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# **A Qualitative Exploration of the Reitz Reconciliation Process as an Exercise in Restorative Justice.**

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by

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## **Declaration**

I, Jessica Taylor, hereby declare that the work contained in this dissertation ‘A Qualitative Exploration of the Reitz Reconciliation Process as an Exercise in Restorative Justice’, is my own original work. This dissertation, submitted for the Master of Arts degree in Political Science at the University of the Free State, has not been previously submitted by me or any other individual at this university or any other university or faculty. All reference materials used for this study have been properly acknowledged.

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Jessica Taylor

30<sup>th</sup> May 2014

## **Acknowledgements**

Thank you to my parents, James and Caroline Taylor. It is because of you that I am proud to honour the knowledge in my blood. You have given me a gift, a passion to be the change, and it is a privilege for which I am eternally grateful. I would also like acknowledge my deep appreciation for Graham Webb, you gave me the courage to take this path and the strength to reach its end. Finally, I want to express my sincere gratitude to my supervisor Professor Pumla Gobodo-Madikizela. Thank you for giving me this opportunity and for all the support along the way.

## **Dedication**

I dedicate this dissertation to Jehan Scello. Without you this would not be.

## Abstract

In 2008 South Africa and the world were shocked by the public dissemination of the 'Reitz video.' The video depicted five black University of the Free State workers re-enacting a number of humiliating residence initiation rituals at the instruction of four white male university students. The video was narrated as a parody of the proposed racial integration of university residences, and it led to a criminal court case followed by civil proceedings and most importantly for the purpose of this study, a restorative justice process titled the Reitz Reconciliation Process. This study explores the Reitz Reconciliation Process through a restorative justice lens, from a social constructionist theoretical standpoint. The aim of the study is to critically engage the meaning that the students and workers assigned to their experiences of this restorative justice process, so as to gain insight into why they did or did not experience the process as restorative. In-depth qualitative interviews were conducted with the students and workers to gather data for this study, and the data was then analysed using a thematic approach. What the researcher found was that in the students' refusal to accept the wrongfulness of their actions, they persistently emphasised their own victimisation over that of the workers and their offer of apology was plagued by denial. This was all found to be underpinned by an intergenerationally transmitted system of prejudicial beliefs and values that do not align with the values and rights entrenched in the South African Constitution. In contrast, the workers constructed the Reitz Reconciliation Process as an experience of forgiveness, healing and restoration. The researcher found that at the core of their process of meaning construction was the ethic of Ubuntu, which is underpinned by a very similar set of values to those of restorative justice. The complexities and implications of these findings are teased out in this study with the intention of gaining a deeper understanding of the possibilities for restorative justice practice in a contemporary South African context.

**Key Words:** Reitz video; white Students; black Workers; Dignity; Reitz Reconciliation Process; Restorative justice; Social constructionism; Qualitative research; Denial; Ubuntu.

## Samevatting

In 2008 is Suid-Afrika en die wêreld geskok deur die publieke verspreiding van die sogenaamde "Reitz-video." Die video beeld vyf swart werkers van die Universiteit van die Vrystaat uit terwyl hulle 'n aantal vernederende koshuisinisiërituele in opdrag van vier wit manlike koshuisstudente moes uitvoer. Die video dryf die spot met die voorgestelde rasse-integrasie in koshuise en lei uiteindelik eers tot 'n kriminele en daarna 'n siviele hofgeding. Die hoofokus van hierdie studie is egter die daaropvolgende herstellende geregtighedsproses bekend as die Reitz Versoenings Proses. Hierdie studie bestudeer die Reitz Versoenings Proses aan die hand van 'n sosiaal konstruksionistiese vetrekpunt en 'n fokus op herstellende geregtigheid. Die doelwit met die studie is die loods van 'n kritiese ondersoek na die betekenis wat beide studente en werkers aan die herstellende geregtighedsproses verleen het om sodoende te bepaal of hulle die proses as herstellend beleef het. Omvattende kwalitatiewe onderhoude is met beide die studente en werkers gevoer en 'n tematiese benadering is gebruik om die data te analiseer. Die navorser bevind dat die studente deur hulle weiering om te aanvaar dat hulle optrede verkeerd was, hulle sodoende meer aandag aan hulle eie sogenaamde viktimisering verleen as aan die onreg wat die werkers moes verduur. Die verskoning wat die studente wel aangebied het is verder ook afgewater deur die ontkenning wat met die verskoning gepaardgegaan het. Die optrede van die studente is grootliks deur 'n stelsel van vooroordele, oortuigings en waardes wat oor geslagte heen aan hulle oorgedra is, beïnvloed. Hierdie waardes stem nie ooreen met die waardes en regte wat in die Suid Afrikaanse grondwet verskans is nie. In teenstelling met die studente het die werkers die Reitz Versoenings Proses as 'n proses van vergifnis, genesing en herstel beleef. Die navorser bevind dat die etiek van *ubuntu* die grondslag van die werkers se ervaring vorm. Die beginsels van *ubuntu* stem ook nou ooreen met die waardes van herstellende geregtigheid. Die kompleksiteit en implikasies van die bevindinge word uitgebrei in hierdie studie met die doel om 'n dieper begrip te kry van die moontlikhede vir die praktyk van herstellende geregtigheid in 'n hedendaagse Suid-Afrikaanse konteks.

Sleutelwoorde: Reitz-video; 'Wit' studente ; 'Swart' werkers ; Waardigheid; Reitz Versoeningsproses; Herstellende geregtigheid; Sosiale konstruksionisme; Kwalitatiewe navorsing; Ontkenning; Ubuntu.

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## **List of abbreviations and acronyms**

**RJC** – Restorative Justice Centre

**SAHRC** – South African Human Rights Commission

**SATRC** – South African Truth and Reconciliation Commission

**SLTRC** – Sierra Leone Truth and Reconciliation Commission

**UFS** – University of the Free State

**VOC** – Victim offender conferencing

**VOM** – Victim offender mediation

## **Glossary**

***Crimen iniuria*** - the South African common law crime of violating the dignity of another.

**Juggie** – Colloquial term for a concoction of unsavoury ingredients that is given to second year Reitz residents to drink as part of a residence initiation ritual.

**Mielie** – Afrikaans term for an ear of corn or maize that has been adopted as a colloquial South African expression.

**Squeezas** – Term used by the Reitz students and their contemporaries to refer to the UFS cleaning staff.

**Residence initiation** – A process whereby senior residents force new residents to complete a number of tasks or rituals to be officially admitted into the residence.

**Residence/ hostel** – Refers to on campus student accommodation that is provided and maintained by the university.

**Reitz residence** – The university residence where the four students were resident when they made the Reitz video.

## **Chapter 1: Introduction**

In 1994 South Africa held its first democratic elections which brought an end to an era of entrenched racial segregation known as Apartheid. In 1995 the newly elected democratic parliament passed the Promotion of National Unity and Reconciliation Act (1995) which set up a Truth and Reconciliation Commission (SATRC) to respond to the atrocities committed under the Apartheid regime. The SATRC was characterised as a restorative justice process, defined in Volume 1 of the SATRC Final Report (1998) as “a process which: (a) seeks to redefine crime (from breaking the law to violations against human beings); (b) is based on reparation (as it aims at the healing and restoration of all concerned); (c) encourages victims, offenders and the community to be directly involved in resolving conflict and (d) supports a criminal justice system that aims at the accountability of offenders, and the full participation of victims and offenders” (p.126).

Sixteen years after the SATRC was established another public restorative justice process was underway at the University of the Free State (UFS), this time in response to the dissemination of a shocking video. The video depicted four white university students showing a complete disregard for the dignity of a group of black university staff, a sight that did not belong in a well-established constitutional democracy founded on equality and dignity. The 2008 incident, labelled by the media as ‘the Reitz incident’, was widely publicised and it re-exposed deep and persistent divisions in South African society. Some saw the students’ actions as a deplorable violation of the dignity of the workers, while others dismissed the incident as a harmless prank. The legal response to the incident confirmed the former thread of public opinion and enforced the workers’ right to dignity. The justice process that followed included criminal proceedings, a separate civil case and finally a restorative justice process titled the ‘Reitz Reconciliation Process.’ The reconciliation process is the focus of this study.

The Reitz Reconciliation Process is an important case study for two key reasons. First, while restorative justice has found application in South Africa since the SATRC, there haven’t been any other prominent examples of a public restorative justice process attempting to address the healing and reconciliation needs of both those immediately involved as well as a broader affected community. Second, there equally haven’t been any contemporary examples of

restorative justice processes dealing with this particular kind of offence between young white wrongdoers and black wronged. In other words an incident perpetrated by university educated white second-generation post-Apartheid citizens, who would have only experienced the Apartheid regime as very young children and yet perpetrated a crime built on the ideology of that era. They are identified as second-generation post-apartheid citizens because the students and their parents will both spend the greater portion of their lives as citizens of post-Apartheid South Africa.

This is not to suggest that Reitz is an isolated incident. There were cases prior and some that have happened since of young white South Africans enacting values that are twenty years outlawed. It must also be mentioned that there have been racialized incidents on campus perpetrated by black students against white students. The most recent racially charged incident that took place in February of this year where two white UFS students physically attacked a black student on campus. The perpetrators were expelled and criminal charges have been laid against them, while the injured student is claiming damages from the UFS. These incidents illustrate that second-generation prejudice is powerful and pervasive and it needs to be addressed. This study will explore restorative justice as means of engaging these and other issues that manifest as a result of South Africa's persistent past.

## **1.2 Background**

This section synthesizes information from various sources, including official documentation, media sources, video recordings and interviews, to provide a comprehensive account of the Reitz affair. Of particular use in this section was data gathered during interviews with four institutional representatives who were not only intimately involved with the Reitz affair from beginning to end, but who were also able to provide valuable historical and contextual information.

The purpose of this background section is to give the reader a clear sense of the context within which this study is operating and the key stakeholders involved. The theoretical underpinnings of this study suggest that there are multiple constructions of what happened, and that all of these versions have value to those who constructed them. In other words there isn't a single account that should be given prominence over others. However, for the purposes of clarity, this section offers the researcher's construction of the Reitz affair which draws on an array of relevant sources.

For the purposes of confidentiality, pseudonyms have been assigned to each of the participants. These pseudonyms are used throughout the study. To further protect participants the researcher has also tried to exclude any personal identifiers. There is a full discussion of this in section 3.8 of Chapter 3.

In February of 2008, on the Bloemfontein campus of the UFS, a ten minute video was released that sparked local and international outrage. The video had been made six months prior by four white male university students and it depicted five black UFS cleaning staff re-enacting a number of residence initiation rituals. The media labelled this event ‘the Reitz incident’, after the Reitz residence where the four students resided when making the video. The video can still be found on YouTube (Reitz Video Bloemfontein, 2008).

The video was made in September of 2007 to be shown at the Reitz residence cultural evening. This was an annual talent show event during which each dorm room in the residence would perform something on stage before an audience of their fellow residents. The tradition was that each resident would bring a date to the event. Senior students were given the option of preparing and showing a video clip if they preferred not to perform on stage in person, and this was the option chosen by Ruan, Jaco, Stefan and Marius. They were seniors at the time, sharing a Reitz residence bungalow on campus, and for the cultural evening they decided to make a video featuring five of the university cleaning staff. The five who were involved were Florence, Patricia, Dina, Lindi and William.

The students and workers had known one another for some time prior to the incident and had often interacted on campus. The students and workers however, construct the nature of their relationship very differently and also give differing accounts of how the workers came to be involved in the video. These two components are discussed in the analysis section of this study, which can be found in Chapter 4.

In the video the workers re-enacted a number of residence initiation rituals at the instruction of the students. These included downing alcohol, dancing, running a race, playing rugby and drinking a concoction in which the students had allegedly urinated. According to the students, each of these activities was integral to Reitz culture. The last ritual in particular, which was known as the ‘juggie’, was required of all second year students before they could be accepted into the residence.

The video is narrated as a parody of the proposed integration of university residences. This is communicated in the opening line of the video in which one of the students states that “once upon a time the ‘boere’ (white Afrikaners) lived happily here on Reitz island until one day the previously disadvantaged people found the word integration in the dictionary. Reitz was then forced to integrate.” The students go on to explain in the introduction to the video that due to forced integration they decided to have their own selection process, to determine which of the ‘squeezas’ (cleaners) will win the right to be integrated into the residence.

On the evening of the cultural event, the video was shown to all the Reitz residents and their respective dates, many of whom were also residents on the UFS Bloemfontein campus. The video won the top award of the evening and for some time afterwards the students shared the video with friends and acquaintances in other residences. The students also showed a version of the video to two of the workers, however this version excluded a number of scenes including the scene where the students make the concoction for the workers to drink.

Over the next few months, after the video was made and before it was released to the public, Ruan and Stefan graduated and left campus while Jaco and Marius stayed on to complete their final year of study. Florence, Patricia, Dina, Lindi and William carried on with their work at the university, until February of 2008 when the video was discovered by members of the broader university community and disseminated on campus. The day it was released the video was played on the campus televisions in the university cafeteria and once the media became involved the video was broadcast to the rest of South Africa and the world. Within hours of its release Jaco and Marius were expelled from UFS and the workers were given leave from their jobs.

To contextualise this event it is necessary to consider the transformational initiatives that were taking place on the UFS campus around the time of the incident, and in the years prior. Since the mid 1990’s the UFS has been involved in a process of transformation. This process included a number of unsuccessful attempts at racially integrating the campus residences at the undergraduate level. Each of these attempts had been met with fierce resistance from the student body leading to heightened racial tension and in some cases incidents of violence. During this time of unrest the Reitz residence had received a reputation for being particularly problematic and by the time the Reitz video emerged there had already been three commissions of enquiry into this residence. All three commissions had recommended that the

residence be permanently closed, and all three recommendations had been rejected by UFS management.

Due to the disruption caused by previous attempts at residence integration, UFS management decided not to move forward with any further attempts until 2007 when a new Vice-Rector of Student Affairs was appointed. At this time a decision was taken by UFS management that residences could no longer be segregated along racial lines, and a policy of racial integration was confirmed to begin in 2008. This decision was not well received by the students and the objections that ensued culminated in two main incidents. In the first, residents participated in a violent protest that caused extensive damage to UFS property and in the second, which occurred just a few days later, the Reitz video was released.

Directly after the public release of the video, the UFS took internal action to deal with the incident. The students were expelled with immediate effect and UFS top management met with the workers to discuss the incident. However, as national outrage increased, external parties became involved. A Ministerial Committee was established to look into transformation in higher education and the South African Human Rights Commission (SAHRC) became involved and offered to represent the workers. The workers accepted assistance from the SAHRC who took on their case and formulated a multifaceted plan to address the human rights violation perpetrated by the students. This approach included both a criminal component between the state and the students, to determine guilt and punishment, and a separate civil component whereby the workers made a claim against the students and the UFS for damages.

In 2009 a criminal case was opened in the Bloemfontein Magistrates Court against the students for the crime of *crimen iniuria*. This crime is defined under the South African common law as the act of “unlawfully intentionally and seriously impairing the dignity of another” (Meintjies-Van der Walt et al., 2008, p.467). Before the criminal case was heard there was a mediation attempt, as is the precedent for *crimen iniuria* cases. Mediation was unsuccessful and in July of 2010 the students pled guilty to the crime for which they were charged. They each received a R20 000 fine or a twelve month prison sentence, and the judge gave them an additional 6 months prison sentence suspended for five years on certain conditions. The case was later taken on appeal to the Bloemfontein High Court and in June of 2011 two of the students had their fines reduced to R10 000, and the other two to R15 000 (Van der Merwe and Others v. State, 2011).

A few months before the students were sentenced, Professor Jonathan Jansen was inaugurated as the new Rector and Vice Chancellor of UFS. In his inaugural speech in October of 2009, he publically apologised to the workers and offered forgiveness to the students, stating that the university would drop all charges and that students could return to UFS to complete their studies. While none of the students accepted Professor Jansen's offer to return, this speech signified the beginning of a powerful era of transformation at the UFS and thus became an important part of the Reitz story. His announcement was also the cause of outrage amongst certain communities (Jansen, 2009b).

As the criminal proceedings of 2010 were drawing to a close, civil proceedings were initiated in the Equality Court. The SAHRC, on behalf of the workers, claimed damages from the students and UFS and in February of 2011 the Equality Court confirmed an out of court settlement which consisted of four main conditions. First that a public apology be made by the students and the UFS to the workers, second that a pecuniary tribute (an undisclosed monetary amount) be paid by the UFS to each of the five workers, third that job security be provided by the UFS to each of the five workers and finally the establishment of a Human Rights institute on campus. A two day event titled the 'Reitz Reconciliation Process' was then structured around the public apology requirement of the settlement.

The Reitz Reconciliation Process took place on 24 and 25 February, 2011 and it is the students' and workers' experiences of this process that are the focus of this study. The process consisted of a public and private component, both of which were held on the Bloemfontein campus of UFS. On the evening of 24 February a private trust building meeting was held in a small meeting room adjoining the Rector's office in the main building. The meeting was held between the four students and five workers with the assistance of a facilitator. However, before the main meeting began, Florence and Lindi requested one-on-one meetings with Stefan and Jaco respectively. After these one-on-one encounters had taken place all five of the workers engaged in face-to-face dialogue with all four of the students, in a meeting that went on for a few hours. During this meeting the students apologised to the workers who accepted their apology and responded with forgiveness.

After this meeting the students and workers moved to another room where the workers' families were waiting along with a number of other select individuals from the SAHRC and UFS top management. During this gathering the workers introduced their family members to the students and those family members who wanted to speak were given the opportunity. One



of the students also spoke and explained to all present what had taken place at the private meeting. Following this a meal was served and shared amongst all present.

On the following day a human rights seminar was held and then later that evening the Public Reconciliation Ceremony took place. The ceremony was attended by approximately three hundred invited guests, and the programme included various speakers and entertainment pieces. During the ceremony a member of UFS top management offered a public apology to the workers on behalf of the university. This was followed by a public apology from one of the Reitz students on behalf of the group (see Appendix E). Two of the workers stood up and responded to these apologies on behalf of the group, giving the students and the university their forgiveness. The end of the public ceremony brought an end to the reconciliation process and at the time that this study was conducted the students and workers had not seen or spoken to one another since that evening on the 25<sup>th</sup> of February 2011. Below is the timeline that summarises the events discussed in this section.

### **1.2.1 Timeline of events**

#### September 2007

- The Reitz video was made and shown at a residence cultural evening.

#### February 2008

- The Reitz video was disseminated to the public.
- The four students responsible were expelled from the UFS with immediate effect.
- The five workers were given leave from work.

#### July 2008

- The Reitz residence was closed.

#### October 2009

- Professor Jonathan Jansen was inaugurated as Rector and Vice Chancellor of UFS.

#### July 2010

- The four students plead guilty to *crimen iniuria*.
- The students were sentenced to a R20 000 fine each or twelve months in prison.
- Civil proceedings were initiated by the SAHRC on behalf of the workers.

#### August 2010

- The students were granted leave to appeal their sentence.

#### January 2011

- The International Institute for Studies in Race, Reconciliation and Social Justice was opened on the UFS campus, now the Institute for Reconciliation and Social Justice.

#### February 2011

- The Equality Court confirmed an out of court settlement.
- The Reitz Reconciliation Process took place.

#### June 2011

- The students' sentences were reduced

### **1.3 Definitions**

Before outlining the research objectives of this study it is instructive to provide a few key definitions of concepts that are integral to this study. While all of the mentioned concepts will be discussed at greater length in the body of the study, these brief definitions will help the reader locate the study within a broader body of research.

#### **1.3.1 Restorative justice**

The restorative conception of justice views crime as a violation of people and relationships. Thus crime is understood as something that affects not only those directly involved but a broader community as well. On this basis justice requires that the wrongdoer, wronged and the affected community are all involved in a collective effort to repair the damage and restore relationships (Zehr, 2002). Those wronged should be given the opportunity to have their needs met through mechanisms such as dialogue and restitution, and wrongdoers should be encouraged to take ownership of their role in the process by accepting responsibility for their actions (Umbreit & Coates, 2000).

#### **1.3.2 Conventional criminal justice (retributive justice)**

Most conventional criminal justice systems are underpinned by a retributive conception of justice. This approach conceives of crime as a violation of the law and the state and on this basis justice requires that the state determines guilt and imposes punishment on the offender (Zehr, 2002).

#### **1.3.3 Social constructionism**

A theory of knowledge based on the understanding that individuals develop meaning and construct knowledge in relationship with others, through daily interaction, in particular social, historical and political contexts (Gergen, 1999).

### **1.3.4 Ubuntu**

An ethic or philosophy most commonly defined using the phrase “a person is a person through other persons” (Agulanna, 2010, p.287). Ubuntu is based on the idea that one’s own humanity or personhood is intimately connected with the humanity of others. This means that it is only in the community of other human beings that the life of the individual can have meaning (Agulanna, 2010).

### **1.3.5 Dignity**

In South Africa, dignity is one of the founding values of the Constitution and it is also an enforceable right (Constitution of the Republic of South Africa, 1996; Reyneke, 2011). *Crimen iniuria* is the South African common law crime of “unlawfully, intentionally and seriously impairing the dignity of another” (Meintjies-Van der Walt et al., 2008, p.467).

### **1.3.6 Reparations**

Reparation for an injustice can be understood as the action or process of making amends for a wrong one has committed. Reparations can be symbolic, for example the wrongdoer apologising to the wronged, or material, for example monetary compensation, or both. In a restorative justice context, reparations are generally required to include both symbolic and material components (Walker, 2006).

## **1.4 Research objectives**

This study does not investigate or evaluate the way the UFS dealt with the incident, the perspectives and opinions of the broader community or the details of the criminal case. This study focuses on the experiences of the four students and five workers who were directly involved in the Reitz affair. And more specifically, this study explores their experiences of the Reitz Reconciliation Process.

In this study the Reitz Reconciliation Process is conceived of as an exercise in restorative justice. The research questions and objectives are framed within this restorative justice framework and informed by the theory of social constructionism. This theoretical position, which understands meaning to be constructed by individuals through their daily interactions with others, supports the researcher’s choice to explore the Reitz Reconciliation Process through the meaning that the students and workers assign to their experiences of it.

The aim of this study is to explore whether the meaning that the workers assigned to their experiences of the Reitz Reconciliation Process, aligns with the desired restorative outcomes

of the restorative justice process, and why. On this basis, the research question asks: Did the Reitz students and workers experience the Reitz Reconciliation Process as restorative and why? This question is explored by way of three core sub-questions.

- Did the workers, in their capacity as the wronged party, feel that the Reitz Reconciliation Process was able to address their needs, enabling them to heal?
- Did the students, in their capacity as the wrongdoers, feel that the Reitz Reconciliation Process was able to address their needs, enabling them to take responsibility for the wrongfulness of their actions?
- Was the Reitz Reconciliation Process able to restore the student's and worker's relationship to an ideal of social equality, enabling them to coexist in the same community with equal dignity and respect?

The purpose of these questions is to structure an investigation into the elements of the process that the students and workers constructed as most meaningful. To guide this investigation, the sub-questions are supported by two main objectives. The first is to gain insight into the impact of cultural differences on the students and workers experiences of the Reitz Reconciliation Process. The second is to gain insight into the role of the students' apology in the students' and workers' construction of the process. Implicit in this second objective is the intention to explore the relationship between apology and forgiveness and the relationship of reparations to this exchange.

In the process of exploring these research questions and objectives, the researcher used qualitative methods to gather and analyse the data. There is a dearth of in-depth qualitative exploration into participant accounts of restorative justice processes and in the words of Choi, Green and Gilbert (2011) "due to a lack of participants' accounts on their experiences, gaining knowledge on how restorative justice works from their perspective is critical, especially to further development of justice policy and practice" (p.342). This illustrates one of the contributions this study has to make to existing knowledge in the field.

### **1.5 The broader significance of this study**

At the core of South Africa's constitutional democracy is the South African Constitution (1996). This document embodies a new moral baseline for the country, founded on the notion of equality and dignity for all. The challenge is that some factions of South African society are still struggling to assimilate this new baseline into their lives. These factions are impeding

South Africa's ability to reach a place of mutual respect and to achieve a shared sense of 'right' relationships.

Adding to this concern, as reflected in the Reitz incident, is that a constituent of these factions are young white university students, from a second generation of post-Apartheid citizens. In other words there is a generation of young white South Africans reinforcing beliefs and values of an Apartheid regime they only experienced as very young children. In acting on these beliefs these individuals are breaking the law and yet as will be discussed in this study, those same beliefs don't allow them to perceive their actions as wrong. The question then becomes how do you address these pervasive beliefs and can restorative justice principles assist with this challenge?

The Reitz Reconciliation Process offers an opportunity to explore the implementation of restorative justice principles in a contemporary South African context. This study seizes that opportunity, using a restorative justice lens to gain insight into the deep brokenness that continues to plague this country and explores how it might, over time, be healed.

Before moving to the body of this study there are three things that need to be stated. They will be mentioned here in brief, however they are at the core of this research. First, this process of learning is not about judgement, it is about engagement. Second, the issues that emerge are human and they are shared. Third, this study requires that everyone who interacts with this research is aware of their own position in the story.

