantian philosophies of dignity, crime and punishment. These philosophies are based on the thinking that the offender is rational and his decisions should be punishable for the public good. They do not consider factors like offenders' relationships with the family (Hill 2007: 49). They also tend to glorify punishment over justice (Hill 2007: 49). Under this arrangement imprisonment is expected to deter prisoners or other people in the community from committing crime in future (Muller 2005: 53; Hill 2007: 42). Inadvertent consequences like the family enduring the pain of the imprisoned father, son or husband are often overlooked.

Human dignity from a Christian perspective on the other hand is supposed to be relational, referring to the immeasurable worth of every human being because of their relationship with God and not because of their individual characteristics (Bongmba 2007: 47; de Gruchy 1996: 239). To be human in Christ has implications "for both our relationship with the creator and our relationship with one another" (Gonzalez 2007: xv; de Gruchy 1996: 248).

Human dignity, in Christian theology holds that all people have God's divine nature in some sense and are of equal worth as human beings (de Gruchy 1996: 239). Therefore the human dignity of prisoners with families' is God given; it is given by virtue of being human (de Gruchy 1996: 239). Under humanity in Christ, being made in the image of God, all human beings are equal and there are no divisions that should make some less human than others on the basis of power or piety or by circumstances such as being in or outside of prison (de Gruchy 1996: 239).

Prisoners are however, treated as less than human because of the crimes they commit (Cosendine 1995: 33). The state and some sections of the church for that reason justify vengeance and discrimination against them. Prisoners are considered as "outside society" (Hill 2007: 54). Prisoners are denied liberty and freedom by law, and they are separated from their families and stigmatized for the crimes they commit (Cosendine 1995: 33; Van Ness et al 1997: 38). Prisoners attest that this has negative social, economic, political and theological implications for them and their families left on the outside.

Most men in prison have had low levels of closeness and contact with their children in the period before they are sent to prison as some men are involved in heavy drinking and others are migrant workers (Aitken a 2006: 10). Thus, the status of the father-child relationship is quite likely to deteriorate for many fathers during imprisonment, making fatherhood difficult for some prisoners because they have minimal contact with their children while they are incarcerated (Aitken d 2007: 2; see also Shaw 1994: 115-116). The role of fatherhood role can also sometimes be affected by lack of transportation for children to visit them in prison, the stigmatisation of the mother who may even hide or downplay the fact that the father is in prison for fear that the children will be traumatised (Codd 2003: 2). However, fathers closeness with children can sometimes increase while in prison when they participate in a family conference although time for such meetings is often short (Aitken a 2006: 10; Aitken d 2007: 10).

Scholars have found that many prisoners' wives also feel the loss of the absent husband which confuses their identity (Royer et al 1987: 31-32). They do not feel themselves to be married, nor do they feel that they are widowed: they have a husband but the many beneficial roles that the husband could play are automatically cut off by imprisonment (Royer et al 1987: 32-33). Sometimes family decisions are brought to the husband for consent and at other times the woman takes on new roles of decision making which empower her during this difficult period (Codd 2003: 14). This can make some of the children hostile and anxious as they experience a change in the roles of the mother (Morris 1965: 1-2; Codd 2003: 15; Royer et al 1987: 16).

While the husband experiences stigma in prison and after release, Garshick says that the denigrating experiences of male prisoners' wives are more complicated as they are 'hidden' from the public eye. "They feel their rights to be wives have been taken away just as those of their

partner to be husband" (quoted in Codd 2003: 7). Furthermore, Garshick quotes one wife who said "I didn't realize a person could put you so down" (quoted in Codd 2003: 7)

The treatment of prisoners is highlighted by looking at the indignity experienced in prisons in South Africa. This gives us glimpses at some of the violations of human rights which are not necessarily unique to South Africa but cut across most prisons in other countries (Van Ness 2001: 4). There are limited accurate statistics on total numbers of people imprisoned and those accessing restorative justice services around the world. Some countries do not have appropriate statistics and in all regions of the world there is overcrowding in prisons, making "the observation of various provisions contained within the United Nations Standard Minimum Rules for the Treatment of prisoners …often absent" (Tkachuk et al 2001: 6).

Using South Africa's 2005 statistics (which may have changed by 2010 when this thesis was written), the rate of imprisonment of the population was at 402 per 100 000 which is higher than that of the United Kingdom and Japan which were 105 per 100 000 and 54 per 100 000 respectively (Aitken a 2006: 2). This is however, less than the United States which is at 715 per 100 000 and the Russian Federation at 584 per 100 000. For every 2000 people of the South African population 8 people are in prison (Aitken a 2006: 2).

Prisoners are overcrowded and this has negative health and social consequences. Overcrowding is a major global prison problem (Van Ness 2001: 4; Tkachuk et al 2001: 6). While prison damages people, out of every 20 imprisoned, 19 return to society which makes the task of reintegration complex and urgent (Aitken a 2006: 2).

Furthermore, prisoners' relationships tend to be estranged because of the steady lengthening of prison sentences which disconnects families for extended periods of time (Kibuka quoted in Tkachuk et al. 2001: 6; Aitken a 2006: 3). In 2004 in South Africa, only 4.8% prisoners had sentences of up to 6 months while 35% had sentences of more than 10 years (Aitken a 2006: 3). This means that many families will have their father, husband or son absent from home for those years.

Some prisoners seem to be sacrificed at the expense of others. The South Africa Law Commission is quoted to have reported that for every 100 violent crimes (murder, rape and aggravated robbery) reported to police; perpetrators have been convicted in only 6 cases after more than two years (Aitken a 2006: 3). Three quarters of cases involving murder, rape, and robbery with aggravated circumstances have not even made it to court after two years (Aitken a 2006: 3). Deductions could be made that, not only is imprisonment hurting families, it is also dealing with the top of an iceberg as far as crime is concerned.

Many prisoners through the institutionalization process are denied personal responsibility and made dependants of the state. Infantisation portrays the state of a prisoner in this case, as being turned into an equivalent of a child is another reality and pain that prisoners with families have to grapple with on prisoners' release (Steinberg quoted in Aitken a 2006: 3).

The Church response to prisoners' affairs in the past has mostly drawn from the retributive theology approach whereby "they reap from what they sow" (Boers 1992: 30; Haddad 2006: 86). The traditional foundation for Christian understanding has justified differential treatment of prisoners and free people (Boers 1992: 30; see also Haddad 2006: 82; West and Zengele 2006: 51-52). Interpretations of biblical texts such as "an eye for an eye and a tooth for a tooth" from Leviticus 24:19-20, Deuteronomy 19:21, Exodus 21:22-25 are often used by retributive justice proponents (Boers 1992: 30, see also Louw 2006: 101).

Other biblical texts such as Romans 13:4 "for the authority does not bear the sword in vain" have also been used to justify the stigmatization of offenders by the Church and the state (Boers 1992: 32). The state is understood to bear the sword on God's behalf and in many cases is thought by the Church as always legitimate (Boers 1992: 32). This thinking has captured theological and political discourse from medieval and reformation times up to contemporary Christianity of the twenty first century (McLellan 1997: 125) These historical and contemporary interpretations have not only impacted on the Christian understanding of prisoners and free people but have also had implications for politics and criminal justice.

 McLellan shows that some Church leaders perpetuate indignity by buying into state theology (McLellan 1997: 124-125). State theology is the belief that a state holds power or should be in

power because to be a state is connected to being in 'God's will' or approval (Kairos Document 1985: 3). In the case of criminal justice the state is understood to represent God in its administration of justice and other political affairs. As a representative of God's justice, even when it is oppressive, those who fall prey to its laws - which are sometimes unjust - are said to be punished by God's institution.

The Church has hardly addressed the issue of imprisonment and prisoners' dignity theologically, because it has tended to consider this a state and not a church matter. Reflecting on a wider context, some scholars have argued that Church theology, "wittingly or not promotes and gives legitimacy to domination, discrimination and dehumanization" (de Gruchy 2004: 10).

In some congregations prisoners' families are received with compassion while in others they are shunned. Royer et al (1987: 34) also says that the Church takes an ambivalent position on prisoners' families. Royal et al (1987: 34) and Garshick (quoted in Codd 2003: 7) also raise the issue of stigma and loss of identity created by imprisonment of a male partner. A prisoner's wife describes finding a church as, "taking some risks. Many churches are hard on people who do not fit their picture of what a Christian should be like" (Royer et al 1987: 34)

Studies on retributive justice reveal that the deterrence and rehabilitation models, which are supposed to stop people from committing after becoming aware that the consequences are punishable and how they will be punished, are significantly failing (Hill 2007: 15). Many prisoners turn into worse offenders than before they went to prison for reasons which are embedded in the model of justice itself and other reasons beyond the justice system (Van Ness 2001: 4; Hill 2007: 15) This is also evidenced by high rates of recidivism; crime repetition, re-arrest and frequently more imprisonment (Blankenship 2002: 40; Van Ness 2001: 4).

Given the negative impact of retributive justice, the Church around the world has been involved in trying to restore human dignity through justice initiatives that are restorative with a relational approach (Zehr 1990: 181; Van Ness et al 1997: 24-29). Restorative justice literature like *Crime and Its Victims* (Van Ness 1986), *Restoring Justice* (Van Ness et al 1997), *Crime, Shame and Reintegration* (Braithwaite 1989), *Restorative Justice: Healing the Effects of Crime* (Consedine 1995) and *Justice that Heals: A Biblical Vision for Victims and Offenders* (Boers 1992) also

reveals an increased focusing on healing relationships between offenders and 'victims' that are hurt by crime. Family related work has also been done, but this has been more in the area of young offenders than in regard to prisoners with families (Cosendine 1995: 99; Braithwaite 1989: 72-75).

Hill's (2007: 56) study reveals that some of the proponents of examining power relations in the retributive justice system advocate for restorative justice that takes all the affected parties into consideration. This justice system should be open to evaluation to allow necessary changes that will benefit the human relations of all the people concerned. The study further shows that justice should be concerned with responding to the abuse of power that offenders exercise in committing crime, unlike the traditional retributive justice system that "exercises power over stakeholders" by punishing the offender as an intervention on behalf of the state (Hill 2007: 14).

The ancient Hebrew notion of justice also aimed to "restore wholeness … *Shalom* … which signified completeness, fulfillment, wholeness - the existence of right relationships among individuals, the community and God" (Van Ness et al 1997: 8).  Crime was understood to "destroy right relationships within the community and create harmful ones" whereby the purpose of "justice was to restore community that had been sundered by crime" (Van Ness et al 1997: 8-9).

A programmatic attempt at 're-humanisation'[2] is found in KwaZulu-Natal, South Africa. This programme is called 'Phoenix Zululand' (PZ). Rehumanisation does not mean that someone's humanity can be taken away but that people can be treated as though they are less than human beings, which they also sometimes believe of themselves (see also Nussbaum 2000: 12). The one treating and the one treated inhumanly often tend to reproduce more of what they do and what they receive consecutively. The violator of the other violates more and the one violated tends also to violate others (Scott 1990: 21, 45-69). The PZ initiative seeks to address the disarray of prisoners and their families' dignity through adopting a restorative justice approach that respects relationships.

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[2] Re-humanisation implies being treated humanely with mutual respect, thus enabling one to experience 'humanness' again.

The PZ programme is used as a case study in this research to identify the understanding of indignity and means for the restoration of dignity of prisoners and their families. PZ works with various Christian denominations in its administration although the founder's leanings are in the "Quaker or Friends" tradition (Aitken b 2007: 1). The prisoners with families in PZ programmes are however not discriminated against on religious grounds. The programme uses prisoners' stories to bring about re-humanization through art, music and conversations in families. The 'Healing Through Art' project has an overriding objective "to make self-revelation and expression possible, to free the discursive field… to address the damaging effects of imprisonment and to make a creative return to society possible" (Aitken e 2008: 6)".

Furthermore, PZ undertakes 'family conferencing' projects in which the male partner participates in a conference with his family in a prison setting and aims at the restoration of family relationships (Nonceba 2008: 3; Aitken b 2007: 4). Conferencing draws families into sharing the experiences resulting from a crime committed by a member of their family. The prisoners also have the opportunity to plan with their family about their future (Nonceba 2008: 3; Aitken d 2007: 4).

PZ programmes are carried out in eleven prisons of Zululand and the work is mainly conducted through facilitators who include serving prisoners, ex-prisoners and community based facilitators (Aitken e 2008: 6). Other Phoenix Zululand re-humanising activities include conflict resolution, environmental learning, music and drama and conversations in families focusing on prisoners responsibilities towards families and support from family (Aitken e 2008: 6).

The absence of a focus on a social theological analysis of the indignity suffered by prisoners and their families provides the rationale for this study, which seeks to offer such a theological response.

## 1.2     Research questions and objectives

The research question of this study is: What constitutes an adequate social theological response to the indignity suffered by prisoners and their families?

In the light of this, the following sub questions are addressed:

1.      What are the experiences of indignity and re-humanisation of prisoners with their families'?

2.      What are the perspectives of human dignity in the retributive and restorative justice discourse?

3.      What would be an appropriate social theological response to indignity experienced by prisoners with families?

The objectives of this study are therefore:

1. To document and analyse the indignity and re-humanisation experienced by prisoners and their families using their experiences.

2. To identify the perspectives of human dignity and how these influence both retributive justice and restorative justice.

3. To suggest a social theological response to the indignity suffered by prisoners and their families.

## 1.3     Research methodology

The study uses an inductive, contextual theological approach. The study is non-empirical, building a theory of dignity of prisoners and their families on the basis of a case study of the Phoenix Zululand restorative justice programme based in Eshowe, KwaZulu-Natal, South Africa. The study employs a content analysis of existing data from the Phoenix Zululand (PZ) restorative justice programme. This involved gathering and analyzing the content of various materials of relevant data from PZ programme (Neuman 2000: 292).

Phoenix Zululand was targeted and systematically sampled because the programme has data on family conferencing conducted inside the prison with male partners and their families as well as re-humanising programmes using art production in which the agency of the prisoners and their relationships are considered important by the service providers. The data materials for this study include experiences from the Phoenix Zululand restorative justice programme as portrayed by

groups of prisoners with their families through their art work and through family group conferencing.

There are limitations in using this methodology of experiences that can include, but are not limited to, the stilted or even changed perception of reality and of meaning of an event at the time it happened and at the time of narrating it (Soderblom quoted in de Gruchy 1996: 157). These limitations are reduced by the fact that some of the experiences are deduced through art pieces. Art often speaks of even more than what the artist was thinking consciously (Aitken e 2008: 6). Furthermore, limitations in the use of experiences are reduced because the group participated in composing the commentaries concerning the art works that were used as data in the study. This group participation in the composition of commentaries reduces particular destructive tendencies or constructions since other participants also contribute their life experiences in interpreting the art piece. In addition, the commentaries on the art and the family conferences had been documented already as they were composed by prisoners[3], by prisoners for their families[4] and from notes compiled by PZ staff member, Nonceba Lushaba[5].

Further, with regard to the research methodology employed, in addition to using the prisoners' and their families' experiences as a benchmark for understanding prisoners' human dignity from their own context (de Gruchy 1996: 6), this study also presents an understanding of human dignity in accordance to the legal framework of human rights in a sociological analysis, while it uses the Christian doctrine of *Imago Dei* and *Imago Trinitatis* as fully revealed in Jesus Christ, as the benchmark for a theological response.

