

VICTIMS' PARTICIPATORY RIGHTS IN PAROLE HEARINGS: A SOUTH AFRICAN PERSPECTIVE

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Abstract

In South Africa, significant progress has been made in legislative and policy efforts to advance victim participation in the parole process. Victims now have a legal right to make representations at a Correctional Supervision and Parole Board (Parole Board) hearing in certain matters relating to parole placement decisions. This conceptual paper aims to discuss the circumstances in which crime victims may exercise their rights to information and participation in parole hearings. Any reference to a victim in South Africa includes a complainant or a relative of a deceased victim. In promoting a victim-centred approach to criminal justice, provision has been made in both section 75(4) of the Correctional Services Act 111 of 1998 and section 299A of the Criminal Procedure Act 51 of 1977 for the involvement of victims in Parole Board hearings. In 2005, the South African Department of Correctional Services issued specific directives to facilitate and promote the involvement of complainants in Parole Board hearings. These directives were developed in support of the Victim Empowerment Programme of Government, which is based upon the concept of restorative justice. The stance of the Department of Correctional Services is that all parole considerations should include victim participation; however, this paper argues that practical challenges remain for both the Department of Correctional Services and the victims of crime. It proposes directions for future research as there is little to no research that has been conducted on the effects of the parole process on victims.

Keywords

Complainant; parole hearing; participatory rights; restorative justice; South Africa; victim

Introduction

In 2015, former Justice and Correctional Services Minister, Advocate Michael Masutha, requested a review of South Africa's parole system after discovering that Correctional Supervision and Parole Boards (hereinafter referred to as 'Parole Boards') were lacking professional and independent decisions when granting parole to offenders. The Minister highlighted the importance of protecting the rights of victims and stated that 'we cannot consider the parole application of any offender which does not show that the victims were consulted' (Mitchley, 2015). The Minister shifted the lens towards victim participation when he recommended in his budget vote¹ speech on 20 May 2015 for the parole system to be reviewed to, among others, strengthen victim and community participation and empowerment with a more proactive stance to ensure their involvement in parole hearings (South African Government, 2015).

Currently, the issue of parole review and the efficacy of South Africa's parole system is still being debated. In March 2020, Justice and Correctional Services Minister, Ronald Lamola, conceded that the parole process is flawed and needs reform, particularly when victims were not part of the processes to release the offender on parole. A task team was set up by the Minister to review some of the parole laws and policies (Meyer, 2020b). The onus is on the task team to make the parole system more victim-centred and to amend the minimum detention period for aggressive sexual offences (Portfolio Committee on Justice and Correctional Services, 2020).

This paper commences with a brief definition of the term 'victim' in South Africa. It then presents an overview of victim empowerment and its implementation in the criminal justice system. This is followed by a brief description of parole and the parole process in South Africa. This paper argues that practical challenges and obstacles remain for both the Department of Correctional Services and the victims of crime before proposing future directions for research and policy. In South Africa, a victim's right to participate in a Parole Board hearing and be heard regarding parole for offenders is enshrined in legislation. Yet relatively little is known about the implementation of victim participation in parole hearings. This paper elaborates on the rights of victims at the parole phase and addresses the lack of research and knowledge regarding victim participation in parole hearings in South Africa.

Definition of 'victim' in South Africa

According to the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, victims of crime are 'persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.' The Declaration also includes in the definition of 'victim', 'where appropriate, the immediate family or dependants of the direct victim and

¹ The budget vote speech outlines the plans, highlights and priorities of a national government department.

persons who have suffered harm in intervening to assist victims in distress or to prevent victimization' (United Nations, 1985).

Similarly, the South African Department of Correctional Services defines the term 'victim' as:

Any person directly or indirectly who has suffered harm, including physical or mental injury; emotional suffering; economic loss; or substantial impairment of his or her fundamental rights, through acts or omissions that are in violation of the criminal law (Mokoena, 2018).

The South African Service Charter for Victims of Crime (the Victims' Charter) and the Minimum Standards on Services for Victims of Crime (Minimum Standards) provide the following definition of a 'victim':

A victim of crime is defined as a person who has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights through acts or omissions that are in violation of our criminal law. 'Victim' also includes, where appropriate, the immediate family or dependant of the direct victim. A person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and victim. 'Victim' is inclusive of all, without prejudice of any kind on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth (Department of Justice and Constitutional Development, 2008:8).