## **Chapter 2: Theoretical framework and literature review**

### **2.1 Introduction**

This chapter contains an in-depth discussion of the theoretical framework that underpins this study as well as a review of the literature relevant to the research topic. The theoretical framework, the lens through which the literature will be contextualised and interpreted, is informed by two distinct and complementary theoretical positions. The first is social constructionism, which challenges the existence of a single reality that can be objectively observed, and the second is the theory of restorative justice, which conceptualises crime and justice in a particular way. Restorative justice is the lens through which the researcher conceptualises the Reitz incident and subsequent reconciliation process and social constructionism is the theoretical position that underpins the researcher's interpretation of the meaning that the students and workers assign to their experiences of the Reitz Reconciliation Process.

The literature review, which follows on from the theoretical framework discussion, contextualises this study within a broader body of scholarship. It covers relevant scholarly work in the area of restorative justice theory and practice, and explores some of the significant developments, both nationally and internationally. Within this broader body of work, the researcher will also critically interpret specific literature on apology, reparations and the African ethic of Ubuntu. The purpose of this review is not only to engage the contributions of major studies but also to identify significant gaps and inconsistencies in the literature, so as to justify the research questions investigated in this study.

### **2.2 Theoretical framework**

The following two subsections, 2.2.1 and 2.2.2, will discuss key elements of the theoretical framework that underpins this study. A theoretical framework can be characterised as the philosophical basis upon which the research takes place, and thus it forms the link between the theoretical and the practical components of the study. As Burr (2003) explains, the theoretical framework is implicated in every decision made in the research process. This makes it vital that the researcher is clear about the underlying assumptions she brings to the research, specifically those relating to the nature of reality and knowledge production.

Theories are formulated to explain, predict and understand phenomena. In many cases they also help researchers challenge and extend existing knowledge within the limits of certain critical bounding assumptions. The theoretical framework is the structure that can hold or

support the theory of a research study. In the case of this study, social constructionism is the theoretical framework that informs interpretation and supports the theory of restorative justice which is used as the lens through which the research problem is approached. Social constructionism and restorative justice theorize at different levels, however as will be discussed they are fundamentally complementary approaches.

The following sub-sections will discuss each of these two theoretical approaches in turn.

### **2.2.1 Social constructionism**

Constructivism, with a 'v', operates on the assumption that individuals construct meaning through their individual perceptions of reality. Constructionism develops upon this foundation to suggest that reality is derived from meaning constructed by individuals within a particular context (Zimmerman & Dickerson, 1994). And social constructionism, Gergen (1999) argues, is one of five variants of constructionism.

Burr (2003) explains that the fundamental differences between constructivism and social constructionism are twofold. The first difference lies in the extent to which the individual is seen as an agent who is in control of the construction process, and the second is in the extent to which our constructions are the product of social forces, either structural or interactional. Social constructionism centres around the influence of social relationships on the construction of reality, and the constructive force of language is taken as a principle assumption. In other words it is built on the understanding that people construct knowledge between them, by way of their daily interactions, using the categories and concepts of language as a framework of meaning. Gergen (1999) explains this saying that individuals develop meaning in relationship with others through daily interactions in particular social, historical and political contexts. As such meaning is understood to be bound by and a product of social context.

On this basis, reality is believed to be constructed through the shared meaning that individuals assign to their experiences within their specific social context. Social constructionism therefore rejects the existence of a single reality that can be objectively observed and as such challenges the positivist notion that the nature of the world can be revealed by observation. Thus the purpose of social constructionism is to understand the way in which different meanings and realities are constructed between people in particular contexts (Burr, 2003).

In this study, social constructionism is the lens through which all aspects of the research process are conceptualised and applied. In other words social constructionism reflects the stance of the researcher in all key research decisions and it also locates the research as part of a larger body of theoretically positioned research. As an example of this framework in practice, when structuring this research the researcher approached the Reitz Reconciliation Process with an understanding that context would inform the shared constructions of meaning. In other words the process may well be constructed in more than one way. This directed an inquiry to the literature to determine which of the potential participants would be able to contribute to a justifiable and relevant process of knowledge construction in the specific research context, as informed by the theory of restorative justice. This illustrates how in the early stages of the research process, social constructionism underpinned the researcher's approach to selecting, interpreting and reviewing relevant literature, in turn informing the selection and justification of who to include in the study. The literature review follows in section 2.3 and a more detailed discussion of the research choices can be found in Chapter 3 which focuses on methodology and research design.

The theory of social constructionism also informed the boundaries and limitations of this research in two key ways. First, social constructionism suggests that the only abiding feature of social life is that it is continually changing (Burr, 2003). This suggests that a researcher can only try and understand an account for how the world appears at the time of the study. This confines the researcher to only explore the realities constructed during the research process, remaining aware that these constructed realities may well change and develop over time. Second, social constructionism often presents researchers with an array of potential participants, in that one group of participants may construct meaning around an event in a context that differs from that of another group. As mentioned above, this requires the researcher to make certain choices about whose experiences are most relevant to the study. In the case of this research, the researcher used the theory of restorative justice to choose the experiences of the students and workers directly involved in the Reitz Reconciliation Process as the research focus. This meant delineating a specific set of constructed realities and exploring the meaning used to construct them and the context within which they were produced, to construct new knowledge around the Reitz Reconciliation Process. On this basis the researcher excluded valid constructions of the Reconciliation Process that did not serve the specific research purpose.



Implicit in the discussion thus far, and central to the theory of social constructionism, is the belief that the researcher is central to the construction of knowledge. He or she co-constructs knowledge with the researched, within a particular context, and thus is an active player rather than an objective observer in the research process. On the basis of this understanding, social constructionism requires that the researcher remains aware of the inter-subjectivity between herself and the research participants, remaining mindful of how it influences the analysis process (Dowling, 2006). An in-depth discussion of reflexivity, as relevant to this study, can be found in section 3.7.

Social constructionism is a valuable theoretical framework in the context of this study for three main reasons. First, social constructionism provides for different constructions of social phenomena and thus provides for a full and in-depth exploration of the students' and workers' different experiences of the Reitz Reconciliation Process. It doesn't seek to achieve a single objective account or 'common understanding' of the Reconciliation Process but rather recognises the influence of social, historical and political context. The social constructionist framework allows the researcher to engage the narratives of the students and workers in all their complexity, learning from the tensions and inconsistencies rather than trying to eliminate them. Second, many of the questions around the Reitz incident and reconciliation process are linked to complex and contested constructs such as justice, reconciliation, dignity, trauma, and racism. Social constructionism provides a framework within which these challenging constructs can be unpacked and explored for what they mean within the specific research context. Finally, the theoretical orientation of social constructionism is well suited to the application of the theory of restorative justice. Restorative justice is the specific theoretical lens through which the Reitz Reconciliation Process is constructed and explored and social constructionism provides a suitable framework within which to do this. The following section will discuss the theory of restorative justice in more depth, teasing out the main components of the theory and illustrating how they are applied in this study.

### **2.2.2 The theory of restorative justice**

The conventional notion of justice as retributive, presents some interesting challenges when framed using social constructionism. As a general starting point, retributive justice is based on the assumption that there are certain actions that can be objectively determined as wrong. In the occurrence of a wrongful act the conventional criminal justice system is required to gather and judge accounts of the act to determine the facts of what occurred and decide the

fate of those involved accordingly (Zehr, 2002). Thus the court is responsible for discovering what happened, based on the belief that there is one objective reality to be known, and as such it could be argued that conventional theories of justice are underpinned by a positivist theoretical framework.

A social constructionist framework challenges many of these underlying assumptions, for example by suggesting that crime is a construct rather than an objective fact. As will be discussed below, restorative justice also emphasises the importance of people's experiences of wrongdoing over the facts of a crime and restorative justice is, by its very nature, a conception of justice that differs from conventional notions of justice and it challenges the retributive theory of justice which underpins most conventional criminal justice systems (Llewellyn & Howse, 1998). This section will explore the core components of the theory of restorative justice, illustrating how it is positioned within a social constructionist framework to inform this research study.

There are a number of fundamental differences between restorative justice and the more widely recognised retributive justice. One of the core variances is that restorative justice conceives of wrongdoing as a violation of interpersonal relationships that needs to be addressed rather than the violation of a criminal law that needs to be punished (McNamara & Dhimi, 2003). On this basis restorative justice fundamentally requires that all key stakeholders should be involved in collectively addressing and repairing the harm caused by the offence. Further details of the different restorative justice definitions presented in the literature will be discussed in the literature review, this section however, concentrates on the theory of restorative justice and its core components.

The characterisation of restorative justice as justice is significant because in the past the phrase has been used as a catchall for any alternative practices to those used in the conventional legal justice system. As a notion of justice, restorative justice is bound to address recognised claims of wrongdoing and thus is not applicable to all incidents that require conflict resolution. That said, in the context of restorative justice the boundaries of wrongdoing are defined by the society in question which means that the scope of restorative justice can and often does extend beyond dealing exclusively with incidents defined as crimes.

In their work titled "Restorative Justice – A Conceptual Framework", Llewellyn and Howse (1998) provide one of the most comprehensive accounts to date, of what they label the theory

of restorative justice. It is their specific conception of the theory that underpins this study and their insights into the core theoretical assumptions of restorative justice are drawn on extensively in this section.

As a starting point, restorative justice operates on the basis of two core sets of values. These are process values, which address the quality of the restorative process, and individual values which focus on promoting the nurturing of individuals. Process values guide restorative justice practice and ensure that restorative justice processes occur in an environment that supports the values of respect, honesty, humility, mutual care, accountability and trust. Individual values serve to encourage individuals to act with respect, honesty, accountability, compassion and patience (Pranis, 2007). These values suggest that when researching a process through the restorative justice lens it is important to consider not only values guiding the process itself but also values drawn on by the individuals involved in the process. This underpins a central strand of inquiry in this research, which asks about the relationship between the pre-existing value systems drawn on by the stakeholders and core values of restorative justice. Some of the questions that arise are: is it necessary for these two value systems to align in order for a process to be truly restorative? And what happens when a stakeholder's value system stands in direct contrast with the restorative values mentioned above?

Developing upon the foundation of these two sets of values, there are three broad defining elements which are central to the theory of restorative justice. First, as a theory of justice, restorative justice is inherently relational and founded upon the understanding that "human selves exist in and through relationships with other selves" (Llewellyn & Howse, 1998, p.39). Through this relational lens wrongdoing is framed not as a violation of the law but rather as harm caused to social relationships. This illustrates how the theory of restorative justice is receptive of a social constructionist conception of crime and it also illustrates how the Reitz incident was perceived within the study context.

Unlike other conceptions of justice, the goal of restorative justice is not to restore relationships to the way they were before the wrong occurred. Restorative justice rather aims to restore social relationships to an ideal of social equality on the understanding that it was inequality within the pre-existing relationship that caused the wrong. Social relationships are understood to be those between individuals, groups and communities informed by the societal, cultural and historical context within which they are formed. Restorative justice

understands that these relationships are all interconnected and thus assumes that wrongdoing caused by inequality in one relationship, is likely indicative of widespread inequality in the society in question (Llewellyn & Howse, 1998).

In applying this theoretical lens to the Reitz affair, the researcher was required to explore the nature and quality of relationships between different groups within the UFS context, as located within the broader contextual dynamics of Bloemfontein and South Africa. On this basis the researcher aimed to determine the extent to which the Reitz Reconciliation Process, in the experience of the students and workers, was able to restore their damaged relationship to an ideal of social equality. Had the researcher used a retributive or redistributive theory of justice, the focus would have been on whether or not the justice process was able to restore the *status quo ante*, in other words returning the students and workers back to their respective positions before the wrongdoing had taken place.

Linked to this acknowledgement of the relationship between individual cases of wrongdoing and broader social inequality, the second core component of restorative justice theory deals with facilitating broader social transformation. The goal of restorative justice is ultimately to restore social relationships to a situation whereby all the individual stakeholders are respected as equal members of society by society. Society in this context refers to a national community, as built of individuals, groups and communities (Llewellyn & Howse, 1998). In other words stakeholders should be able to coexist with equal dignity and respect within the same community. Using the restorative justice lens, this study explores whether the students and workers felt they had been restored to a position of equal dignity and respect within the same community and investigates what they identified as some of the important components of this experience. The researcher also considers the nuances of restorative justice in a highly divided society or community, and how this may impact on experiences of equality.

Incorporating this component of broader social transformation requires that restorative justice theory promotes context sensitive restorative practices. In other words restorative justice does not force situations to fit theory; rather it remains flexible and responsive to different contextual needs. This is the third core component upon which the theory is built and in this study it means a consideration of whether or not the Reitz Reconciliation Process was able to recognise and embrace the specific and different restorative needs of the students and workers involved, as relevant to their context. This asks whether the restorative practices decided upon were deemed appropriate by the stakeholders themselves.

A challenge that presents itself in the South African context, as raised above, is when the stakeholders themselves, and their respective communities, are divided on the very values that should be used to determine appropriate restorative practices. This broader question guides the analysis process in this research study, which illustrates how the researcher used the theory of restorative justice to tease out particular tensions in the application of restorative justice principles in a contemporary South African context.

The context dependency of restorative justice practices means that there is no set procedural model of restorative justice against which processes can be measured. However, there are a number of guiding features a process should include to be considered restorative, all of which are informed by the three components discussed above. At the fundamental level all restorative processes should be underpinned by a commitment to human connection over isolation. Restorative processes should bring together all those with a stake in the relevant incident, ensuring the equal and active participation of all of these parties. The stakeholders in a restorative justice process are all those party to the relationship damaged by the wrongdoing in question, most often categorised as wrongdoer, wronged and the community. Ideally these parties are brought together voluntarily, to explain the harm they experienced and participate in a discussion of how best to repair the harm and restore the damaged relationships. This face-to-face encounter is the context within which everything else happens. It should enable all stakeholders to relay their experiences with the goal of reaching an inter-subjective account of the wrong (Llewellyn & Howse, 1998). The researcher uses each of these theoretical components to guide the key facets of this research exploration.

This section and the one preceding it have helped explain the researcher's theoretical stance in this study. Social constructionism is the theoretical framework within which this study has been conducted, and it has informed the way in which the researcher has approached the process of meaning construction. Positioned within this broader theoretical framework, the theory of restorative justice has been used to structure the exploration of the students' and workers' experiences of the Reitz Reconciliation Process. This is the theoretical stance from which the researcher critically engages the relevant literature as discussed in the following section.

### **2.3 Literature review**

This review will present and critically interpret literature relevant to the research topic. The purpose of the review is to provide a scholarly context within which the research is being

conducted so as to make clear how the research will contribute to the production of knowledge in a particular domain. The researcher will explore key trends, areas of contestation and gaps in the literature, clearly illustrating how the findings of this review inform and justify the research questions.

This literature review will mainly cover scholarly work in the field of restorative justice, including the three main voices of theory, practice and research. The review will start with an exploration of restorative justice definitions, followed by an investigation of research trends in the scholarship and will then move to consider the development of restorative justice in a specifically South African context before focussing on various topics relevant to the Reitz Reconciliation Process. These topics include cultural diversity, apology, forgiveness, Ubuntu and reparations. The researcher will critically explore how each of these topics or themes take position in the restorative justice literature, exploring some of the key gaps and unanswered questions that emerge. The review will then close with a critical interpretation of the limited body of literature dealing specifically with the Reitz incident, before finally synthesising the findings into a summary of what is known and what is not known, so as to justify the formulation of the research questions.

As discussed in the previous section, this study will focus on the students' and workers' experiences of the Reitz Reconciliation Process, as informed by the theory of social constructionism and the restorative conception of justice. The literature review is organised around this research focus and will develop the specifics of this study accordingly.

### **2.3.1 Defining restorative justice**

Defining restorative justice is no easy feat and even its origins remain contested. As seen in the literature restorative justice can be framed as many things including a movement, paradigm, a model, an approach, an alternative or a concept, making it challenging to reach consensus on a single definition. Some scholars use the lack of a generally accepted definition to argue that restorative justice defies definition. They claim that to define restorative justice would be to limit the concept to a particular context or application and thus its parameters should be left undefined. The problem with this is that it increases the risk of restorative justice being applied in ways that are not really restorative. This section explores the work of scholars who have tried to define restorative justice and considers the strengths and weaknesses of these attempts.

In terms of the origins of restorative justice, respected authors in the field Howard Zehr and John Braithwaite, follow a historical perspective. This view proposes that forms of restorative justice predate the current criminal justice system and thus have simply been revived in recent years. For the purposes of this review, the focus will be on the development of contemporary restorative justice over the last three decades. The researcher will critically unpack certain key moments in the evolution of restorative justice, in support of a contextualised understanding of the contemporary literature.

As mentioned there isn't yet one definition that has achieved consensus, however Marshall's (1999) definition is one of the most cited in the contemporary literature. He describes restorative justice as a "process whereby all the parties with a stake in a particular offence, come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (p. 7). This definition highlights some of the most recognised aspects of restorative justice, which include the active participation of all stakeholders, the necessity of a face-to-face encounter, and the importance of a resolution orientated towards the future.

The involvement of all stakeholders and the importance of a face-to-face encounter, are widely accepted in the literature as significant elements of any restorative justice process. Presser and Van Voorhuis (2002), as well as McNamara and Dhimi (2003), explicitly incorporate these elements into their definitions. However, these authors differ from Marshall (1999) in that they place a more decisive emphasis on the relational element of restorative justice, something that is noticeably missing from Marshall's (1999) definition. His definition is indicative of the earlier generation of restorative justice scholarship which did not explore the relational considerations in any great depth.

As McNamara and Dhimi (2003) explain, restorative justice conceives of crime as a violation of interpersonal relationships, rather than an offense against an individual. This is built on the understanding that even if stakeholders had no previous relationship, the crime creates a hostile relationship that affects the wellbeing of those parties. Thus the encounter is more than a face-to-face meeting; it is a relational moment of engagement. Different authors foreground different sets of core principles in terms of this engagement. Presser and Van Voorhuis (2002) consider three important core processes. These include dialogue, relationship building and communication of moral values, all of which focus on the important elements of interaction between stakeholders. Each of these processes has an important role

to play in the transformation of relationships, however this aspect is not explicitly discussed by Presser and Van Voorhuis (2002). It is disappointing that their analysis does not take this into account in that the core processes they mentioned are essentially the building blocks for the transformation of social relationships as referred to by Llewellyn and Howse (1998).

Of all scholars included in this literature review, Llewellyn and Howse (1998) were the only to acknowledge and discuss this transformational element of restorative justice. They explain that the goal of a restorative process is not to restore stakeholders to their pre-crime circumstances, but rather to transform relationships to an ideal state of social equality. The reason for this, they argue, is that it was the inequality of the initial relationship that enabled the offence, making transformation necessary. Pre-existing social inequality is integral to any consideration of crime or justice in a South African context, and most likely in other contexts as well, thus there needs to be further scholarly development on the theoretical contribution of Llewellyn and Howse (1998).

In two recent studies investigating the different forms of restorative justice, authors found that the most common were victim offender mediation, family group conferencing and healing or peace circles (Choi, Green & Gilbert, 2011; Dancig-Rosenberg & Gal, 2013). These programme models differ primarily on the basis of those defined as key stakeholders and the level of community involvement. For example while victim offender mediation is an intimate encounter between the victim, offender and a mediator, family group conferencing includes the victim and offender, their communities of support, community representatives and professionals. Healing circles are most often used in indigenous communities and include the entire community as well as spiritual and traditional elements. Both the mentioned studies draw on an extensive range of empirical work and thus present well supported findings about the differing forms of restorative justice.

The findings of these studies illustrate that there is no set model for restorative justice. The forms they reference speak to some of the main trends in restorative justice practice, however they are by no means an exhaustive list of what can or has been done. The Reitz Reconciliation Process doesn't fit neatly within any of the three main models which is why it is necessary to investigate the relevant details of the process within its specific context, rather than simply assuming to understand how the restorative justice principles have been applied.

With regards to the question of what constitutes a restorative process, practitioners and scholars often make reference to a continuum of restorative justice. Not many offer clarity on



how this continuum operates in practice, however Skelton and Batley (2006) offer some helpful questions for assessing the degree of “restorativeness” in practice. They include the following: does it address harms and causes, is it victim orientated, are offenders encouraged to take responsibility, are all three stakeholder groups involved, is there an opportunity for dialogue and participatory decision making and is it respectful to all parties. This study is one example of a very limited body of published research that focuses on restorative justice in the South African context. Thus while the international applicability of their contributions may be questioned, their findings are very valuable in the context of this study.

### **2.3.2 Significant research trends in the restorative justice literature**

The variety of restorative justice programme models and the lack of a single accepted definition, as discussed above, provide space for some contention in the literature. These areas of contention can be framed within a number of recognisable research trends that have emerged through the development of the restorative justice scholarship over the years. One of the main drivers of development in the restorative justice field is the relationship between the retributive conception of justice, used in most conventional criminal justice systems, and the restorative theory of justice. Thus as a starting point it is helpful to consider how opinions about the nature of this relationship have shifted over the years.

Although Albert Eglash is believed to have coined the term ‘restorative justice’ in 1977, it is Zehr who is accredited with creating the first comprehensive account of restorative justice in the late 1980s. Zehr (1990) introduced the theory of restorative justice using particular foundational language and ideas, which shaped the way early advocates discussed it. One of the main components of Zehr’s (1990) account is the way he positioned restorative justice as an alternative justice paradigm, opposed to the principles of retributive justice and operating independently of the criminal justice system. He highlighted a number of key differences between restorative justice and the retributive approach, however there was one main reason given at this time for not being able to reconcile these two conceptions. This was that retributive justice prioritised elements of public interest over the needs of the individual stakeholders and thus focussed too exclusively on the public aspects of crime. While Zehr’s (1990) early work is seminal in the restorative justice field, his approach of constructing restorative justice in opposition to other justice paradigms quickly became dated and was replaced by a more nuanced understanding of these relationships.

When Zehr introduced restorative justice in the late 1980s people were engaging with it for the first time. Thus the early restorative justice scholarship was largely concerned with gaining recognition for this new conception of justice. During this time restorative justice scholars chose to contrast restorative justice with other forms of justice so as to present it as something different and unique, stimulating interest and dialogue within the academic community. As time progressed, restorative justice became better established and more widely recognised and as academics and policy makers became more familiar with it so research interests shifted. From the early 2000s research began to focus less on the theoretical boundaries of restorative justice and more on its practical application.

This shift saw the emergence of a strong critique of Zehr's (1990) view of the relationship between restorative justice and the retributive criminal justice system. Some authors, such as Walgrave (2007) argued that the opposition was an oversimplification that distorted the restorative and retributive conceptions of justice. Others, such as Daly (2002), argued that restorative justice practices often engage in a flexible incorporation of multiple justice aims and thus the oppositional view is artificial. Roche (2007) agreed with Daly's (2002) argument and took it a step further suggesting that for some victims retribution may provide a form of restoration. Both Daly (2002) and Roche (2007) claim that in certain instances, restorative justice mechanisms can be integrated into the criminal justice system. Braithwaite (2002) is also of the opinion that restorative justice processes can be used in a way that is complementary of the criminal justice system, however he does not concede that retribution has been or should be a part of restorative justice processes.

For those who support the possibility of a positive relationship between restorative justice and the retributive criminal justice system, these two approaches represent the two main strands of argument. First, Braithwaite's (2002) approach is that the different conceptions of justice can be complementary but should not overlap and second, the opinion of Daly (2002), as supported by Roche (2007), is that restorative justice mechanisms can be integrated into the criminal justice system and that retribution can be a form of restoration. These two strands, both of which critique the approach that restorative justice operates as an opposing alternative to other justice conceptions, are part of a debate that continues in the literature today.

This development from Zehr's (1990) stance to a more complementary approach has mirrored some methodological shifts in the scholarship. The earlier literature saw a research

trend of quantitative comparative studies focussed on measuring outcomes. For example researchers would quantify stakeholder satisfaction for both restorative justice processes and court proceedings in the criminal justice system and then would compare the outcomes.

An illustrative example of this trend is Poulson's (2003) study, which evaluated what he called the psychological outcomes of restorative justice. In his study Poulson (2003) compares stakeholder satisfaction in the criminal justice system with that in restorative justice processes. He draws on data from published evaluations of seven restorative justice and criminal justice processes conducted in different countries and he then conducts a cross-country analysis to reach his conclusions. On the basis of his findings he concludes that restorative justice is a "compelling and effective alternative to court in all measured outcomes" (p. 174). One of the drawbacks with Poulson's (2003) study is that there are substantial differences between the cases, the stakeholders and the implementation of justice principles in the different countries. This makes it difficult to compare across cases and reach well-supported generalised findings. This is a widespread challenge in restorative justice research in that there are so many different restorative justice programme models.

Some other quantitative studies that follow this comparative, outcomes based model are those by Strang and Sherman (2003), Bevan, Hall, Froyland, Steels and Goulding (2005) and Calhoun and Pelech (2010). This methodological trend was understandable in an era when restorative justice advocates were working hard to establish restorative justice as a legitimate alternative, however it has left a dearth of empirical literature engaging the reasons why stakeholders experience satisfaction or not. This gap has become increasingly problematic with the growth in the implementation of restorative justice.

In more recent literature there has been a slow move towards more focussed and in-depth qualitative research methods. This can be seen in the work of Dancig-Rosenberg and Gal (2013) as well as Cunneen and Hoyle (2010), who also both develop models for the complementary relationship between restorative justice and the criminal justice system. Dancig-Rosenberg and Gal (2013) develop a model that integrates restorative justice within the conventional punitive system of crime and punishment. Cunneen & Hoyle (2010) on the other hand suggest that the two conceptions should be seen on a continuum. In other words sometimes restorative justice will be most appropriate to a situation and other times it may be a retributive approach that is best suited, and the justice system should be able to provide for

this. In essence both sets of authors argue that the restorative and retributive paradigms should work together within the broader criminal justice system.