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[3] Pictures and commentaries obtained directly from PZ, Eshowe, 25/5/2008

[4] Pictures obtained from Nonceba Lushaba, PZ, Eshowe, 3/11/2008

[5] Family conferencing notes by Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

**1.4     Structure of the dissertation**

**Chapter two: Human rights perspective on human dignity: a critique**

This chapter gives a critique of existing theories of human dignity under retributive and restorative justice. The human rights model assumed by the retributive justice framework is critiqued. The human dignity provisions in human rights conventions in retributive justice are acknowledged and the restorative justice values that promote human dignity are also acknowledged. However, the inadvertently or intentionally stigmatizing and dehumanizing restorative justice approaches to prisoners and their families are critiqued.

**Chapter three: The case study of Phoenix Zululand**

This chapter focuses on evidence of indignity by imprisonment as analyzed by prisoners with their families and evidence of restored dignity within the Phoenix Zululand re-humanization programme. It raises issues concerning human rights under retributive justice and discusses the frequently ignored values of restorative justice.

**Chapter Four: Human dignity from a Christian perspective**

This chapter presents a theological framework of human dignity using *Imago Dei and Imago Trinitatis* and Jesus' presence and restoration in suffering. Jesus' presence and restoration in suffering are discussed as part of the *Imago Dei*, examining the work of his life and death.

**Chapter five: Restorative justice, human dignity and the Church: Towards a conclusion**

This chapter highlights the importance of analysing human dignity from the sociological; legal-human rights; and experiential, PZ perspectives but emphasises the importance of foregrounding the theological perspective. The chapter further shows what the implications for Church would be when the *Imago Dei* and *Imago Trinitatis* theological response proposed in chapter four informs restorative justice work.  It then suggests some areas for further research.

**Chapter Two**

**A human rights perspective on human dignity: a critique**

## 2.1    Introduction

This chapter gives the legal and human rights perspective of human dignity and critiques this approach for overlooking community as the very essence of being human. According to international law human dignity is a human right and it is undeniable (Oyero 2004: 12). There are therefore international human rights instruments that are intended to protect the vulnerable from human rights violations because their proponents hold that  "all human beings are born free and equal in dignity and rights"  (Oyero 2004: 1).

In presenting the human rights perspective of human dignity this chapter will try to answer the research question: what are the perspectives of human dignity in the retributive and restorative justice discourse? The chapter outlines human rights conventions applicable to prisoners as human beings in relation to human dignity, followed by an examination of the rights of prisoners with families, and finally critiques the human rights approach to human dignity under retributive justice.

Retributive justice is the thinking that, by being punished, those who commit crime get what they deserve as they 'reap what they sow' (Haddad: 2005: 29, 2006: 86; Van Ness et al 1997: 24; Zehr: 1990: 181).   Restorative justice on the other hand is the thinking that crime hurts relationships and this harm needs to be repaired to restore those relationships and the community in which they function (Consedine 1995: 11).   However, even the major restorative justice approaches overlook the alienation of prisoners. This hurts the relationships in prisoners and their families. This too is discussed in this chapter.

## 2.2    Human dignity under the human rights perspective

The concept of human dignity is one of the most important, innovative elements introduced in international law, whereby the rights of individuals, including prisoners, are universally defined by the United Nations (Oyero 2004: 12). The introduction of the notion of 'human dignity'

changed understandings of criminal justice in both positive and negative ways. Positive in the sense that dignity-related aspects such as good physical health, appropriate and adequate shelter, the provision of good food and the fair treatment of prisoners without the use of torture were taken into consideration by international conventions. However, the introduction of human dignity also changed the understanding of criminal justice in negative ways by continuing to overlook the essence of being human as embedded in the invaluable worth of each individual and especially in regard to living in respectable community. Several international instruments outline all peoples' and prisoners' rights that are to be upheld for the sake of their human dignity (Oyero 2004: 17, 19, 24).

Some of the relevant international instruments include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Standard Minimum Rules for the treatment of offenders (SMR) (Brownlie 1992: 38-39,498, Muller 2005: 57, Oyero 2004: 1,18). Article 10(1) of the ICCPR states that "all persons denied of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (Oyero 2004: 18).

The human rights perspective of human dignity is that it is a common right of all members of the human race (Oyero 2004: 1). The UDHR recognises in its preamble, (paragraphs 1 and 5), "the inherent dignity" and "equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world" (Oyero 2004: 12). It also reaffirms faith in the "fundamental human rights, in the dignity and worth of the human person and equal rights of men and women" (Oyero 2004: 12). "Respect for dignity implies respect for the autonomy of each person, and the right of everyone not to be devalued as a human being or treated in a degrading or humiliating manner" (Oyero 2004: 13). The declaration pledges to promote "universal respect for the observance of human rights and fundamental freedoms" and proclaims the UDHR as "a common standard for all persons and all nations" (Oyero 2004: 13). Fundamental human rights are thus understood to derive from the inherent dignity of the human person (Oyero 2004: 1).

Respect of and demand for human rights are taken as a yardstick of a humane life the world over, but may not mean the same thing to all its proponents as Head affirms below;

> Human rights are almost a form of religion in today's world. They are the great ethical yardstick that is used to measure a government's treatment of its people. A broad consensus has emerged in the twentieth century on rhetoric that frames judgment of nations against an international moral code prescribing certain benefits and treatment for all humans simply because they are human. Within many nations political debates rage over the denial or abuse of human rights. Even in prosperous, democratic countries …much public discourse is phrased in the rhetoric of rights. Legal documents to protect human rights have proliferated … (while people) have claimed that particular benefits they desire are a matter of human rights and must be provided. Indeed, the claim that the desired benefit is a human right is often meant to undercut any opposition as unprincipled or even immoral (Head 1997: 51).

### 2.2.1  Human rights of prisoners with families

The rights of prisoners outlined below are as they pertain to their relationship with their family. Direct provisions made by the Standard Minimum Rules (SMR) of 1977 for the Treatment of Prisoners or other international human rights instruments tend to overlook the whole issue of prisoners with families. The "SMR was adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council (ECOSOC) by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) 13 May 1977" (quoted in Oyero 2004: 17). The SMR has one rule concerning prisoners with families which is in relation to their "contact with the outside world". According to SMR Rule 37  "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits".

The second human right upheld in the above conventions that is applicable to all prisoners, but that has special implications for prisoners with families is the right to "humane treatment". It asserts that prisoners have a right to humane treatment and that punishment shall not be extended to any person other than the criminal (Brownlie 1992: 498). This right can encompass prisoners'

rights to life, freedom from torture, the right to liberty and security that are protected by article 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), 1966 (Brownlie 1992: 498).

The right to humane treatment is a result of the recognition "that those rights [including the one dealing with humane treatment] derive from the inherent dignity of the human person" and the "desire to make more effective the struggle against torture and other cruel, inhuman degrading treatment or punishment" (Brownlie 1992: 38-39). Provisions are, therefore, made, for example in the preamble and in Article 2(1) of the Convention Against Torture and other Cruel Inhuman and Degrading Treatment (CAT) to treat prisoners humanely. It is stated there that, "…each state party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction" (Brownlie 1992: 38-39).

Torture is used here to mean "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as …punishing him for an act he or a third person has committed" (Brownlie 1992: 39). The provisions in the CAT document add to the above definition of torture that "any act to punish or intimidate" for any reason inflicted by "a person acting in an official capacity amounts to torture" (Oyero 2004: 19). Also according to Article 10 of the ICCPR and Article 5 of the UDHR, respect for human dignity implies freedom from degrading actions which subject a person to humiliation (Oyero 2004: 24). Under these provisions outlined above, the prisoners or their families by implication are not supposed to be tortured mentally or otherwise.

The third right considered in this chapter is that which assures the family of a prisoner that it will receive "protection and assistance" to fulfill its functions as a unit. Speaking generally (i.e. not as regards the families of prisoners specifically), the international instruments mentioned above have provisions in place intended to protect the family group. Illustratively, according to UDHR Article 16(3) of 1948, "the family is the natural and fundamental group unit of society and is entitled to protection by the society and the state" (Brownlie 1992: 24). Additionally, the Convention on the Rights of the Child, (CRC) of 1989, states in its preamble that it is "*convinced that the family, as … the natural environment for the growth and well-being of all its members*

and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community". The child should grow up in a family environment "for the full and harmonious development of his or her personality… in an atmosphere of happiness love and understanding" (Brownlie 1992: 183).

Furthermore, the ICCPR's 1966 Article 24(1) states that "every child shall have, without discrimination…the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state" (Brownlie  1992: 133). The CRC's 1989 article 14(2) also states that "parties shall respect the rights and duties of the parents, and when applicable, legal guardians, to provide direction to the child in the exercise of his or her rights in a manner consistent with the evolving capacity of the child" (Brownlie 1992: 187).

International instruments intend to ensure that both parents care for their children and where this is difficult the parents are assisted in appropriate ways. Article 18(1) of 1989 of the CRC for example states that "parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child … The best interests of the child will be their basic concern" (Brownlie 1992: 188).

Meanwhile, the CRC's 1989 Article 18(2) states that "for the purpose of guaranteeing and promoting the rights set forth in the present Convention, State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of the children" (Brownlie 1992: 188).

The fourth human right under discussion in this chapter deals with the right to self respect and personal responsibility despite being imprisoned. The SMR considers the right to human dignity in matters such as accommodation, food and health (SMR  1977 Articles 9-14), as well as  in terms of medical services (SMR Article  20(1 and 2) and SMR Articles 20-26 ), and personal hygiene (SMR Articles 15 -16).  Human dignity calls for prisoner accommodation that does not aggravate the suffering already caused by the loss of liberty and that does not lead to loss of self respect and sense of personal responsibility. Prisoners should also have access to a qualified medical officer with a knowledge of psychiatry (SMR Article 22(1).

In democratic nations around the world, the rule of law and respect of human rights are among the principles of good governance (McLellan 1997: 125). However, rule of law does not necessarily mean the same as justice in terms of prisoners' experiences. The implementation of prisoners' rights is often difficult and these rights are often violated under rule of law with limited justice for those affected by this (Oyero 2004: 24). A case in point is the failure to implement or the violation of those rights pertaining to prisoners' families which forms part of the topic of this thesis.

While the recognition – under the retributive justice system - of prisoners' right to human dignity in particular and human rights in general, were a big step in the right direction (Oyere 2004: 12), the nature of this system is based on a focus on appropriate punishment for particular crimes rather than on justice for the parties involved (Zehr 1990: 181). Part of the problem with the retributive system of justice where the rule of law governs, is that culture is not necessarily taken into account, even when culture assists in human flourishing and in the establishment of the common good (Rapoport 2006: 14-16). For example in the case of Africa, African community life and its positive social role has been overlooked by the imprisonment system that alienates prisoners from their families and communities.

In view of the above, the next section argues that because human rights advocacy for human dignity currently functions within the retributive justice framework - objective of which is punishment rather than upholding human dignity - some of the human rights proposed by international law are being violated, in particular those that concern issues of human dignity.

## 2.3    A critique of the human rights approach in retributive justice

In order to understand the basis of the human rights discourse of equality, human dignity, and justice for all it is essential is to recognise that this approach is informed by, and embedded in, a retributive justice system. Human rights can thus inadvertently be retributive rather than just. Retributive justice is the result of classical and neo-classical thinking that offenders are rational, that they weigh the utility of their crime and therefore must be punished accordingly (Zehr 1990: 181, Muller 2004: 57). Much of the punishment in retributive justice tends to be humiliating

although the international laws request that only liberty be denied of a prisoner but respect must be maintained (ICCPR Article 10(1) (Oyero 2004: 24).

Institutionalisation puts the offender in a different community from his own; making him feel alienated (Hill 2007: 14-15). In addition, institutionalisation and loss of liberty combine to create a master and subject relationship, leading to hostility. On the one hand the result of this that there is the likelihood that prison guards may abuse their power (Hill 2007: 15), while on the other hand almost all possibilities for personal decision making are denied to prisoners and any opportunities for their self governing are lost, as the latter learn to simply take orders from the former (Scott 1990: 45-69).

Deprivation of freedoms of association and liberty under the pretext that this is the minimum accepted circumstances of imprisonment is a severely dehumanizing action (Oyero 2004: 18).

Bernard Shaw (quoted in Van Ness 1986: 48-49) laments the dehumanisation of imprisonment by isolation from the free community as follows:

> What sane man, I ask the clamorers, would accept an offer of free board , lodging , clothing, waiters in attendance at a touch of the bell, medical treatment, spiritual advice, scientific ventilation and sanitation, technical instruction, liberal education, and the use of a carefully selected library, with regular exercise daily and sacred music at frequent intervals, even at the very best of Ritz Hotels, if the conditions were that he should never leave the hotel, never speak, never sing, never laugh, never see a newspaper, and write only one sternly censored letter and have one miserable interview at long intervals through the bars of a cage under the eye of a warder.

The conditions described above are moreover not those of some prisons, in which many of the services mentioned are not denied to prisoners. Indeed, under imprisonment security is prioritized over the right to human dignity and justice (Blankenship 2002: 14). Imprisonment and the resultant inhumane treatment is justified as part of the task of upholding law and order and curbing violence in society. In the retributive justice system, prisoners are treated as being 'outside' society and are kept separate from the public, leading to stereotyping, discrimination

and to branding them together as dangerous to security of the public, making their imprisonment a necessity to protect the rest of society (Hill 2007: 24).

Among the inhumane treatment mentioned above is that the visitation of prisoners by family and others is not sufficiently facilitated by prisons departments despite being stipulated by Rule 37 of the SMR. What communication (via visitation, telephone, email, or letters) can be accorded by the prison to prisoner to communicate with family depends on the economic situation of a given country and the budget of the prison as many prisons do not have the necessary funding for this (Oyero 2004: 24). Therefore, the logistical and financial burden of communicating with prisoners falls on the families and not on the state. The state for example may put in place the necessary conditions to make visiting a prisoner possible, such as giving the necessary permission, but it does not provide transport to needy families. In many situations the state does not inform the family when a prisoner has been transferred to another prison so that families often do not know where the prisoner has been detained from or transferred to.

Another aspect of the treatment experienced under the retributive justice system of imprisonment is that incarceration becomes the public naming of a category of people whom the public views as second class citizens (Hill 2007: 24). This violates the rights of families and greatly strains family relationships (Codd 2003: 7). Many prisoners serving long term sentences face severe challenges in their relationships with a spouse because of their imprisonment (Van Ness et al 1997: 114-115). Imprisonment also sacrifices the children of prisoners to the system who become the hidden victims of crime (Shaw quoted in Burnside and Baker 1994:114-115).

In addition, many prisoners around the world are denied their sexual rights which are part of their being human. For the heterosexual there is loss of heterosexual relationships which damages the inmate's self image. There is in addition loss of autonomy in community and loss of rich community life which are also issues of human dignity. Institutionalisation is thus deprivation of prisoners' right of association (spending time with others: their spouse and children, but also their community) which is an important component of human dignity (see also Nussbaum 2000: 78-83). In prison, often one's gifts and capacities are not given the opportunity to flourish in community. Illustratively, imprisonment makes creativity and planning - important

elements of human dignity - difficult and sometimes impossible (see also Nussbaum 2000: 78-83).

It is argued by some scholars that states around the world are more concerned about efficiency than human dignity and human rights because of the current global neo-liberal policies (Tregenna 1997: 21; Monbiot 2004: 22; Groody 2007: 13,25). Prisoners become mere recipients of oppressive policies and programmes enforced by the state to maintain 'law and order' at minimum cost (see also Groody 2007: 13, WCC 2005: 1-2). The state takes over the stakeholders' role (Ntloko 1999: 5-6), the stakeholders being the prisoners and their families on the one hand, and those individuals or groups harmed by the crime committed on the other hand (Hill 2007: 14-15). This is then viewed as a situation of 'conflict', between two opposing 'sides', which underpins the retributive notion of punishing and wrongdoer (Howard Zehr 1990: 181).