In South Africa, the Victims' Charter and Minimum Standards refer to a 'victim' whilst the Criminal Procedure Act 51 of 1977 and the Correctional Services Act 111 of 1998 refer to a 'complainant'. There is no difference between these terms; however, one could consider using the term 'survivors of crime' to collectively refer to both terms and avoid stigmatising those affected by crime. Pertaining to their involvement in Parole Board hearings, the rights conferred to either a complainant or victim apply to the relative of a deceased victim.

Victim empowerment: a victim-centred approach to criminal justice

Victim empowerment aims to restore the loss or damage caused by criminal acts and their consequences through a variety of actions intended to empower the victim to deal with the consequences of the event, to leave it behind and suffer no further loss or damage. It is premised upon the belief that individuals, families and communities have the right to privacy, safety and human dignity, and that victims should play a more central role in the criminal justice process. Empowerment may be defined as having (or taking) control, having a say, being listened to, being recognised and respected as an individual and having

the choices one makes respected by others (moving from victim to survivor) (Department of Social Development, 2007:6).

South Africa's victim empowerment is based upon the concept of restorative justice. This concept advocates a victim-centred approach to criminal justice. The South African government has developed and adopted various strategies and policy resolutions towards empowering victims to exercise their rights in the criminal justice process (Ramagaga, 2012).

National Crime Prevention Strategy

The National Crime Prevention Strategy (NCPS) was launched by the South African government in 1996 as a strategy for promoting and implementing a victim-centred approach to crime prevention. The purpose of the strategy was to shift the focus of the criminal justice system to the victims of crime and their interests and away from the offenders.

In the discussion on the shift in the approach to crime prevention, the NCPS states that:

The emphasis on prevention also requires a shift in relation to criminal justice. In particular, an emphasis on a state-centred system should give way to a greater emphasis on a victim-centred, restorative justice system. A victim-centred criminal justice system is one that is concerned to address the direct effects of crime and place emphasis on those victims least able to protect themselves. A restorative justice system is one which seeks to encourage full rehabilitation, particularly for juvenile offenders and where treatment is aimed at enabling the minor offender to avoid a life of crime (Interdepartmental Strategy Team, cited in Batley, 2005b:118).

Victim Empowerment Programme

The Victim Empowerment Programme (VEP), a first for South Africa and on the African continent, aims to make the criminal justice process more victim-friendly to become more responsive to victims' needs, and to minimise the negative effects of crime on victims through the development and provision of multidisciplinary services for victims of crime and violence (Nel, 2019:96). The VEP was launched in 1998 as one of the key programmes under 'Pillar One' of the NCPS, i.e. 'improving the efficiency of the criminal justice system as a whole' (Batley, 2005a:125). The VEP is led by the Department of Social Development which coordinates, at a national level, an interdepartmental and intersectoral victim empowerment management team. It includes representatives from relevant government departments such as the South African Police Services, the Departments of Justice and Constitutional Development, Correctional Services, Health and Education as well as representatives from civil society organisations and academic institutions. This team is responsible for providing strategic direction to the programme and ensuring that all issues pertaining to victims in the respective departments are addressed (Frank, 2007:24; Department of Social Development, 2009:13).

Integrated Victim Empowerment Policy

The Integrated Victim Empowerment Policy (IVEP) is based on restorative justice principles and aims to uphold the rights and meet the needs of crime victims within a restorative justice framework (Hargovan, 2007:116). The IVEP provides a framework for all interdepartmental and intersectoral stakeholders regarding the establishment, development, delivery and nature of victim empowerment benefits and services (Department of Social Development, 2007:3). For example, the Department of Correctional Services is responsible for protecting the interests of victims in relation to sentenced offenders, the rehabilitation of offenders and for preventing victimisation of offenders within the correctional services system (Department of Social Development, 2009:21). The National Commissioner of Correctional Services is responsible for providing victim empowerment services and, in so doing, may:

- afford the victim an adequate opportunity to participate in a Parole Board hearing;
- notify the victim of the official release date of the offender; and
- develop victim-offender mediation programmes.

The South African Service Charter for Victims of Crime (the Victims' Charter) and the Minimum Standards on Services for Victims of Crime (Minimum Standards) were approved by Cabinet in 2004 (Department of Correctional Services, 2007:4). Both documents are central to the IVEP and considered as important strategies for promoting the rights of victims and providing guidelines to ensure the quality and effectiveness of victim services (Schoeman, 2019:281).