In summary of the methodological shift, quantitative evaluative research was necessary in the early process of establishing restorative justice as an accepted theory of justice. However, as the prominence of restorative justice has grown there has been increasing recognition of the need for more in-depth qualitative studies into particular aspects of restorative justice processes. For example the restorative justice literature speaks of various procedural aspects such as transforming interpersonal relationships and empowering victims and yet quantitative research has not been able to provide an in-depth explanation of how these aspects are introduced or how they evolve in restorative justice programmes. Thus qualitative research is needed and is on the increase which will hopefully also empower researchers to engage the challenges and pitfalls of restorative justice in greater depth, a topic that has been largely avoided in favour of a focus on the strengths and successes of the restorative justice approach, as discussed below.

While there has been a gradual shift in recent literature towards engaging the challenges and shortcomings of restorative justice, Cunneen & Hoyle (2010) argue that “restorative justice has become a victim of some of its own advocates’ rhetoric, a causality of the overinflated claims and expectations” (p. 26). It is apparent that certain proponents in the literature are guilty of focussing exclusively on the strengths of restorative justice rather than providing a balanced picture of the approach. An example can be found in the study by Choi et al. (2011) which in its title claims to explore “How and Why Restorative Justice Processes Work”. This is an apt illustration of the way scholars completely exclude pitfalls and failure from the restorative justice conversation. Again such an approach is understandable for the earlier literature when the theory was still gaining recognition. However, now that restorative justice has been established, this one sided approach is detrimental to its growth and improved practice.

There are a number of other key trends in the restorative justice research that are worth mentioning. The first speaks to the topics of stakeholder satisfaction, which was mentioned above using the example of Poulson (2003). The focus on comparative outcomes in the earlier literature meant that investigations into stakeholder satisfaction were plentiful. Another example is the meta-analysis of thirty-five studies conducted by Latimer, Dowden and Muise (2001), who found significantly higher levels of satisfaction among victim and

offender participants of restorative justice programmes than any other justice alternatives. The problem with these studies is that while they claim to explore stakeholder satisfaction there is a disproportionate focus on victims. In other words the literature seems to operate on the understanding that stakeholder satisfaction is synonymous with victim satisfaction, which has left a shortage of research into the experiences of offenders.

The works of Hayes (2005) and more recently Reyneke (2011) are indicative of a developing interest in the experiences of offenders. Reyneke (2011) argues that offenders should be encouraged to be involved in the process of developing a restoration plan on the basis that restorative justice processes afford offenders the opportunity to acknowledge liability and show remorse. She claims that this can contribute to the offenders' sense of self-worth and can help reintegrate the offender into their community. Along similar lines, Walker (2006) suggests that restorative justice "insists on genuine accountability and responsibility taking from those who are responsible for harm" (p.383). She suggests that restorative justice typically creates the conditions to leverage responsibility, that is to move people from minimal sense of connection and responsibility to a richer and more demanding perception of what harm the wrong does. In other words these authors agree that once offenders engage in restorative justice practice it is common for a move towards greater acceptance of responsibility which in turn encourages a positive experience of the process. These theoretical arguments are problematic in that the limited empirical findings on offender experiences suggest that offenders are generally not experiencing widespread satisfaction, as seen in Hayes (2005). This poses a serious challenge to existing restorative justice theory and it is something that requires urgent attention and further in-depth inquiry.

As a final point, linked to that made above, there is also a lack of research on the relationship between the experiences of different stakeholders in a restorative justice context. The literature tends towards a separatist trend of investigating either the experiences of the offender or the victim. In other words despite the prominence of social relationships in restorative justice theory, there are a limited number of empirical studies that explore the relationship between the experiences of the offender and the wronged or the factors that may influence this relationship. This makes it difficult to find empirically based conclusions on any possible correlation between for example victim satisfaction and offender satisfaction. Even in studies that claim to explore the experiences of both victims and offenders, such as that of Choi et al. (2011), the findings focus very firmly on the experiences of the youth

offenders with very limited engagement with the experiences of the wronged party or the relationship between the two.

The majority of the restorative justice research discussed in this sub-section and the previous one, emerge from Australia, New Zealand, Canada and the USA. In order to determine the applicability of these findings and trends to the African and specifically South African context, the following sections explore some of the literature that focuses on these areas.

### **2.3.3 Restorative justice in South Africa**

South Africa's national restorative justice narrative started with the SATRC. Apartheid was a legally enforced system of racial discrimination and so when it came time for South Africa's transition to a constitutional democracy there was mistrust of the law. This meant that to create a society where perpetrators and victims of the apartheid regime could live side by side required something beyond pure retribution and criminal punishment. In 1995 the SATRC was established on the basis of restorative justice principles (Graybill & Langegran, 2004).

The SATRC brought together the perpetrators, victims and bystanders of the apartheid regime, in a public space where they personally encountered one another in a mediated way. Those directly involved in the hearings were active in telling their stories and communicating their truths, while the audience was responsible for bearing witness. This demonstrates how restorative justice principles were first applied in the mid-1990's with the hope of addressing and transforming unequal societal relationships plagued by entrenched racial discrimination, to ideal relationships of social equality whereby all stakeholders could live side by side in the 'new' democratic South Africa. It is also important to note, in light of the discussion to follow, that although apology was a significant component of some of the SATRC hearings, it was not a requirement for amnesty (Promotion of National Unity and Reconciliation Act, 1995). Apology, like forgiveness, was simply considered a potential by-product of the process.

Volume 1 of the SATRC Final report (1998) defined restorative justice as "a process which: (a) seeks to redefine crime (from breaking law to violations against human beings); (b) is based on reparation (as it aims at the healing and restoration of all concerned); (c) encourages victims, offenders and the community to be directly involved in resolving conflict and (d) supports a criminal justice system that aims at accountability of offenders, and the full participation of victims and offenders" (p.126). While there is no South African specific

definition of restorative justice, this definition created an important platform for the further development of restorative justice in South Africa and subsequently there have been other official sources that have dealt with the issue of defining restorative justice in a South African context.

In 1997 the South African Law Reform Commission issued a discussion paper on restorative justice which described it as a “way of dealing with victims and offenders by focusing on the settlement of conflict arising from crime and resolving the underlying problems which caused it” (p.4). More recently, the Child Justice Bill of 2002 defined restorative justice as “the promotion of reconciliation, restitution and responsibility through the involvement of a child, a child’s parent, family members, victims and communities” (p.125)

Skelton and Batley (2006), both of whom have extensive experience in the field, have written one of the most comprehensive accounts of the development of restorative justice practice in South Africa. In their article they discuss how the modern theory of restorative justice reached South Africa, found its way into practice models and policy documents and then finally into law reform initiatives. Some of their key insights are included below.

As a starting point, Skelton and Batley (2006) assert that modern restorative justice practice in South Africa has its roots in victim-offender mediation (VOM). They describe how South Africa’s participation in the modern international movement of restorative justice began in the early 1990’s with the work of the National Institute for Crime prevention and the Reintegration of Offenders (NICRO). NICRO established and later evaluated South Africa’s first VOM project, using Zehr’s model of restorative justice as the theoretical framework.

Then in 1995, alongside the SATRC, the Centre for the Study of Violence and Reconciliation and the Wilgespruit Fellowship Centre convened a Survivor-Offender Mediation Network. The network intended to offer a service of mediated interaction between survivors and offenders, to compliment the reconciliation work of the SATRC. Unfortunately the programme received fewer referrals than had been hoped for and so it only lasted for the duration of the SATRC before it was forced to close down for lack of funding. Also in 1995, an Inter-Ministerial Committee (IMC) for Young People at Risk was established and restorative justice was adopted as a “practical principle” for the transformation of the child and youth care system. A pilot project in family group conferencing (FGC) was later established in Pretoria, and in 1997 it handled forty-two cases. Skelton and Batley (2006)

explain that the findings of this project were published in a document that was used as both a practice research study and an implementation manual.

The following year in 1998, The Restorative Justice Centre (RJC) was opened in Pretoria. This organisation set out not only to offer victim offender conferencing (VOC) as an alternative to the criminal justice system, but also to build capacity within South Africa for the delivery of restorative justice programmes. After its establishment the RJC successfully forged links with a number of other organisations in a network called the Restorative Justice Initiative Southern Africa, which launched a VOC pilot project in 1999 with the express aim of formulating a restorative justice model more familiar to African customary values.

Over the last two decades the South African government has displayed openness to restorative justice, at least in principle, and Batley (2005) describes its commitment to restorative justice in numerous policy documents from 1996. At an international level, South Africa was one of the state parties who co-sponsored the basic principles of restorative justice at the ninth session of the Commission on Crime Prevention and Criminal Justice in April 2004. The government has thus committed itself on an international stage to ensuring the introduction of restorative justice practice where appropriate.

In one of the most recent developments, the RJC was actively involved in the team that developed the National Policy Framework for Restorative Justice. The Policy Framework was finalised in 2011 and approved by the directors-general of departments in the justice, crime prevention and security cluster in early 2012. It defines restorative justice as “an approach to justice that aims to involve the parties to a dispute and others affected by the harm (victims, offenders, families concerned and community members) in collectively identifying harms, needs and obligations through accepting responsibilities, making restitution, and taking measures to prevent a recurrence of the incident and promoting reconciliation; this may be applied at any appropriate stage after the incident” (Department of Justice and Constitutional Development, 2011, p.3). The framework follows a broad approach so as to include criminal justice, civil law, family law and African traditional justice. While more work needs to be done to develop an implementation plan, the approval of this framework by all government departments concerned is highly significant, as it builds a shared understanding of the concept and lays the foundation for further implementation of restorative justice.



Currently there are different levels of implementation and integration of restorative justice practice and principles in South Africa, with probation services emerging as the most active sector in this respect. There has also been implementation of restorative justice in the Department of Correctional Services but to a limited extent. On balance, it could be argued that while the South African government endorses the idea of restorative justice at a rhetorical level, they have not yet shown full commitment with regards to practical implementation.

#### **2.3.4 Restorative justice and cultural diversity**

South African society is culturally diverse, a reality that is intersected by a history of inequality and discrimination on the basis of race. While race and culture are not the same they are deeply intertwined and both continue to inform interpersonal interactions in South Africa in significant ways. The Reitz students and workers come from differently classified race groups and were raised in very different cultural contexts.

The students can be classified as white, they are first language Afrikaans speakers and they identify with white Afrikaner culture. This is significant because white Afrikaner culture in South Africa brings with it a number of specific values and beliefs developed through a tumultuous history of being both oppressed and oppressors. Equally, discourses around race have a particular historical development in South Africa and the manner in which race is constructed is influenced by this history. As Bloor and Bloor (2007) explain, historically racial identity for many Afrikaners was believed to be conferred to them not only by the state but also by God. Subsequently, extremist members of the Dutch Reformed Church considered themselves as the chosen people selected by god to rule, and the only true human beings. Not all white Afrikaners accepted the state-inflicted identity during Apartheid, however a significant portion did. The five workers on the other hand can be classified as black and they all identify with a traditional system of African values known as the philosophy of Ubuntu. Ubuntu, and its specific relationship to restorative justice is discussed in section 2.3.5 to follow.

On the topic of cultural diversity, the question that arises in the restorative justice context is: how does culture impact on an individual's experiences of a restorative justice process? In other words how does cultural diversity between stakeholders impact on restorative outcomes as perceived by those stakeholders? One of the main findings in the limited literature on this

topic is that cultural differences present a significant challenge in the restorative justice context.

One of the key publications on this topic is that of Umbreit and Coates (2000). They acknowledge that cultural diversity impacts upon restorative justice processes and they choose to focus specifically on the way in which culture informs verbal and non-verbal communication, and how this can lead to costly misunderstandings. They use the example of a victim and an offender from different cultural backgrounds explaining that the victim's avoidance of eye contact is perceived by the offender as a sign of aloofness when in the culture of the victim it is a sign of respect for one's elders. This example is used to illustrate how non-verbal miscommunication can be detrimental to the restorative outcomes of an encounter. Umbreit and Coates (2000) argue that to address these potential pitfalls it is important that restorative justice processes reflect the relevant cultural practices of the stakeholders involved. This requires that those working in the justice programmes invest in understanding the specifics of the different cultures and how they may impact on the process. Thus Umbreit and Coates (2000) suggest it is important that mediators maintain cultural sensitivity throughout and do so by meeting with the stakeholders beforehand and learning how they see their world.

In their study, Umbreit and Cotes (2000) build their argument on the assumption that there isn't one set of cultural values that is more correct or problematic than another. Rather they perceive the core of the problem to be the clash between different cultural beliefs and values. A question that is not considered in this study is, what happens when one of the stakeholders draws on a set of cultural values that falls outside of the range of acceptable values within that particular society? For example, what are the implications if a stakeholder is operating on the basis of racist beliefs which are the same beliefs he drew on when committing a wrong?

Umbreit and Coates (2000) do acknowledge racism as a subset of cultural conflict, however they do not engage the complexity presented by the presence of racism in a restorative justice context. Their contribution on this topic is to suggest that "in situations in which antagonists are embittered by age-old conflicts passed on from generation to generation, short term efforts at understanding and amelioration will likely succumb to such insurmountable odds" (p.13). Umbreit and Coates (2000) argue that these situations are extreme cases, however in South Africa, issues of racism and the intergenerational transmission of knowledge cannot yet be considered extreme. They remain endemic societal problems.

In a South African context, if restorative justice processes are required to address and transform pre-existing inequality within social relationships, then the process needs to be able to do more than simply acknowledge and succumb to the presence of racism and the resultant cultural conflict. The process needs to be equipped with tools to engage, address and transform these beliefs in order to achieve true restoration. This speaks to a specific gap in the limited literature on cultural diversity.

Reyneke (2011), a South African who writes about the South African context, claims that “cultural values and practices play an important role in the restorative process” (p.143). In her article she explains that culture can be a significant obstacle to successful restorative justice processes because different cultural groups may have different perceptions of restoration. She suggests however that cultural differences and other challenges such as race and language differences can be overcome with the proper training and development of facilitators. What she doesn’t explore is what kind of training is appropriate to this context.

The two broad findings running through the sparse literature on this topic are that cultural differences can pose a serious threat to the success of restorative justice processes and yet this can be overcome by training facilitators to understand and deal with these differences. Umbreit and Coates (2002) add that there will be certain cases where the cultural conflict cannot be overcome and Reyneke (2011) suggests that there can also be cases where the cultural beliefs are particularly complementary of a restorative justice process. Reyneke (2011) specifically uses the examples of Ubuntu and Maori culture.

The problem with their main findings is that there is very little empirical research into cases where facilitators have been successfully trained or stakeholders consulted extensively about their cultural beliefs. There are also limited examples of cases where cultural beliefs have been particularly helpful or problematic and why. The reason for lack of engagement on this topic could again be that scholars are still focused largely on arguing why restorative justice is a revolutionary alternative, at the cost of critically engaging some of the key challenges and shortcomings facing the restorative justice approach. One of the research objectives in this study is structured to explore how the differing cultural values and beliefs of the students and workers impacted on their constructions of the reconciliation process and their experiences of restoration.

In line with the cultural diversity discussion in this section there are other scholars who, like Reyneke (2011), argue that the cultural values of Ubuntu are particularly complementary of

the restorative conception of justice. The section below will discuss this in greater depth, however the problem remains that the practical implications of this relationship are not explored in any depth in the empirical literature.

### **2.3.5 Restorative justice and Ubuntu**

Skelton & Batley (2006) explain that African indigenous justice systems are now generally acknowledged to contain elements of restorative justice. They suggest that these systems have influenced the modern conceptualisation of restorative justice and they identify nine features that African traditional justice processes and modern restorative justice process have in common. The first three are related to the values base for these processes. They are that both processes aim for reconciliation, both promote a normative system that stresses rights and duties and they both highly value dignity and respect. The other six similarities are procedural in nature. They are that neither process makes a sharp distinction between civil and criminal justice, there is no rule that cases should be bound by previous decisions, both processes are typified by simplicity and informality of procedure, they encourage participation and ownership, they have a powerful process that is likely to bring about change and both value restitution and compensation, including symbolic gestures or actions (p 8).

This outline provides a very useful framework within which to consider the relationship between what Skelton and Batley (2006) refer to as African indigenous justice and restorative justice. Metz and Gaie (2010) as well as Schoeman (2012) confirm the links made by Skelton and Batley (2002), however they explore the relationship by framing African indigenous justice as an element of Ubuntu. Metz and Gaie (2010) explain that “Ubuntu prescribes seeking restorative justice subsequent to a wrong” (p.282) and Schoeman (2012) agrees with this finding, arguing that “the same values and principles that underpin the African philosophy of Ubuntu are embodied in restorative justice” (p.26).

Nafukho (2006) explains that the concept of Ubuntu is present in most African cultures although sometimes it is framed using different terminology. The term “Ubuntu” is used by languages from the Nguni family (such as Xhosa and Zulu), however the same ethic is referred to as “mtu” or “botho” in other languages (p.412). Central to the Ubuntu worldview is the belief that one’s own humanity or personhood is inextricably bound up in the humanity of others. This is often expressed in the phrase ‘umuntu ngumuntu ngabantu’ which roughly translates to ‘a person is a person through other persons’ (Nafukho, 2006, p.409). Krog

(2008) and Agulanna (2010) try to provide a more widely accessible explanation of this phrase.

In her writings Krog (2008) chooses to use the phrase “interconnectedness-towards-wholeness” in place of the term Ubuntu, which she claims has been overused and exploited (p. 354). She explains that wholeness should be understood as a process of becoming, of moving towards one’s fullest self. This, she argues, is only possible through the fullness of those around us. Agulanna (2010) provides an explanation that complements Krog’s (2008). He states that “it is in the community of other human beings that the life of the individual can have significance or meaning” (p. 285).

In addition to these definitions, the growing scholarship seems to agree on a few core elements considered central to the ethic of Ubuntu. The first and most recognized, as mentioned, is that one’s own humanity or personhood is intimately connected with the humanity of others. Thus a person’s humanity is discovered and recognized through relationships and interactions with others. As Agulanna (2010) explains “it is in the community of other human beings that the life of the individual can have significance or meaning” (p.289). On the basis of this understanding Ubuntu proposes that what we do to others affects us and thus in the words of Kamwangamalu (1999) “the good of all determines the good of each” (p.8).

The second definitive element of Ubuntu is that your personhood is not static but rather it has the potential to develop over time. Metz and Gaie (2010) suggest that this potential is linked to “our deepest moral obligation to become more fully human” which they argue means entering more deeply into community with others (p.285). This element of Ubuntu suggests that it is possible to develop personhood or humanity in others by facilitating their capacity to value community. Linked to this is the third element which is that everyone has innate humanity by virtue of being human and that this intrinsic value cannot be taken away. In the words of Mnyaka and Motlhabi (2005), “regardless of their social status, gender or ‘race’ persons are recognized, accepted, valued and respected for their own sake” (p.220) The mention of respect, as linked to dignity, should be emphasized in that it is highly valued in the notion of Ubuntu.

The innate humanness of all persons is directly linked to the conception of crime and justice supported by an ethic of Ubuntu. Crime or wrongdoing is understood as acting on the refusal to make use of an inner state of humanness. In other words crime is not seen to mean that the

individual has lost their humanity, and on the basis of this understanding, no matter what wrong has been committed that individual remains a human being. Thus justice focuses on the rehabilitation of both the wrongdoer and the wronged by facilitating the restoration of broken relationships (Mnyaka & Mothlabi, 2005).

The literature suggests that the values underpinning the Ubuntu ethic align with those of restorative justice, however there is no empirical research to illustrate the implications of this in practice. In other words, if a stakeholder involved in a restorative justice process lives by the values of Ubuntu, how will this impact on their experience of that process? In the context of this study, the literature provides grounds for exploring the impact of cultural diversity on a restorative justice process in two specific streams. The first looks at how the complementary nature of Ubuntu and restorative justice will impact on a stakeholder's experiences of a restorative justice process. The second considers how cultural values that are not in line with accepted societal norms can impact on the restorative potential of a process. By looking at the way these elements operate in practice, both in their own right and in relationship with one another, this study will address a significant empirical gap.

### **2.3.6 The role of apology and forgiveness in restorative justice**

In the early 1990's, when restorative justice was still considered relatively new to the justice field, there was a preoccupation with defining key principles and establishing restorative justice as a legitimate alternative. As a result there was little focus on the role and importance of more elusive concepts such as apology and forgiveness. This changed with the increased scholarly interest in the implementation of restorative justice. Restorative justice in practice presented the opportunity to investigate the experiences of stakeholders which saw a growing interest in the emotional dynamics of restorative justice processes, as seen in the work of Harris, Walgrave and Braithwaite (2004) who focused on the way in which empathy influences expressions of remorse. Choi et al. (2011) later used their findings to suggest that practitioners should develop programmes that foster empathy among offenders, through mediated dialogue with victims. This new interest in the emotional dynamics of restorative justice opened a space that invited investigation into the role of apology and forgiveness in the restorative justice context. This section critically explores the development of the literature that has come to occupy this space, with a specific focus on the developing role of apology.

The scholarly conversation around the role of apology and forgiveness in restorative justice, gained momentum in 2002. Presser and van Voorhuis (2002) contributed in a way that was characteristic of the earlier literature claiming that “although it is unclear whether apology and forgiveness are necessary or even desirable aspects of victim healing, many in the restorative justice movement consider it some indication of healing” (p. 174). This statement is vague and remains relatively non-committal to any clear role for the concepts of apology and forgiveness. Zehr (2002) was slightly more bold in his approach, stating that although restorative justice might provide a context where apology and forgiveness can occur, they are not a primary focus of restorative justice. Braithwaite (2002), in agreement with Zehr, considers apology and forgiveness to be emergent standards of restorative justice, which should be hoped for but never expected. He goes slightly further by claiming that apology and forgiveness are gifts which “only have meaning if they well up from genuine desire,” and that if people are invited to offer these during a restorative justice process it would “destroy the moral power of these gifts” (p. 571).

All of these scholars refuse to accept apology as a central or facilitated part of a restorative justice process. In 2006, Hayes (2006) brought a slightly different approach to the discussion, one that had not been supported in the literature up to that point. His very definition of a restorative justice process is one whereby “offenders apologize, their apologies are accepted, victims offer forgiveness and programs conclude with a feeling of mutual goodwill” (p. 370). He thus states that “the offering and acceptance of apologies forms the ‘core sequence’ of symbolic exchange in restorative encounters” (p. 373). Hayes (2006) does however add that although apology and forgiveness are key features of a restorative encounter, they are not essential outcomes of these processes, as there can be other key benefits for stakeholders. This possibility of a more central role for apology was later reinforced by Choi et al. (2012) who stated that for many victims, a sincere apology from offenders “is critically important to achieving meaningful restoration” (p.40). However, he also added that obtaining an apology or offering forgiveness is not an explicit goal of restorative justice but rather a desirable outcome. Choi et al. (2012) demonstrate that despite developments in the literature there is still a hesitation to completely let go of the original limitations placed on the role of apology.

From what is seen in the literature, the Reitz Reconciliation Process offers a unique case in that it was structured around a requirement that the students make a public apology to the workers. This diverges even from South Africa’s own restorative justice legacy because as

mentioned, apology was not a legislated requirement for the granting of amnesty in the SATRC. The SATRC followed the more accepted model in the literature which is that apology should be a part of the process as a desirable outcome not a facilitated requirement.

There are however other examples in Africa, of countries using restorative justice to address mass atrocities, that illustrate the way apology has been incorporated more intentionally into restorative justice processes. Two such examples can be found in Rwanda and Sierra Leone in 1999 and 2002 respectively. These cases are relevant in that they reflect, through a lens of addressing mass atrocities, a gradual shift in the role of apology in international restorative justice practice. Thus they contribute to a better understanding of the broader restorative justice journey from the approach taken in the SATRC to that used in the Reitz Reconciliation Process.

In response to the genocide of 1994, which saw approximately eight-hundred-thousand people killed in just one-hundred days of ethnic cleansing, Rwanda chose a retributive approach using national and international trials to prosecute the perpetrators. However, by 1999, with the prisons overflowing and very few cases having been heard, it became clear that this approach was not working. Thus it was decided that a restorative justice approach was needed in addition to the retributive mechanisms in place, and it was agreed that a traditional dispute resolution process known as *gacaca* (grass courts) would be used (Reuchamps, 2008). *Gacaca* is a participatory justice system which is traditionally used to deal with conflicts within communities.

Thus what began as a purely retributive response, developed into a mixed model incorporating restorative justice and using traditional customary practices to inform the national response. One of the important features of *gacaca* was its emphasis on apology. Although apology wasn't required, it was overtly recognised as a significant feature of the process in connection to its traditional cultural underpinnings (Graybill & Langegran, 2004). This illustrates how the use of local traditional forms of restorative justice, alongside retributive criminal trials in Rwanda, allowed for the incorporation of cultural standards such as the expectation of apology, into broader National transitional justice discourses.

Sierra Leone, in their response to civil war, progressed from the Rwandan example in a number of ways. Building on Rwanda's approach, they made use of a hybrid model from the



outset; incorporating elements of retributive justice in the form of UN funded special courts, and restorative elements in the form of a truth and reconciliation commission (SLTRC). The apology element was also taken a step further when, during the 2002 inauguration of their SLTRC, the chair stated that:

We will not expect you (victims) to forget, but we will expect you to forgive. And the message to the perpetrator will be that by our own cultural standard there is a duty to express remorse to confess and to accept forgiveness. (Graybill & Lanegran, 2004, p. 10).