It is the emphasis on individual rights, informed by western thinking, that contributes to the prevention of the necessary involvement of the wider society. However, the understanding of human rights as an individual right is not universally accepted, for example in African society the focus is always on the communal rights (i.e. communal well-being) rather than those of the individual alone (Oyero 2004: 16).  Rapoport (2006: 14-16) argues that human rights are not universal in as far as their interpretation and implementation goes, as these are biased toward western culture, forcing others around the world to adapt to a culture other than their own and leading to social/communal decline due to a lack of coherence and a loss of identity.  At the same time however, it is generally accepted that without individual respect and individual opportunity to participate as a decision maker in one's life, social development (i.e. social well-being) cannot occur either (Sen 1999: 128-129, 227).

Another critique of the retributive justice human rights approach is that it overlooks the fact that human beings are embedded in relations of power referred to as the social-spatial networks of power (Mann 1986: 1; Germond et al 2006: 37). Mann has classified these networks into four categories: ideological, economic, military and political (IEMP) networks of power. The human rights approaches tend to look at people as rational individuals ignoring the fact that they are often embedded into these networks of power and that the controlling power often determines behaviour rather than people's rational decisions (Germond et al 2006: 37).  In the case of the

UDHR for example, its ideological power coverage enlarges its domination beyond the confines of a national state; it is a global 'law' and determines what is acceptable internationally irrespective of its possibility or appropriateness in a particular context.

In regard to the above-mentioned social-spatial networks, Davies emphasizes the point of how unequal and oppressive relationships can often be present in institutions: "In impersonal modes of procedure the relational element is largely absent or has been excluded… contingent relationships that are brief, distant and with a narrow purpose and not relationships of encounter, personal contact, closeness and continuity" (quoted in Burnside and Baker 1994: 39). In particular within the situation of the retributive justice system, highly negative power relations exist between prisoners and warders which often results in the violation of human rights, as indicated above (Davies quoted in Burnside and Baker 1994: 39).When relationships are not respectful the powerful dehumanize the vulnerable in systems or institutions like prisons (see also Scott 1990: 45-69, 21, 112-114)  However, as recognized by African societies in particular, to be human is to affirm one's humanity by recognizing the humanity of others and, on that basis establish human relations (Louw 1997:  5).  Also, in this thinking, the value of the individual is to be seen in the context of the value of the wider community and its affirming relationships (Germond and Mopelo 2006: 30)

It is considered as being 'for the public good' to imprison an offender but this collectivity seems to be ignored after imprisonment, because it is surely also 'for the public good' that prisoners and their families remain connected specifically, and that the human dignity (not simply the human rights) of prisoners be upheld. Human dignity has collective implications as human beings are individuals in community (Oyero 2004: 16).

Dickens (quoted in Schneider 1979: 732), argues that under the retributive justice system, prison's goal of reformation has failed. Moreover, it is not 'for the public good' when as a result, of this failure prisoner's return to the community damaged by their imprisonment:

> In its intention I am well convinced that it is kind, humane and meant for reformation but I am persuaded that those who devised this system of prison discipline, and those benevolent gentlemen who carry it into execution do not know what it is they are doing. I

believe that these very men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years inflicts upon the sufferers… Over the head and face of every prisoner who comes into this melancholy house, a black hood is drawn; and in this dark shroud, an emblem of the curtain between him and the living world, he is led to a cell.

However, since the 1970's when the above quote was written, there has been growing thinking from a restorative justice perspective about the human dignity and human rights of prisoners (including those with families) (Zehr 1990: 181; Hill 2007: 4). This thinking posits that crime hurts relationships and that justice, not retribution, is needed in order to repair these hurt relationships. It is through participation of affected parties in their crime and conflict that they can effectively deal with the hurt relationships (Van Ness et al 1997: 24-25). The next section, therefore, focuses on human rights and human dignity from a restorative justice perspective. The section however, also critiques the current dominant restorative justice practice. This critique principally focuses on restorative justice ignoring restorative justice values in the case of prisoners and their families. It also focuses on resolving a particular crime but not engaging the state in regard to its oppression of prisoners with families and the wider context thereof.

## 2.4    Human rights approach in restorative justice

Restorative justice is a relational approach to justice, upholding human rights, that intends to defend the human dignity of all involved in the crime conflict. "Restorative justice … focuses on the harmful effects of offenders' actions and actively involves victims and offenders in the process of reparation and rehabilitation" (Eglash quoted in Van Ness et al 1997: 24). Restorative justice can also be called a fresh vision of what society should be like; a fresh understanding of the goals of crime prevention (Burnside and Baker 1994 quoted in Van Ness 1997: 25; Zehr 1990: 181). Restorative justice is "passionate" justice that emphasizes "love, compassion and vindication of the weak… [which is] part of what it means to be human" (Burnside and Baker 1994: 43). The "weak" here does not refer only to the victims of crime, but also to those 'weakened' through their incarceration and its dehumanizing aspects on themselves and their families. Marshall (quoted in McCold 2001: 2) adds that restorative justice "is a process whereby

all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."

Restorative justice is undertaken by both the state and the community but more by the latter. State programmes with some restorative justice activities include victim offender reconciliation programmes and family group conferencing done in partnership with nongovernmental organizations (NGOs) and faith based organizations (FBOs) (Van Ness et al 1997: 69-73). Meanwhile, community initiated programmes are often established by local communities, NGOs and FBO's. Some of their activities of restorative justice include: family conferencing, victim offender mediation, victim impact statements and other reconciliation projects.

One example is the *Mato OPut* (reconciliation) initiative in northern Uganda applied in the conflict with the Lords Resistance Army (LRA). It was an initiative of the community which was later used in collaboration with the state to reconcile the returnee former rebels with their victim communities (Afako 2002: 3). The notion of community underlies the term *Mato Put*, which refers to the bitter root drink shared by offender and victims to assure each other of their reconciliation. The Acholi people of northern Uganda traditionally believe that if they can share food with their enemies, then the power of revenge has been broken and defeated and they can be brothers in community again (Afako 2002: 4).

### 2.4.1    The values of restorative justice

There are four main intertwined values of restorative justice: inclusion, encounter, reparation and reintegration (Van Ness et al 1997: 24-131). The process of restorative justice is, therefore, underpinned by the values of encounter and inclusion, and the outcome of restorative justice is expected to involve making amends or reparation, another important value of restorative justice (Van Ness et al 1997: 67-110). The process and outcome are expected to lead to another value of restorative justice called reintegration (Van Ness et al 1997: 111-131; Liebmann 2000: 100; Zehr 1990: 181). Reintegration can be referred to as "re-entry into community life as a whole, contributing, productive person…[and it] requires relationships characterized by respect, commitment and intolerance for - but understanding of – deviant or irrational behavior" (Van

Ness et al 1997: 116). This then requires joint action by offender or victim and community (Van Ness et al 1997: 116).

In respect of the human dignity of the offender, victim and communities, restorative justice requires the inclusion of all the parties impacted by the crime for the restoration of relationships between offender and those who have been injured by the crime.  Under restorative justice, restoration of those hurt by crime is expected to be effective if the victims, offenders and communities themselves have opportunities for active involvement in the restorative justice process, as early and as fully as possible (Van Ness et al 1997: 24-25; Liebmann 2000: 2).

 Inclusion respects the human dignity of all stakeholders as they become agents of their own change (see also Sen 1999: 221; Nussbaum 2000: 1, 12). The stakeholders participate equally and meaningfully and everybody's input is respected (Hill 2007: 26). By stakeholders participating in the issues of their own crime, they are empowered. The more inclusive a system is the more restorative that system will be. The key elements of inclusion include: the invitation of all stakeholders to participate in ; the acknowledgement of stakeholders' interests; and the conscious effort to take these various interests into consideration (Van Ness et al 1997: 67-90). In the encounter between them, mediation is required and an impartial third party may be needed to facilitate the process in addition to the people affected by the crime (Van Ness et al 1997: 81-82).

In family conferencing, key family members, the offender and other relatives also participate by giving their interests and having their voices heard (Van Ness et al 1997: 82-83; Liebmann 2000: 101; Zehr 1990: 181).  Through restitution or apology, among others, the affected parties in the crime have the opportunity for further intereaction which is more inclusive for the various stakeholders (Van Ness et al 1997: 82-83). There is respect, openness and fairness in family conferencing and in all restitutive interactions for all parties affected by the crime, unlike the case with courts and prisons (Van Ness et al 1997: 77-79).  The restorative justice workers are also included in the process. They stand with crime impacted families, mobilize moral and sometimes practical assistance and also provide moral and spiritual guidance (Van Ness et al 1997: 124-130). In addition, church or faith based organisations are central for healing of people negatively impacted by crime, including its perpetrators (Van Ness et al 1997: 125).

Human dignity is respected under the 'encounter' aspect of restorative justice. This is a meeting that brings together offenders and victims and other members who have also been directly impacted by the crime (Van Ness et al 1997: 69). During the encounter the people actually get to meet and put a name to a face, share what happened and how it affected the parties involved, discuss how to address the harm done, as well as to speak about how they feel (Van Ness et al1997: 71-72). Other elements of encounter are to recognise the effects of crime, to understand each other and to reach agreement on practical solutions to the situation (Van Ness et al 1997: 76). Individuality (of the prisoner, family and victim) is upheld in a community setting (broader society), as attention is paid to individual needs of each stakeholder (Van Ness et al 1997: 87).

The other value underpinning the restorative is that of making amends or reparation, which also upholds human dignity.  Reparation is often something done by the offender to the victim revealing acknowledgement of the crime victim as a human being and the wrong done to this person (Van Ness et al 1997: 91).  Reparation can also involve apology, and changed behavior related to the offense (Van Ness et al 1997: 94). The change of behaviour can also be general such as a prisoner undertaking a course of study to enable his/her future employment, in realizing the need of a person to "find wholeness and establish themselves in the community as participating members" (Van Ness et al 1997: 131; Hill 2007: 26). This also helps in reintegration, another principle that will be considered below.

Repairing relationships and building community can also involve restitution; which can be in material goods or in kind depending on the agreement made by the stakeholders. (Van Ness et al 1997: 4-98)  Some offenders do more than they were asked as an act of generosity. Illustratively, an offender may be asked to paint a wall he made dirty during a theft and when he finishes the task given to him, he offers to help in other ways (Van Ness et al 1997: 168). In this case the offender has been rehumanised and feels as part of the community instead of feeling alienated (Van Ness et al 1997: 131).

Reintegration, the fourth value upheld under the restorative justice system, is key in crime prevention and in the reduction of crime repetition or recidivism that often results in overcrowding in prisons. Restorative justice workers may mobilize material assistance depending on need because some of the offenders will have had a prison sentence and may thus

not have a place to stay or a job to support him/herself, or a victim may need particular material assistance that the offender is not able to provide (Van Ness et al 1997: 161-162). Moral and spiritual guidance is also given instead of stigmatising the offender or the victim, because crime produces moral and spiritual crises. The Church or faith based organisations are frequently central in healing, resettlement and reintegration efforts (Van Ness et al 1997: 162).

Reintegration promotes human dignity, together with the other values discussed above. Applying these values in the context of prisoners with families would result in reduced trauma for these families, hence assisting in prisoner rehabilitation, which would in turn ultimately help in making imprisonment a practice that is truly 'for the public good'.

The section that follows, therefore, tries to look at how the dominant restorative justice theory and practice often fails to apply the above mentioned values in situations of prisoners with families.

### 2.4.2    A critique of the dominant restorative justice approach

Restorative justice has been shown in the last section to uphold four important values of inclusion, encounter, reparation and reintegration whereby the parties affected by the crime participate in their own justice process. However, the critique of the dominant restorative justice approach below focuses on the limited or non-application of restorative justice values in the imprisonment of offenders and in terms of their relationship with their families. Families of offenders are categorized (under the restorative justice system) among the 'secondary victims' but "they are 'primary stakeholders' …because the crime has directly affected these individuals" (Paul McCold quoted in Hill 2007: 7-8). Furthermore the critique looks at how the social analysis of crime as an event that needs to be resolved for relationships to be restored, overlooks the wider context in which the crime conflict and the criminal justice system responses to crime are situated. Restorative justice, therefore, by not engaging the state in terms of its neglect of some of the rights of prisoners with families, limits the application of its four values of inclusion, encounter, reparation and reintegration. This leads to the families', offenders', community's and even the primary victims' relationships not being restored through the institution of

imprisonment. Moreover their feelings of powerlessness, fear and even violence remain or may even grow (Hill 2007: 52-59).

Firstly, restorative justice overlooks and contradicts the inclusion value of restorative justice by often not tackling family matters in case of imprisonment of one its members. Important stakeholders such as children and spouses are often excluded in such process of justice (Shaw in Burnside and Baker 1994: 114-115). While the children and spouses are then negatively affected (as 'secondary victims'), the offender's own reintegration is also impacted upon, as is the healing process within the prisoner's family before and after his/her release.

Therefore, the exclusion of the family from the process of justice violates the restorative justice thinking of concern for the victim. Restorative justice asserts that overlooking victims in the justice process is re-victimising them and it, makes them once again feel powerless. However,

> allowing the victim to participate in the process gives the victim a sense of empowerment in defining her 'self,' an ability to re-cast herself as something other than a victim. In other words, it allows the victim to restore a relationship with herself and the world that was disrupted by the offender's act, namely a sense of control, a sense of autonomy, and a sense of security in her surroundings  (Hill 2007: 52)

While this is often said to be applicable in the case of primary victims, the ones against whom the crime is committed directly, it is also very true for families as secondary victims (Codd 2003:7; Royer et al 1987: 34). The importance of relationship in the whole criminal justice process is thus underlined here by highlighting "that human identity or subjectivity is an always shifting locus of intersecting relationships both with oneself and with others" (Hill 2007: 53).

Offenders in situations of imprisonment are also not given opportunity to participate in restorative justice processes with their families which often makes their future reintegration difficult. Imprisonment tends to force an offender "to adopt strategies and modes of subjectivity which reinforce and encourage the very modes of behavior which the traditional justice system purports to 'correct.' A restorative system, on the other hand, embraces a response to crime

which allows and encourages offenders to find their own meaning, to re-create themselves within the context of community and through transformative practices" (Hill 2007: 53 ). However, by marginalising prisoners with families in this process together with their families, restorative justice (like retributive justice), continues to exclude them from society because their identity formation processes do not take their families into account in a positive manner. As stated above with regard to families (as 'secondary victims'), "the implicit assumption is that identity is fluid and constructed through social relationships" for prisoners too (Hill 2007: 53).

Secondly, the restorative value of encounter which often deals with the power issues at the opposite ends of a continuum for victims and offenders is often ignored in situations of prisoners with families. Encounter facilitates the restoration of the balance of power within and between the parties in the restorative justice process. However, imprisonment combined with lack of encounter, perpetuates the reinforcement of the abuse of power through imprisonment and lack of encounter as is illustrated by Hill,

> The criminal act is an abuse of power. A central concern for any criminal justice
>
> system is how to respond to this abuse of power, this imposition of the will of one individual on another. Any state response to crime will inevitably involve exercising power over the individuals involved, both the victim and the offender. By and large, our current system of justice exercises power over stakeholders by intervening on behalf of the state and punishing the offender. Restorativists argue that this intervention disempowers victims, fails to produce significant change in the way offenders exercise power, and, in fact, may unintentionally enhance and reinforce the offender's tendency to abuse his power by placing him in a prison environment where criminal and antisocial techniques and strategies are perfected, perhaps for no other reason than that is how one survives prison (2007: 56).