The Victims' Charter was developed in line with the NCPS' victim-centred vision for the criminal justice system. The Charter is compliant with the South African Constitution, 1996, and based on the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power to which South Africa is a signatory (Ramagaga, 2012). The foreword of the Victims' Charter specifically refers to restorative justice and the importance of making the South African criminal justice system more victim orientated (Batley, 2005a:125; Hargovan, 2007:114). The Charter mentions that the focus of the criminal justice system has 'shifted from an adversarial and retributive Criminal Justice System to a more restorative approach to justice' (Department of Justice and Constitutional Development, 2014:3).

A range of rights that may be demanded by victims in their interaction with the criminal justice system and other service providers are identified in the Victims' Charter. These include the right to be treated with fairness and with respect for dignity and privacy, the right to receive and offer information, the right to protection, the right to assistance, the right to compensation and the right to restitution (Department of Social Development, 2007:7; Hargovan, 2007:117). The Victims' Charter explains that the right to offer information means the crime victim may 'participate (if necessary and where possible) in criminal justice proceedings, by attending the bail hearing, the trial, sentencing proceedings and/or Parole Board hearing.' In affording this right to crime victims, criminal

justice service providers (e.g. prosecutors, police and correctional services officials) are expected to ensure that any contribution that a crime victim wishes to make to the investigation, prosecution and parole hearing, is heard and considered in these processes. This includes being able to make a written application to the Chairperson of the Parole Board to attend the parole hearing and submit written input to the Board. The right to receive information is perhaps the most basic. Crime victims 'can request to receive notification of [Parole Board] proceedings which [they] may want to attend.' (Department of Justice and Constitutional Development, 2014:7).

The Minimum Standards is an information document that outlines what is expected from the various role-players in the criminal justice system or service providers in the delivery of services to victims. It spells out the processes that should take place once a victim reports a crime, as well as the responsibilities of the relevant departmental role-players in the criminal justice system (e.g. South African Police Services, National Prosecuting Authority, Departments of Health, Justice and Constitutional Development, Social Development and Correctional Services). The purpose of the Minimum Standards is to explain the basic rights and principles of the Victims' Charter to crime victims and to hold everyone involved in the criminal justice system accountable to deliver suitable support and services to crime victims (Department of Justice and Constitutional Development, no date; Frank, 2007:23).

Parole in South Africa

The Department of Correctional Services is expected to play a significant role in safeguarding the rights of victims and offenders by assisting the Parole Board in determining an offender's suitability for parole (Ramagaga, 2012). Nationally, 53 Parole Boards have been established in terms of section 74 of the Correctional Services Act 111 of 1998² to take independent decisions on the release of offenders into society. Each Parole Board consists of four members from the community, one being the chairperson and one the vice-chairperson, both appointed on fixed-term contracts. The other two community members are employed on a part-time basis. In addition, the Department of Correctional Services is represented by one official who acts as the secretary of the Parole Board. The Board may also co-opt a nominated representative from the South African Police Service for a meeting of the Parole Board (Portfolio Committee on Justice and Correctional Services, 2020).

In South Africa, parole is referred to as a placement option from a correctional centre into the system of community corrections (Hargovan, 2015:56). The parole process is initiated by the Case Management Committee at each correctional centre who must submit a profile report to the Parole Board regarding the possible placement of an offender on parole, and the conditions for such placement. The profile report provides valuable information to the Parole Board in considering the safety of the community, the interests of the victim(s) and offender rehabilitation (Louw, 2008).

² The Correctional Services Act 111 of 1998 is one of the legislative mandates of the South African Department of Correctional Services.