This powerful language of duty and expectation raises some questions that are closely linked with discussions around apology and reparations in the restorative justice context. These are questions of voluntariness and consent, sometimes considered alongside the challenges of legislating restorative justice. Voluntariness and consent are widely advocated for in the literature in the sense that all participants should voluntarily agree to participate in a restorative justice process. In other words participating in a restorative justice process should always be a choice.

In a recent article by Dancig-Rosenberg and Gal (2013), the authors discuss voluntariness within the context of the temporal relationship between the criminal justice system and restorative justice. They argue that if the offenders have already been found guilty by the criminal justice system and subsequently enter a restorative justice process it is safer because if given the choice at the outset they may falsely admit guilt so as to avoid the criminal justice system in favour of restorative justice. This article raises one of the concerns about consent and voluntariness, which is that offenders may take advantage of the system.

Linked to this discussion is a question about the implications of legislating restorative justice as a means of addressing crime. In a number of countries, including Australia, New Zealand, the United Kingdom (UK) and the United States of America (USA), restorative justice language has been incorporated into legislation and policy. This generally manifests as the inclusion of certain restorative justice principles for examples holding offenders accountable for their offences, involving victims and the community in the justice process and obliging the offender to pay restitution. In the UK for example, Williams (2005) explains that the principles of restorative justice lie in reparations, offender to victim, and that a reparation order allows courts to order young people to undertake reparations. Sometimes it will be direct forms of reparations but more commonly it is indirect or symbolic forms. The question

that arises is, is it practical or ethically acceptable to order people to undertake reparation in a restorative justice context? In response to this question, Williams (2005) argues that only offenders who accept responsibility for their behaviour should be part of the mediation process with the victim and come into contact with them. Although few other jurisdictions make reparations compulsory, McEvoy and Newburn (2003) argue that reparation by offenders is most often not voluntary.

The Reitz case embodies some of these complexities and questions in that symbolic reparations in the form of apology, alongside other material forms, are also legislated in the South African context. The Promotion of Equality and Prevention of Unfair Discrimination Act (2000), which outlines the powers and functions of the Equality Court, stipulates that after holding an inquiry the court may make an appropriate order in the circumstances, including an order that an unconditional apology be made. It was on the basis of this legislation that a public apology was included in the out of court settlement that led to the Reitz Reconciliation Process. This illustrates another significant component of the Reitz Reconciliation Process that provides an opportunity to explore some of the questions raised in the literature.

Returning to a more focused discussion of apology, it is worth briefly considering the complexity of this notion in its own right, outside of its contested role in restorative justice. Apology, like restorative justice, doesn't have one set of components upon which everyone agrees. However, having reviewed a number of lists compiled by key authors in the field the array of possible elements include: an acknowledgement of the offence; an overt acceptance of responsibility; an explanation; an expression of remorse or regret; an offer of compensation, reparation or restitution and a promise that such behavior will not be repeated in the future (Petrucci, 2002, p. 341; Lazare, 2005, p.34; Alter, 1999, p.14; McNamara and Dhami, 2003, p.1). These elements speak to various relational aspects of a restorative justice encounter and suggest some of the specific steps in the apology process that could contribute towards the transformation of relationships between stakeholders. Most authors present these components as a checklist of requirements for a genuine apology.

Another important component of the apology literature, that is relevant to the Reitz context, is the distinction between public and private apology. As has been mentioned, the Reitz reconciliation ceremony incorporated a public and a private element, both of which included an apology from the students to the workers. The private meeting involved a direct

engagement between only the students and workers, whereas the public ceremony comprised of the reading of prepared statements of apology and forgiveness before a large audience consisting of various members of the broader community. This public private distinction is something that has not been sufficiently addressed in the restorative justice literature, however it is an important consideration in the apology literature.

Private apologies are generally understood as the offender making a personal apology directly to the offended, without an external audience. Public apologies are those in the presence of an audience on the assumption that the issue in question is relevant to the broader public. For this reason public apologies are often more formal and calculated, in that they have to take into consideration the feelings of the offended party as well as the broader public (Lazare, 2005, p.38; Alter, 1999, p.8.; Govier & Verwoerd, 2003, p.68).

This distinction is widely accepted in the apology literature, however what is important for this study is the differential impact of the public and private apology in practice. This links with the relationship of apology to the potentially transformative quality of restorative justice processes. This study will investigate the contextual subtleties that come into play during the Reitz Reconciliation Ceremony encounters, as experienced by the students and workers themselves. It will be important to consider not only how the understanding in the apology literature comes to bear on the particular case in question, but also how the case challenges the conception given in the literature. This is necessary due to the fact that the private public apology distinction hasn't been specifically investigated in a restorative justice context.

While the role of apology in the restorative justice context has developed over time, forgiveness hasn't received the same attention and generally remains considered only as a possible outcome. However, forgiveness is still an important component of many restorative justice processes and McNamara and Dhimi (2003) provide a useful definition in the restorative justice context. They explain forgiveness as having two key elements. One is relational and the other is internal or personal. Thus forgiveness allows for reconciliation between two people or groups, and also for the internal emotional healing of the person forgiving.

### **2.3.6.1 Apology and reparations**

As briefly touched on above, the question of reparations is intimately linked with a discussion of the role of apology and forgiveness in a restorative justice context. Walker (2006) explains that reparations in a restorative framework play an “instrumental and symbolic role in repairing relationships, including the role of adding weight to expressive interpersonal gestures such as apology” (p. 385). On the topic of apology and its relationship to reparations Walker (2006) further argues that “apology is the most minimal but unambiguous and foundational gesture of repair” (p.387). Brooks (2004) advances a similar approach to Walker (2006) which he labels an ‘atonement model’ of reparations. Although Brooks (2004) uses restorative justice without defining it, his account of atonement makes apology central and sees monetary and other reparations as necessary to make apologies believable. Both Brooks (2004) and Walker (2006) frame their conception of reparations as a move away from a juridical or legalistic understanding which would argue for reparations as a means of returning the wronged party to their situation before the wrong took place.

More generally, Walker (2006) explains that that the nature and background of a particular case of injury, as well as the foreground of current social relationships, are significant for how injury and responsibility should be understood, and what measures of repair are available and meaningful. Unfortunately Walker (2006) does not offer any empirical insight into the practical application of reparations in particular restorative justice contexts. In the contemporary literature most authors also argue for the necessity of both material and symbolic reparations to achieve restoration, which Verdeja (2008) suggests requires a consideration of both “economic marginalisation” (objective conditions) and “identity based disparagement” (subjective conditions) (p.214). On this basis Verdeja (2008) also offers a helpful four-fold rubric that provides insight into the possibilities and limitations of reparative measures. The four ideal dimensions of this rubric include symbolic and material along one pole, and then concerns with the form of acknowledgement and a question of collective or individual recipients along the other (p.208). Walker (2006) adds to the discussion by suggesting that while in some cases material reparations will be indispensable, in other cases they might be unnecessary. However, in no cases are material reparations alone sufficient. She argues that the nature and meaning of reparations in a restorative justice context should emerge from communication centred on the needs of wronged and wrongdoers.

The broader body of literature on reparations in a restorative justice context is generally limited to a conversation around reparations for past atrocities and historical injustices in

transitioning countries. This means, as recognised by Verdeja (2008), that there is comparatively little work done on reparations for victims of recent wrongs. This is problematic in that there is a lack of conceptual clarity on the purpose and impact of different forms of reparations.

One of the key differences between different conceptions of justice is whether reparations should aim to restore the *status quo ante* or should aim to transform relationships. Walker (2006) argues that the direct concern of restorative justice is the moral quality of future relations between the offenders and those who were wronged. She suggests that restoration refers to “repairs that move relationships in the direction of becoming morally adequate without assuming a morally adequate *status quo ante*” (p.387). She describes morally adequate relations as those where people are confident that they share some basic standards for the treatment of each other and people are able to trust each other to abide by these standards or at least acknowledge if they don’t. Thompson (2002) agrees with Walker (2006), and states that the aim of reparations is to “repair relations damaged by injustice but not to return to a state of affairs that existed before the injustice was done” (p.16). Both of these approaches to the reparations align with the conception of restoration used in the work of Llewellyn and Howse (1999). As mentioned they suggest that the aim should be to restore the damaged relationships to an ideal of social equality.

Developing the significance of the moral quality of relationships, Walker (2006) explains that a moral baseline of acceptable conduct and regard for the dignity of others is very important in most justice contexts. For example, there is a standard of moral acceptability for the impact we have on each other through our actions and interactions and thus reparations will address the impact of actions and interactions that fall outside of that standard of moral acceptability. This approach runs into trouble where there is no clear and broadly accepted moral baseline, such as in the case of historical injustices where there was radical denial of moral standing or an enforcement of degraded moral status of individuals. Walker (2006) argues that unlike other conceptions of justice, restorative justice provides a better framing ideal for reparative practice where there is need to establish a governing understanding of ‘right relationship’. While corrective justice aims to restore the *status quo ante*, restorative justice reparations aims to improve the moral quality of relationships.

In the South African context this conversation may make more sense as a discussion about cultural differences, as spoken to in section 2.3.4. Walker (2006) argues that while there are

international and national standards of moral equality, they are inspirational standards that don't and in many cases can't define stable expectations for those whose local communities and cultures adhere to different rules. In South Africa it could be argued that a national moral baseline is enshrined in the Constitution, however do all cultural communities share in or adhere to this baseline? This question will be explored in this study, investigating why the students violated the workers' dignity and whether they ever did share the moral baseline that defined their actions as a violation.

The articles mentioned raise a number of interesting and important points about reparations in a restorative justice context, however there are a number of things missing from the literature. First, a discussion about the transfer of responsibility for reparations to a party other than those held responsible as the offenders. Second, an in-depth consideration of different ways that the relationship between symbolic reparations (such as apology) and material reparations (such as a monetary pay out) impact on the experiences of the stakeholders involved in a restorative justice process. There is also limited engagement with the impact of different cultural conceptions of reparations. Many of these issues are raised in the Reitz case and as such will be further explored so as to build on the existing literature.

### **2.3.7 The Reitz Incident**

Before concluding this review it is instructive to briefly consider the small body of South African literature that directly engages the Reitz affair. Academic commentary on the Reitz affair remains relatively sparse, specifically with regards to the Reconciliation Process. The largest body of Reitz related academic literature thus far emerged during 2010, the year before the Reitz Reconciliation Process took place. Some of the most significant articles released this year include those by Soudien (2010), Wasserman (2010), Matthews (2010), Lewins (2010) and Naidoo (2010).

In 2008, in response to the Reitz incident, Craine Soudien headed up a Ministerial Committee on Transformation in Higher Education. Subsequently, in 2010, he wrote a piece about Reitz for the South African Journal of Science. In his article Soudien (2010) reflects on the question of who should take responsibility for the Reitz incident, in the context of higher education transformation in South Africa. He asks whether responsibility should be attributed to the four students as individuals or whether there is a collective responsibility belonging to UFS as an institution, and other societal collectives and organisations complicit in the incident.

Soudien's (2010) discussion focuses largely on the question of institutional complicity and thus does not engage the personal experiences of the students and workers involved. He does give an account of the Reitz incident that is later drawn on by authors Lewins (2010) and Wasserman (2010), however Soudien (2010) emphasises that very little is known about what really happened with the Reitz incident due to the fact that no-one has access to what was in the students' heads when making the video, or the state of the workers' complicity. The social constructionist stance taken in this study agrees that one cannot return to the process of meaning construction that took place on the day the video was made. However, one can explore, as this study does, the students' and workers' subsequent constructions of the incident. At the time of conducting interviews for this research in 2013, the researcher was the first person who had been allowed to formally interview all five of the workers since the incident and to date there is no academic literature that engages their experiences of the Reitz Reconciliation Process.

Naidoo (2010) also speaks to a gap in the literature where the experiences of the students and workers should be, and she frames her discussion using a race lens. She argues that in "post-apartheid South Africa it is in the unquestioned, unchallenged, unseen and unspoken acts of the everyday that racism is allowed to persist" (p.12). Within the framework of this assertion she claims that the subjectivities of the white students and the black workers involved in Reitz have not yet been sufficiently explored to understand how such a video could be made in the first instance.

Returning to Soudien's (2010) central question of institutional complicity, he explores the role of universities in students' search for identity as post-apartheid citizens. A similar topic is discussed in an article published by Van Der Merwe (2009), although Van der Merwe (2009) focuses more specifically on the role of the university residence. While both Soudien (2010) and Van Der Merwe (2009) emphasise the role of institutional complicity in the Reitz affair, the complicity of UFS is not considered in this study. This limitation of scope is underpinned by the social constructionist and restorative justice stance taken in this study, which supports a focussed in-depth exploration of the students' and workers' experiences.

The other mentioned articles, including Naidoo (2010), Matthews (2010) and most recently Boesak (2012), integrate discussions of the Reitz incident into broader conversations around questions of race and reconciliation in the South African context. In contrast to Matthews (2010) and Boesak (2012), Naidoo (2010) makes the argument that the existence of racism,

such as that demonstrated in the Reitz incident, suggests the failure of reconciliation. Matthews (2010) and Boesak (2012) on the other hand take a slightly more nuanced view. They both recognise that South Africa continues to face challenges in the process of reconciliation, and they acknowledge the role of racial tensions, however neither author is willing to definitively declare reconciliation a success or failure. Rather they advocate for an approach that explores reconciliation as a complex process. These differing opinions illustrate the complex relationship between race and reconciliation in a South African context, which has again been foregrounded by the Reitz incident.

More specifically, Matthews (2010) focuses on the different interpretations of reconciliation in South Africa exploring the possibility that certain conceptions of reconciliation, specifically those most popular in white communities, can act as an obstacle to transformation. Her argument is that the conception of reconciliation employed in these communities is narrow and requires very little from white South Africans which enables them to avoid any moral responsibility to redress the unjust consequences of Apartheid. In the context of the Reitz incident, her article raises important questions about the way that certain dangerous beliefs and values are framed within white communities. Boesak (2012) on the other hand explored the fragility and nuances of reconciliation, looking at power dynamics and the phenomena of a new generation of post-apartheid South Africans perpetrating racial incidents. This is something Jansen (2009a) also discussed extensively in his book 'Knowledge in the Blood.' Jansen's (2009a) work is included in the analysis found in chapter 4.

This study draws on elements of Matthews (2010), Boesak (2012) and Jansen (2009a) in its approach to understanding reconciliation. Reconciliation is understood as a process rather than a goal or an outcome, it is not seen to be something that can be conclusively defined as a success or failure at any one moment and rather it moves on a continuum evaluated according to its procedural successes at various levels. All of the mentioned articles also agree that the SATRC was only the beginning of the reconciliation journey for South Africa, arguing that the most important work is yet to be done. Thus there is an articulated space in the South African literature relating to the Reitz affair, for research into contemporary reconciliation initiatives.



### **2.3.8 Conclusion**

This review has critically explored relevant literature in the restorative justice field, evaluating the strengths and weaknesses of established knowledge in this context. The findings of this review have been used by the researcher to justify the specific research questions and objectives selected for this study. This subsection will summarise the main findings of this review, including important themes and ideas as well as identifying relevant gaps and shortcomings that were discovered in the literature, and then illustrate how these findings informed the research questions.

Most of the earlier literature, produced during the 1990's, was dedicated to establishing restorative justice as a recognised and valid conception of justice. During this era, most of the empirical literature focussed on demonstrating that restorative justice results in higher levels of stakeholder satisfaction than the retributive approach used in most conventional criminal justice systems. These studies showed a preference for quantitative methods which left a dearth of in-depth qualitative inquiries into why stakeholders experienced greater satisfaction in restorative justice contexts. The earlier literature also presented restorative justice as a victim centred approach. This has informed a long standing research trend whereby scholars focus on victim experiences, generally at the exclusion of offender experiences. This has resulted in a shortage of research into the experiences of offenders as well as the relationship between victim and offender constructions of restorative justice processes.

These are some of the key trends and shortcomings that justify the main research questions for this study, which contribute to existing debates, develop on existing themes and address some the significant gaps mentioned above. This study uses in-depth qualitative methods to explore the meaning that the students and workers assigned to their experiences of the Reitz Reconciliation Process, and asks whether they experienced the process as restorative or not and why. Three sub-questions, as seen below, ask more specifically about the way the students and workers constructed their needs and whether they feel that these needs were addressed.

- Did the workers, in their capacity as the wronged party, feel that the Reitz Reconciliation Process was able to address their needs, enabling them to heal?
- Did the students, in their capacity as the wrongdoers, feel that the Reitz Reconciliation Process was able to address their needs, enabling them to take responsibility for the wrongfulness of their actions?

- Was the Reitz Reconciliation Process able to restore the students' and workers' relationship to an ideal of social equality, enabling them to coexist with equal dignity and respect within the same community?

These questions will help the researcher address the empirical gap of why stakeholders experience processes as satisfactory or not and will also enable the researcher to contribute towards a better understanding of the relationship between the differing experiences of different stakeholders.

With regards to the specific research objectives explored in this study they too are justified by specific gaps in the literature. This review found four key areas of interest in the literature, each of which fall under one of two broader themes that justify the two core research objectives in this study. The themes are, the relationship between Ubuntu and restorative justice, the role of reparations, the importance of voluntariness and the relationship between apology and forgiveness. Linked to the first of these four themes is the first objective which is to gain insight into the impact of cultural diversity on the students and workers' experiences of the Reitz Reconciliation Process. The second objective, as linked to the remaining three themes, is to gain insight into the impact of the students' apology on the students' and workers' experiences of the Reitz Reconciliation Process.

The justification of the first objective is linked to a discussion in the restorative justice literature on cultural diversity. The limited literature on this topic suggests that the impact of cultural differences on a restorative justice process can take one of two paths. The first is that where the cultural values compliment restorative justice values it can impact positively on stakeholder experiences, and second where cultural beliefs conflict with restorative justice values or the cultural beliefs of fellow stakeholders, it can have a very negative impact on the restorative justice process and its outcomes. These arguments are presented in the literature, however they are not explored in practice or backed by empirical research.

The second objective is justified by the literature on apology in a restorative justice context, and is structured by three key conversations. One is around the notion of voluntariness, a second concerns the relationship between apology and forgiveness and the third looks at the role of reparations. As discussed in the review, the literature has seen a slow growth in the willingness of restorative justice scholars and practitioners to embrace a more facilitated and intentional role for apology in restorative justice processes. On this continuum the Reitz Reconciliation Process presents on the very progressive end of the scale in that the students

are actively required to apologise to the workers. This provides an opportunity to move the three mentioned conversations forward significantly, which restorative justice practice suggests is needed.

This summary demonstrates how the literature has informed and justified the main research question, the three sub-questions and the two research objectives. The following chapter will explain the details of the methodology and methods employed in this research study.

## **Chapter 3: Methodology and research design**

### **3.1 Introduction**

The previous chapter positioned this study within a broader body of relevant literature. During this exercise the researcher traced a number of key developments in the restorative justice literature and in doing so was able to establish the significant areas of contention and paucity. These gaps in the literature were used to inform and justify the research questions and objectives for this study which are used to structure an exploration of whether the students and workers experienced the Reitz Reconciliation Process as restorative and why.

Having reviewed the relevant literature, and outlined the research questions and objectives accordingly, this chapter focuses on research design. The researcher will describe, discuss and justify all of the important research choices, starting with broader level decisions such as the choice to employ a qualitative research approach. The chapter will then move to consider the selected case study design, the method of data collection and analysis, and will conclude with a discussion of trustworthiness and relevant ethical considerations.

### **3.2 The qualitative research approach**

Qualitative methodology focuses on making sense of phenomena through the meaning people bring to them. Consequently, qualitative approaches to research are well suited to facilitating in-depth explorations into the ways that participants individually and collectively perceive and interpret their experiences (Banister, Burman, Parker, Taylor & Tindall, 1994). In this study, the qualitative approach is used to engage the meaning that the students and workers assign to their experiences of the Reitz Reconciliation Process, in a way that enriches our understanding of those experiences. The qualitative approach is well suited to this purpose because it provides research tools, such as the in-depth interviews used in this study, which allow the researcher to see the world from the viewpoint of the participants. Such an inquiry would not have been possible using quantitative methods in that they focus on objectively quantifying phenomena and they prioritise breadth over depth (Flick, 2009). Quantitative inquiries also use fixed measures to determine a fixed statistical reality, which does not allow for an in-depth exploration of the complex and nuanced meaning that different individuals assign to their different experienced realities.

There are three specific elements of the qualitative methodology that make it an appropriate choice for this study. First it embraces the socially constructed nature of reality, second, it foregrounds the importance of context and third, it recognises the significance of the relationship between the researcher and that which is being researched (Denzin & Lincoln,

2011). Each of these three aspects will be discussed in turn, along with a consideration of how they illustrate some of the key differences between qualitative and quantitative approaches.

First, qualitative and quantitative research approaches are underpinned by different assumptions concerning the nature of reality. Quantitative inquiries are underpinned by the assumption that there is one universally accepted reality which can be studied objectively and understood (Patton, 2002). The qualitative approach on the other hand assumes that different people have different perspectives on the world and therefore they experience and construct diverse realities (Lincoln & Guba, 1985). Thus reality is understood to be subjectively constructed through the meaning individuals assign to their experiences of their social context. This demonstrates one of the ways in which the qualitative research paradigm fundamentally complements social constructionism, in that they share a belief in the existence of multiple subjectively constructed realities. While Burr (2003) points out that there aren't research methods that are intrinsically social constructionist, he agrees that social constructionism leads logically to the use of qualitative methods.

The second and third elements of the qualitative research approach that make it well suited to this study, also speak to the complementary relationship between qualitative methodology and social constructionism. The second element relates to context sensitivity. Gergen (1999) explains that social construction centres on the assumption that individuals develop meaning in relationship with others, through daily interactions in particular social, historical and political contexts. This positions context as an important consideration when engaging human experience and meaning. Qualitative methodology embraces this emphasis on context, taking into account contextual conditions when interpreting the meaning of experience (Patton, 2002). For example the context within which the students, workers and the researcher construct meaning is acknowledged as integral to the process of interpreting that meaning. Thus the qualitative approach enables the researcher to engage, interpret and represent the students' and workers' accounts of their experiences in a way that remains cognisant of the context within which their experiences were constructed. The theory of restorative justice argues that restorative mechanisms must always be context sensitive and so advocates of this approach also emphasise the significance of context.

As mentioned, the qualitative approach is underpinned by the understanding that meaning is constantly constructed, in a particular context, by individuals in relationship with each other.

The next step in qualitative research is that this meaning is interpreted and represented by the researcher, who in turn becomes actively involved in the process of constructing meaning (Berg, 1995; Gergen, 1999). This means that the researcher's own subjectivity informs the research process in indivisible ways. On this basis the researcher needs to reflect on their subjectivity and the ways it influences the process of meaning construction in the research context. A discussion of this, often titled reflexivity in a qualitative research context, can be found in sub-section 3.7. This is the third and final component of qualitative research that makes it well suited to this study. The social constructionist underpinnings of this study do not support the quantitative claim to value free objectivity, social constructionism requires that the researcher acknowledge her own process of meaning making and how this influences the research process.

Having discussed the reasons why a qualitative research approach is most appropriate to achieving the aims of this study, it should be mentioned that the use of a qualitative methodology is also significant for addressing a gap in the literature. The previous chapter found that most empirical studies, up until recently, have been conducted using quantitative methods with the intention of demonstrating the success of restorative justice outcomes. The quantitative nature of most of the empirical research means that there is limited investigation into why stakeholder experience restorative processes as satisfactory, or not. This study has employed qualitative methods to engage in-depth with participant accounts of the Reitz Reconciliation Process, to determine how and why this process was or was not experienced as restorative by the stakeholders involved. Thus this qualitative study addresses a methodological dearth in the restorative justice literature.

### **3.3 Case study research design**

Within the broader qualitative research approach, this study takes on the form of a case study. More specifically, this study draws on the work of Yin (2003) and Simons (2009) to employ a case study research design framework. Yin (2003) explains that the case study design is not considered a prescriptive plan for research. Rather, he argues, it must be approached as a set of choices that guide elements of the research process, including the formulation of a research question and the collecting and analysing of data.

Developing the same basic understanding of the case study design, Simons (2009) defines case study as “an in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution, programme or system in a ‘real life’

context” (p.21). Thus the case study design is well suited to achieving a holistic in-depth account of a complex social phenomena within its context. Drawing on this definition, the case study design was selected because it is able to facilitate the necessary depth of investigation and it provides tools with which to engage the complexity inherent in the students’ and workers’ experiences of the reconciliation process. The remainder of this section discusses this twofold rationale and provides a detailed description of the components that structure this particular case study design.

The Reitz Reconciliation Process took place in 2011 and to date there is no in-depth systematic scholarly research into this process. There are some published articles that discuss elements of the Reitz incident itself, as mentioned in the literature review, however the reconciliation process remains largely unexplored. This means that this study is tasked with exploring new territory and the case study design was selected because it is well suited to such a task. Lincoln and Guba (2000) explain that the case study design allows the researcher to discover, develop and learn throughout the research process and it also has a collection of research tools that can be used to explore new and complex phenomena.