Encounter restores "empowerment, order and connection" (Zehr quoted in Hill 2007: 57) to the victim as well as to the offender. Victimization - being a victim – leads to questioning of "the orderliness of the world, our sense of autonomy or personal control, and our sense of relatedness – where we fit in a web of social relationships … The core trauma of victimization might be

called the 'three ds' – disorder, disempowerment and disconnection" (Zehr quoted in Hill 2007: 57). In being excluded from the restorative process, the family continues to be re–victimised because the disorder resulting from their family member being imprisoned, their disempowerment in terms of how they deal with the situation and the disconnection they feel both with the imprisoned individual and with their community or society at large cannot be addressed without their full involvement.

Further, encounter helps offenders to start on the road of changing behavior, as Zehr asserts: "offending behavior often arises out of unhealthy ways of coming to terms with … 'pillars' of autonomy, order and relatedness ... [Thus] we may construct a world in which we establish a sense of autonomy by domination over others, an order based on violence and force, and a sense of relatedness rooted in distrust of others and kinship with fellow 'outsiders.' … [T]he journey to healing for offenders means re-constituting these pillars, often in new ways … [and] the process of settling these issues is a journey of belonging. Since it involves relationships with others, the journey cannot be made alone" (Zehr quoted in Hill 2007: 57).

Thirdly, restorative justice ignores its own value of reparation when limited or no opportunity is given to the family to put things right that have gone wrong as a result of the crime and imprisonment of one of its members. This is in violation of restorative justice's own proposition that "a key to regaining … [the] sense of self is to allow victims to exercise some power over the way in which justice is carried out", in other words they should be able to contribute their thoughts on what must be done to "right the wrong." Victims should not have to become the abusers of power and take revenge on the offender, and in any case they are much less retributive than commonly assumed. However, restorativists "do require of a criminal justice system … that victims not be completely left out, and thereby disempowered" (Zehr quoted in Hill 2007: 57-58). While this line of thinking is being followed with increasing frequency with regard to the 'primary victims' of the crime, as far as the 'secondary victims' (such as the offender's family) go, it is commonly ignored in the dominant restorative justice system.

Additionally, on the side of the offender, the sense of domination of others and abuse of power can be dealt with when they are faced with the challenge of dealing with what went wrong. This requires assisting "in re-shaping the subjectivity of offenders, in other words re-casting their relationship to power", which requires the incorporation of "practices of self-transformation" into the criminal justice system. These are, practices which "do not take place in a vacuum" but involve interaction with others as offenders are given "opportunities to acknowledge wrongdoing, to experience other ways of relating to others (including victims), and to re-imagine their relationship to themselves" (Hill 2007: 58). Again, this indicated how important relationship (including with the family) is in the whole process of restoration, hence the critique being given here is that the dominant restorative justice system does not take this into account.

Fourthly, the reintegration value of restorative justice is the most difficult to realise when there is limited participation by families in the justice process, because as many families have found life after the release from imprisonment of one of their members extremely problematic (Van Ness et al 1997: 114-115; Hill 2007: 58). Ignoring the three values of restorative justice mentioned above (inclusion, encounter and reparation), makes reintegration even more difficult because plans for the future are not charted. Planning for one's future is part of being human, and contributes to one's dignity (see also Nussbaum 2000: 78-81). However, this is denied to many prisoners who are not given the opportunity to plan with their families.

Power operates within individuals and human relationships and this power can be expressed in various ways (Germond 2001: 30). As Mann says, political power tends to be centralised and regulates many aspects of social relations (Mann 1986: 11). The criminal justice system, therefore, expresses political power in that it regulates the life (including the family life) of those who commit crime. This political power needs to be addressed by proponents of restorative justice in order to uphold its four important values for all stakeholders, including prisoners' families. Even supporters of state engineered retributive justice assert that it is only the offender who is supposed to be harmed or punished for the offense and not other persons such as victims of crime or families (Burnside and Baker 1994: 49); this then is a challenge for restorative justice to make inroads in the system. Attempts at instituting restorative justice with the participation of

families in prison settings, such as is being undertaken by Phoenix Zululand, the case study of this research, which is discussed in the next chapter, indicate a way forward in this regard.

## 2.5    Conclusion

This chapter has looked at how the introduction of the lens of human rights in the criminal justice discourse represented a great step forward as it introduced the notion that human dignity is a human right in its own right. However, the chapter also outlined how the actualization of human dignity as a right has particularly been a challenge, as the retributive justice approach in which it was introduced, could not by its nature sustain such an approach .

Restorative justice on the other hand, was shown to have made a positive impact on the justice process by its key strength redefining crime to mean hurting or damaging relationships, and justice to involve repairing the harm caused by crime to bring about restoration. However, even though restorative justice takes relationships as the starting point in all its work, it was also shown to be curtailed by prison institutional challenges as regards prisoners with families.  The involvement of families, while very necessary for restoring relationships and reintegration, was found to be limited in many restorative justice programmes because of the powerful competing state approach of retributive theory and practice.

The chapter has also shown that restorative justice focuses on offenders and victims, addressing the problem on a micro (individual case) level and not looking at the broader context of crime and rehabilitation as an issue of relationship. Specifically, the state prisons tend not to take into account the plight of prisoners and their families, not fully acknowledging their human rights and dignity.  The laws and policies of the state as well as procedures of the prisons also continue to negatively impact on the micro relationships because of the failure of the retributive justice approach to take the issue of relationship into account at all (McCold quoted in Hill 2007: 8). Even where restorative justice has taken the place of retributive justice, the issue of prisoners' families has not been accorded the necessary attention especially in view of the fact that the family unit usually provides an individual (including a released prisoner) which a major part of his/her identity and emotional as well as physical (economic) support.   Thus, the four important

values of restorative justice – inclusion, encounter, reparation and reintegration – are not systematically and emphatically applied when it comes to prisoners' families.

The next chapter therefore focuses on the case study Phoenix Zululand, an NGO engaged in restorative justice work involving the participation of families and their imprisoned family member. Phoenix Zululand upholds the four values of restorative justice in regard to both prisoners and their families.

## Chapter Three

## The case study of Phoenix Zululand

### 3.1     Introduction

The last chapter illustrated how human rights can be violated when the primary stakeholders in the aftermath of crime are ignored as is often the case in retributive and dominant restorative justice systems that marginalise prisoners and their families. Through the Phoenix Zululand art and family conferencing projects discussed in this chapter, prisoners reveal how imprisonment can violate their human rights and disrespect their human dignity. They also illustrate how participation in the process of justice rehumanises them as they participate in Phoenix Zululand programmes of art and family conferencing, as will be described as will also be illustrated in detail later in the chapter. This chapter, therefore, focuses on commentaries on the indignity experienced during imprisonment, and on the re-humanisation by participation in Phoenix Zululand programmes as perceived by prisoners and their families**.**

The introduction to the chapter is followed by the background to Phoenix Zululand (PZ) restorative justice programme. The chapter then describes the various PZ programmes that respect human dignity by upholding the value of human relationships and individual worth. It also further describes prison life, using illustrations from the art and family conferencing projects and finally highlights issues raised by prisoners with regard to retributive justice and restorative justice.

The chapter particularly looks at the PZ art project and family conferencing projects in detail in which prisoners reveal the indignity they face in prison and the disrespect they receive from the community outside prison. The art and family conferencing projects confirm that families are victimized by imprisonment and that both prisoners and their families have issues to put right between themselves to repair the harm caused by both crime and retributive justice as a way of

dealing with that crime. These experiences illustrated in the art project[6] and the revelations during family conferencing [7]are also confirmation that despite the introduction of human rights in criminal justice, and particularly the right to human dignity, many prisoners and their families continue to suffer indignity and disempowerment.

Furthermore, prisoners' experiences underscore the importance of relationships for all humanity whether in or out of prison, hence the need for restorative justice programmes that encourage inclusion, encounter, reparation and reintegration, as outlined in the previous chapter. It was noted above that transformed relationships are the key in all four values espoused by restorative justice ,and this chapter further indicated that Phoenix Zululand staff have reported 'conversion' through their programmes of meeting with and relating to prisoners as human beings (Aitken a 2006: 5). The staff are convinced from their continuous interface and relationships with prisoners, even after release, that transformation is possible and hence, that the reintegration of prisoners as productive members of society can be achieved (Aitken a 2006: 4-5).

## 3.2 Background to the Phoenix Zululand restorative justice programme

Phoenix Zululand is a programmatic attempt to address the impaired dignity of prisoners through initiatives that rehumanise them. PZ uses the Phoenix symbol taken from ancient Greek mythology of "a bird that dies by its own act in a fire and then rises again from the ashes" (Aitken b 2008: 1). The programme operates in Eshowe, KwaZulu-Natal, South Africa. The PZ programme is used as a case study in this thesis, in order to identify and understand the indignity experienced by prisoners and their families, as well as to explore possible means for the restoration of their dignity. Phoenix Zululand programme has a leaning in the 'Quaker or Friends' tradition but works with various Christian traditions in its administration and clientele. The prisoners with families in its programmes are not discriminated against on religious grounds.

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[6] Pictures and commentaries obtained directly from PZ, Eshowe, 25/5/2008

[7] Family conferencing notes by Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

PZ derives the approach of its restorative justice programmes which were initiated in the 1990s, from the thinking that was introduced in the modern criminal justice discourse from the 1970's onward.

> Many writers locate the origins of restorative justice in the criminal justice practices of indigenous peoples around the world and pre-modern societies in Africa, the Middle East, and Asia, practices which were, and in some cases still are, embedded in religious and spiritual traditions. The modern restorative justice movement developed out of victim-offender mediation programs begun in Mennonite communities in Canada and the United States during the 1970s. Beginning as a means of dealing with relatively minor property crimes, especially those involving juveniles, many restorative justice programs have expanded to include more serious crimes such as rape, assault, and murder. The 1990s saw enormous growth in restorative justice programs throughout the world. Much of this growth took place in small victim-offender mediation programs (Hill 2007: 4).

PZ introduced restorative justice programmes as a way of advocating for justice that emphasizes repairing the harm caused by crime and restoring relationships that have been damaged as a result (Aitken a 2006: 12; see also de Lange 2006: 2, 9-11). Extremely high rates of recidivism had become the norm in most prisons in Africa by the 1990's. In South African prisons, partly because of their history of violence in apartheid, coupled with the poor or non reintegration of prisoners with families, recidivism was also not the exception (Aitken a 2006: 1). In other parts of the world the enlightenment agenda (i.e. the view that rational criminals commit rationally thought-out crimes and must be punished accordingly regardless of context or other issues) was also becoming less popular as a result of similar experiences of recidivism in the criminal justice system (Blankenship 2002: 14).

In raising the issue of justice that restores, PZ work emphasises the point of 're-humanisation' of prisoners with families (Aitken e 2008: 6). The various PZ projects, therefore, are all geared toward this goal.  PZ has attempted to introduce relationships that affirm human dignity and are

not alienating. The relationships are respectful and mutual for all involved, both prisoners and families. The programme uses art and family conferencing to achieve its goal.

The PZ programmes are carried out in eleven prisons of Zululand and the work is mainly done through facilitators who include serving prisoners, ex-prisoners and community based facilitators. As noted above, Phoenix Zululand's general objectives are to uphold the dignity and celebrate the humanity of people with whom they have contact (Aitken e 2008: 6)

Restorative justice projects of victim –offender mediation in prisons around the world do not involve the prisoners' families: rather, they involve offenders and 'primary victims' of crime (Van Ness et al 1997: 69-74; Zehr 1990: 161). Activities such as family conferencing with families tend to take place in the community and in cases of juveniles or minor cases diverted from court. They generally are not undertaken with prisoners inside prison (Leibmann 2000: 100; Van Ness et al 1997: 73; Cosendine 1995: 81) as is the case with Phoenix Zululand. PZ's approach of art and family conferencing in prison is therefore rare but very important and necessary. The creativity of prisoners as human beings is encouraged and is not lost even in prison. Prisoners' art pieces have been exhibited in art exhibitions and PZ received funding in 2005 and opened its own art gallery in Eshowe in 2006 (Aitken b 2007: 1). The creativity of prisoners extends also to music and prisoners have access to a recording studio to facilitate one of their projects called the 'Voice Beyond Walls', which is a music and drama project, as will be explained below.

## 3.3    Phoenix Zululand programmes

### 3.3.1  Art project

The 'Healing through Art' is the central project of Phoenix Zululand programmes focusing on prisoner and family activities. The art project counters the stigma that prisoners encounter in prison and from community through encouraging their rehumanisation.

In the art project, a prisoner creates a piece of art and a group of prisoners interpret this artwork together to create a shared experience which they see the art to be revealing[8]. The experiences that prisoners create out of the art are a process of social analysis of their situation as they understand it. Through their discussion they write down the group experience. In recording their experience in writing, the group of prisoners deals with issues in a way that draws on their life experiences.

In personal conversation with the researcher, the PZ director, Richard Aitken [9] explained that prisoners try to interpret the art piece by stating what they see and what it says to them as prisoners, as prisoners with families and in terms of their community. They look for images or descriptions that are relevant for them as prisoners and create as well as document a group version of the artist's story. They then plan how to share the written story with their family, community and society at large.

Analysis of the stories also helps prisoners to overcome their victimizations and suggests how re-humanisation can happen in a particular situation. The notion of human dignity and celebration of humanity empowers and gives prisoners another way of looking at themselves (Aitken a 2006: 1-12; Aitken b 2007: 1-6). The group then decides on points of action and begins to envision a more positive future for themselves (Aitken b 2007: 1-6).

### 3.3.2 Family conferencing

The 'Family Conferencing' project draws members of the prisoners' families into the tasks of social reintegration (Aitken a 2006: 1, 7-13, 2007: 1-2; Nonceba 2008: 1). The family conference facilitator, Nonceba Lushaba , recorded  in her  family conferencing notes that, in conferencing sessions prisoners and their families' always confirm the importance of community for prisoners as human beings. They express how separation from family negatively impacts on them and how

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[8] Personal conversation with Richard Aitken ,Director of PZ, Eshowe, during visit to PZ art gallery on 24/5/2008
[9] Personal conversation with Richard Aitken ,Director of PZ, Eshowe, during visit to PZ art gallery on 24/5/2008

the PZ restorative justice programme enables them to meet with their family and rehumanises them[10].

The prisoners' art, drawn in anticipation of their families' visits, often depicts how they miss home and the caring relationships of their families and how they enjoy being in contact with family. However, there are also situations where homes are not longed for as places of comfort and community, but even in such situations prison is not preferred[11].

There is a strong focus in these family conversations on the restoration of family relationships whereby the male partner participates in a conference with his family in a prison setting, facilitated by a PZ family conference staff member (Nonceba 2008: 1; Aitken a 2006: 7-16; ). Prisoners are held accountable for their actions by their families, restore relationship with family members by making amends with them, and plan with these families for their future reintegration (Lushaba 2008: 1; Aitken a 2006: 4-16).

Lushaba further noted in her records that preparing for the family conference includes creating cards with healing messages. There is a card for parents/those who play the role of the authoritarian figure, there is one for children of inmates or for the caregivers of children and there is one for personal partners. All of these must have a healing message and are embellished in whatever way the participants would like. Prisoners thus undertake the creative component of designing a card and message for a parent, grandparent, uncle or aunt as the case may be, in order to express things to help repair the relationships. Meanwhile, family members, especially children and spouses make cards to express love, and care for their imprisoned father or spouse, which also breeds reconciliation.