The head of the correctional centre is responsible for making parole decisions for offenders sentenced to incarceration of 24 months or less whereas Parole Boards will take decisions on offenders serving determinate sentences of more than 24 months (Portfolio Committee on Justice and Correctional Services, 2015). Legislation makes provision that all sentenced offenders qualify to be considered for possible parole placement after a certain period of the sentence, or minimum detention period has been served. An offender, in terms of section 73(6)(a) of the Correctional Services Act 111 of 1998, may be considered for parole placement after serving either the stipulated non-parole period, or if no non-parole period was stipulated, half of the sentence (Republic of South Africa, 1998:55). However, these requirements for parole placement do not apply to offenders who are serving life sentences or who are habitual criminals. Offenders who were declared habitual criminals may be considered for release on parole after having served seven years. Offenders who are serving life sentences may be considered for placement on parole after having served 25 years. The decision to release offenders serving sentences of life incarceration on parole must be made by the Minister of Justice and Correctional Services following the recommendations from the Parole Board (Republic of South Africa, 1998:58). The Parole Board takes various factors into account during a parole decision-making process. Some of the factors that must be taken into account when considering an offender's placement on parole are, inter alia, the seriousness of the crime, the offender's crime prognosis (probability of re-offending), response to correctional programmes and participation in restorative justice programmes, available support systems in the community, and the degree of risk the offender poses to the community and complainant(s) (Department of Correctional Services, 2006:8; Hargovan, 2015).

Victim involvement in parole hearings: a legal framework

Section 75(4) of the Correctional Services Act 111 of 1998 and section 299A of the Criminal Procedure Act 51 of 1977 mandate the involvement of victims or complainants in Parole Board hearings (Portfolio Committee on Justice and Correctional Services, 2020).

Correctional Services Act 111 of 1998

Restorative justice was first introduced into the Correctional Services Act 111 of 1998 when section 38 was amended to include restorative justice requirements as one of the assessment areas for developing a correctional sentence plan. Section 38(1)(j) specifically states that '[a]s soon as possible after admission as a sentenced offender, such offender must be assessed to determine his or her restorative justice requirements.' Before the amendment of the Correctional Services Act, only section 75(4) made explicit provision for victims of crime to be present at parole hearings. Section 75(4) stipulates the following regarding a complainant or relative being allowed to make representations when placement under community corrections is to be considered:

Where a complainant or relative is entitled in terms of the Criminal Procedure Act, to make representations or wishes to attend a meeting of a [Parole] Board, the National Commissioner must inform the Board in question accordingly and that Board must inform the complainant or relative in writing when and to whom he or she may make representations and when and where a meeting will take place (Republic of South Africa, 1998:59).

Criminal Procedure Act 51 of 1977

The most important aspect regarding the application of restorative justice in terms of the Criminal Procedure Act 51 of 1977 is found in section 299A, where the Act explicitly provides for the right of victims of crime to participate in parole proceedings (Republic of South Africa, 1977:155). The amendment to section 299A of the Criminal Procedure Act came into effect with the Judicial Matters Second Amendment Act 55 of 2003 and provides for the right of a complainant or an immediate relative of the deceased (in the case of murder) to make representation relating to the placement of a sentenced offender on parole, day parole, or correctional supervision³ by the Department of Correctional Services (Republic of South Africa, 2003:8). Note that this provision focusses on serious offences only (for example, murder, rape, robbery, sexual assault and kidnapping) and not all types of crime (Muntingh, 2005). Victims of offences not listed in the Criminal Procedure Act are also allowed to make representations to the Parole Board (Portfolio Committee on Justice and Correctional Services, 2020). According to subsection 299A(2), the complainant or a relative must inform the Commissioner of Correctional Services in writing of their intention to exercise the right to make representations or attend a Parole Board meeting. In addition, subsection 299A(3) states that '[t]he Commissioner of Correctional Services shall inform the parole board in question accordingly and that the parole board shall inform the complainant or relative in writing when and to whom he or she may make representations or when and where a meeting will take place.'

When a court sentences an offender for certain violent crimes, as mentioned above, it must inform the complainant, if present, of these rights (Republic of South Africa, 1977:155; Republic of South Africa, 2003:8). The Criminal Procedure Act does not deal with the probable scenario where the complainant is absent at the sentencing stage of the trial but wishes to make representation if they were aware of this right (Muntingh, 2005). However, subsection 299A(4) of the Act obliges the Commissioner of Correctional Services to issue directives regarding the complainant's right to make representation or attend a Parole Board meeting. Key issues regarding the Directives are briefly discussed below.