For example, the case study design provides for a high level of contextual detail. This is not only a valuable research tool but also a valuable communication tool. Contextual data gives the reader’s a sense of ‘being there’ which in the case of the Reitz Reconciliation Process can help the reader connect to the experiences of those who were involved. As explained by Yin (2003), this means that case studies have the potential to transform a readers understanding of a phenomenon by extending their experience. The Reitz Reconciliation Process is a case of deep and challenging human complexity and to communicate this complexity through an academic analysis requires a design that will allow the analysis to resonate with the reader. Taking this idea slightly further, Yin (2003) suggests that case studies can also serve broad social functions. They can do this by describing values in society, exploring contradictions in our lives, offering new insights on what has been and should be done and presenting new perspectives on events. The Reitz case embodies a number of pervasive tensions that continue to plague South African society and thus this potential for broader self-reflection by a readership further confirms the value of the case study design in the context of this research project.

Having discussed the broader rationale for choosing a case study design, it is important to briefly discuss the defining details of this specific case study design. The subject of this case study is the Reitz Reconciliation Process, which is investigated as a case of restorative justice. This subject is explored through the students' and workers' subjective experiences of the process which constitute the object or analytic frame of this case study. In other words this case study uses the experiences of the students and workers as a prism through which to explore the Reitz Reconciliation Process as an exercise in restorative justice. This case was not selected because it was typical or representative of restorative justice in South Africa. The case was chosen because it raises significant and challenging questions about restorative justice in a contemporary South African context, and exploring this case in a systematic way offers the opportunity to engage some of these questions. This case study is exploratory, in that it asks and investigates a number of initial questions that provide insight into specific areas for further research (Baxter & Jack, 2008).

The Reitz Reconciliation Process, the subject of this case study, is a single case bound within a particular temporal and spatial context (Creswell, 2003). However, the object of this case study, the students' and workers' experiences, give this single case study a nested or layered quality. The reason for this layered character is that different units of analysis are used to explore the experiences of the students and workers respectively, which requires some cross unit comparison across the two groups. In the case of the students, the individual was used as the main unit of analysis. However, social constructionism sees knowledge as constructed between people, therefore the researcher did also look across individual units to consider how the process of group meaning making may have influenced the individual narratives, and vice versa. In the case of the workers on the other hand, the group was used as the main unit of analysis. The workers were interviewed using a focus group method and what emerged was a group narrative that was analysed as such. The analytical process ran across these two groups and thus across these different units of analysis which created a layered texture. In other words the students' and workers' experiences were not cases on their own, rather they gained their integrity and wholeness from the case of the Reitz Reconciliation Process and so they were approached as elements or embedded units of a single nested case study (Thomas, 2011; Baxter & Jack, 2008).

The non-prescriptive nature of the case study design provides for a combination of methods that is best suited to the objectives of this research. However, in the case study literature some



scholars are critical of this lack of organisational structure, suggesting that it leaves case inquirers unable to articulate what they are doing for lack of guidance (Van Wynsberghe & Khan, 2007; Gerring, 2004). The following few sections will serve to address the concerns of these scholars by discussing each of the selected case study components in turn, making clear the specific implementation of the case study design in the context of this study.

### **3.3.1 Sources of data**

One of the defining characteristics of case study research is that as a design it provides for the use of multiple sources of data. Yin (2004) explains that this enables the development of converging lines of inquiry which means that findings are likely to be more convincing and accurate. In this study data gathered from different sources, using different methods, was combined to provide the most comprehensive account of the selected case within its context. The main source of data was participants, supported by video recordings, media articles, court documents and archival records.

Data collected from interviews with seven purposively selected participants were used to explore the wronged and wrongdoer's subjective experiences of the Reitz Reconciliation Process. In other words this data was used to engage the object of this case study. The other mentioned sources, as well as interviews with four institutional representatives, were used to gather contextual details relevant to the broader Reitz Reconciliation Process, the subject of the study. Unedited video footage of the Reitz Reconciliation Process, including footage of the public ceremony and elements of the private ceremony, provided a significant window into the proceedings of the two day event. Legal documents, court documents, relevant e-mail correspondence between stakeholders, a book manuscript written by one of the students about the Reitz affair and Reconciliation Process and documentation detailing the planning of the reconciliation process all provided invaluable contextual information. Data collected from interviews with two representatives of UFS and two representatives of the SAHRC, all of whom were personally and directly involved in the reconciliation process, also contributed towards this second body of data.

Quantitative survey research most often uses a large randomly selected sample believed to be representative of the broader population (Patton, 2002). Case study research on the other hand, generally requires a much smaller sample than other types of research (Yin, 2004). The reason for this is that a smaller information rich sample is better suited to achieving the

necessary depth of inquiry required by the qualitative case study approach. This study used a purposive approach to sampling to deliberately select a small sample of individuals best positioned to illuminate the issues of central importance to the purpose of this research. In the process of identifying and contacting these individuals, the researcher used information gathered from SAHRC and UFS personnel as well as media publications.

In the end nine potential participants were identified. These included the four students and the five workers involved in the Reitz incident. These individuals, in their capacity as the wrongdoers and wronged respectively, were selected to provide in-depth insight into their experiences of the Reitz Reconciliation Process. It is important to emphasise that these individuals were included in the sample; however not all of them were able or willing to participate. Before discussing the particulars of those who did participate in the final study, it is necessary to briefly consider who wasn't included in the sample and why.

The participants selected for this study were not the only individuals or groups with relevant insight into the Reitz Reconciliation Process. In other words there are various angles from which to consider the process and its impact which would implicate different groups in the study. For example one could focus on the way it affected other students and staff at the university or explore how the process contributed towards broader transformation at the university. In these instances the sources of data would be different, however in this study the only individuals able to answer the specific research question posed are the Reitz students and workers who were interviewed. That said, there are other relevant groups who could be interviewed in future research that develops on the findings of this exploratory study. They could include the families of the students and workers, the students' residence contemporaries at the time of incident and the workers' colleagues on campus. These specific groups fall beyond the scope of this study, however they could make a valuable contribution to further related research in that they constitute the core community effected by the Reitz incident and the community is considered a key stakeholder in restorative processes.

### **3.3.2 Participants**

In the end seven individuals were interviewed for this study. This included two of the four Reitz students and all five of the Reitz workers. For the purposes of anonymity each of the research participants is allocated a pseudonym by which they will be identified throughout this study.

In this study the five cleaning staff who were involved in the Reitz incident are collectively referred to as the ‘workers’, a term they used when referring to themselves as a group. The group consists of five black individuals including four women Florence, Patricia, Dina, Lindi, and one man William. These individuals range in age between 35 and 55 and all but one are first language Sesotho speakers.

Lindi is the eldest of the group and had been employed at UFS for over thirty years when the incident took place. She, along with the other four ‘workers’, had been responsible for cleaning the Reitz residence as well as a number of other UFS residences on the Bloemfontein campus. Florence describes how their assistance of the students often extended beyond their specified duties of employment. She explains that at times they would stay late in the evenings after work to cook for various events at the students’ request. She also helped one of the students with a small business that he ran. He would bring ‘mielies’ from his family’s farm and she would sell the ‘mielies’ for him in a local township where she, and some of the other workers, lived. Dina would also help the students wherever she could, often assisting those studying Sesotho with their homework. Dina has struggled for a long time with her physical health and would often suffer intense pain during her cleaning duties. She remembers how she would keep her spirits up by joking and laughing with the students while cleaning their rooms. Patricia self-identifies most strongly as an active and respected leader in her church and within the group of workers she is also looked to as a leader. Patricia, Dina, Florence and Lindi are all mothers and William, who is the only male in the group, is also a parent. Unlike the others, William had only been working at the UFS for two years when the incident took place and he was employed by a sub-contracted cleaning company rather than by the university itself. The five workers share an extremely strong bond.

The term ‘students’ is used to collectively refer to the four young white men involved in the Reitz incident. This title references their position as UFS students at the time when the Reitz video was made. The intention of this study was to interview all four of the students involved, however only Ruan and Jaco made themselves available. That said, Stefan and Marius, who refused to be interviewed, stated that they would have Ruan speak on their behalf. Ruan had been the mouthpiece of the group throughout the Reitz affair and thus was well positioned to interview as a representative for the students as a group.

When the Reitz video was made, Ruan, Jaco, Stefan and Marius shared a Reitz residence bungalow on the UFS campus. These bungalows were reserved specifically for seniors,

which all four of the students were at the time of making the video. When the video was publically released, six months after its making, Ruan had already graduated from UFS. He spent some time outside the country but is now married and living in the Bloemfontein area. Unlike Ruan, Jaco was in his final year of study and still on campus at the time of the video's release. He was expelled before he was able to complete his degree and now lives and works on his family farm in the Free State.

The following section will discuss the details of the specific interview methods used to collect data from the research participants discussed above.

### **3.4 Interviewing as data collection method**

Patton (2002) explains qualitative in-depth interviewing as an approach that provides “a framework within which respondents can express their own understanding in their own terms” (p.348). In the context of this study, this is significant because it enables the researcher to explore and capture the depth and complexity of human experience and meaning as framed by the participants themselves.

In-depth qualitative interviews are typically structured according to one of three basic interview strategies, the informal conversational interview, the general interview guide approach or the standardized interview (Patton, 2002). All three of these approaches share a commitment to asking genuinely open-ended questions that allow participants to respond in their own words. In this study the researcher made use of the interview guide approach to conduct in-depth semi-structured interviews. Prior to the interview the researcher outlined the topics for discussion in an interview guide, which also included a number of broader questions. The specific sequence and wording of the questions however, was only decided upon during the interview. The pre-determined structure ensured that the same basic lines of enquiry were explored with each participant while the flexibility of questioning enabled responsive interviewing that was sensitive to the specific interview context.

All the interviews conducted for this study used the interview guide approach and they were all audio recorded, however there were also some key differences. The flexibility of the interview guide approach meant that some of the interviews went on longer than others, within the range of one to four hours. Another key difference was that while individual interviews were conducted with Ruan and Jaco, a focus group interview was used to collect data from participants Florence, Patricia, Dina, Lindi and William. The five workers

specifically requested to be interviewed as a group and on this basis the researcher selected a focus group approach as the most appropriate to their specific group context.

Patton (2002) describes a focus group interview in broad terms as an “interview with a small group of people on a specific topic” (p. 385). More specifically, the purpose of this kind of interview is to get high quality data in a social context where people can consider their own views in the context of the views of others. This contextualised exploration of individual and collective meaning making was an important reason for the use of a focus group approach when interviewing the workers. Their shared experiences of the Reitz affair played an integral role in the meaning they assigned to their individual experiences of the Reitz Reconciliation Process and the focus group interview facilitated engagement with these relational dynamics in a way that an individual interview could not. The focus group setting also provided an environment of comfort and support, which became particularly important when discussing sensitive or emotional topics.

There are also particular challenges that can arise within the focus group context, for example the voices of some participants overpowering those of others. This was a concern with William, the only male in the group. William spoke only once in the focus group context and so to try and mitigate this challenge the researcher subsequently set up an individual interview with him. What transpired was that William was as quiet and reserved within this context as he had been in the focus group context. There are various factors that may have influenced William’s withdrawal in the interview setting, however what is significant is that the researcher attempted to address any issues that may have been specific to the focus group context.

The interview guides used in the individual interview with Ruan and the focus group interview with Florence, Patricia, Dina, Lindi and William were similarly structured so as to explore the same basic lines of enquiry with these participants. The guide included topics and questions related to the Reitz incident itself and the various legal proceedings that followed, before focussing on the Reitz Reconciliation Process (see appendix D for interview guide). The guide used for the individual interview with Jaco included some similar topics to those mentioned above, however it was shorter and more focussed because Jaco only made himself available for a limited telephone interview (see appendix E for interview guide).

Most participants were not first language English speakers and so all interviewees were given the opportunity to be interviewed in the language of their choice with the assistance of an

interpreter. While participants Ruan and Jaco elected for their interviews to be conducted in English without an interpreter present, Florence, Patricia, Dina, Lindi and William chose to be interviewed in Sesotho with the assistance of an interpreter.

Edwards (1998) explains that interpreting is not simply a case of translating words but rather transferring meaning from one language to another. He argues that when using an interpreter “researchers need to acknowledge that they carry out interviews with rather than through interpreters” (p. 197). The researcher recognises that the interpreter was active in the process of meaning making and takes this under consideration as relevant to the broader research process.

Subsequent to the focus group interview, a translator was also employed to translate and transcribe the focus group interview from an audio recording. This helped as a way of ensuring that the words of the workers were transcribed verbatim and that any discrepancies in the interpreter’s translation were addressed.

During the data collection process described in this section, the researcher began engaging the data. Thus data collection formed an initial part of the analysis process. However, it was only once all the data had been collected that the researcher moved to a more focussed process of analysis, as discussed in detail in the subsequent section.

### **3.5 Thematic analysis**

Thematic analysis is an analytical approach used widely by case study researchers because it allows the researcher to build a complex exploratory case analysis grounded in the particulars of the case (Mills, Eurepos, & Wiebe, 2010). The analytical flexibility of the thematic approach also allows for the use of more than one data source. It provides a means by which to integrate different sources into a holistic account making it a suitable choice for the case study research design and more specifically for this study.

For these reasons thematic analysis was identified as a suitable analytical approach for this study, and it was later selected for two main reasons. First, the thematic approach was best suited to answering research questions which focus on people’s experiences, views and perceptions. Gergen (1999) explains that by using text as a proxy for experience, the thematic strategy facilitates an exploration of the process by which people describe, explain and give meaning to their experienced reality within a particular context.

Second, the thematic approach to analysis could be aligned with the specific theoretical framework underpinning this study. While some analytical strategies are extremely prescriptive and have strong affiliations with specific methodologies or theoretical frameworks, the thematic approach has a distinctive flexibility (Braun & Clarke, 2006). This provided for the constructionist thematic approach to analysis used in this study, an approach that focuses on the way in which reality is created by the data. As mentioned, social constructionism also takes the constructive force of language as a principle assumption (Burr, 2003). Language is seen to provide the categories and concepts that people use to frame their meaning. Thus language is at the core of this analysis process.

Braun and Clarke (2006) define thematic analysis as a method for “identifying, analysing and reporting patterns within data” (p. 79). Guest, Macqueen and Namey (2011) explain that these patterns of meaning are expressed as themes which are used to describe both “implicit and explicit ideas within the data” (p.6). There are a number of steps in the process of identifying patterns of meaning across a data set, and they can vary from one research context to the next which makes it important to be clear about the specifics of the thematic approach used in this study.

These were the steps the researcher followed when applying the thematic analytical strategy to this study. Having transcribed each interview verbatim the researcher undertook close and repeated reading of the transcripts to familiarise herself with the content of the data and to gain a broader sense of the text. Once the researcher felt she had grasped the essence of the text, and was intimately familiar with the content, she carefully went through each transcript again, underlining and highlighting words, phrases or sentences relevant to her research questions. When using thematic analysis in the context of case study research, researchers often create a list of a priori themes using the research questions. The exploratory nature of this case study meant that this was a helpful starting point that laid the way for a constructionist analysis on the basis of deductive and latent coding.

During the coding process, the researcher began organising the data into meaningful groups and she did so on the basis of a layered process. First, as mentioned above, the researcher grouped the data using the research questions for guidance. Second, the researcher further coded the data on the basis of significant assumptions underpinning it. In other words the researcher grouped assumptions that were relevant to the participant’s construction of reality, as communicated through the data. These coded groups of data were then organised into

themes, by drawing together pieces of text with similar meanings, and then these themes underwent an extensive process of refinement. Having finalised the themes, the researcher conducted a discussion of her findings in the analysis chapter of this study, using specific extracts from the transcripts as evidence.

Rather than providing a rich thematic description of the entire data set, this study focuses on providing a more detailed and nuanced account of a particular group of themes directly related to the research questions. In other words the analysis focuses on themes that provide relevant insight into whether the students and workers experienced the Reitz Reconciliation Process as restorative.

In analysing the data it became apparent that the findings needed to be communicated in two layers of exploration. As can be seen in the analysis chapter, chapter 4, the first layer includes a number of themes relevant to the students' and workers' construction of the Reitz incident. This layer includes an analysis of the students' and workers' contrasting perceptions of their relationship and an investigation into the knowledge and assumptions that underpin these constructions.

The second layer of meaning builds on these findings and discusses the themes relevant to the students and workers construction of the Reitz Reconciliation Process. This layer includes an analysis of the students' apology and the workers' offer of forgiveness so as to engage the meaning behind the students' experience of exclusion and the workers' experience of healing. Following the analysis in chapter 4 is a discussion of the significant conclusions that can be drawn from the findings, which can be found in chapter 5.

### **3.6 Trustworthiness of qualitative research**

Rather than assessing the trustworthiness of the research product on its completion, this study has implemented a number of verification strategies throughout the research process to ensure rigour. Drawing on the approach of Morse, Barrett, Mayan, Olson and Spiers (2002) these strategies include investigator responsiveness, methodological coherence, appropriate sampling and the concurrent collecting and analysing of data.

Firstly, methodological coherence requires that the methods used in a study match the research questions and the choices for analysis. This chapter has discussed and justified each of the significant methodological decisions made in this study, demonstrating how they complement one another in achieving the research aims. Secondly, sampling must ensure the



collection of sufficient data from a selection of participants who are well suited to the research topic. The purposive sampling used in this study used reliable sources to select participants who were best positioned to provide relevant insight on the research topic. These participants were interviewed, some more than once, until sufficient data had been collected. Lastly, data collection and analysis must happen in relationship with one another, encouraging a responsiveness which enriches both processes. Temporally, the collection, transcription and analysis of data took place concurrently, enabling them to continuously inform one another. Structurally these processes were unified under the case study research design which ensured they remained responsive in their relationship to one another. Finally, the researcher remained engaged, responsive and reflexive in applying each of these mentioned strategies. In doing so, the researcher understood the research process as interactive and its elements as interrelated to ensure the ultimate rigour of this study as a whole.

### **3.7 Reflexivity**

Reflexivity leads the analyst to take up the knots of place and biography and to deconstruct the dualities of power and anti-power, hegemony and resistance, insider and outsider to reveal and describe how our representations of the world and those who live there are indeed positionally organised (Macbeth, 2001, p.38).

Reflexivity is another important consideration for the rigour of a qualitative study. Reflexivity is about understanding how notions of self and other shape the analytic exercise and thus analytic rigour is tied to the analyst's reflexive engagement in the world (Macbeth, 2001). To be reflexive is to be thoughtful and self-aware of the inter-subjective dynamics between the researcher and the researched. In qualitative research the researcher is central to the construction of knowledge thus they have a responsibility to critically reflect on the way that the facets of their subjectivity impact upon the meaning construction and other aspects of the research process (Banister et al., 1994; Elliot, 2005).

Reflexivity requires a vigilance for the unseen and what I came to learn in this research process is that things unseen reside most comfortably in one of two places. Moments of ease, where I am not required to struggle or question and equally in moments of uneasiness, where I dare not probe for fear of being further unsettled. In the hold of these moments, and the

emotions they evoke, I found myself most resistant to self-reflection. And inevitably, swaddled in these reflexive blind spots, resided the parts of my subjectivity most relevant to this research process. In this section I provide some insight into how I carefully unwrapped and unpacked those parts of myself.

This study was registered and conducted at the UFS, which for me meant a move from Cape Town to Bloemfontein. In this new context everything I was and always had been meant something new and the things which had previously made me the same became identifiers of difference. In my experience of this new community my home language of English became symbolic of a painful history of war and loss, being a woman became a signifier of inferiority and my views about the world became marginal rather than normative. While my whiteness seemed to automatically give me membership to a close knit group, I found that this simply meant that people felt more comfortable saying things around me that I didn't want to hear. It was within the framework of this experience that I developed my initial perceptions of this study.

Going into the interviews I was fixated on the potential impact of my otherness with regards to age, culture, gender, class and education. I thought about the role of history in the formulation of identity and wondered how my race and language would influence the relational dynamics between myself and the students and workers respectively. I worried that the workers would see me only as a young white UFS student, much the same as those who had put them through this whole ordeal to begin with and I suspected the students may liken me to the media whom they resented for all the negative publicity they had received. However, as it transpired, it was my unexpected experiences of connection and sameness that were most powerful and unsettling in the research context.

In my process of connecting with the students I came to realise that sameness is only comfortable until you recognise yourself in those you wish to perceive as other. Reflecting on the way I responded to their narrative I learnt that my sense of my own whiteness, in relation to theirs, had bred a vulnerability in me that manifested as a need to protect what I thought I might be. I felt a need to defend their narrative as if exposing it may expose something in me that I wasn't yet ready to accept. Remaining blind to this relational complexity, or feigning objectivity, could have skewed my research in dangerous ways. However, reflexivity required me to look until I saw, until I could recognise and reflect on this vulnerability.

This section provides a window into one component of a continuous process of reflexive engagement. Throughout this research process I not only acknowledged and observed but challenged and questioned the components of my subjectivity, as it continued to position me in relationship to others. This helped deepen my analysis of the meaning I co-constructed with the students and workers in their respective interviews, and contributed to the analytical rigour of this study.

### **3.8 Ethical considerations**

This final section of this chapter will illustrate how safeguarding the well-being of participants remained a vital priority throughout the research process.

#### **3.8.1 Ethical approval**

Before conducting this research, the researcher obtained ethical approval from the UFS Department of Political science and the UFS Title Committee, an overseeing research and ethics authority at the university.

#### **3.8.2 Voluntary participation and informed consent**

From the outset this study has prioritised the active protection of all participants, with a focus on voluntary participation and confidentiality. Each participant was provided with detailed information on the purpose and aims of the study and particulars about the research process, before any interviews took place. The researcher communicated this information to the participants with a detailed information letter and consent form (see appendix A), accompanied by an in-depth verbal explanation. The researcher took great care to ensure that the vernacular used in this initial explanation was clear and accessible to all participants.

Each participant was then asked to sign a consent form confirming their voluntary consent to participate in the study and giving permission for the interview to be audio recorded. The consent given by the participants was taken as ‘process consent’, which Munhall (1989) defines as an on-going and mutually negotiated process whereby participants are able to modify the boundaries of their consent throughout.

#### **3.8.3 Confidentiality**

All the individuals who consented to participate in this study were guaranteed confidentiality and various safeguards were implemented to protect their privacy. Participant names were replaced with pseudonyms and as far as possible all personal identifiers were removed. In addition to these safeguards all the interview data, including both recordings and transcripts,

were locked away and only made available to the researcher and a translator where necessary. Due to the wide media coverage of the Reitz affair and the public nature of the reconciliation ceremony it wasn't possible to promise participants complete anonymity. The researcher made sure to discuss this with each of the participants.

#### **3.8.4 Emotional well-being and follow up**

Various measures were also taken during the interviews to protect the emotional well-being of the participants. First, the interview location was selected on the basis of the participant's preference, while also taking into account the necessity for the interview setting to imbue a sense of comfort and safety. All locations were private, quiet and convenient for the relevant participant so as to minimise the potential for stress or discomfort.

Secondly, at the start of the interview each participant was reminded that they did not have to answer any question they felt uncomfortable with. They were informed that they could turn off the audio recorder if talking about something they preferred wasn't recorded and that they could stop the interview or withdraw their information from the study at any time. Due to the sensitive nature of the research, the researcher explained that should the interview cause the emergence of any emotional distress for the participants, an appointment would be organised with a local social worker and/or psychologist.

Thirdly, follow up meetings were scheduled with willing participants to ensure that there weren't any negative effects that developed after the interview as a result of their participation in the study. These meetings also offered an opportunity to keep the participants informed about the progress of the research.

Lastly, the researcher committed to giving each participant a copy of this thesis on its completion. The thesis will be professionally translated into Sesotho for the benefit of the Sesotho speaking participants.

## Chapter 4: Analysis

### 4.1 Introduction

The analysis discussed in this chapter uses a thematic strategy to systematically explore the meaning that the students and workers assigned to their experiences of the Reitz Reconciliation Process. This analytical process aims to explore the meaning that the students and workers assigned to their experiences of the Reitz Reconciliation Process, in order to address the following research question: Did the students and workers experience the Reitz Reconciliation Process as restorative and why? The purpose of this analysis is to determine whether the restorative justice process was able to address the restorative needs of the students and workers and in this vein the research question is structured by three core sub-questions. First, did the workers, in their capacity as wronged, feel that the Reitz Reconciliation Process addressed their needs, enabling them to heal? Second, did the students, in their capacity as offenders, feel that the process addressed their needs, enabling them to take responsibility for the wrongfulness of their actions? Third, was the Reitz Reconciliation Process able to restore the students' and workers' relationship to an ideal of social equality, enabling them to coexist with equal dignity and respect within the same community?

Chapter 2 positioned the Reitz Reconciliation Process and this study within a broader body of relevant literature. This process helped define the research questions and sub-questions outlined above and it also illuminated two specific research objectives that this analysis aims to meet. The first is to gain insight into the impact of cultural differences on the Reitz Reconciliation Process, and the second is to gain insight into the role of apology in the context of the Reitz Reconciliation Process.

The researcher found that most empirical studies in the literature, up until recently, have been positioned to demonstrate the effectiveness and successes of the restorative justice approach. This has left a dearth of empirical literature engaging the challenges of restorative justice or the cases where this approach doesn't or hasn't worked. The quantitative nature of most of the restorative justice empirical studies also means that there is limited investigation into why restorative processes are experienced by participants as satisfactory or not. This study has used qualitative methods to engage participant accounts in-depth. The purpose of this investigation is to determine why the Reitz Reconciliation Process was experienced as restorative or not, by the stakeholders involved. The aims and methods position this study to address a gap in the literature.