PZ also workshops ideas on what the effects of the prisoner's imprisonment might be on the various family relationships and what might they do and say to bring about healing[12]. In addition

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[10] Family conferencing notes by Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008
[11] Family conferencing notes by Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008
[12] Family conferencing notes by Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

to dealing with families, family conferencing also facilitates developing an understanding of and a practical commitment to dealing with the 'primary victims' of the crime (Aitken d 2007: 2-5).

Families set up processes to facilitate means of approaching victims in future. These processes act as a condition for creating grounds for offenders making a practical contribution and restitution later on (Aitken a 2006: 1, 4). Additionally, prisoners in PZ projects were put into groups, to manage their projects for example as facilitators and leaders in the family conference, restoring their political life as human beings (Lushaba 2008: 1; Aitken a 2006: 4-16).

### 3.3.3   Other PZ projects

Other projects carried out by PZ will not be addressed in detail in this thesis but they are intertwined with the art and family conferencing projects that are dealt with at length. They include projects such as 'Conversation in Families', 'Voice beyond walls', 'Starting with Us', and 'Groundswell'(Aitken e 2008: 6).

'Conversation in Families' is a PZ project that focuses on prisoners' responsibilities towards their families and deciding how they will ask for support if and when they need it after they leave prison (Lushaba 2008: 1;Aitken e 2008: 6).

'Voice beyond walls' is another programme that facilitates the education of the outside community on prison life and experiences. It produces music, dramas and prisoners' stories for radio stations for an audience in the outside world, often based on the action plans of prisoners and their families (Aitken e 2008 :6, 1-2).

'Starting with Us' is another PZ project, targeting life skills and encompassing techniques to promote self esteem and to resolve conflict ((Aitken e 2008:6).). This programme "challenges inmates to draw self-portraits, to draw a picture depicting 'a day in the life' of the prisoner" (Lushaba 2008: 1). At the end of the programme, participants display a poster that portrays an aspect of the inmate's life, "either remembering good times, challenging times or tracing the river of life" (Lushaba 2008: 1).

Another project of PZ is 'Groundswell'. This project is concerned with environmental learning. It is intended "to awaken inherited knowledge of trees and plants and their value in society… [In

this project, e]nvironmental knowledge is used as an extended metaphor of self worth". (Aitken e 2008:6).

## 3.4    Experiences of prison life [13]

Experiences of prison life are written about and depicted in art pieces by prisoners, for example dealing with how their personal and family life has been negatively impacted by imprisonment and how PZ programmes have rehumanised them. Other experiences included the prisoners' treatment treated in prison and their negative feelings about that kind of treatment. Prisoners reveal in their art and written experiences that they treasure human relationships with their families and others. PZ prisoners thus undertake their social analysis on human dignity 'from below' (i.e. they are not outside researchers analyzing the situation 'from above'). They use art and other means to express how they are treated by prison authorities and to reveal their experiences in prison and with regard to their relationships with their families before, during and after prison.

In personal conversation with Richard Aitken, the director of the PZ programme, he indicated that prisoner's art emphasised the resilience of the human spirit that is not fully shattered by imprisonment when given the opportunity for rehumanisation.  He also added however, that there was lot of art depicting violence that many prisoners grapple with, but that this violence is often dealt with as they participate in PZ projects.[14].

Nonceba, the PZ conference facilitator, who provided me with her notes on the family conferencing work of PZ, had noted in these records that in the family conferencing project - where experiences of prison life and how to deal with them is shared - wives, parents, children and other relatives participate and most of their relationships are renewed through this. The anticipated meetings with family are depicted in terms of the unfailing love that exists between family members and also indicate offenders taking responsibility for their wrong choices and decisions. She added that in the conferences she facilitates she always witnesses new relationship

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[13] The art and family conference pictures and quotes from participants' commentaries are the copyrighted property of PZ and are used here with permission.
[14] Personal conversation with Richard Aitken, Director of PZ, Eshowe on 24/5/2008

building which involves truth telling, apology-repentance, forgiveness, reparation, accountability and gaining a full place in the family and community again[15].

### 3.4.1 Verbalised experiences emerging through the art project

The experience of imprisonment is not described by prisoners as one in which human rights or dignity is respected, as retributionists and human rights proponents claim. Life in prison is instead depicted by prisoners as a "crisis of being"[16] involving great indignity, as the recorded experience below shows:

> When you arrive in prison for the first time, the shock is great. You think you are the only person ever to have gone to prison. For a time you know who you are. You remember your family and your friends. Then you forget their faces. Bit by bit, you forget who you are yourself. Then you become a matchstick on a prison bed. Something in you dies, and there is nothing in you to hold on to.

This confirms that imprisonment excludes people from community, creating anxiety, fear, and loss of hope in the future. The prisoners use expressions such as "something in you dies", indicating the reduced sense of self-worth of brought about by imprisonment.

There is also expression of the prisoners' feeling of personal meaninglessness in the use of a phrase such as "there is nothing in you to hold on to". Related meaninglessness in regard to life and the future is also reported in another research study. This applies particularly to prisoners serving long sentences. Steinberg (quoted in Aitken a 2006: 1, 3) says that confinement in an institution over a long time means that there is a loss of "self determination" and that prisoners "become infantilized", as they turn into the equivalent of a child. "This damage can sometimes be irreparable. Inmates are robbed of the most rudimentary co-ordinates of adulthood: deciding

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[15] Family conferencing notes obtained from Nonceba  Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

[16] Prisoners' written experiences obtained directly from PZ Eshowe, from Richard Aitken, Director of PZ, Eshowe on 25/5/2008

when to eat, when to sleep, to wash" etc. The ways in which prisoners adapt to this can be "self damaging", perhaps involving "psychotic fantasy", or violence, or on the other extreme, some "become pedantic enforcers of prison rules."

Prison life, because it separates families, does not consider them as part of the criminal justice equation and often does not give the opportunity for families to put things right in case of breached relationships. It thus denies the very justice it tries to work for as illustrated in the written experience of prisoners outlined below. This is in violation of the restorative justice value of 'reparation' mentioned above in the discussion on human dignity in the human rights perspective. The following is one prisoner's written experience:

> I had a beautiful wife…. I wrecked our lives [through] fast cars and many women. I infected my wife with HIV. She is dying in Ngwelezane Hospital...I shall never see her again. I struggle with my memory. I try to bring back her beauty… [The] picture is all that remains of that lovely woman. I offer it to her.[17]

Furthermore, as the critique of dominant restorative justice above showed, looking at solving crime while overlooking the context in which this crime and the responses to it are located, is problematic. This assertion is confirmed by the above written prison experience. In situations of prisoners with families justice would mean more than solving the mere crime event. Illustratively, in the case above there are issues of gender and institutional violence at play. The prison rules did not allow a formerly abusive now remorseful husband to apologise to his dying wife in hospital.

The written experience above also, illustrates that for prisoners putting things right is not just in regard to the 'primary victim' but especially in regard to people other than those with whom most restorative justice work often deals. In this case, these people are the prisoner's family. In addition, prisoners express that part of being human was taking responsibility in the well being of the community and being accountable when relations have been hurt.

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[17] Prisoners' written experiences obtained directly from PZ Eshowe, from *Richard Aitken, Director of PZ, Eshowe on 25/5/2008*

Furthermore, the written experience above shows how loving relationships were still treasured by this apparently abusive man and how the opportunity for making amends was lost because of imprisonment, leaving only reminiscences of lost love. Love, belonging, commitment, care, affiliation, and being accepted by the important people in one's life were some of the expressions of interdependence denied by imprisonment, as revealed by this written experience of life in prison.

In a different prisoner's written experience, it is revealed that to bring about justice linked to mutual respect, requires the participation of prisoners in this process, as stakeholders, and not just as onlookers locked away without changing their attitudes and behavior, as illustrated below[18]:

> Disorder threatens us. We fear AIDS and the power of its disorder. We have also been the cause of disorder. We dream of a time when we shall stand before others, and they will listen with respect because our ideas are good, and because they see confidence and self esteem in us.… We shall bring colour to the lives of others. This will be a place where love will be safe because we have learned to listen to each other with respect. Homes will be places of respect. Homes will be places of safety.

The prisoner's written life experience above continues to affirm the fact that their situation is wider than the particular crime and the resultant imprisonment. Rather it involves a context of disorder that is bigger than the crime and incarceration. Responses to such a situation therefore need to take the other related issues mentioned into consideration. Issues of AIDS, negative attitudes, low self esteem, disrespect, lack of confidence and failure to listen to each other, all compound to generate more disorder if not dealt with.

Prisoners also sometimes see themselves as sacrificial victims of society. There is a sense in which this is true as they are often not given opportunity to deal with the issues that took them to prison in the first place. They therefore have a sense of betrayal by the state and society in terms

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[18] Prisoners' written experiences obtained directly from PZ Eshowe, from Richard Aitken, Director of PZ, Eshowe on 25/5/2008

of various factors (unemployment, homelessness, substance abuse etc.) that led them into situations that in turn led them into prison. Prisoners can even view their predicament in religious terms, and this resonates in their writing of their experiences in prison. Writing about depicting a prisoner as a Christ-figure, the prisoners made the following comments:

> One possibility is that it illuminates as a problem an idea of the prisoner as a sacrificial victim: if it is true – at least in part – that the nature of society and dysfunctional families give rise to criminal offending, then those jailed can be seen as society's sacrificial victims[19].

### 3.4.2 Visualised experiences emerging from the art project

Prisoners' art confirms that it is important to include them in the process of their restoration as agents of change and as people with a stake in the aftermath of the crime they committed as the 'inclusion' value of restorative justice, suggests. In this case the participation goes beyond the rational self to what prisoners refer to as "inner force" in the commentary below. Having a relationship with a greater force than rational thinking is shown to help them in actualising their human dignity. While prisons - the gates in particular - are depicted as sources of lost hope and future, there is room for the restoration of life and freedom in relationship with the "inner force" and "spiritual energy".

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[19] Prisoners' written experiences obtained directly from PZ Eshowe, from Richard Aitken, Director of PZ, Eshowe on 25/5/2008

Figure 1A



I come to a gated door. The bars are cold and unyielding, and the lock has no key. This door has been made for me, and only me, and now it is closed forever to block my way. There is no way forwards. And yet, from the shadows of my depressed being, there come new intimations of spiritual energy. I think of my past, and the people of my past, my victims and my champions. From the hidden corners of that past, seeds of hope take shape, and the first flickering of colour returns to my life. And behold, with returning colour, the iron bars begin to dissolve and an inner force beckons me. My hand reaches through the dissolving bars, and in a moment, I shall walk through the gate and take the first step of my resurrected life.[20]

Imprisonment violates the right to family relationships by separating families. During the period of incarceration, the possibilities for reunion and rewarding interpersonal relationships are often very minimal. The child's right to a secure family or being cared for by the state in the absence of parents if in need, according to the human rights propositions discussed in the chapter two, is also violated. There is emotional torture for the parents in the community, the parent in prison

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[20] Picture and commentary obtained directly from PZ, Eshowe, 25/5/2008

and for the children. This is a violation of the CAT rights of the prisoner and the 'secondary victims' (Brownlie 1992: 39).

Through their art, prisoners thus depicted how they long for their families and children, as seen below:

Figure 2A



> The majority of men serving prison sentences are fathers. The loss of the role of fatherhood is probably the cause of most of inner anguish for men in prison. The struggle to reconnect with children and families after prison is often desperate. Fathers in prisons also often have to live with the death of children, without being able to participate in the rituals of human passing[21].

Partly due to lack implementation of the restorative justice value of 'encounter', prisoners do not get an opportunity to face their actions squarely and to engage with the people they wronged. They are thus unable to feel a sense of worth and often after leaving prison they still disrespect themselves and hence disrespect others, therefore committing more crimes and ultimately being brought back to prison.

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[21] Picture and commentary obtained directly from PZ, Eshowe, 25/5/2008

Illustratively, the 'machinery of imprisonment', drawn by a prisoner below, does not achieve its goal of transforming people who have done wrong through punishing them. Rather, imprisonment often made prisoners tougher, gearing them up for further cycles of violence depicted as balls moving out only to bounce back into the machine. Prisoners are incapacitated in prison but when released they simply return to the same prison un-rehabilitated and undeterred, proving that the fourth value of restorative justice – that of 'reintegration' - has also not been achieved.

Figure 3A
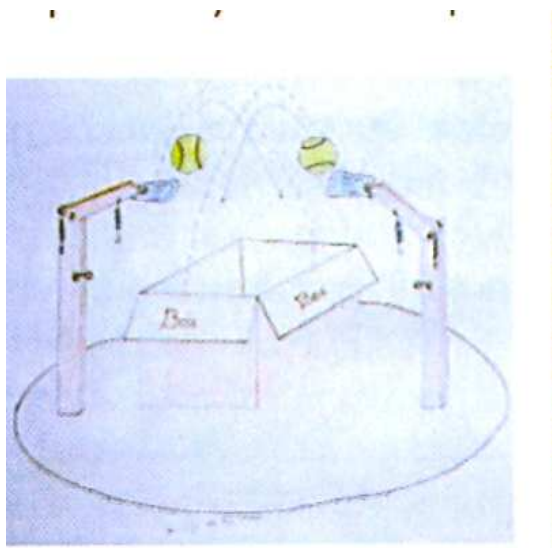


"The piece of art shows a curious machine whose only purpose is to keep balls bouncing back into a box after they have tried to bounce out"[22] (also quoted in Aitken e 2008: 6).

Furthermore, the commentary below reveals that there is often a distortion of the psyche of the imprisoned (see also Aitken a 2006: 3). The man in the art piece below felt so ashamed that he could not get up and allow himself to be seen. It was his wife that he intended to rely on for guidance. This was not a relationship of equals, but rather a situation of somebody who felt inadequate depending on another person. Other innocent family members like children are also

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[22] Picture and commentary obtained directly from PZ, Eshowe, 25/5/2008

humiliated by imprisonment and their social growth and human flourishing is hampered (see also Cosendine 1995: 20).

Figure 4A
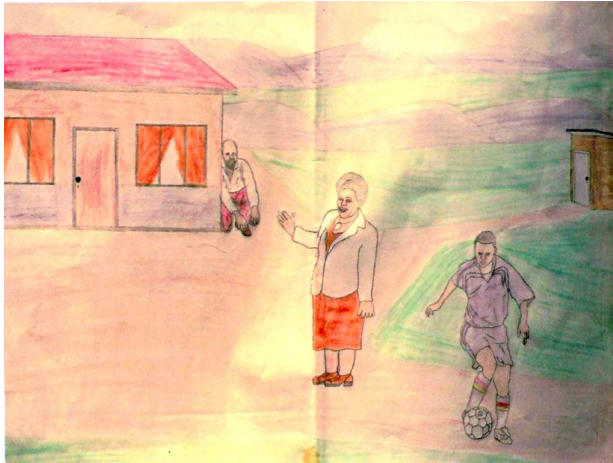


>The artist was doing his second term in prison in a rural prison with no background of art at all. In the art piece he shows himself crouching at the side of his family home. He feels himself to be so emotionally crippled; he cannot stand up and be seen in the open. Yet he believes his beloved wife is the only person who has the power to beckon him to participate fully in life once again. She is a strong woman to whom he might turn for help. In a metaphorical sense she stands between him and the flowering life of his son, portrayed in the foreground. The drawing becomes movingly catalytic in helping both (the artist) and the prison group of which he was a member to understand and formulate a creative way [forward] in his life. The profoundest anthropological point is that this artistic expression of a cry for help [from a woman] came from a man whose life has been shaped by a strongly patriarchal culture[23] (also quoted in Aitken e 2008: 7).