Directives regarding complainant participant in Parole Boards (the Directives)

In 2005, specific Directives⁴ to facilitate and promote the involvement of complainants in Parole Board hearings were issued by the Commissioner of Correctional Services (Department of Correctional Services, 2006). The Directives sets out the manner and circumstances in which a complainant or relative may exercise their rights to attend a Parole Board meeting or make representations when parole placement of an offender is being considered. It aims to provide members of the Parole Boards and complainants with information and guidelines on, among others, how a complainant can request to be

³ Correctional supervision in South Africa is a community-based sentencing option exercised directly by a court of law. It refers to a sentencing option where imprisonment is converted into correctional supervision after the offender served a portion of the sentence in a correctional centre. Offenders who serve a sentence of correctional supervision are called probationers in the system of community corrections.

⁴ Directives have the same legal standing as regulations issued in terms of an Act.

involved in a Parole Board meeting, the content of representations and what influence representations will have on the decision of the Parole Board.

In terms of the notification procedures, the Directives state that every complainant must ensure that the relevant Parole Board in whose area the offender is being detained, is informed in writing of both the desire to be informed about a parole hearing and to make representation. In addition, the complainant is required to inform the Chairperson of the Parole Board of a range of information including the name of the offender, the offence committed, the case number, the date and the name of the court where the offender was convicted, and the physical and postal address of the complainant. The complainant's request will be recorded, and they will be informed about the process and any decision by the Parole Board to release the offender (Department of Correctional Services, 2006:6). However, it is unclear how a complainant will know where an offender is being detained and there is no procedure set out that compels the Commissioner of Correctional Services to keep the complainant informed of an offender's whereabouts. This means, according to Muntingh (2005), that if the complainant cannot furnish all this information and/or directs their notification to the wrong Parole Board, the right to make a representation is 'effectively lost due to administrative concerns'.

Mujuzi (2019) notes that the duties of complainants described by the Directives are contrary to the provisions of section 299A of the Criminal Procedure Act. In parole proceedings, Muntingh (2005) reported that 'the Act is clear that the complainant must inform the Commissioner [of Correctional Services] of [their] intention to make representation, as well to provide up to date contact details, with the latter then informing the relevant parole board, the Directives sets out a different procedure.' It is clear from the Directives that the duty of the Commissioner has been removed from the procedure and that the responsibility now rests with the Chairperson of the Parole Board and the complainant.

Regarding the format and content of representations, verbal or written representations, as well as audio and video recordings, will be allowed during the Parole Board hearing. It is clear from the Directives that the representation or submission by the complainant should deal with any one or a combination of the following:

- (a) A statement that describes the emotional, physical, and financial impact of the offence on the complainant and family members.
- (b) A statement of opposition that may contain reasons why the offender should not be released on parole; for example, the risk the offender may pose to the complainant after release.
- (c) Recommendations on possible parole conditions that may be imposed on the offender to reduce this risk to the complainant, should placement on parole be approved.

The Directives acknowledge the rights of offenders by allowing them to respond to the statements made by the complainant and to ensure a fair application of the audi alteram partem rule.

The question, 'What influence will the representation have on the decision of the Parole Board?' is clearly addressed by the Directives. Firstly, a complainant does not have a vote on the decision of the Parole Board but may be present for the duration of the hearing. Secondly, the Directives stipulate that the Parole Board should inform the complainant that it is not only their representations that will influence the decision of the Board but that the balance of the representations and the following factors will direct the Board's decision:

- The offender's response to development and treatment programmes associated with rehabilitation.
- The existence and quality of support systems in the community.
- The probability of re-offending.
- The risk that the offender may pose to the community and the complainant.

The Directives also outline circumstances where children or vulnerable complainants are involved, and state that a Parole Board may allow a family member to make a representation on behalf of the child or vulnerable person. Furthermore, the Chairperson of a Parole Board must take all the necessary steps to ensure that all complainants are protected from offenders, their needs and concerns are addressed and that no victimisation will take place during the hearings (Department of Correctional Services, 2006:9). Notwithstanding, Muntingh (2005) argues that these directives are not 'keeping with the intentions of the Victims' Charter which seeks to offer a service to victims that is sensitive to their needs.'

The Directives place an undue burden on complainants who may wish to exercise their rights to information and participation (Frank, 2007). The primary concerns are the lack of government funding for complainants or victims to attend parole hearings and unavailability of information on victim participation. The author found that only the contact details of Parole Boards, and no information on the process for victim involvement in parole hearings, are available on the homepage of the Department of Correctional Services. Moreover, complainants are responsible for their own arrangements and costs incurred in attending a Parole Board hearing, including travel and accommodation.