This analysis chapter is divided into two main sections. The first deals with contextualising the Reitz Reconciliation Process by exploring the context within which the Reitz incident took place. The second section explores the students' and workers' experiences of the Reitz Reconciliation Process itself. Included in each of these two sections are a number of subsections used to group and explore significant themes. The subsections included in the first section explore the students' and workers' divergent cultural belief systems and focus on their contrasting constructions of the Reitz incident. The subsections in the second section explore the students' and workers' experiences of the Reitz Reconciliation Process through a lens of apology and forgiveness. The first two subsections of the second section investigate how the students used their experience of apology to disengage the reconciliation process and reinforce their denial. The second two subsections then consider how the workers used the students' apology and their own response of forgiveness to assign a positive meaning of repair and restoration to the reconciliation process.

As a whole, this chapter will discuss the relevant findings that emerged from a thematic analysis of the interview data, data collected from Ruan, Jaco, Florence, Patricia, Dina, Lindi and William. These findings will be used to answer the aforementioned research questions and they will contribute to a number of conclusions to be discussed in chapter 5 to follow. When presenting the research findings reference will be made to extracts drawn directly from the interview transcripts. These participant quotes serve to include the voice of the participants in the analytical discussion and provide evidence for the presented findings. The language used in the quotes has been left in its original form and has only been corrected where the written form does not clearly reflect the original verbal communication.

#### **4.2 The Reitz incident**

The right to dignity holds an important place in South Africa's constitutional democracy. It is one of the founding values of the constitution as well as an enforceable right (Constitution of the Republic of South Africa, 2006, S1, 7(1), 36(1), 39(1) & 10). Thus, a violation of dignity, such as that committed by the students against the workers, has serious implications in a South African context. This study considers the effectiveness of a restorative justice approach in addressing the effects of such a violation.

The theory of restorative justice understands the nature of crime differently to the retributive conception of justice used in most conventional justice systems. Restorative justice conceives of crime as damage inflicted upon personal and social relationships whereas the retributive

approach views crime as an act of breaking the law (Umbreit & Coates, 2000). Llewellyn and Howse (1998) explain that a restorative approach to justice operates on the understanding that crime is caused by pre-existing social inequality in relationship. On this basis the goal of restorative justice is not to restore the *status quo ante* but rather to restore damaged relationships to an ideal of social equality. This suggests that when exploring a restorative justice process it is important to investigate the nature of the pre-existing relationships between stakeholders and the social context within which these relationships operate.

The following two subsections will engage these two considerations in the context of the Reitz incident. The first subsection will explore the way the students and workers construct their relationships with one another and how this construction operates within a particular cultural and historical context. The second subsection will investigate the way the students and workers use their perceptions of this relationship to give meaning to the Reitz incident. In the broader context of this analysis chapter, these subsections are used to contextualise the students' and workers' constructions of the Reitz Reconciliation Process. As will be shown, their differing experiences of the Reitz incident and the Reconciliation Process are underpinned by their divergent cultural value systems.

#### **4.2.1 Contrasting perceptions of relationship**

This subsection focuses specifically on the students' and workers' perceptions of their relationship with one another prior to the incident. In other words it explores the way they construct the relational context within which the incident took place. When applying the restorative justice approach it is important to engage the underlying social causes of an incident of wrongdoing, as entrenched within the relationship between wronged and wrongdoer, as it helps determine what is required to achieve justice (Llewellyn & Howse, 1998).

The five workers involved in the Reitz incident were cleaners on the UFS Bloemfontein campus. They had been responsible for cleaning a number of residence rooms including those of the four Reitz students who had made the video. Some of the workers had spent more time working in the Reitz residence than others, however on average the relationship between the four students and five workers spanned a period of about four years.

The extracts below illustrate the meaning of familial connection that emerged from the workers' construction of their relationship with the students. These extracts, Florence's words, show how the workers used a parent child analogy to describe their relationship with the students.

*Just like any other relationship parents have with their children, you know how children behave they make mistakes, they do things. But we had that balanced relationship whereby we come back, we sit down, we communicate and talk about things. They looked unto us as their parents, as their elders. (Florence)*

*That's the sort of relationship we had with them. We took them as our own kids, we cared for them, we loved them. (Florence)*

*When Stefan arrived he was under my care like a small child. It was like bringing up your own child. When he is a grown up you expect good from him. (Florence)*

The language of kinship that Florence employs in these extracts, and her reference to the characteristics of the bond between a parent and child, suggest that she assigns a powerful meaning of 'care' to her relationship with the students. In a westernised context, applying this meaning to a university workers' relationship with a resident student may present as unusual or exaggerated. However, if one positions the workers meaning of familial relatedness within a philosophy of Ubuntu, such as that drawn on by the workers, it emerges as a natural expression of interconnectedness.

Metz and Gaie (2010) explain that central to the Ubuntu philosophy is the esteeming of familial relationships. Family is seen as something to be valued for its own sake and this applies to existing familial relationships and also extends to a duty to promote familial relationships wherever one reasonably can. Metz & Gaie (2010) further suggest that this approach positions "all human beings as potential members of an ideal family, that is, as individuals to be loved" (p.281). Thus in the Ubuntu context, kinship terms attest to the nature of the relationships that bind members of a community together.

This suggests that the familial meaning the workers assign to their relationship with the students references a specific way of being in community with others. This means that although their relationship was not literally that of a parent and child it was informed by this



dynamic which the workers made real through their selfless acts of caring, as illustrated in Florence's extracts below.

*At times they would just call you. One of them was in the room on the bed they would just call you to come and make them tea and then you have to walk from the room to the kitchen prepare tea for them and then take it from the kitchen to them you know. That's the sort of relationship we had because we just went out of our way to please them and to do you know what any other parents would do for their very own kids.(Florence)*

*I even sacrificed my lunch time to help them, unknown to the university. I have done all what they asked me to do for them. At times I arrived at my place at night because of the help Lindi and I gave to them. I used to cook pap for a huge number, hundred and something of children and the sauce, spicing meat, setting tables for their enjoyment. They should have appreciated all that we did as their parents.(Florence)*

This familial meaning was pervasive throughout the workers' narrative. They used it to construct their willingness to participate in the video and also to frame the pain they experienced on discovering the true purpose of the video. The workers' ability to accept the students' apology and respond with forgiveness was also underpinned by their belief in the importance of human interconnectedness.

The ethic of Ubuntu had a powerful influence on the workers process of meaning construction, however the workers also communicated an awareness of a broader relational context, informed by racial prejudice. As illustrated by Patricia in the extract below, the workers' belief in familial connectedness operated in conjunction with their experiences of racism. This demonstrates the complexity of the social context within which the relationships between the students and workers were formed. The workers recognise the relevance of South Africa's apartheid past and the persistent influence of race on relational dynamics, however in their narrative they persistently choose to emphasise a meaning of familial care. The language of racism and apartheid was only seen in the extract seen below. It did not come up again in the workers' narrative.

*Before this incident at the university was that period, which I may describe as of apartheid, but still, it is still an apartheid era...We were still*

*experiencing racism but in the midst of that, these kids that we were assisting at the residences they understood us, they respected us and they looked unto us as some of their parents. (Patricia)*

While the workers chose to emphasise the meaning of familial connectedness, the students overtly rejected this. Instead they constructed their relationship with the workers as one of inequality, framed by a particular set of cultural beliefs about those perceived as ‘other’. Their extracts are plagued by binary oppositions of ‘us’ and ‘them’, which can be seen most strongly in their construction of the ‘student cleaner relationship’, as discussed below.

In their interviews the Reitz students identified as white Afrikaans speaking South Africans. In a South African context, discourses around race and identity have a particular historical development. Bloor and Bloor (2007) explain that for many Afrikaners, racial identity was believed to be conferred to them not only by the state but also by god. Verwey and Quayle (2012) agree with this, suggesting that one of the cornerstones of Afrikaner culture is a respect for authority, founded on an ultimate respect for god. They argue that as seen in younger Afrikaner’s, this value manifests as a deep respect for ones elders. In the extract below Ruan speaks to this cultural value suggesting ‘authority’ to be a defining characteristic in relationships of care and respect, such as that between a parent and child. Within this context he denies the workers a position of authority, implying that he did not consider them worthy of this particular kind of respect.

*To me it’s also very strange, and maybe it was a cultural thing to them you know, because they will always fall back to ‘ja ons soos hulle kinders gewees’, you know we were like their own kids...They said it in the media as well a lot, that we were their kids but like I have explained the relationship in the beginning, we had a very good relationship and stuff but they were never like an authority over us, never um to really say they were like our mother or father or whatever. (Ruan)*

As seen in the extract below, Ruan then constructs his relationship with the workers as ‘good,’ but he does so on the basis of utility. He suggests that the workers provide a cleaning service and it is on this basis that the students and workers have a good relationship. This reinforces a characteristic of inequality in that the students’ construction of the relationship is not fundamentally based on the inherent dignity of all, it is utility based. In the second extract

below Ruan then refers to loyalty and longstanding service as the basis for a “long term good relationship.”

*I think our relationship was a good relationship but it was based on the cleaner student relationship you know, the person that cleans our dorm rooms and we the students you know. (Ruan)*

*You meet them and they come into your room every day, and they clean your room, and I think it's the same as at home. We have had a person coming to clean our home over the last fifteen twenty years, you build a very long term good relationship and you see it on the same basis basically. (Ruan)*

In the first of the two extracts, Ruan defines his relationship with Florence, Patricia, Dina, Lindi and William as a ‘student cleaner relationship’. He uses this phrase as if it has lexical meaning which suggests that he assumes there is shared knowledge between himself and the white researcher. The second extract indicates that Ruan’s knowledge of this relationship is brought from the home into the university context. This transferability implies that in the students’ construction, the quality of the relationship is understood to be inherent and thus can be transferred across different contexts. In other words the relationship is not dependent upon qualities of the individuals but rather upon qualities of the group. The workers also transferred their construction of the relationship from the home space, however they used the universal parent-child analogy. The students are using a relationship with very specific class and gender dynamics in the South African context, a relationship that is historically plagued by inequality.

In a South African context the relationship between black domestic workers and their white employers speaks to a specific relational history informed by deep inequality and oppression. In South Africa the domestic labour force has for the last eighty years predominantly consisted of black women working for white households and 2006 labour demographics demonstrated that domestic work remained the largest sector of employment for black women in South Africa (Fish, 2006). In the early 1980’s Gaitskell, Kimble, Maconachi and Unterhalter (1983) defined the position of black domestic workers as a nexus of triple oppression in that these individuals were oppressed as women, oppressed as black and oppressed as workers. Much has changed since this era and the position of domestic workers

is now legally protected by labour legislation, however King (2007) argues that this legislation has been largely ineffective due to challenges of implementation and enforcement. In a similar vein Fish (2006) argues that despite victories in the transformation and reconstruction of South Africa in the post-apartheid era, severe race, class and gender inequalities continue to structure the lives of women in domestic work which she refers to as the 'last bastion of apartheid' (p.108).

The complexities and nuances of domestic labour in post-apartheid South Africa extend beyond this brief discussion and beyond the scope of this study. What is significant for this analysis however, is that the relationship between black domestic workers and their white employers continues to be plagued by race, class and gender inequalities. These dynamics have informed the students' construction of the 'student cleaner relationship' and thus can provide insight into the nature of relational and social inequality that enabled the wrongdoing to take place. As Fish (2006) explains "domestic labour represents a microcosm of existing patterns of social inequality within society" (p.108). The restorative justice process would thus have been trying to transform the relationship between the students and workers from this *status quo ante*, which prevented them from co-existing within the same community with equal respect, to an ideal of social equality.

The disparity of the meaning assigned by the students and workers to their relationships with one another introduces the first of many significant differences between the ways these participants construct their experiences. This section has introduced the way in which cultural differences influenced their processes of meaning construction. The workers drew on the ethic of Ubuntu when constructing the relationship as one of familial connectedness while the students' meaning of inequality was informed by their own cultural beliefs about the 'other'. The following subsection will build upon the findings of this subsection by engaging the way in which the students and workers assign meaning to the Reitz incident itself. More specifically the subsequent subsection will explore the way the students construct their denial within a context of shared knowledge in the residence context and how the workers illustrate the depth of the violation they experienced using the meaning of betrayal.

## 4.2.2 Constructing the Reitz incident: Denial and betrayal

### 4.2.2.1 Constructing the incident as blameless within the Reitz residence context

The students made the Reitz video for a residence cultural evening that was attended by all the residents of the Reitz hostel. The Reitz residence, until its closing in 2008, remained an all-white, male, Afrikaans speaking residence situated on the Bloemfontein campus of the University of the Free State. On this basis the residence could be described as what Verwey and Quayle (2012) call a racially and culturally homogenous private space.

The Reitz video was made in response to the implementation of a new residence integration policy that would bring an end to this homogenous socio-cultural space. The policy would integrate black students into the formally all white Reitz residence in a process the student's labelled 'forced integration'. This is reflected in the opening line of the Reitz video which states that "once upon a time the Boere (white Afrikaners) lived happily here on Reitz Island until one day the previously disadvantaged people found the word integration in the dictionary. Reitz was then forced to integrate" (Reitz video, 2008). The students go on to explain in the introduction to the video that due to forced integration they have decided to have their own selection process, to determine which of the workers will win the right to be integrated into the residence. The students' actions in making the video, and the message they were trying to communicate with the video, suggest they drew on beliefs of racial exclusivity and maintained segregation, such as those that underpinned the Apartheid ideology. In the extract below Ruan suggests that this knowledge was shared within the homogenous context of the Reitz residence, in that the other residents 'understood' the video. This section will discuss how Ruan uses this notion of shared knowledge in the residence context to deny the wrongfulness of his conduct.

*They (Reitz residents) all knew it was nothing and they all understood the context of things you know...they understood the context of the video and they understood the traditions of the video, they knew we intended no harm with the video to the cleaners. (Ruan)*

There are two things that are significant about the students' use of this shared knowledge in the residence context, as underpinned by Apartheid era values. The first is that these students are second generation post-apartheid citizens and thus would not have personally experienced Apartheid or the propaganda that sustained it. This means that the knowledge and beliefs they are drawing on must have been transmitted to them from a previous generation. The second is

that according to the extract above these beliefs were shared and reinforced within the private homogeneous space of the residence. In other words the students' post-apartheid white Afrikaner identity was being constructed in this space in a way that enabled the students' treatment of the workers in the making of the video.

To better understand these two components that informed the students' actions and their construction of the incident, it is helpful to briefly consider the broader historical and cultural context within which these white Afrikaner students were operating. In 1948 the system of 'Apartheid' was officially implemented in South Africa. Apartheid was an institutionalised policy of racial oppression built upon a propagated belief in the inherent inferiority of 'other' ('non-white') race groups (Jansen, 2009a). This belief in inherent racial inequality was explicitly and relentlessly reinforced in white communities. In 1994, with South Africa's first democratic elections, the system of Apartheid came to an end, and the beliefs upon which it had been built were declared wrong and immoral. This shattered what had for many white South Africans thus far been uncontested knowledge of the past. Jansen (2009a) explains that for a large majority of white Afrikaans speaking South Africans the potential loss was too great and so they chose to adapt only as much as needed. Thus the deeply entrenched beliefs of the past remained within many white South Africans who continued to transmit these beliefs to a second-generation of post-apartheid South Africans.

Verwey and Quayle (2012) agree that the end of apartheid left Afrikaners to face an overwhelming existential crisis. They argue that this crisis necessitated the construction of a new post-apartheid Afrikaner identity that rejected some of the stereotypes of Afrikaner identity while reinforcing key discourses underlying the racist Apartheid ideology. Their recent study of white Afrikaners in the Bloemfontein region found that this identity was most strongly reproduced in private, culturally and racially homogenous spaces such as 'around the braai'. They also found that participants showed contempt for individuals who actively expressed these views in a public context. In the words of Verwey and Quayle (2012) about one participant "he is not condemning racism, but only the public violence often associated with racist Afrikaners" (p.562).

Jansen (2009a) also writes on the process of knowledge transmission in certain spaces, arguing that the transmission is informed by concentric circles of influence including the family, the church, sport, schools, cultural networks and peers. In the context of the Reitz incident, the most relevant circle of influence was the white male peer group of the Reitz

residence, of which Ruan, Jaco, Stefan and Marius had been a part for upwards of four years. Jansen (2009a) explains that in these all-white, all-Afrikaans peer groups “a powerful set of social and historical stories are shared and reinforced in an emotionally intense closed circle” (p.78).

Returning to the narrative of Ruan, the extract below shows how the students used this residence peer group context to construct the Reitz incident as blameless, presenting it as entertainment rather than a violation. In doing so Ruan exposes prejudicial beliefs about the black workers and again demonstrates the presence of Apartheid era beliefs.

*All the people at the hostel laughed, they loved it...I think the students really never saw it in a dehumanising sort of way. They actually saw it as lifting them up. Because now you know they love to see the cleaners, who their relationship was normally just cleaning their room and joking with them every day, to actually where they actually have something now to joke with them; ‘jus Florence you drink your beer quickly’ or ‘jus you run the sprint quickly’ or ‘jus you have good ball skills hey’ whatever you know. So they can actually now share this video with the cleaners and their experience afterward. So I think actually the video sort of lifted the cleaners up in the viewpoint of the hostel. (Ruan)*

In this extract Ruan suggests that the Reitz residents perceived the dehumanisation of the workers as a means of elevating their status within the residence, a way of ‘lifting them up’. What can be inferred from this is that the students construct the humanity of the older black workers as subordinate to that of their own and their white counterparts. They suggest that humiliating the workers and using their humiliation as a source of entertainment, helped the Reitz residents see the workers as something more. This demonstrates a complete disregard for the dignity of the workers, which links with a central tenet of Apartheid ideology.

It is important to mention here that this extract was not delivered with hatred or disdain. The intention with which Ruan communicated this piece of his narrative was to suggest that the video brought the students and workers closer. In other words he did not intend to openly declare that he believes the humanity of workers to be lesser. The danger is that this may well be the way that some interpret his words because that is the power of inter-generationally transmitted knowledge. If consistently shared in a homogenous cultural space the message embodied in this extract will remain unchallenged and unchanged, maybe for generations.

The researcher is not suggesting that hers is the only interpretation; she is suggesting rather that these words, stories and the emotions that go with them have to be critically engaged.

Linked to the power of intergenerationally transmitted knowledge, and central to the students' construction of the Reitz incident, is denial. In the Reitz context it manifests as a denial of culpability and a construction of the incident as blameless. Denial is one of the most common defence mechanisms by which people try to protect themselves from feeling pain or other difficult emotions such as shame (Swartz, de la Rey, Duncan & Townsend, 2008). Denial is the refusal to acknowledge or accept painful realities and it can operate in such a way that even when there is overwhelming evidence that something is true, and deep down an individual may know it to be so, they continue to deny its existence because it is too uncomfortable (Hilgard, Atkinson & Atkinson, 1979). Van Dijk (1992), who writes specifically on denial of racism, suggests that denial presupposes a real or potential accusation about one's actions and asserts that such attacks against one's own integrity are not warranted. He further explains that denial doesn't only function at an interpersonal level. It can also have social implications in that it can serve to save face of the whole in-group.

Benson (2006) explains that specifically in the context of non-violent crimes "a denial of basic criminality and a characterisation of their actions as blameless are very common responses of wrongdoers" (p.296). Thus denial is not uncommon in offenders, however what complicates the students' construction of denial is that the transmitted beliefs, upon which they draw in constructing their denial, do not align with the societal values entrenched in the South African Constitution. In other words their beliefs fall outside the range of acceptable values upon which the South African legal system operates.

In trying to understand how such a set of beliefs can be maintained and transmitted over a long period of time, Verwey and Quayle (2012) make a useful distinction between expressions of racist beliefs in the private and public sphere. Their study found that a key part of contemporary Afrikaner identity is managing public and private identity as strictly separate enterprises. This is based on a belief that certain utterances that might be "taken the wrong way in mixed public spaces" must be reserved for the in-group, in private (p.569). This links with a point made by Van Dijk (1992) that given the social norms that prohibit explicit discrimination, white group members usually don't want to be perceived as racist. The extracts below illustrate how the students construct a very similar public private distinction and how this manifests in an aversion to labels of racism.



*So the big problem to me was that this whole thing was blown up as a racial incident where it was actually a crimen iniuria case according to the court, and from a civil case as well where it was a human rights thing. It never had anything to do with being racist or racial and so forth, but the whole media and politics and everything do it up as a racial incident. (Ruan)*

*It is actually supposed to be a human dignity thing, but the public still perceive it as a racist thing. (Ruan)*

*And they start making observations and conclusions from seeing this whole incident as a racist incident, and not for what it maybe should be. So that's why I think still a lot of people have a misperception of what happened and what's going on. (Ruan)*

These three extracts illustrate how Ruan denies any relationship between issues of racism and the Reitz incident. He suggests a false separation of human rights and race related issues and more specifically of racism and human dignity, all of which are intimately linked as made explicit in the Constitution. This illustrates a powerful aversion to the terminology of racism as linked to a strong denial in the context of the public private divide.

This distinction between acceptable conduct within the private and public sphere is a challenging one in the context of denial. The students' more explicit references to this distinction are discussed further on, however here it is worth exploring the more nuanced implications of this divide with regards to the students' perceptions of themselves versus the public's perceptions of them. It raises a difficult question of whether the students are in denial to avoid facing up to the wrongfulness of their conduct, or whether their prejudiced beliefs leave them unable to conceive of their actions as wrong and so their denial serves to protect their beliefs. In other words, how much of their denial is an effort to convince others of their innocence so as to avoid acknowledging their own guilt and experiencing the accompanying shame. On the other hand how much of their denial is an attempt to protect and reinforce their beliefs, drawn from an Apartheid past, that are no longer in line with the normative beliefs and laws of the country. If the students were to accept the wrongfulness of their actions they would in turn have to acknowledge that the very beliefs that enabled them to make the video are also wrong. These beliefs form a significant part of the students'

identity and thus accepting that they are wrong, in the face of their community who share these beliefs, would be an extremely difficult process.

It would appear that there is a complex tension between the students' sub-conscious need to protect their beliefs and the way they perceive themselves and their conscious need to protect themselves against others' negative perceptions of them. This tension emerges in the discussion to follow, however it is not the purpose of this study to resolve it. Rather the intention of this subsection is to explore the students' denial of wrongfulness in relationship with the workers' experience of violation, so as to better understand their differing constructions of the reconciliation process.

At the core of the students' denial is their belief that their actions were not a violation of the workers' dignity. In other words they deny that they committed a wrong and in extension deny their culpability. Their denial is constructed and reinforced using two interrelated strategies. The first strategy is to argue that their actions were not directly responsible for any of the pain experienced by the workers and as a result their actions were not wrongful and they are not culpable. This strategy is communicated by Ruan in the extract below. He justifies this strategy by suggesting that his relationship with the workers remained unchanged until the video was released to the public.

*Our relationship after the video was made, and after we showed them the video, was the same for six months until the thing became public... And then the media came and politics came and top management- mismanagement rather came and they blew this thing apart. And now all of a sudden they [the workers] were hurt and they were traumatised and so forth you know. So to me I still struggle to find out why they weren't hurt and traumatised for the first six months after we've shown them the video, um but only when top management and politics got involved they got hurt. So if you ask me the real person who must be prosecuted here is the people who made this video public and put it out of context and gave it to the international media and to the local media. (Ruan)*

In this extract, along with the one below, Ruan also constructs his second strategy of denial which is to actively transfer blame to others who he claims were responsible for the pain experienced by the workers. This is a common trait of denial. The students are willing to accept that the workers were hurt, however they deny responsibility for the violation that

caused this pain and transfer the blame to those who made the video public. This links back to the public-private distinction, proposed by Verwey and Quayle (2012) to be a characteristic of post-apartheid Afrikaner identity. These extracts illustrate that the students felt their conduct was completely acceptable within the private homogenous space of their residence, however they constructed the video as hurtful when it entered the public sphere. On this basis they transferred blame to those who made the video public. The students' narratives portrayed a shared contempt, similar to that shown in the Verwey and Quayle (2012) study, for those who expose racist views in the public sphere.

*I actually really feel we didn't hurt their [the workers'] dignity. The person who did want to hurt their dignity is the person who spread this video to all the media without proper explanation of the relationship and of who we are and of what our intention was. (Ruan)*

The students construct the incident by denying that they intentionally violated the dignity of the workers and in extension denying that they are culpable of wrongdoing. As shown in the second extract above, the students use a particular account of the Reitz incident to support these strategies of denial. Ruan explains that they made the video and showed it to the workers and for six months their relationship remained unchanged until such time that the video was released to the public. When considered in conversation with the workers construction of the incident, as explored in the subsection below, this selective account comes to expose a layer of dishonesty in the students' narrative that further illustrates the depth of their denial.

#### **4.2.2.2 Constructing the incident as betrayal**

The students' claim, as part of their constructed denial, that the workers were hurt as a direct result of the public release of the video, rather than by the video itself. In the workers' construction of the Reitz incident, they also recognise the public release of the video as a turning point in their experience of violation, however for very different reasons to those proposed by the students. The workers construct the public release of the video as the first time they saw the full video and learnt of the students' deceit and betrayal. There are two specific components which are central to the meaning that the workers assign to their first viewing of the full Reitz video. The first is that the students misled them about the purpose of the video and thus tricked them into participating. The workers only discovered the true purpose of the video after watching the full version and realising it was intended as a protest

against the racial integration of residences. The second is the urination scene, which the workers were only shown on the day of the video's release. Thus it was only once the video had been made public that the full extent of the humiliation and betrayal became apparent to the workers.

In the extract below Florence contextualises the students' deceit within the context of the workers' pre-existing relationship with the students. She suggests that the students took advantage of the workers' willingness to assist them, specifically in university related matters.