In addition, the absence of the values of inclusion, encounter and reparation combine to make the prisoner's life full of anxiety, fear and struggle as what society and various categories of victims think about them continue to haunt them in the confines of prison, as depicted below. Their

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[23] Picture and commentary obtained directly from PZ, Eshowe, 25/5/2008

actions remain unresolved despite their imprisonment, and they are labeled with stereotypes that prisoners have called a predetermination of who one is.

Figure 5A



> In the drawing there is the sparseness of the minimalist context which is important. In a significant way, this grossly misrepresents the overcrowding of our prisons - in some cases now 265% - yet it is accurate about the desolate emotional life of a prisoner. The most poignant thought occurs in the image in the mirror (quoted in Aitken e 2008: 7). [According to the group of prisoners commenting on this artwork], before you even present yourself to the mirror … it has a predetermined idea of who you are and you feel that you will forever be trapped in that self image. The mirror is society … ; ever present in your prison cell. There is nothing to look at that might help you to think differently. It is hugely significant that so much sharing of artistic skill is continually going on in our prison groups. Prisoners feel they have got hold of a medium to shape their fears and struggles[24] (also quoted in Aitken e 2008: 7).

Prisoners depict the irony of living in overcrowded spaces while emotionally feeling alone. Proponents of retributive justice depict prison as humane, despite the deprivation of privacy of

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[24] Picture and commentary obtained directly from PZ, Eshowe, 25/5/2008

prisoners because of overcrowding (PRI 1997: 1-2). In connection with accommodation in prison, human rights - according to the standard minimum rules of treatment of offenders (SMR 1977) -demand:

> 9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room. (2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions … 10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. 12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Overcrowding is however the prevalent case in South Africa and many other countries. The 2008 statistics indicated overcrowding of prisons in South Africa in some cases reaching 265% (quoted in Aitken e 2008: 7). Statistics around the world (from 2001) show a similarly worsening picture.  "According to estimates of the US Census Bureau, the world population (was) 6,150,805,396… That number divided by 100,000 is 61,508. Dividing 8.5 million prisoners by 61,508 yields a prison population rate of 138 per 100,000…Half of this (prison population) number are in three countries: the US, Russian and China, [meaning that prisons in those countries must be overusing imprisonment and China has a high population as well]. …Twenty-five out of 26 countries in Latin America and the Caribbean have overcrowded prisons, and 20 face critical overcrowding levels of more than 120% (Van Ness 2001: 2). This makes upholding the respect of prisoners' dignity around the world very difficult due to overcrowding.

Prisoners who do not get the opportunity to participate in restorative justice programmes and do not reintegrate in the community tend to bounce back to prison as depicted in the artwork of the machine showed in the previous commentary for Figure 3A. As prisoners keep returning to prison, combined with other factors like new crime trends, overpopulation and inappropriate

policies such as budget cuts, cost sharing and privatization, prisons are becoming more overcrowded which worsens their accommodation situation (Walmsley 2005). This consequently affects prisoners' health in general and increases spread of infectious diseases in particular, in addition to other negative effects as also affirmed by Van Ness below (2001: 4):

> [O]vercrowded prisons are hard to control. They are more likely to be violent; health and sanitation deteriorates; and it is much more difficult to carry out programs that will ease the prisoners' re-entry, such as education, work, recreation and family visitation … Recidivism rates - repeat offender rates - are high for prisoners anyway, and overcrowding increases the likelihood that they will go even higher… [H]uman rights provisions require that prisoners be spared cruel and degrading punishments. No country should tolerate the kinds of conditions that result from overcrowding, neglect and corruption… prisons are expensive to build and expensive to run. No country can afford to build its way out of its overcrowding problem, even the richest of countries.

Prisoners' art confirms that much of human rights propositions become rhetoric in the realities prison life experiences, when results of restorative justice like reintegration and reduction in recidivism cannot be achieved because of the failure to deal with issues such as overcrowding.

### 3.4.3   Visualised experiences emerging though the family conferencing project

Experiences from family conferencing were revealed in expressions of love and hope and they confirm how giving opportunities for applying the values inclusion, encounter and reparation go a long way to rehumanise individuals. The family conference facilitator said that plans for future reintegration were made in the prison[25] which gave prisoners hope for the future.

Expectations of a better future, planning for the future, and making goals were expressed as priorities in family conferences. Family conference reports by Lushaba revealed that it is

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[25] Family conferencing notes obtained from Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

fulfilling to plan with members of the family on some possible future (2008: 2). This emphasizes that they were beginning to have hope again through the PZ programmes. The report also added that conference responses allow participants to share hope, and that they highlight the importance of family, reunions, gender, violence, apology, acceptance and the opportunity given by PZ to feel human again (Lushaba 2008: 2).

Some of the prisoners' art from the family conferencing on being human and on dignity were produced for their families, for example those shown below, together with short commentaries by the prisoners[26]:

Figure 1FM
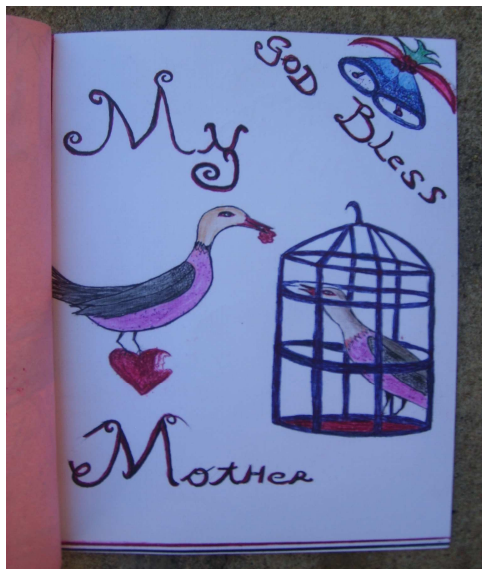


Mother's love and care shared with the son in prison.

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Figure 2FM



Family is considered precious and there is also thought about the cross and light shining.

Figure 3FM
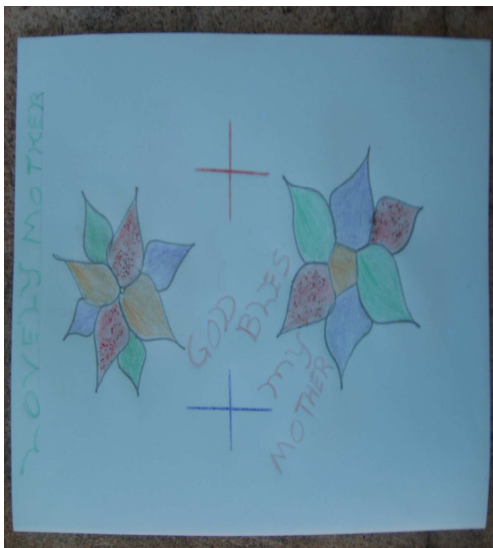


Love for mother and son continues in prison.

Figure 4FM



Love for children and trust in God to bless them

Figure 5FM



The prisoner is looking forward to start[ing] a family. The prisoner shares some important attributes such as respect, love, dignity and responsibility with [his] family.

Figure 6FM



[The] prisoner tries to communicate with [his] family and let them know that he misses them [by] posting a letter to them. Also thinking about home is [the] prisoner sleeping in prison.

Figure 7FM



The] prisoner requests the wife to remain in unity, trusting God the beginning and the end (Alfa and Omega). Assertiveness, creativity and respect are esteemed as part of being human.

Figure 8FM



There is a lot of spiritual expression on love in the above drawing. Love for Jesus Christ by prisoners. Love by Jesus Christ - true love written in words. Jesus is drawn hanging on the cross on one side of the Bible and on the other side of the Bible [is] a person praying. Above the Bible is a sword going through love or the heart while inside the love symbol is a bird (dove) carrying an olive branch.

The art from family conferencing sessions further affirms that prisoners have issues they need to share or settle with their other members of the family. They confirm love and responsibility in respectful relationships. Some relationships, such as fatherhood, are a particular challenge that many prisoners have to face (see also Aitken d 2007: 2). Prisoners also express their spirituality in relation to Jesus and the Bible. Even the colours used in the art carry a message to the family. Full colour was often used to express home, community and family environments, which are places associated with happiness (Aitken a 2006: 13).

### 3.4.4   Verbalised experiences emerging through the family conferencing project

Lushaba says that when prisoners' children come to visit, prisoners take the time to play with them, to read to the children the cards they had written for them, or to share anything special they had prepared for them. The prisoners say this is a time of "happiness mixed with sadness" as the children have to go away, leaving their fathers in prison. This is also a time of "questions and

clarifications"[27]. Lushaba said the time of conferencing was also a time of "play and laughter"[28]. This experience affirms their humanity and human dignity; as attested by Louw (1997: 5) and Nussbaum (2000: 73-84).

Lushaba's notes[29] on family conferencing show that a process of healing the harm caused by the crime was often achieved through the meeting of the prisoner and his family, as her following comments reveal. She noted that prisoners felt family conferencing was helpful and gave some sense of hope in trying to restore their personal pride. In addition prisoners had an opportunity to speak with the family: wives, girlfriends and children. In these conversations, some were able to consolidate some of their thinking and to view things from the family's perspective as well. Some became aware of the gap caused by their absence from the family, while others felt the conference helped them to have a platform from which to thank the family for their support and to make certain commitments to them.

Prisoners continued to emphasise the importance of loving relationships and community to them as opposed to the isolation they were subjected to under conditions that often make building a loving community difficult. Prisoners said family conferencing was an opportunity to face ones' feelings around the importance of family and to acknowledge how difficult it must be for mothers to single-handedly raise the children[30] . Prisoners were also delighted to see mothers, daughters and sons at the conference. In some cases, the family did not know for sure where prisoners were, and thus conferencing was an opportunity for them to see and interact with

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[27] Family conferencing notes obtained from Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

[28] Family conferencing notes obtained from by Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

[29] Family conferencing notes obtained from Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

[30] Family conferencing notes by  Nonceba from Melmoth prison October 2007, obtained from Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

prisoners. Prisoners praised the family conference activities and "wished the programme could have taken more time to conclude"[31]

Conferencing gave opportunity for the fulfillment of the value of restorative justice that was referred to as 'encounter' in the previous chapter. Lushaba said that families felt affirmed in relationships and gained warmth from family which made them feel accepted. In addition, the family conference helped with the healing process with family. It was a chance to look the family members in the eye and tell them how sorry one is, which was a relief for prisoners. [32]

Many families look forward to having an opportunity when they can be included in the process of justice after the negative impact of the crime on them (Shaw 1994: 114-116, Codd 2007: 9,14). The criminal justice system and international human rights such as the standard minimum rules for the treatment of offenders (SMR Rule 37) provide for their communication with their member in prison but do not put provisions in place to make this communication practical.

However, the PZ family conferencing project makes this possible and a letter from a prisoner's wife[33] below shows her satisfaction at having been involved in this encounter:

> I write this letter to thank you for the discussion you hosted (to bring together families). I felt like my spirit was freed when I had the opportunity to speak about what was in my heart. It's as if a burden I had been carrying around was lifted off my shoulders. Umntwana ("The Prince") [her husband], is an abuser, and this is no joke. I was really surprised when I found him not to be that abuser that I knew. I don't know the happiness of married life as it should be because of the way he abused me my whole married life. He didn't contribute even a cent; he didn't even buy me meager items like clothing. He didn't even know whether the children's school fees were paid for or not, whether they had uniforms; the four children that I had to make a plan for. I teach at a crèche to get

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[31] Family conferencing notes by Nonceba from Melmoth prison October 2007, obtained from Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

[32] Family conferencing notes by Nonceba from Nkandala Correctional Centre July 2008, obtained from Nonceba Lushaba, Family conferencing facilitator of PZ, Eshowe 20/10/2008

[33] Family conferencing notes by Nonceba .L, Family conferencing facilitator of PZ, Eshowe 20/10/2008

money for the children to be clothed. Umntwana was a big problem. I hope he will do an about face and become a person who knows that he has 9 children whom he needs to love. While he is away, we feel like there is a wonderful gentle breeze blowing. His biggest problem is alcohol. He would drink from the beginning of the month to the end of the month; drinking at the Plaza and then coming back to fight with me and the children. Sisi, if you could collectively help me by making him stop drinking he would be a better person. This would be my request and plea that I even cry about.

I thank you humbly,

XX

Prison which does not address the violence that inmates come with to prison only perpetuates that violence (Hill 2007: 14-15). While the husband of the lady above was on the outside he was violent to the family and they were not flourishing. His absence from home created space for having some respectful relationships among the remaining family members. The wife says they would be happy to have the prisoner back if he can remain changed as they saw him in prison. He was more accepting and respectful. This confirms the earlier assertion that it is not only the crime event that needs to be addressed but the attitudes and context in which it is located. Imprisonment is not necessarily promoting the right of human dignity as it intends but often perpetuating violence. Men who manifest violent behaviour like the husband of xxxxx are abusers of power and they are often not helped much by the institutional abuse of power applied in the prison.

Lady xxxxx letter reveals further that the very home that most prisoners depict as a locus of love, tranquility and where human dignity is respected can also be a space of 'struggle and violence for women' (see also Chirongoma 2006: 56). This point is very revealing about gender inequality in the household and society.

Family conferences also revealed renewed respect and acknowledgement of the other members of the family through affirmation, meeting, telling one's story and through developing good

interpersonal relationships. Nonceba says[34] that through these encounters of prisoners with their families, they cried, laughed, apologized, forgave and hugged as they saw the new person that emerged out of their meetings. Their longing and love for children, spouse and relatives was evidenced by how the prisoners and their families felt accepted and belonging. Aitken also said that the longing and love for family was evidenced by how they treasured the photographs they took with their relatives during the family conferences (Aitken c 2007: 1-2 ).

## 3.5    Issues raised by prisoners on retributive justice and restorative justice

In trying to answer the research question asking what the experiences of indignity and dignity of prisoners' with families are, the above mentioned prisoners' life experiences of dignity and indignity in the process of the administration of retributive and restorative justice were of significant use. These experiences were shared in the course of the art project and family conferencing by prisoners with families. Human dignity was described as a sense of being treated as a person of worth and being included in relationships as a human being. Absence of this inclusion was described as indignity.

Through the failure to apply the value of restorative justice referred to as 'inclusion' prisoners and their families around the world suffer a sense of indignity also. Family conferencing in most restorative justice work is mainly directed at juveniles or it takes places only within specific communities, for example the Maori of New Zealand (see Van Ness et al 1997: 73-74 ). More such inclusive work is needed in all prisons, as evidenced by the response of PZ participants to their experiences in the PZ projects. Participation in the process of their rehabilitation by their joining in the restorative justice projects of PZ was overwhelmingly satisfying and rewarding as depicted by the prisoners' art and verbalised experiences.

The prisoners made an additional very strong point that while crime hurts relationships, which then requires amendments to be made; it also needs to be acknowledged that crime does not remove the humanity from those who commit it. Prisoners remain human beings in need of relationships and deserving of humane treatment. Their art and verbalised experiences called for

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[34] Family conferencing notes by Nonceba .L, Family conferencing facilitator of PZ, Eshowe 20/10/2008

and envisioned a scenario where crime can be addressed and where the various stakeholders are also acknowledged and supported accordingly (see the art and commentaries).

## 3.6 Conclusion

The PZ case study has confirmed that it is difficult to promote human dignity in conditions that discriminate and deny freedom. Prisoners referred to such life as a "crisis of being" in one of their commentaries above. Prisoners also affirmed that living in community with self and fellow human beings rehumanised them. They also mentioned communion with the "inner force" (see Figure 1A) transforming their situation of a kind of death to a resurrected one.