Challenges and obstacles to victim participation

The purpose of the parole system in South Africa is to promote offender rehabilitation and to ensure offenders are successfully reintegrated into society as law-abiding citizens (Louw, 2008). With the introduction of victim participation and restorative justice, the situation has changed. It's almost inconceivable that many victims of violent crimes would attend parole hearings to merely forgive offenders or to support their release. According

to De Bruin (2008), most victims in South Africa who want to make an input at parole hearings, blankly oppose parole. This is reiterated by findings in the United States (Roberts, 2009; Caplan, 2010; Petersilia and Reitz, 2015). Ramagaga (2012) stated that:

It is not uncommon for both the victims of the crime and community members to be concerned when an offender, especially those convicted of violent crimes, becomes eligible for, or is released on parole. This may be out of fear that the parolee might reoffend or because the victim has not fully recovered (physically, psychologically or financially) from the incident.

A concern with victims opposing parole is that it could create an adversarial situation. If a victim's only motive for attending a parole hearing or submitting a victim impact statement is to seek revenge, the victim's involvement will run counter to the purpose of the parole system. By implication, it means that victim input then becomes closer to retribution than to restoration – exactly what the Victims' Charter says it is shifting away from (Oliver, 2019). Fundamentally, most victims seem to want offenders to be accountable for their actions and the harm done to them and ultimately, they want to find closure and move on with their lives. The challenge for Parole Boards in making parole decisions is to find a balance between offender rehabilitation and the restorative justice ideals of healing and restoration.

In the parole process, the best-case scenario would be for victims to first participate in restorative justice programmes and, later, making an input at the parole board hearing. Restorative justice programmes, according to Oliver (2019:38), 'could then inform the parole decision and lead to decisions that are fair' for both the victim and the offender.

Many respondents from a survey conducted by the Department of Justice in Canada in 2004, believed that there were obstacles to victim participation in the parole process. The results showed that the main barriers cited by respondents were 'the lack of funding to assist victims who want to attend Parole Board hearings, the lack of victim awareness of ways in which they can participate in the parole process and of the support services available.' Distance, travel or transportation and fear or unwillingness to face the offender were also found to be primary obstacles to victim participation (Department of Justice Canada, 2004:129).

The stance of the South African Department of Correctional Services is that all parole considerations should include victim participation (Department of Correctional Services, 2020:16). Yet, tracing the victims of crime and preparing them to participate in restorative justice programmes has been a major challenge for the Department (Department of Correctional Services, 2020:16). It is likely that most victims are unaware of their participatory rights in parole hearings, and 'even where victims can be traced, some are reluctant or unwilling to make submissions to the Parole Board or even participate in restorative justice processes' (Hargovan, 2015:60).

The main obstacle to victim participation in parole hearings might be that victims' rights, as contained in the Victims' Charter and relevant legislation, are not considered before making parole decisions. Hargovan (2015) claims that there are minimal if any, counselling

services available to victims and no structure has currently been established for keeping victims informed of upcoming parole hearings. The rights of victims to receive and offer information and to make submissions against the granting of parole, for example, how the crime has affected their lives, are not always recognised. Justice and Correctional Services Minister, Ronald Lamola, concurred that 'victims of heinous crimes are not always informed [or consulted] when offenders are considered for parole' (Reddy and Shoba, 2020). This was true in the case of convicted rapist and former grand slam tennis champion Bob Hewitt. It took his three victims, who had been coached by the now 80-year-old in the 1980s and '90s, over 30 years to finally get justice for the horrendous crimes he committed against them. Bob Hewitt was found guilty on two counts of rape and one count of sexual assault and sentenced to an effective six years imprisonment in September 2016. The Parole Board, despite having the victims' details, convened without their knowledge and granted Bob Hewitt parole in August 2019. The victims were never notified of the parole hearing and after Justice and Correctional Services Minister intervened, Hewitt's parole was cancelled. The case was again referred to the Parole Board to reconsider the matter together with the inputs from the victims. Bob Hewitt was released on parole on 24 April 2020 after serving just over three-and-a-half years of his six-year sentence (Carte Blanche, 2020; Meyer, 2020a). A key element of procedural justice is for victims to feel that they are treated with fairness and respect (Rossner, 2017). In the case of Hewitt, the victims may have been more satisfied with the parole decision, if they felt their voices were heard and respected.