*Some of them they do Sotho at university so they would often come to us and ask us to assist them with some of the things they did in class. So now on that day they came to us, they said to us 'this is a university project, this is something that we are working on so we would like you specifically to help us with this thing because it has to be submitted at 4pm'...I took part in this thing because I wanted to offer my help because that's how we would often do things. They would come to us and then we would assist where it's necessary.*  
(Florence)

Patricia connects the discovery that they had been misled with feelings of betrayal.

*The children betrayed us and said it was a university project...we did not know they were deceiving us.* (Patricia)

In the first extract below Florence recalls the first time she watched the full Reitz video. She had previously not seen the scene where one of the students appears to urinate in a mixture that the workers are later given to drink. In the second extract she outlines the meaning of shame and disgrace she subsequently assigned to the incident. These extracts illustrate that the workers' sense of humiliation was further entrenched by their realisation that in the six months after the video was made and before it was released, they had been under false pretences about their participation. Worse still, others had become aware of the truth before they had. At the end of the first extract Florence refers to the anger of her nephew. Her nephew, who was a student at the UFS, had viewed the full video before Florence had and he was so enraged that his fellow residents had locked him in his residence room to calm down. It was a group of his contemporaries who then approached and questioned the workers about their participation in the video, before the workers themselves had seen the full video.

*They were playing the video for us to see what's really happening. When they played the video we were sitting down but when they came to that incident where they urinated in the food, when they were in the toilet, that's when I stood and I was the first person to exclaim 'what is this video all about'....I asked them to replay the video especially at that part which I did not see what was happening. I was just thinking about what my nephew had seen, that is why he was so angry. (Florence)*

*I was so ashamed to walk in the streets, I had to disguise myself....I was also hiding myself from other people. That was my life. I was hiding myself from other people. I was ashamed and disgraced. (Florence)*

The workers construction of the incident serves to further illuminate the depth of the students' denial. As seen in the extract below, Jaco excludes any details of dishonesty or deceit from his recollection of events and in doing so uses information, such as his unchanged relationship with the workers over the six months prior to the video's release, to reinforce his denial. In other words his construction of denial caused him to exclude important information about his conduct that was central to the workers experience of violation.

*The video actually brought us closer to one another because it was a nice fun day making the video. And that's the problem is that for those six months there wasn't a problem and they had also seen the video. (Jaco)*

The students' choice to deceive the workers demonstrates their awareness that had the workers known all the details about the video they would have chosen not to participate. This seems to suggest that even prior to making the video the students did conceive that their actions would be perceived by some as wrong. In light of the public private distinction discussed earlier, it could be said that although the students knew the video would be perceived as inappropriate outside the context of their residence peers, they knew that the beliefs of their in-group would deem it acceptable. In other words the video would be acceptable as long as those considered 'other' were not made aware of any details they may find offensive. This links back to the finding of Verwey and Quayle (2012) that certain things must be reserved for the in-group audience because outside of that context they may be 'taken the wrong way'. This suggests that the students didn't perceive their conduct as inherently wrong but they knew that those with different beliefs may interpret it as wrong. On the basis of this interpretation, Jaco's quotation below can be understood as saying that they

never intended for the video to be seen by anyone who would conceive of their treatment of the workers as a violation.

*Our intention was never never never what happened, you must understand we only wanted to show the video that night. (Jaco)*

And similarly, in light of the evidence above, when Ruan claims that “*I never had any intent to hurt them*”, he is suggesting that he never intended for the workers to find out that he had deceived them and as such, he never intended for them to experience the betrayal and humiliation that they did. Van Dijk (1992) argues that in denial of discrimination it is typical that an offender will not only deny an incriminating act but also its underlying intentions, purposes or attitudes.

This first portion of this analysis chapter has focussed on the relational context within which the Reitz incident took place as well as the students and workers perceptions of the incident itself. The purpose of this exploration was to contextualise the Reitz Reconciliation Process which is necessary for two reasons. The first reason is that in order to determine the ability of a restorative justice process to achieve experienced justice one needs to engage the nature of the specific injustice being addressed. The second reason is that if restorative justice aims to restore relationships to an ideal of social equality it is necessary to understand the details of the relevant social relationships before the wrongdoing occurred.

Two significant findings have emerged from this section, each of which is relevant to the exploration of the Reitz Reconciliation Process in the following section. The first finding is that the students and workers drew on very different value and belief systems in their process of meaning construction. This is shown via their divergent constructions of their relationship and the Reitz incident itself. These differences are informed by intersections of race, class, gender and culture as positioned within a specific South African historical context. In this study these differences are generally referred to as cultural differences and are discussed within a framework of Ubuntu for the workers and a framework of denial for the students. In the subsequent section it is shown that the workers ethic of Ubuntu is better aligned with the principles of restorative justice than the students’ set of beliefs which culminate in their denial. This links with the second significant finding of this first section which is that the students, and their residence community, hold certain beliefs that do not align with the normative values upon which South African law is founded. In other words more than just their actions it is their beliefs and values that are in contravention of the law and thus their

persistent denial of wrongfulness suggests that they have chosen to disregard the legitimacy of the law in favour of their own beliefs. This is explored further in the following section on the basis of two important questions. The first is whether the students' construction of the Reitz Reconciliation Process supports the finding that they deny the legitimacy of the current state and its laws. The second asks whether restorative justice, which requires that offenders take responsibility for their wrongdoing, can only work with offenders who ascribe to a certain acceptable range of values.

The subsequent section, which focuses on the students and workers experiences of the Reitz Reconciliation Process, will use these findings of the first section to engage the restorative justice process in greater depth and will address the main research questions of this study. These questions include, did the students and workers feel that the Reitz Reconciliation Process was able to address their needs and why? This question is linked to the question of whether the students and workers experienced the reconciliation process as restorative and why?

#### **4.3 The Reitz Reconciliation Process**

The Reitz Reconciliation Process was one element of a larger multifaceted justice process that was used to address the Reitz incident. The criminal case came first and found the students guilty of *crimen iniuria* for violating the dignity of the workers. These proceedings were underpinned by a retributive approach to justice and as punishment for their crime the students were sentenced to a fine or twelve months in prison. Following the criminal proceedings a separate civil case was opened with the Equality Court. The civil proceedings resulted in an out of court settlement which formed the basis for the restorative justice process. This illustrates that restorative justice was not used as an alternative to the criminal justice system. It was a product of the civil proceedings which took place separate from but in addition to the criminal proceedings. The relationship between restorative justice and the criminal justice system differs extensively between cases and so this positioning is significant for contextualising the findings of this study.

The mentioned out of court settlement consisted of a number of conditions one of which required the students to make a public apology to the workers. In South Africa the Equality court is empowered, by the Promotion of Equality and Prevention of Unfair Discrimination Act (2000), to order "that an unconditional apology be made" (p.15). It was on this basis that a condition of the out of court settlement required the students to publically apologise to the

workers. This legislative influence suggests that future restorative justice processes, constituted in a similar way, could also include a required apology which raises two questions. The first is about the role of apology in a restorative justice context and the second is a question of voluntariness, which is a central principle of restorative justice theory.

In the context of the restorative justice literature, one of the most controversial elements of the Reitz Reconciliation Process is the public apology requirement around which it was structured. Apology itself is not new to the restorative justice context, however incorporating apology as a facilitated requirement is widely criticised in the literature and finds limited expression in restorative justice practice. The dominant approach in the literature, as asserted by key authors Zehr (2002) and Braithwaite (2002), accepts apology only as a possible by-product or desirable outcome of a restorative justice process. Braithwaite (2002) argues that if people are required to offer an apology or respond with forgiveness it would “destroy the moral power of these gifts” (p. 571). At the core of their argument lies the belief that a requirement of apology would lead to a disingenuous and insincere apology which could cause further damage in a restorative justice context. The SATRC followed this approach and did not include apology as a requirement for the granting of amnesty.

Some of the more recent empirical literature, specifically that dealing with youth conferencing in Australia, has suggested that there is a gap between theory and practice when it comes to apology in a restorative justice context. They argue that apology and forgiveness are more complex in practice than is catered for in the theory and on this basis both Hayes (2006) and Blecher (2011) place great emphasis on the restorative significance of the offer and acceptance of apology. Blecher (2011) goes as far as to suggest that apology “forms part of the unspoken touchstone of restorative justice” (p.95). In line with the arguments of Zehr (2002) and Braithwaite (2002) both Hayes (2006) and Blecher (2011) maintain however that apology must be voluntary, a product of freewill, and not required. Along these lines Hayes (2006) argues that while apology and forgiveness are central to reconciliation and repair they are not necessary. This illustrates one of a number tensions that arise in the contemporary literature, seemingly caused by authors trying to hold on to the existing theoretical approach while also trying to position apology and forgiveness in a new way in practice. Another example of tension in the literature is that while Hayes (2006) and Blecher (2011) argue that apologies must be voluntary, their findings suggest that more often than not an apology isn't perceived as voluntary by the offender or the offended. Unfortunately Hayes' (2006) and Belcher's (2011) quantitative findings, measuring percentages of offenders and victims



registering various feelings and emotions, don't provide much insight into the complexities of apology in practice. Their research is however valuable in that it demonstrates the growing significance of apology in a restorative justice context and the increasing need for qualitative research into how stakeholders engage with the apology-forgiveness exchange in practice.

The Reitz Reconciliation Process, with its public apology requirement, deviated both from the accepted approach in the literature and from South Africa's own legacy of restorative justice practice. Therefore it offers a unique case within which to consider the role of apology in a contemporary restorative justice context. During the two day Reitz Reconciliation Process, held in February of 2011, the students apologised to the workers on two separate occasions in two different communicative settings. Their first apology was offered to the workers during the private trust building meeting, held as part of the private portion of the reconciliation process. This meeting was attended by the students, workers and a trained facilitator and the private space enabled a level of intimacy and emotional openness between these parties. The students' second offer of apology, the required public apology, was given during the Public Reconciliation Ceremony in front of the workers and a gathered public. This formalised context did not facilitate any direct communication or dialogue between the parties involved.

The nature of the apologies differed greatly between these two communicative contexts as did the meaning assigned to them by the students and workers. The subsequent two subsections will discuss each apology in turn. The first will explore the powerful meaning of exclusion the students assign to their experience of the public apology and the second will investigate a split in the students' construction of their private apology, as caused by their denial. These subsections will consider the students' construction of meaning in conversation with that of the workers who perceived and received the students' two apologies very differently. The final subsection will then focus specifically on the workers' construction of their forgiveness and how this impacted their construction of the reconciliation process.

The findings of the analysis in section 4.3.1 to follow, show that the students' and workers' perceptions of the apology-forgiveness exchange were at odds. For example, while the students perceived their apology as reason to disengage the reconciliation process, the same apology enabled the workers' forgiveness and healing and informed their satisfaction with the process. On this basis the analysis will argue that the static definition of apology, used in much of the restorative justice literature, is not appropriate restorative justice practice. In

other words the potential value of apology needs to be understood as more fluid and nuanced than is allowed by the four generally accepted requirements in the literature. These four requirements are an acknowledgement and account of the offence, a willingness to admit wrongdoing and accept responsibility, a commitment to provide restoration and a promise to forbear (Regehr & Gutheil, 2002; Blecher, 2011).

### **4.3.1 Apology and denial**

#### **4.3.1.1 The public apology requirement: Denial and exclusion**

Stahlkopf (2009) argues that one of the primary goals of restorative justice is to re-empower the principle parties affected by an offence, as central players in the process of addressing that offence. This requires equal deliberative participation among stakeholders. This can be challenging in that the impact of this re-empowerment can only be effective in as far as the parties perceive their experience as one of participation.

The extract below shows that Ruan assigns a powerful meaning of exclusion and disempowerment to his experience of the Reitz Reconciliation Process. He constructs his experience as one of not being heard or consulted and implicit in this extract is a tone of disdain for the process. The following subsection will explore why Ruan constructed the process in this way and how his experience links with the students' offer of apology.

*I don't actually know what the human rights goal was of this process and what their intention was, like I said we weren't involved... we never had any say in this process from the start off so I don't know what their purpose was and what their goal was and we never had any chance to tell them listen here but this is what would be my goal and purpose if we go through a process like this. (Ruan)*

Offender participation has been acknowledged as a significant challenge in restorative justice practice and there is a small but developing body of literature trying to engage this issue. Most restorative justice proponents have avoided the topic in that it represents a potential weakness of the restorative approach to justice, however Karp, Sweet, Kirshenbaum and Bazemore (2004) emphasise the importance of investigating offender experiences in greater depth. They explain that when examining the nature and effectiveness of restorative justice programmes it is important to investigate the extent of offender participation and the impact of their varying levels of involvement on the restorative justice process and the other parties involved. They claim that an important characteristic of restorative justice is dialogue and

negotiation between the affected parties to define the reparative obligations of the wrongdoer. In the case of the Reitz Reconciliation Process this negotiation took place before the parties met face-to-face for the first time and it was framed as a legal process of settlement. The extract below illustrates how the legal context, with lawyers operating as mouthpieces for the parties involved, impacted upon Ruan's experiences of exclusion.

*The part of the whole reconciliation thing that I had a problem with was you know nobody has contacted us or really spoke to us. Everything was done through lawyers and I think it's difficult sometimes with lawyers being the middle man you know, the message sort of gets lost or doesn't get translated properly through a middle man and - or through a lawyer. And the other thing is to get approached as a human being you know, not as the Reitz four or not from a human rights commission you know. You can work for the human rights but just approach me, learn to know me, learn who I am, try to understand. (Ruan)*

In this extract Ruan communicates that he did not feel recognised as an agent in the process and more than that he suggests that he didn't feel acknowledged as an individual or a human being. There is an implied sense of victimisation in this extract suggesting that the students' exclusion caused them to focus on their own experiences of victimisation rather than those of the workers. As seen in the final line of the extract Ruan suggests that he feels misunderstood by those responsible for facilitating the process, in that no one tried to get to know him. The problem with this is that it aligns with Ruan's argument that people only interpreted the students' actions as wrong because they misunderstood the context within which the conduct took place. In other words this suggests that he is constructing his experience of exclusion in a way that supports and reinforces his denial. This reiterates the significance of actively including offenders in restorative justice processes, in this case to challenge their prejudice and assist them in taking responsibility for their actions.

Stahlkopf (2009) argues that acknowledging the offender's experience of harm can also be an important step in helping them take responsibility for their actions. It gives them space to deal with their injuries rather than build resentment that the injuries of others are addressed while their own are ignored. In the context of the Reitz case such an approach seems counter intuitive in that the students' sense of hurt is based on a deep denial of their culpability. It could however be argued that by engaging the students' construction of their own victimhood

the restorative justice process could engage the roots of their denial from a place of care. This sense of acknowledgement could empower the students to understand the experiences of the workers and take responsibility for the effects of their actions.

Ruan uses his experience of the public apology as central to his sense of exclusion. In the extract below he uses the process of writing the public apology to illustrate his sense of being silenced and side-lined in the reconciliation process.

*We weren't really involved but then the one thing they said we must do is we must write a speech that we must give. So I took a lot of time and effort to write the speech...and when I mailed it to them they just told me no they don't like it, it's not going to happen. So I think I tried to redo it a bit and change one or two sentences maybe and I re-mailed it and they just said no. Long story short I got a letter from the – I don't know if it came from the Human Rights (Commission) or the university but I got a letter from them I had to learn...so they had written my apology letter for me or no uh for the four of us to go up in front of the public and say it over. So that was the reconciliation, to give you an idea of how big our part really was. (Ruan)*

An apology requirement would be considered controversial in the restorative justice literature. Those who would argue against an apology requirement would be even further concerned by Ruan's suggestion that the content of the apology was developed and prescribed at the exclusion of the offenders. However, the role of public apology in the Reitz Reconciliation Process is more complex than most of the literature would allow or provide for. In other words the impact of the public apology did not come down to the students' construction of it. The purpose of the public apology was not simply about the students showing remorse for their actions, its purpose was to serve the needs of the workers and a broader affected public. As will be discussed it becomes apparent that an apology that does not meet the needs of the offender can still be constructed as meaningful by other stakeholders.

Appendix E includes Ruan's original apology as well as the apology he read out at the public ceremony. When comparing these two apologies it is apparent that Ruan's original apology supports his construction of denial whereas the second apology challenges his denial in that it acknowledges the wrongfulness of the students' conduct. This suggests that because of Ruan's denial he was unable to conceive of his original apology as inappropriate and so he

used its rejection to further reinforce his sense of exclusion. The way Ruan does this is by suggesting that his apology was his version of events and thus its rejection meant that he was unable to share his side of the story. Jaco reinforces this meaning in the second of the two extracts below.

*I truly truly believe that nobody has ever heard our side of the story...I think till today, our side of the story hasn't actually been heard. (Ruan)*

*I just want to tell them what happened...to this day, we have not been able to tell our story...they never asked for our story, they never thought we were innocent. (Jaco)*

In suggesting that they have never been given the opportunity to tell their version of events, Ruan and Jaco are suggesting that everyone is misinformed and thus their conclusions are unfounded. They use this belief to support their denial and maintain their innocence indefinitely on the basis that no-one, except their own community, really knows or understands the full story. This illustrates again how the students' experience of exclusion, which manifested most strongly in their construction of the public apology, served to further reinforce their denial. In the extract below Ruan suggests that he was resigned to this state of affairs and so chose to disengage from the process rather than contest it.

*You played the role, you gave in the whole time when maybe you would have liked things to be done a lot differently. But you knew if you going to be right minded now or you know if you going to tell them now listen I don't like this you know it's just going to drag the story out and it's just going to drag it along and along and along. We wanted to go on with our lives so we gave in the whole time to whatever they said. You realize that okay listening to what they say now is going to help this thing get sorted out quicker, so you just go with it. (Ruan)*

This findings of this subsection support the position that offender satisfaction, or rather offender discontent and disengagement, is one of the main challenges facing restorative justice practice. This section found that there was a direct correlation between the students' experiences of exclusion and their refusal to recognise the wrongfulness of their actions. This portion of the analysis has also shown that offenders' experiences of exclusion can be linked to pre-existing constructions of denial, as informed by a pre-existing system of beliefs and

values. Thus their experiences are not necessarily solely dependent upon the structure and facilitation of the process itself. This reinforces the importance of taking the personal context of offenders into account when attempting to achieve offender satisfaction.

In conclusion the students constructed the Reitz Reconciliation Process, and more specifically the public apology component, using the meaning of exclusion. On this basis they disengaged from the process. The question then becomes, how did the students' experiences of exclusion and disengagement, as linked to their public apology, impact upon the workers and upon the outcomes of the process as a whole? In addressing this question it is necessary to acknowledge that the students' construction of the public apology did not occur in isolation. It is directly linked to the students' private apology to the workers during the private trust building meeting, which will be discussed in the subsequent subsection.

#### **4.3.1.2 A split apology: Denial and forgiveness**

The students were deeply affected by their experience of offering a public apology, the details of which were discussed above. The workers on the other hand did not assign strong personal meaning to the students' public apology. They framed the public ceremony simply as a means of communicating to the public what had already taken place in the context of the private ceremony. The extracts below show that the workers perceived the public ceremony as significant and yet they didn't position it as central to their meaning construction around the reconciliation process as a whole.

*We went to the public to show that we have forgiven those children wholeheartedly and we were already making jokes. (Patricia)*

*All those who gathered there heard our voices that we have forgiven those boys because they have asked for forgiveness. (Florence)*

*I think it really helped, that public ceremony that we had for the community. It helped for the public to see when we say we forgive them and when the students ask for forgiveness from us (Patricia)*

The workers construct the private trust building meeting, and the students' private offer of apology, as the most significant component of the reconciliation process. The workers construct this apology as genuine and remorseful and as the catalyst for their forgiveness and healing. Thus the private apology was central to their satisfaction with the process as a whole. The students' construction of their private apology on the other hand, is plagued by denial

and indicative of their inability to accept responsibility for their conduct. In other words the students' and workers' interpretations of the private apology were at odds, the details of which will be discussed in this subsection.

The private apology took place during the Private Trust Building Meeting held the night before the public ceremony. This meeting was the first time the students and workers had met and engaged in face-to-face dialogue since the day the video had been released to the public three years prior. The purpose of this meeting was to provide the students and workers with a private, safe, facilitated space in which they could speak openly with one another about the incident. There was no apology requirement imposed upon this meeting and yet it is likely that the required public apology prepared for the following evening influenced the proceedings.

Inherent in the meaning the students assign to their apology is a deep split. This is illustrated in the extracts below as a split between that for which Ruan is sorry and that for which he is not. He is “*sorry about what happened*” however not for “*what I’ve done*”.

*I am sorry about the process and all those things and from the beginning I said I’m sorry about what happened, how the thing turned out to the cleaners. But I have never said sorry for what I’ve done, because my true intentions was never to hurt the cleaners, so how can I say I’m sorry for something I feel, I really truly feel that I didn’t do. (Ruan)*

*I didn’t feel that I truly wanted to hurt the cleaners, never was that my intention. But it turned out that they maybe got hurt in the way the video was portrayed in the public and those sorts of things and for that I am sorry. (Ruan)*

Ruan uses this split to separate his actions in making the video, from the consequences of the video. This separation of intention, action and effect is an artificial distinction used by Ruan to support his denial. It enables him to construct an apology whereby he can apologise to the workers while still denying his culpability and transferring blame.

This split is at one level a result of the relationship between the students’ denial and the apology requirement. That is to say that Ruan constructs this split apology so that he can fulfil the apology requirement while still denying that what he did was wrong. On account of the requirements of an apology discussed in the literature review, Ruan’s inability to

acknowledge the wrongfulness of his offence, admit wrongdoing or accept responsibility would render his apology as disingenuous. On first interpretation the students' refusal to accept any responsibility for the pain experienced by the workers presents as callous and an explicit indication of their prejudices beliefs about the 'other'. However, the following few extracts, in which Ruan communicates a sense of care and concern for the workers, are a reminder of the complexity inherent within the relationship between the students and workers. The extracts below indicate how in practice, dangerous beliefs about the 'other' operate within genuine acts of caring for the 'other.' These acts become the foundation for denial, as seen in the extract below wherein Ruan uses the phrase "I only had love for them" to deny wrongfulness and support his split apology.

*I do have remorse for how the thing turned out with them and I'm sorry that the thing turned out like that. But like I say I was never sorry because I truly believe I never had any intent to hurt them. I only had love for them you know up until now, I never had any intent to hurt them...I only had love and best wishes you know and-and wish them well. So to me it's sort of lying to myself if I say I'm sorry for something I didn't do or never intended for. (Ruan)*

In this extract Ruan suggests that if he accepts culpability for hurting the workers and apologises for his actions he would be lying to himself on the basis of his belief that he genuinely cared about them and would never intentionally hurt them. There is a deep contradiction between the students' treatment of the workers in making the Reitz video and their suggestion that they only had love for the workers. This contradiction reinforces that the students applied a different standard of appropriate treatment to the workers, however it is important to recognise that although the students' 'care' for the workers was not based on a respect for their inherent human worth, it still manifested in real acts of generosity. Within their framework of beliefs about the workers, the students perceived these acts as representative of genuine care. In the first extract below Ruan explains an imagined scenario where he has the opportunity to meet with Dina in private. His use of 'care' in this extract can be contextualised using the two extracts below it which illustrate different acts of care.

*I think I would have went to her and we would've sat down and I would have said to her listen Dina, sorry this thing turned out like this but I never had any intention to hurt you. I don't know what the politics and the unions and everybody said to you but I truly never had – and you know my heart*



*you know I- I looked after you, you knew I cared for you while we were at the hostel so nothing's changed from that point of view. (Ruan)*

*We had such a good relationship, especially with me and Dina. We had one where Dina come tell me where she had problems or where she had pain you know. I normally gave her extra money if she wanted to travel extra or I normally gave her a lot of pain pills because she had a bad ankle. (Ruan)*

*I had a lot of t-shirts and clothing that I knew I'm going to the corporate world now I'm not going to use half of these clothes. So I ended up probably giving her about a full black plastic bag of clothing for her son and she was very happy. (Ruan)*

These extracts illustrate an important dimension of the relationship between the students and workers. The students used this component of care as central to their split apology by suggesting that they would never intentionally hurt someone they cared about and thus couldn't apologise for something they didn't feel they did. This expression of "love" and "care" has to be understood within the context of the students' prejudiced beliefs about the workers, however it also needs to be considered as an influence on the way the workers received the students' apology.

The interpretation above has shown that the students offered a split apology, plagued by denial, underpinned by their persistent inability to accept responsibility for the wrongfulness of their actions and justified using an argument of care. The workers however perceived and received the students' private apology as genuine and remorseful and worthy of their forgiveness, as can be seen in Patricia's extract below. This introduces the complexity and fluidity of apology in the Reitz Reconciliation Process and suggests that a structured definition may not be useful in determining the impact of an apology in a restorative justice context.

*They asked for forgiveness, they showed remorse, they owned up to the wrong that they did and that's how we ended up forgiving them. (Patricia)*

Florence reinforces the significance of the students' apology in the restorative justice context by suggesting that accepting the students' apology and forgiving them for their actions was the catalyst for her healing. She describes the emotional shift from pain to 'comfort' in the extract below.

*After accepting their apology we were even hugging... and I felt comfort inside, I really felt a relief like something's been lifted. (Florence)*

These extracts show that the meaning the workers assign to the students' apology is at odds with the meaning of denial with which the apology was offered. In his study on youth justice conferencing in South Australia, Hayes (2006) found this to be true of almost a third of the cases he investigated. He found that victims and offenders would interpret apologies differently in a number of combinations for example the offenders were sorry but the victims felt they were not and vice versa. Hayes' (2006) quantitative study did not offer any insight into why these discrepancies of meaning may occur, however his findings suggest that the Reitz case is not an isolated incidence of this phenomenon in a restorative justice context.