The restorative approach used by PZ therefore gets the parties involved in their own conflict and its transformation. The approach also goes deeper to look at the feelings and attitudes as opposed to looking at only the thoughts and apparent rational decisions made by the prisoner in committing the crime, as is the case in retributive justice (Van Ness et al 1997: 26,114-115; Hill 2007: 5-6). The stakeholders involved then have the opportunity to participate in some of their own justice processes as agents of their own change. This chapter has highlighted very important issues like inclusion and community, the worth of human beings given in the human right of human dignity, but has also expressed the suffering and stigmatisation of prisoners and their families as revealed in their commentaries.

The next chapter gives a Christian theological perspective on human dignity that will lay a foundation for a theological response to the issues of restorative justice and human dignity in chapter five. This Christian perspective is embedded in the conceptual framework of *Imago Dei* and *Imago Trinitatis*, while Jesus Christ as the true *Imago Dei* concerned about the suffering of human kind is also addressed8000.00 Euros.

## Chapter Four

## Human dignity from a Christian perspective

### 4.1    Introduction

This study has discussed human dignity within a legal and human rights frame where issues of inclusion and community, the worth of human beings, the human right of human dignity, and suffering of prisoners were raised. It has also looked at prisoners' experiences which have confirmed the indignity suffered under retributive justice and which also revealed the rehumanisation they experience under restorative justice responses. If the Church is to respond adequately to issues of human dignity faced by prisoners with families then there needs to be a strong theological basis on which to build this response. Human dignity from a Christian theological perspective is therefore the focus of this chapter.

The chapter argues that human dignity emanates from relationship with God and from being made in the image of God. It is from the divinity within us, our being made in the image of God, that we derive our human dignity. It also argues that this image has been supremely revealed in Jesus Christ, the true image of God. *Imago Dei* Jesus Christ is *Imago Trinitatis* because God lives as a communal (Trinitarian) God. Being in the image of God who is also *Imago Trinitatis* implies living in true dignity and in community.  It is therefore in being in community, in relationships with God, fellow human beings and the rest of creation,  that human dignity lies (Migliore 2003: 125).

Christian theology further holds that the incarnated Jesus became fully human (de Gruchy 1996: 246). In Jesus Christ "the final revelation of the true human nature" is revealed which is a life of dignity (de Gruchy 1996: 246). Also through the incarnation, Jesus the word of God, the truth, became alive. Jesus who is the truth also spoke the truth about God and human nature. Therefore every other word spoken about God and humanity ought not to contradict the perspective of the "word [that] become flesh" (de Gruchy 1996: 246). Jesus promoted the human dignity of the marginalized and through suffering not only in his life but also ultimately in his death and resurrection, he demonstrated that he abhorred discrimination, alienation and stigma.

This chapter is informed by an inclusive anthropology where Christ who has included all is identified as the true image of God, the Triune God who lives in community and by humanity in the image of God. To analyse the Christian theological perspective of human dignity this chapter therefore looks at the following themes: *Imago Dei,* fallen *Imago Dei, Imago Trinitatis,* and Jesus the true *Imago Dei* whose life and death demonstrated that all can be included in the household of God and who restores hope to the suffering and to those who are discriminated against.

## 4.2    *Imago Dei*: the root of human dignity

*Imago Dei* lies at the heart of human dignity in Christian theology (Bongmba 2007: 49; de Gruchy 1996: 251-252). All humanity bears the image of God and it is this relationship that gives the human dignity from which the inalienable rights proposed by social scientists emanate. This is an important contribution that theology has to offer to the discourse on human dignity. Human dignity is a gift from God, and is God-given in nature (Mpumlwana 1994: 76).

The "special and immeasurable worth" of humanity is not based on a human being's physical or rational characteristics nor on their ability to refrain from sin. It is not "something that has to do with the substance of humanness; but has everything to do with the image of God" (Bongmba 2007: 49). "Through their covenant relationship with God" human beings share in *Imago Dei* (de Gruchy 1996: 248), implying that undermining human dignity is undermining the image of God in humanity (Mpumlwana 1994: 74).

 *Imago Dei* places on each person a special and immeasurable worth whereby every individual is dignified by virtue of being human (de Gruchy 1996: 251-252, Bongmba 2007: 49). Human beings do not have less of the image of God on the basis of a loss of a characteristic, trait or attribute (de Gruchy 1996: 248). Bongmba affirms that humanity is "predestined to be conformed into (Romans 8:29) … transformed into (2 Corinthians 3:18) … renewed according to… (Colossians 3:10) and made in the likeness of God (James 3:9) in the same true *Imago Dei*" (Bongmba 2003: 44). This therefore implies that all people bear the image of God irrespective of their condition (Bongmba 2007: 46).

The image of God gives the self-transcending freedom characteristic to humanity which is finite and conditioned whereby human beings are not disembodied spirits but have embodied existence (Migliore 2003: 124). Human freedom therefore gives us the opportunity to choose to enrich our life and this choice can be having fellowship with God (Migliore 2003: 124-125). God lives in freedom and desires that humanity live in freedom (de Gruchy 1996: 248).

Although human beings enter a special relationship with God through their commitment to Jesus Christ; "it is not this commitment that is the basis for being made in the image of God" (Bongmba 2007: 46). Human beings are therefore in the image of God already individually and on that basis ought to be treated with dignity, not on the basis of how much they show commitment to Jesus Christ (de Gruchy 1996: 251-252, Bongmba 2007: 46). Being in the image of God therefore means that "human beings … are beings freely addressed by God and free to respond to God" (Migliore2003: 123).

Additionally, in the same manner that "God lives in freedom, lives in community", God "wills that creatures live in community" and so alienation of some people on whatever basis is not in accordance to the image of God, true Christianity (de Gruchy 1996: 248). This point will be illustrated later in the section on God as community.

Migliore says that "being created in the Image of God means that humans find their true identity in coexistence with each other and with all other creatures" (Migliore 2003: 125). This implies that being made in the image of God means acknowledging "love that makes room for others" especially the marginalised, and establishing a "richly diverse community" (Migliore 2003: 127-128). The freedom and responsibility that people have is not exercised in "isolation but in continuous interaction" (Migliore 2003: 125) *Imago Dei* is a relational term that spells out God's relationship" to human beings and to one another in an inclusive manner (de Gruchy 1996: 248-249, Bongmba 2007: 46). Migliore says that "being truly human means living in faithful response to the grace of God…out of isolation and into life of relationship" (Migliore 2003: 125).

Human beings are thus interdependent and interrelated. In Genesis 1 human beings are "created in the image of God not as solitary beings but in the duality of male and female" and in Genesis 2 humanity is "… placed in a garden inhabited by many creatures" (Migliore 2003: 126). According to Genesis 1, all are made equal, both male and female. "Male and female together constitute the image of God…and the order of the relationship…in the light of the gospel…is mutual love and mutual service" (Migliore 2003: 127-128)

Thus it is the relatedness to God and other parts of creation that gives human dignity. Humanity is "created for fellowship with God and is addressed by God" (Migliore 2003: 125). The whole relationship project starts with God, and human beings are supposed to freely respond to it (Bongmba 2007: 46). Migliore asserts additionally that this relationship is God's initiative and "to be human is to live in response to the gracious initiative of God" (Migliore 2003: 125).

Furthermore, "being created in the Image of God is not a state or a condition but a movement with a goal: human beings are restless for a fulfillment of life not yet realised" (Migliore 2003: 128). Being created in the image of God leads humanity to have a longing for God (Migliore 2003: 128). The Christian perspective of human dignity holds that it is not only for the satisfaction of "emotional or physical needs" that human beings search, as is the rational thinking in human rights theory; it is also the essence of "meaning in life" (Migliore 2003: 128). "There is at work in all creation , but especially in human life , a call forward to new freedom" (Migliore 2003: 129).

## 4.3    Fallen *Imago Dei*

Classical Christian theological anthropology holds that the sins of humanity, understood in Adam, result in a fallen image of God whereby the quality of the image of God is 'less' than originally intended. There are two strands to this thinking on the fallen *Imago Dei* in classical theological anthropology. There are those who hold that sin came after the fall whereby God created everything perfect and it was Adam's fall that brought disorder to the world (de Gruchy 1996: 238). The other strand argues that sin was potentially there in creation and Adam had to use his rational power to choose life. When Adam chose death, the quality of the human image

was changed because of what humanity had decided to do with the power of choice (de Gruchy 1996: 238).

The idea of the fallen *Imago Dei* holds that the image of God is the loss of something within the human being (de Gruchy 1996: 247). The question that is raised concerns what it means to be the "humanity created after the image of God and yet have fallen" as shown in the Genesis account (de Gruchy 1996: 247). Many theological traditions have equated the fall to humanity as having lost something within themselves in "substance, form or proportionality" (de Gruchy 1996: 247). Therefore, proponents of the argument of the damaged *Imago Dei* by sin suggest that the work of grace is still needed to bring back humanity to its original *Imago Dei* (de Gruchy 1996: 238). Therefore, finding ourselves in Adam is "an unfinished ambiguous project because further grace from God is still needed to bring redemption from the trap of sin and condemnation" (de Gruchy 1996: 237). However, the danger in this argument is that the grace that is available and needs to be accepted is overlooked. This grace provided by Jesus Christ will be discussed later in the section "Jesus Christ the true Image of God".

Retributive theology that interprets a God who only looks out to punish evil doers is significantly underpinned by the thinking on the fallen *Imago Dei* and is not rooted in an inclusive anthropology supported by Jesus Christ (de Gruchy 1996: 248; Migliore 2003: 59). The good news of the love of God in Christ that continues to work transformingly in the world by the Holy Spirit is therefore, distorted and not experienced fully in the Christian community (Migliore 2003: 59). In this thinking, humanity –knowing it is fallen due to sin – feels unworthy of being the image of God – and accepts its sinful nature, sidelining the saving grace that is freely available through the work of Christ. In the secular world, those who are suppressed under the powerful (including prisoners in prison) also tend to believe that they are not worthy and resign themselves to their fate (Migliore 2003: 63). They may not seek liberation from oppression or to be healed, nor forgive or gain their position in society again (Migliore 2003: 63).

Belief in the fallen *Imago Dei* underpins much of theological justification of state oppression. God is understood to have given the state power and a mandate upon which the state can carry out God's business on God's behalf and the Church does not critique the oppression that lies in state structures (Migliore 2003: 64-65). For example the Bible is often uncritically quoted to

justify imprisonment and the state responsibility for administering criminal justice and other matters of politics (Migliore 2003: 64-65). The injustices therein go unchecked where the state tries to keep security above justice in the 'God instituted state' (Migliore 2003: 64-65).

The tendency of this worldview is to focus only on individual salvation and marginalize structural and public bondages or injustices (Migliore 2003: 135). The Church focuses on individual change and does not often interrogate the injustices of the state (Migliore 2003: 63).The distortion has also crept into the misrepresentation of sin and grace where sin is understood as merely the corruption of the individual person (Migliore 2003: 135). However, sin is not only "a corruption of the individual person … it is also active and powerful in public and corporate structures of life" (Migliore 2003: 135). Sin is not simply an individualistic moral issue but involves social and communal understandings (Migliore 2003: 135).

In addition, under the thinking of humanity in Adam, the suffering of humanity does not touch the omnipotence of God. God is understood as having individualistic attributes that do not share in humanity's "suffering". God cannot be rejected and cannot be vulnerable to the weakness of humanity within the fallen image of God (Migliore 2003: 73). The power of God is understood as raw omnipotence, not seen to connect to what it really is; "sovereignty of love …incomparably strong even in weakness" (Migliore 2003: 73)

Sin in this case, only described in the shallow sense of violation of a moral code misunderstands its depth. The depth of sin "is primarily a disruption of relationship with God … opposition to grace … refusal to live thankfully and gladly by the grace of God that makes personal life in community with diverse others possible" (Migliore 2003: 121, 124).

For this study it is important to have an inclusive anthropological understanding. An inclusive theological anthropological approach is preferred because it foregrounds; what it "means to be human, created in the image of God which has implications for both relationship with the creator and relationship with one another" (Gonzalez 2007: xv).

## 4.4    Jesus Christ the true *Imago Dei*

In an inclusive anthropology, the meaning of humanness and human dignity "is not read from creation or from the fall but it is read from redemption" (de Gruchy 1996: 248). Jesus Christ is

"the paradigm of humanity not Adam" (de Gruchy 1996: 246). All die in Adam but all live in Christ through his resurrection and new life (de Gruchy 1996: 245). The notion of the *imago Dei* is used in the New Testament "with special reference to the divine human relationship in its Christological dimensions because Christ is the image of God" (de Gruchy 1996: 248; Bongmba 2007: 44).

To include all humanity Jesus provided an offering for sin, thus including all sinners in the household of God. Christ shed the blood of the sacrifice as the Lamb of God; that was needed for the forgiveness of sin and took care of the question of discrimination, guilt and inequality (Louw 2006: 103). Jesus paid the required highest price, the sacrifice of blood, giving his life in death that brings resurrection life to those who are discriminated against and stigmatised because they are considered unequal due to their sins (de Gruchy 1996: 248; Louw 2006: 104).

The blood of animals could not take away the guilt of humanity once and for all, as Jesus blood did. In the Old Testament sacrifices of animals and birds had to continually be given to take away the guilt of sin to make sinners and cursed people acceptable (Louw 2006: 107-108). Jesus brought human reconciliation to God through his death and resurrection where those who could not previously be accepted in the household of God because of what was considered their cursed nature could now have access and be accepted (de Gruchy 1996: 248; Louw 2006: 106-107).

Additionally the death of Christ is also important in its own right, as through the crucifixion of Christ the hope of the suffering is restored through the powerfully demonstrated covenantal relationship between God and the people God created (Clifford: 2004: 20; Louw 2006: 113). This gives assurance of Jesus' presence in suffering and of the value placed on the lives of people that Jesus died for (Clifford: 2004: 20; Louw 2006:113). The boundless love of Jesus Christ is "decisively revealed in the cross of Christ … and with all aspects of the gospel story: compassion of Jesus for the sick, his solidarity with the poor, his parables and above all his passion and resurrection" (Migliore 2003: 71).

Jesus in bringing life to humanity instead of death as with Adam is a high priest and is able to act as mediator to save humanity from the power of sin. Jesus' death made him the one through whom mercy and grace can be found.  Jesus' atonement brought life for all as opposed to the act

of Adam which brought death for all (de Gruchy 1996: 246). As de Gruchy puts it there has been a profound change in our destiny, Jesus' "act of righteousness is what leads to life for all" (de Gruchy 1996: 246). The very categorization or division of slave or free, those who belong and outsiders is not there: in Christ, all have been made "members and fellow citizens of the household of God" (Gal 3:27-28 quoted in de Gruchy 1996: 3). This is the Christian message of God's grace.

To reveal God to humanity, Jesus assumed various offices: Jesus the messiah, the Christ, the anointed one, with offices of prophet, priest and king. The three offices of prophet, priest and king would be conferred with anointing in the Old Testament in Israel. Through the prophetic office Jesus instructed or revealed to humanity who God is and what God's will is.  In the prophetic office Jesus encouraged and urged humanity out of sin but also gave humanity hope in what was in the Kingdom of God now and in the future (Boesak 2003: 166-167). It is in line with the prophetic office that the Church today can reveal the will of God in given social, political or spiritual matters.

There is also the powerful Christian tradition of Jesus Christ the true *Imago Dei* as the fully incarnated one.  Jesus' "incarnation must actualise in history something of what it means to be such a human being" (de Gruchy 1996: 249). Jesus' life on earth as a human being therefore is illustrative of what it means to be human even today (de Gruchy 1996: 249).