Future directions for research and policy

Prior research that has examined the impact of victims' input at parole hearings has reported mixed findings (Young, 2016:471). In one study, Morgan and Smith (2005) reported that victim influence, not the offender's institutional conduct or participation in rehabilitation programmes, was a highly predictive factor in parole decisions. Their research findings clearly showed that victim participation influences the Parole Board's decisions at the parole release hearing. This is reiterated by Polowek (2005) who conducted interviews with Parole Board members and found that almost all participants in the research believed that victim participation had an impact on parole decisions. Caplan (2010), on the other hand, found that while victims' rights legislation has successfully increased victim participation in the criminal justice process, victim input did not have a significant impact on the outcome of parole hearings.

In South Africa, limited research exists regarding victim participation in the parole decision-making process and reliable statistical information is, so to speak, hidden from public view. The only time the Department of Correctional Services has reported on victim participation was in the annual report for the 2015/2016 financial year.⁵ The Department then reported a total of 6,491 victims who participated in parole hearings and restorative justice interventions, namely victim-offender mediation and victim-offender dialogue (Department of Correctional Services, 2016:11). From the data, it is unclear how many of these victims participated in parole hearings, and what effect victim participation had on parole decisions.

⁵ The financial year for the Department of Correctional Services in South Africa runs from 1 April of each year to 31 March of the following year.

In the most recent annual report, the Department stated ambiguously of its plans to continue increasing the number of victims participating in dialogues and other restorative justice programmes to a projected 8,930 in 2021/2022 (Department of Correctional Services, 2020:22). The key question, however, remains of how this target will be achieved or what measures will the Department implement to increase victim participation.

Since 2015, the Department of Correctional Services has emphasised placing victims at the centre of its restorative justice programmes and initiated some measures to ensure effective victim participation in parole hearings. These include:

1. The installation of audio-visual systems in all Parole Boards to help reduce physical and language barriers (Department of Correctional Services, 2015).
2. The appointment of auxiliary social workers to assist with tracing and preparing victims to participate in both restorative justice programmes and Parole Board representations (Portfolio Committee on Justice and Correctional Services, 2020).

Regardless of the extent to which victims participate in parole hearings, it is crucial for the Department of Correctional Services to continue reducing barriers to victims' attendance. Some practical measures that can be taken to help more victims attend parole hearings are:

- Develop a funding model for the reimbursement of travel expenses.
- Provide on-site counselling services to victims before and after a parole hearing.
- Establish a victim database for tracing victims.
- Promote awareness campaigns on victims' rights and restorative justice programmes.

It is clear under the umbrella of 'victims' rights' that the issue of victim participation in parole discussions needs to be further researched, particularly in the South African context. 'It is still unknown, for example, what consequences victim participation in parole decisions or in restorative justice programmes may hold for victims and offenders' (Oliver, 2019:43). It is also unknown what influence victim participation has on parole decisions made by Parole Boards. Therefore, it is absolutely necessary to conduct ongoing empirical research to explore outcomes regarding restorative justice programmes and parole hearings. Such research should ensure to include work to assess victims' experiences, satisfaction and outcomes. The author believes that the insights from victims can inform discussions about parole placement policies and efforts to enhance a victim-centred and reliable parole system for South Africa.

Conclusion

On 8 May 2020, the President of South Africa, Cyril Ramaphosa, authorised the parole of selected categories of low-risk sentenced offenders as a measure to combat the spread of the Coronavirus (Covid-19) in correctional facilities, which are considered high-risk areas for infection (South African Government, 2020). The spokesperson of the Department of Correctional Services, Singabakho Nxumalo, said that 'victims will be afforded an opportunity to make [written] representations during the parole consideration process' (Naik, 2020). However, this can be difficult to put into practice.

Victims' voices need to be heard and their views considered before any offenders are released on parole. 'Upholding victims' rights is not about overruling parole board decisions. It is about respectfully enabling victims' active participation in decisions that affect their personal interests' (American Legislative Exchange Council, 2015).

In theory, it is evident that there have been huge policy and legislative strides made to include victims in parole hearings, but procedural or practical challenges remain. Much more needs to be done to ensure that victims' participatory rights in parole hearings are adequately supported (Ramagaga, 2012). At the time of writing, the Department of Correctional Services has not achieved its goal of implementing a much needed revised, victim-centred and credible parole system for South Africa.

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