## 4.5     Jesus Christ : the *Imago Trinitatis*

Jesus Christ, the true *Imago Dei*, is also *Imago Trinitatis* involving the understanding of God as a community who also "wills creatures to live in community" (Migliore 2003: 122; de Gruchy 1996: 248). God is a communal God and to confess *Imago Trinitatis* "is to affirm that the eternal life of God is personal life in relationship" (de Gruchy 1996: 248; Migliore 2003: 67). As stated above, being in the image of God in community means that humans find their true identity in "relationship with God" and "with each other and with other creatures" (Migliore 2003: 125).

"The doctrine of trinity is a social doctrine…God is a relationship of three persons" described "in terms of shared life and love" (de Gruchy 1996: 248). Humanity in the image of God does not live in individuality of solitary life but in a life of an individual in solidarity. "In God persons

…are defined by inter-subjectivity, shared consciousness, faithful relationships, and the mutual giving and receiving of love" (Louw 1997: 4).

Communal life involves "divine love that freely gives of itself to others and creates community, mutuality and shared life" *(*Migliore 2003: 67). Community life structure in recognition of the *Imago Dei* is for the common good not for a few based on some classification (Bongmba 2007: 47).

*Imago Trinitatis* describes "God's being in love as the source of all genuine community, beyond all sexism, racism and classism" (Migliore 2003: 70). We are only human in so far as we are enabled to become human by other people (de Gruchy 1996: 259).  De Gruchy further asserts that what is important for human beings is not what they are in themselves but the way they treat and respect other people (1996: 259). Chitando attests to this in saying we "cannot be human alone, our humanity finds fulfillment with others" (2007: 56-57).

Illustratively, the African understanding of humanness is also in agreement with the above assertions of de Gruchy and Chitando among others, as a concept of a common humanity that requires recognising and upholding the humanity of others as well as appreciating the shared identity that we all have in common (de Gruchy 1996: 259) and (Chitando 2007: 57). Human beings are understood as interdependent and connected so one cannot just lessen the others dignity as it plays back to the one doing the denigrating, by putting the latter's human dignity in disarray also (Chitando 2007: 57). In community, the suffering of one of the members moves the other members with compassion.

*Imago Trinitatis* also implies that God's life "is essentially self giving love" (Migliore 2003: 70). Jesus gave his life for what he called the Kingdom of God. Jesus advocated for this different type of kingdom where love and community reign . The Church is the earthly demonstration of this community referred to as the body of Christ . God as a communal God has implications for the Church as the body of Christ, as will discussed later under the section dealing with a theological response to human dignity by the Church**.**

## 4.6 Conclusion

In conclusion this chapter has presented the Christian theological thinking of human dignity as having its roots in humanity being made in the image of God. Human dignity was shown as not just a right, or as a phenomenon arising from within humanity, but rather as a result of humanity's relationship with God that is in turn the springboard for relationships with other human beings and other elements in creation.

The thinking around the fallen *Imago Dei* was also shown to be discriminating and judgmental, and instead, an inclusive Christian anthropology was proposed where Jesus is the ideal example of all-inclusive love, and which he has demonstrated through his death and life. Jesus was therefore shown as the only true *Imago Dei* who is also *Imago Trinitati*- communal God who lives in relationship or in community, as must we as human beings, since we are only through the being of others.

The next chapter will therefore, in trying to conclude, revisit restorative justice and human dignity from their social and theological standpoints (Korten 1990: 168), present the implications of such a theological foundation for the Church in regard to prisoners' issues that have been discussed in this thesis, and finally highlight some areas for future research.

# Chapter Five

## Restorative justice, human dignity and the Church: towards a conclusion

### 5.1 Introduction

The previous chapter outlined a Christian perspective on human dignity which gives a theological basis upon which the Church can get involved in re-humanising prisoners and their families. Because the human dignity of prisoners and their families is in disarray under the current practices of retributive and dominant restorative justice, the theology of humanity being created in the image of God should be central to our thinking about our work in the world as regards these prisoners and their families (Boesak 2003: 166; Migliore 2003: 202). It should also determine boundaries for the Church to act in restorative justice interventions.

One of the research questions of this research was: What would be an appropriate social theological response to indignity suffered by prisoners and their families? In trying to answer this question, the present chapter firstly revisits the findings in the human rights discourse on human dignity, the findings concerning PZ prisoners' experiences and the findings from the investigation into the Christian perspective on human dignity. In doing so, it concludes that human dignity is a human right and a human experience with divine foundations. Secondly, this chapter discusses the implications for the Church in this regard, using the *Imago Dei* theological basis. Thirdly, the chapter discusses the loving and compassionate relationships in the Church as a caring community which should accompany both prisoners and their families (Louw 2006: 104; Haddad 2008: 56). Fourthly, the chapter suggests that the Church needs courage to carry out restorative justice work that foregrounds human dignity and stresses the need to live in community. The chapter concludes by suggesting some areas for future research.

### 5.2    Restorative justice and human dignity

Human dignity was explored through the examination of human rights in the legal framework under retributive justice and restorative justice in chapter two of this study. Relevant human rights conventions that support the respect and dignity of prisoners and of their families were surveyed. Only one rule in the standard minimum rules for treatment (SMR 1977 Rule 37) was

found to apply to prisoners' right to communicate with the outside world including receiving visits.

In addition, restorative justice was explored and the respect of human dignity was shown to be a theoretical feature of restorative justice in terms of its values of inclusion, encounter, reparation and reintegration. These values facilitated the restoration of relationships and community in the case of both victims and offenders. However, partly due to the fact that prisoners' families are referred to as 'secondary victims' as opposed to 'primary victims', and partly because restorative justice is not the common practice in criminal justice systems, while the dominant form of restorative justice does not sufficiently apply the above values in practice, the application of restorative justice was found to be lacking among prisoners' families.

In chapter three, the practice of restorative justice using art and family conferencing in the Phoenix Zululand programme was shown to be one of the rare applications of family interventions inside prisons. The PZ case study, therefore, highlighted some of the social issues that affect members of society who are marginalised as prisoners and their families. Furthermore, the PZ experiences of prisoners and their families highlighted their context of indignity. Prisoners expressed their perception of the demeaning criminal justice power, the inappropriate criminal justice policies, their views of society on the outside, how they feel sacrificed by that society since the incident of crime is dealt with, but not the broader context thereof, and how they feel that society has stereotyped them. They also expressed how their participation in PZ projects in terms of restoring their relationships with their families, empowered them and re-humanised them in the process.

Their experiences are a challenge and a call to the Church to reach out to prisoners and their families with a restorative justice approach that builds community. The Church, therefore, has to become more informed about restorative justice and better understand the experiences of prisoners and their families. Only then can they respond more effectively to the indignity suffered by prisoners and their families, which in turn contributes to a reduced rate of recidivism.

The Christian perspective of human dignity was explored the concept of *Imago Dei* which is key to the theological foundation of this study. *Imago Dei* was shown to be the root of human

dignity. In understanding this concept, it became clear that because we are made in the image of God, relationships are important both as individuals with one-another, but more importantly for the Christian community. In order to be truly human, we need to live in community.

Furthermore, Jesus was shown to be the supreme revelation of the image of God who is also *Imago Trinitatis* (i.e. who is also living in community). In Jesus the final revelation of true human nature is revealed. Jesus was shown to despise discrimination and stigma through his life and ultimately in his death. This has implications for the way the Church needs to include the marginalised and demonstrate what it means to be the true human community on earth. The continued discrimination of prisoners and their families is, therefore, against what the Church is called to be as the true community.

## 5.3    Implications for the Church

The metaphor of the Church as the body of Christ "conveys mutual dependence of all members of the community on one another" with Jesus Christ taken as the head of this body, the foundation of the Church and the one coming to unite the Church to himself in glory (Migliore 2003: 191). The Church as a body is also a community or a people as opposed to an organization or mere institution (Migliore 2003: 190; Van Ness 2002: 6). The Church is in addition a community of servants, the Church service to the world takes the form of witness in word and in deed to God's grace and God's call for justice…to love God and our neighbours" (Migliore 2003: 190-191).

The Church is to be aware that prisoners and their families are equally made in the image of God and, therefore  the relationships in the Church and with prisoners and their families will be informed by the understanding of *Imago Dei* (Louw 2006: 110-111) The respect for both prisoners' and their families' dignity would mean a nondiscriminatory response to their  needs (Ngo Dinh Tien 2006: 270 ; Louw 2006: 102-103).The Church in the understanding of *Imago Trinitatis* (God in community in Trinity) should name alienation and stigmatisation as sin against God and against the people for whom Jesus has already been stigmatised because all are in community with them and all should behave as such (Clifford 2004: 20; see also Ackermann 2005: 385-395).

The Church is, therefore, to actualize this in the world today because of the biblical mandate to speak on behalf of the poor, silenced and the dejected, and for justice, peace and equity (Ngo Dinh Tien 2006: 265; Boesak 2003: 166). The Church's vocation is to work preferentially for the poor, sharing the good news of the justice of God (Ngo Dinh Tien 2006: 265 ; Cochrane 2006:18). A theological response to the lack of human dignity implies for the Church that justice work must prioritise people in order to uphold their dignity, and not structures or institutions (Ngo Dinh Tien 2006: 263 ). As Ngo Dinh Tien says "human dignity must be the basic ground to evaluate the status of a person…because of the primacy of human dignity, a person even in his/her …poverty, should not be considered as the object of charity, but as human beings worthy of being respected and listened to" (2006: 263).

To understand the meaning of human dignity for prisoners and their families, the Church needs to undertake a social analysis of what appropriate restorative justice entails, as she engages in work with prisoners. Prisoners engaged in programmes in PZ have identified experiences of low self esteem, meaningless, anxiety and remorse. This challenges the Church to reach out to this group of despised and marginalised people. The theological understanding of the inter-relatedness of people and communities means that the Church should work together among its various denominations and with other organizations to tackle this challenge (Ngo Dinh Tien 2006: 269). Analysis from below, like that done by PZ prisoners, will help the Church to read the signs (i.e. to know what needs to be done and how) in order to heed God's call to action and change the status quo (McLellan 1997: 123; Van Ness 2002: 9).

In working preferentially for the oppressed, the Church needs to carry out work that supports the needs of prisoners' children, spouses, and prisoners themselves. "The resurrection of Christ establishes an identity beyond the stigma paradigm" (Louw 2006: 110). This would mean listening to the social analysis undertaken by prisoners and their families to hear from the prisoners themselves what their problems are (Ngo Dinh Tien 2006: 265-266; see also Cochrane 2006: 19).  Issues such as some of those raised by PZ prisoners need to be addressed.  These include the need for more family visits, mentoring children, schooling of children, gender violence, prisoners' participation in creative work while in prison, their involvement in religious activities and raising income for families while they are in prison.

Furthermore, educational therapeutic programmes should be implemented for imprisoned parents dealing with parenting issues, as well as offering group counselling to help the incarcerated parents cope with the loss of family relationships. The Church must also assist prisoners' families "in moving toward physical, emotional and spiritual recovery". The prisoners' families' anger, hurt, disorientation and isolation may be mitigated through a caring presence (Van Ness et al 1997: 125; see also Cochrane 2006:19, Haddad 2008: 56-57). Jesus death, the cross , "is paramount for the caring ministry of the Church" and restoration of hope" (Louw 2006: 104,110).

However, it must also be noted that in the case of restorative justice, the prisoners and their families should participate as agents of their own change (Van Ness 1997 et al :180).The Church, should recognise that all members have gifts and talents which must be tapped to participate in their own development (Louw 2006: 110). Some prisoners could even be empowered to become facilitators of the restorative justice processes, as was found to be the case in the PZ projects, and hence be enabled to participate in the design of restorative justice processes. This will make them own the process of the restoration of their relationships unlike the situation where the state takes over from them, often making the offenders more violent and the families more powerless because of their respective exclusion from fully taking part in the whole system (Hill 2007: 15).

The Church, however, also has to play an educative role.   Available opportunities to educate and engage various stakeholders, such as policy makers, on restorative justice must be created (Van Ness et al 1997: 157; see also Haddad 2008: 56-57). Within the religious community, Bible studies and sermons on restorative justice highlighting the experiences of prisoners and their families are important.

Coalitions of people that have a stake in restorative justice should be formed. These can include victim organisations, offender organizations, criminal justice officials, child organizations, women's organisations and religious leaders' groups. The broad base representation will give the coalition credibility in its advocacy and the Church would be a key role player in this process (Van Ness et al 1997: 158).

The Church should have people committed to restorative justice activism and advocacy who will evaluate and present the results of the implementation of restorative justice policies, showing their benefits, which can in turn build credibility for future applications of restorative justice (Van Ness et al 1997: 164-165). The negative impact of the implementation of retributive justice can also be evaluated to show human rights violations instituted by that form of justice, and the long-term problems resulting from this (Nies 2004: 3).

Institutionalisation in overcrowded conditions can also be shown to be in and by itself one of the most torturous to prisoners' mental and physical health. In addition, separation for a long time of spouses on the outside and children and other family members should be condemned where possible. This is because long sentences have been found to have tendencies of making prisoners worse off than they came to prison, including leading them to commit more crime after release (Figure 3A in experiences from art; Consedine 1995: 20-21).

The Church, because of its commitment to the marginalised, can mobilise its social power of networks, people support and capacities and assets for the liberation of the oppressed. She can popularise and promote widely in the Church and society at large what has already been done by other restorativists such as, redefining crime and justice to include restoration of relationships, and designing restorative justice programmes such as family conferencing. This will create greater avenues for the practice of restorative justice by the Church and by governmental and other organisations. Churches can offer "their buildings as places where mediations, circles, conferences and other restorative processes involving victims, offenders and their families can take place" (Van Ness 2002: 9).

Furthermore, the formation of "self help support groups" of families of prisoners and of prisoners should be encouraged. "Because of shared experiences, including shared alienation from the community, members of these groups would find strength in meeting together to talk and encourage one another". The groups would be "service oriented" in that they assist with the "practical and personal needs" of prisoners families "in a holistic and organised way" (Van Ness et al 1997: 122).

Crisis services also need to be available to help as prisoners' families often feel victimised by society and they can help "build a sense of safety", educate the family on how the criminal justice system works and to just "be a friend" to the hurting family (Van Ness et al 1997: 126). This "compassionate care can help restore a sense of worth and self respect" within prisoners and their families (Van Ness et al 1997: 126 ; see also Cochrane 2006: 18).

The *Imago Trinitatis* implies community life that consists of loving and compassionate relationships. The members will be moved by compassion to work preferentially for the marginalised prisoners and their families. The commandment to love others needs to reach beyond those in the Church, to those considered sinners and hence rejected by society (Bongmba 2007: 60). By doing this, the Church is living out the communal expression of *Imago Trinitatis*. The Church loves because Christ first loved the Church, the world and continues to love through the Church. Love is the theological basis for the church to believe in human dignity for all people (Gonzalez 2007: 128). "God is love … God's image of love is fundamental to human beings [in] that without love human society would be impossible" and this love is expected to be demonstrated by the Church toward all people (Mpumlwana 1994 : 75).

## 5.4    Areas for future research

The study has been limited to exploring a theological response to the indignity suffered by prisoners and their families. There are, however, a number of areas for future research that the study highlights. These include:

- The role of the Church in assisting in the reintegration of the imprisoned family member into society.
- The role of the Church in supporting spouses and children while the family member is incarcerated.
- The ethical role of the Church in criminal justice issues.
- The role of the Church in policy making processes and service delivery to prisoners and their families.

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