These findings suggest that a restorative encounter, and more specifically the exchange of apology and forgiveness which Hayes (2006) considers the core sequence of symbolic exchange, is dynamic and unpredictable and not well suited to a fixed definition of apology. This implies that in a restorative justice context apology needs to be understood as more than the intention with which it is offered in that it has the potential to impact upon others in unexpected ways. Dzur and Wertheimer (2002) outline a similar argument in their work on forgiveness and public deliberation in a restorative justice context. They suggest that "the request for and acceptance of forgiveness has moral value even when it is not genuine" (p.12). In other words they argue that an apology can have value separate from whether or not the wrongdoer felt genuine remorse and repentance at the time of its offering. This, they explain, is because apology is an action that can occur with behavioural consequences even if not accompanied by the requisite emotions because it has the power to generate the same feelings in the receiver as a genuine apology.

This alternative understanding of apology does not suggest that apology can and should be made a requirement in restorative justice processes. On the contrary this study has shown why requiring an apology can be problematic, specifically with regards to the experiences of offenders. What this study does suggest is that a more fluid understanding of apology is better suited to a restorative justice context. The remaining question then is why the students' and workers' interpretations of the apology were at odds and what this means for the Reitz Reconciliation Process as a whole?

Tavuchis (1991) offers a helpful account of apology in the context of reconciliation and repair. He distinguishes between an apology which fully acknowledges responsibility for

wrongdoing and an account which is an excuse or justification for wrongdoing. He suggests that reconciliation and repair require a sincere apology rather than an account and yet he recognises that what matters in practice is whether the giver and receiver interpret a speech act as an apology or an account. He goes on to argue that for apologies to achieve reconciliation the offender and the wronged must share social constructions of moral conduct. This goes to the core of why the students and workers perceived the apology differently.

As has been discussed the students drew on a set of values and beliefs, shared by their immediate community, that prevented them from constructing their actions as wrong. In other words they did not consider the Reitz video morally reprehensible despite that the law defined it as such. The workers on the other hand ascribe to a set of moral beliefs upon which the new legal dispensation is founded. The constitution is underpinned by the values of Ubuntu and thus the workers' perceptions of the students' conduct aligned with those of the law which found it wrongful. On the basis of their value system the students felt that they did not have anything to apologise for and so to support their denial they constructed a split apology which separated their conduct from its negative impact on the workers. The workers on the other hand, drawing on the ethic of Ubuntu, needed to forgive the students for their wrongful actions and move forward with their lives and thus constructed the apology as meaningful. This shows that on the basis of their different value systems, and in extension their different needs, the students and workers constructed moral conduct differently and constructed the apology differently. This discrepancy impacted on the process in a way that enabled the workers to experience healing and yet did not allow for reconciliation or the genuine restoration of relationship because the students were unable to accept responsibility for their wrongdoing.

While subsections in section 4.3.1 focussed largely on the students' constructions of the reconciliation process, the subsections included in section 4.3.2 to follow will explore the workers' constructions of healing and forgiveness in the context of the Reitz Reconciliation Process. These subsections will discuss other elements of the reconciliation process that the workers recognised as meaningful when constructing their choice to forgive.

## **4.3.2 Forgiveness and Ubuntu**

### **4.3.2.1 Ubuntu as complementary to the restorative justice approach**

As was mentioned briefly in the preceding subsection, the workers assigned a meaning of forgiveness and healing to the reconciliation process. The students' apology was an important

influence on the workers choice to forgive, however there were also a number of other contributing factors which will be discussed in the following subsections. All of these elements, constructed within a framework of the workers' Ubuntu philosophy, contributed to their positive construction of the reconciliation process. As will be shown, this positive construction was the broad result of an alignment of the values embodied in the ethic of Ubuntu and those underpinning the restorative approach to justice.

As a starting point, the workers' choice to accept the students' apology and forgive them was underpinned by the philosophy of Ubuntu. Mnyaka and Motlhabi (2005) explain that forgiveness is central to the Ubuntu philosophy in so far as "not to have the capacity to forgive would be to lack Ubuntu" (p.222). In the extract below Dina demonstrates this Ubuntu belief, constructing the significance of forgiveness and illustrating the responsibility it places in the hands of the forgiver

*Forgiveness is a great thing, nothing comes right without it...If one does not forgive a person, you have destroyed that person's life completely because now that person walks in life thinking that you haven't forgiven them and nothing will go right for them. (Dina)*

This extract illustrates a nuanced relationship between reclaiming the power lost through an experience of trauma and in the process inheriting a responsibility to forgive in order not to destroy the life of another. This connects with the foundational belief of the Ubuntu philosophy that one's own humanity can only be fully realised through our connections to the humanity of others. In other words to destroy the life of another by not forgiving would mean denying the full realisation of your own humanity and Ubuntu is founded on the beliefs that "it is our deepest moral obligation to become more fully human" (Metz & Gaie, 2010, p. 281). This suggests that beyond a choice not to destroy the life of another there is a responsibility to encourage a fuller humanity in others so as to become more fully human in one's own life. In the extract below Florence enacts this responsibility by suggesting that the reason she forgave was to enable students to live a full life.

*We did not want them to go to jail because they still have many years to work for themselves and lead good family lives...It was for this reason that we forgave them, to enable them to lead good lives. (Florence)*

Schoeman (2012) explores the relationship between Ubuntu and restorative justice and she explains that restorative justice embodies the values and principles that underpin Ubuntu. On the basis of this finding she argues that Ubuntu beliefs are complementary of restorative justice goals and in turn she suggests that restorative justice processes offer an ideal platform for teaching positive values and pro-social culture in society. The findings of this study support elements of this argument. First, the workers ascribe to the Ubuntu philosophy and they assign positive meaning to the restorative justice process suggesting that the process was able to meet their needs. The discussion to follow will explore in-depth how the Ubuntu philosophy aligned with the principles of restorative justice in the case of the Reitz Reconciliation Process. Second, justice processes offer an opportunity to reaffirm existing norms and also redefine the political landscape by prioritising and emphasising that which is necessary for justice (Leebaw, 2001). The philosophy of Ubuntu underpins the South African Constitution and thus Ubuntu values align with those considered pro-social in a South African context (Reyneke, 2011). Restorative justice provides a space, unlike that provided by the conventional justice system, where Ubuntu values can be expressed for example through forgiveness. As seen in the extract below, Patricia suggests how a restorative justice process can be used to spread the positive values embodied in forgiveness. The potential for teaching pro-social culture through Ubuntu values is further magnified by the public component of the reconciliation process which accessed a broader witnessing community.

*We told them that we have forgiven them not for their sake but that they also must forgive others who wrong them. They must also teach their peers, their families and their children that if a person makes a mistake and asks for forgiveness he or she must be forgiven. (Patricia)*

This extract suggests how values taught and practiced between individuals in a restorative justice context could potentially extend to whole communities of people with transformative outcomes. This illustrates a powerful relationship between Ubuntu and restorative justice in a South African context, which will be explored further in this study. The challenge however is when the other stakeholders in the restorative justice process, and their communities, ascribe to a set of beliefs and values that stand in conflict with those of Ubuntu and restorative justice and do not align with the values embodied in the Constitution, the supreme law of the land.

The following sub-sections will consider the components of the restorative justice process that the workers constructed as relevant to their forgiveness. These elements include a

humanising encounter that promoted an experience of empathy, a space to voice their questions and receive answers and the provision of reparations. As will be shown, each of these elements embodies the connection between Ubuntu and restorative justice and thus illustrates the specific ways their underpinning values complement one another.

#### **4.3.2.2 A humanising encounter: Rediscovering the intrinsic humanity of the offender**

Central to the Ubuntu philosophy is the belief that everyone has an intrinsic value simply by virtue of being human. Mnyaka and Motlhabi (2005) explain that “regardless of their social status, gender or ‘race’ persons are recognised, accepted, valued and respected for their own sake” (p.216). By virtue of this belief, wrongdoing is understood to be the result of individuals acting on a refusal to make use of an inner state of humanness. Thus wrongdoers do not lose their humanness as a result of their wrongdoing. Their humanness may however be obscured by their actions, causing the offended to lose sight of it. In the context of Ubuntu, losing connection with the humanity of another is detrimental to the fullness of one’s own humanness and so there is a need to regain that connection. To address this need the wronged party needs an opportunity to rediscover the humanity of the wrongdoer. The workers suggest that the Reitz Reconciliation Process provided a space where rediscovery and reconnection could take place.

The workers construct a two part meaning around their ability to rediscover the humanity of the students in the context of the Reitz Reconciliation Process. This meaning implies two specific needs. First, they needed to reconnect with the humanness of the students through an experience of empathy and second, they needed to understand why the students had chosen to deny their own inner humanness as well as that of the workers when making the video. The following discussion illustrates how the workers perceived the restorative justice process to meet these needs.

When constructing their forgiveness in the context of the private trust building meeting, the workers discuss a non-verbal encounter that took place just before the private meeting. While the encounter took place outside the official meeting it was still informed and facilitated by the broader restorative intention with which the students and workers had been brought together. Dina’s description of the encounter below illustrates that it was a moment of witnessing vulnerability in the other which evoked feelings of compassion and empathy in her.

*I think he smoked something like two boxes within that space of time. He was so stressed you could even tell that he was under so much pressure... he was so stressed the way I looked at him and I even felt compassion for him, I even felt sorry for him the way he was at that time. (Dina)*

The significance of this encounter is confirmed by Patricia's reference to it when constructing her final moment of healing. Her inclusion of this reference illustrates the experience as a signifier of the meaning she wishes to construct around her ultimate forgiveness.

*We were all happy, we were laughing together and Florence was teasing Stefan about the incident where he was smoking cigarettes non-stop. It showed that the thing was over. We have forgiven them with all our hearts. (Patricia)*

The important link between empathy and forgiveness is constructed by Florence in the extract below. She communicates empathy as an opportunity to see and feel the pain of the other which enables forgiveness.

*And as soon as we saw their remorse, as soon as they - we even saw tears rolling from their eyes, we felt their – we felt that pain that they felt, that maybe they realised the wrong that they did. So we decided to forgive them, to release them and for us all of us – us and them to move on and to have a way you know forward um from this thing and to move and to close this chapter. (Florence)*

Together these extracts show that the workers were able to rediscover the students' humanity by witnessing their vulnerability. In witnessing the students' "tears" and "stress", the workers were able to see and feel the students' pain and connect it with their own. Thus they were able to reconnect their own humanity with that of the students. This in turn enabled them to forgive and move forward which demonstrates the significance of these humanising encounters in a restorative justice context. Restorative justice processes should aim to encourage these kinds of empathic interactions which raises the question, what conditions facilitate these encounters? In the case of the workers their experience of empathy required a face-to-face meeting and a space where emotion could be expressed and seen. In the extracts of both Dina and Florence the emphasis was on seeing and feeling with no mention of verbal interaction or content. Dina recalls that "*he was so stressed the way I **looked** at him and I*

*even felt compassion for him*". Florence states that *"we even saw tears rolling from their eyes, we felt their pain."* It is the relationship between seeing and feeling emotion in connection with another that is most powerful. This suggests that restorative justice processes should strive to create spaces where stakeholders meet face-to-face and feel sufficiently safe and held so as to openly express emotion. The encounter Dina mentions, where she experienced empathy outside the formalised bounds of the restorative justice process, adds the importance of respecting the power of the unpredictable. Her encounter was still informed by the restorative energy of the process and yet it took place in a moment of un-facilitated human witnessing that could not have been planned.

The discussion above has shown how the workers' experience of empathy contributed to their ability to forgive and heal. There was however another important component that contributed towards their forgiveness in this context. The workers required an explanation for why the students had chosen to deny their own inner state of humanness and that of the workers when making the video.

The studies of Presser and Van Voorhuis (2002) and Bevan et al. (2005) have found that one of the strongest and most consistent needs expressed by victims of wrongdoing is the need to understand why. Wrongdoing often leads to a loss of confidence and a diminished sense of personal security in the wronged individual and this raises a number of questions as they try to understand and process their position as wronged. These questions include why they were chosen by the offender and why the offender committed that particular offence (Bevan et al., 2005). The criminal justice system does not often cater to these needs in that there is seldom an opportunity for the wrongdoer and wronged to engage in face-to-face dialogue. In contrast, one of the important strengths of restorative justice processes is that they provide a communicative space where these questions can be asked of the wronged party.

When constructing the Reitz Reconciliation Process, the workers expressed this need to know why the students had committed the wrong. In the context of the Private Trust Building Meeting they were given the opportunity to ask this question of the students both in the context of a group meeting and a private one-on-one meeting for those who requested it. Florence and Lindi requested one-on-one meetings with Stefan and Jaco respectively. The meaning they assigned to these meetings seems to suggest that this was the space where they felt their need to know why was most directly addressed. Florence recalls her meeting with Stefan in the extract below.



*I remember when he came to the residence he was very small. Like any other parent when you have a small child you are nurturing them and when they are grown up you are expecting great things from them. So I wanted ask him the question, after everything that I have done for you, after everything we have been through is this how you are thanking me? What I wanted to understand from him is why, why did he do this thing to me, what was he thinking when he did it, what motivated him to actually do what he did? (Florence)*

In this extract Florence outlines her need to understand why Stefan participated in making the Reitz video. Her questions resemble those found in the mentioned studies conducted by Presser and Van Voorhuis (2002) and Bevan et al. (2005), however she frames them within her specific relational context. This supports their findings that the need to know why is common to most victims of wrongdoing. Lindi asked similar questions of Jaco, to those Florence asked of Stefan and in the extract below Lindi recalls Jaco's response.

*He said to me that they were only playing, they were just fooling around with this and they didn't mean to cause any harm. Because now they have placed us in the situation they have placed us in and them as well, they are in the situation they have placed themselves in ...He said to me: 'Lindi, forgive me, we were playing. I did not know we have made such big and bad thing'... I said that I have forgiven him. (Lindi)*

This extract illustrates that Lindi perceived Jaco's response as sufficient for her to grant forgiveness. In light of the discussion above this suggests that the students' explanation assured the workers that such an incident would not happen again because they would not act on a denial of their humanness again. Thus by way of a humanising encounter and answers to their pressing questions about the incident, the workers were able to reconnect with the humanness of the students and thus forgive them and become more fully human themselves.

The literature (Karp et.al, 2004; Stahlkopf, 2009) suggests that an offer of forgiveness by the wronged party can hold great significance for the wrongdoer. The claim is that by having their humanity recognised and acknowledged by those they have wronged, offenders are empowered to recognise it in themselves. In the case of the students their persistent denial of wrongfulness prevented them from questioning their humanity or constructing the workers forgiveness as meaningful.

The subsequent and final subsection explores the role of reparations in the Reitz Reconciliation Process. It considers the way the workers constructed the reparatory measures as relevant to their ability to forgive and heal and investigates some of the key issues that arose. One of the important findings was that the origin of the reparations is more significant than the content of the reparations.

#### **4.3.2.3 Reparations: A symbol of action**

In the context of restorative justice, and specifically in cases dealing with violations of dignity, reparations are notoriously complex and challenging (Kukathas, 2006). Dignity is a particularly elusive right making it difficult to quantify (Reyneke, 2011). This makes it challenging to determine how best to repair or compensate injuries resulting from a violation of dignity. In the case of the Reitz incident, the students were found guilty of *crimen iniuria* for violating the dignity of the workers and then the question of how to redress the damages caused by this violation was taken before the Equality Court and a settlement was reached. As has been discussed this settlement consisted of four core conditions all of which could be argued to serve a reparatory purpose. Having discussed the role of the students' apology, both public and private, this section focuses specifically on the condition of a pecuniary tribute. This tribute was paid to the workers by the UFS.

Magarrell (2002) explains that reparatory practices can be purely symbolic or mostly material in nature, however she suggests that they most often fall on a continuum between the two. The workers illustrate the nuances of this relationship between the material and symbolic nature of reparatory measures in their discussion of the monetary pay-out as symbolic of action. As seen in Florence's extract below, the workers construct what they call 'compensation' as action and they position this meaning at the centre of their discussion of reparations.

*We specifically asked them for compensation. That was our request, to restore our dignity and ask for forgiveness. They should prove to us through this action that they are asking for forgiveness and this is how we will forgive them...They asked for forgiveness and they said as a token of them asking for forgiveness there is something that they would offer to us... for us we take it as an action that shows, that proves to us that indeed they were trying to offer their apologies to us. (Florence)*

Here Florence constructs the action of compensation as proof of apology and her use of the word “token” emphasises the symbolism of material reparations. Other authors in the restorative justice field, including Walker (2006), Meyer (2006) and Blecher (2011) agree with this interpretation. They suggest that apology is the central reparative measure and other reparations are simply means of confirming apologies as genuine and believable. Harris et al. (2004) agree with this claim suggesting that “the willingness of the offender to undertake material actions to secure restoration underlines the truthfulness of the apology and makes their recognition of the harm they have caused concrete” (p.203). The suggestion is that action is a good determinant of sincerity in the context of an apology.

In the following section Patricia suggests that this meaning of action as proof can also apply to an offer of forgiveness. Using the construction of compensation as action, both these extracts indicate the significance of reparations for verifying an exchange of apology and forgiveness.

*Forgiveness should not be a lip service but it should be accompanied by actions. You see if somebody has forgiven you through their actions. That's what we wanted to do to them, we wanted them to see that we had forgiven them through our deeds, through what we do ... we also wanted them to show through their actions that they are remorseful. That's how we wanted to build this relationship up after the incident. (Patricia)*

Patricia describes how verbal expressions of apology and forgiveness should be accompanied by action to demonstrate to the receiver the sincerity of said verbal offers. She explains that a verbal exchange of apology and forgiveness is the first step in the process of healing, which subsequently requires that both parties act upon these sentiments so as to confirm their commitment to the restoration of the damaged relationship. Both these extracts illustrate the important link between reparations and restoration. A similar link is outlined by Hayes (2006) who explains that apologies offered by offenders and accepted by the offended party through their forgiveness is a symbolic exchange that is necessary for reparation to occur. This illustrates how the workers' construction of reparations aligns with that of restorative justice.

The workers' construction of reparations also suggests an emphasis on symbolism over material content. The root of this symbolism lies in the action of transfer rather than the quality and quantity of what is being transferred. This shows that even though a pecuniary tribute would be considered a material reparatory measure, its value is perceived by the

workers in terms of its symbolism. This meaning is further developed by the workers within their specific cultural context. Their discussion of reparations as framed by their specific cultural beliefs serves to illustrate how the symbolism of the reparations extends to the wellbeing of the wrongdoer.

Patricia explains the general cultural beliefs that underpin the approach to reparations in her community saying;

*It was our culture as neighbours. For example at home your neighbour could use offensive language and other people might judge that person. The best is to seek a solution and whatever method of paying should be imposed on the offending person. It could have been sorghum beer to show remorse for using offensive language. It was why it was decided that those children should indicate by action that they were remorseful. (Patricia)*

Florence adds to this with her own anecdote explaining that

*According to custom, when a boy has impregnated a girl he must pay damages to the family of that girl to show that he is sorry. That family will accept the compensation. (Florence)*

These extracts illustrate the cultural significance of reparations as a component of justice. Florence and Patricia use culturally specific examples to exemplify their belief in reparation as an action to demonstrate or prove remorse. Patricia then describes the students' reparations as a traditional cleansing ceremony illustrating how the workers' cultural beliefs are applied directly to the Reitz case. This demonstrates the power of their cultural symbolism.

*One thing that we asked them to do for us, because just to explain the customs, we asked them to slaughter a cow for us for a cleansing ceremony... because now this shame that they have brought to us, this is something that we asked them to do for us. (Patricia)*

Florence goes on to shed some more light on the details of the cleansing ceremony and what it means in the context of the Reitz case.

*Yes what we meant is that they needed to come and cleanse themselves, to wash their hands. It's just they had to put money or something on the table as a token of them saying we apologise for what we did ... but there wasn't any*

*cleansing ceremony that took place, it was just that they offered us money.  
(Florence)*

Here Florence explains that the pecuniary tribute they received was symbolic of a cleansing ceremony. Thus the payment of a monetary sum was perceived by the workers as an opportunity for the students to be cleansed of their wrongs. This indicates that within the workers' cultural framework reparations serve to heal both wronged and the wrongdoer. This implies that the offender should partake directly in the symbolism of the reparations as much for their own process of healing and that of the offended party.

In direct contrast with the meaning assigned by the workers, the students' construct the pecuniary tribute as material content used to incentivise rather than heal. As seen in Ruan's the extract below, they suggest that the workers only partook in the reconciliation because of the promise of monetary compensation.

*You know if somebody did something to you and now you supposed to go into the reconciliation process and uh you are maybe a bit hesitant and then somebody goes and they tell you listen here I will give you half a million rand, of course you would go and say sorry if you only earned two or three or four or five thousand rand a month you know. (Ruan)*

Ruan later says that "*incentives from the reconciliation process doesn't make it a true reconciliation process or forgiveness*". In these extracts he constructs the pecuniary tribute as a form of incentive and expresses contempt for its inclusion in the process. Ruan's construction of the material reparatory measure is a concern in the restorative justice context which includes reparations as an important part of the restoration process. While the students' denial inevitably played a role in their perceptions of the reparations, another contributing factor could be that they were not included in these measures. The pecuniary tribute and the job security elements were dealt with solely by the university at the complete exclusion of the students who were not informed of any of the details. It could be that because they were not held accountable for the reparations it further entrenched their failure to take account for their actions and reinforced their denial.

This raises a question relevant to the meaning constructed by both the students and workers around the reparations. In a restorative justice context who should be involved in providing the reparatory measures and to what extent? In this study, the workers' suggestion that an act

of reparation has the purpose of cleansing the wrongdoer as well as healing the wronged suggests that the wrongdoer should be directly involved in some way. The contempt the students have for the material reparatory measure could also support an argument for the wrongdoer's direct involvement over their exclusion. In the following three extracts the workers engage the question of who they believed had been responsible for the pecuniary tribute and how this impacted upon their feelings about the reparations. As can be seen these extracts present as contradictory and confused which makes it very difficult to draw any conclusive finding. However, what this shows is that the question of who should be involved in providing reparations is an issue of contention and one that requires further research.

*This one of cleansing ceremony we asked them [the students] – we specifically asked them to do it for us after this incident. Because now our dignity it was not as it was before so now this is something that we specifically asked them to do for us. They should prove to us through this action that they are asking for forgiveness and this is how we will forgive them. (Florence)*

Patricia then feels it appropriate to clarify saying

*Alright ok now just to clarify what Florence has said, what they did together with the university it's their own business but the cleansing ceremony is something that we expected it to come from them and it did come from them. But we are not aware if maybe they were doing it together with the university, but we expected it to come from them because as the ones who did this incident towards us. (Patricia)*

Patricia goes on to further clarify by explaining that

*In order not to get confused, when we sat around the table, we had expected the children to compensate us. We do not know how the university got involved to compensate us. That we do not know. (Patricia)*

The one thing that these extracts do make clear is that something was expected to come directly from the students; however what remains uncertain is whether the workers perceived the students' involvement to be sufficient and why.

This subsection has illustrated some of the complexities of reparations in a restorative justice context. It has shown that the workers valued the symbolism of transfer over the material

measure of reparations and that the origin of reparations, who they come from, is an important consideration in how they are received. This subsection also demonstrated that the workers' ability to accept the students' apology as genuine was linked to the offer of material reparations. They constructed the reparations as a requisite action to prove the students' verbal apology. Thus while there is some ambiguity in the workers narrative around the reparations they received, they construct the pecuniary tribute as integral to their ability to accept the students' apology and respond with forgiveness.

The closing section of this chapter will summarise the findings of the analysis.

#### **4.4 Summary of findings**

In this analysis the researcher found that at a foundational level the students and workers draw on divergent constructions of their relationship with one another. The workers emphasise a meaning of familial connection and relatedness when assigning meaning to their relationship with the students. They draw on the philosophy of Ubuntu and thus connect with the students on the basis of the inherent human worth of all. The students on the other hand construct their relationship with the workers on the basis of deeply entrenched beliefs about what they believe to be inherent relational inequality between certain groups. Their construction is based on the belief that identifiers of 'race' determine differing levels of human worth. These differing constructions are indicative of the students' and workers' different cultural values and beliefs which ultimately inform their differing conceptions of the Reitz Reconciliation Process.

The students' cultural beliefs and knowledge were found to be underpinned by a transmitted Apartheid ideology. These beliefs were shared and reinforced within the homogenous white, male, Afrikaans residence context. As discussed in this chapter, these beliefs were used by the students to deny their culpability in the Reitz incident and to transfer blame to those who made the video public. The students' beliefs and values were found to be particularly problematic in the context of the Reitz Reconciliation Process because they were not in line with the normative values entrenched in the South African Constitution. This raised a difficult question of whether the students actually consider the post-apartheid government and new South African laws to be legitimate and thus whether they ever accepted the authority of the justice process, restorative or otherwise. On the basis of the findings the suggestion is that they didn't which is how they were able to maintain their denial throughout the justice process.

The analysis has shown that the opposite was true for the workers. The values of their Ubuntu philosophy are recognised to underpin the South African Constitution and as was found in this study they are also line with those of restorative justice theory. In other words the students' belief system was at odds with the restorative justice process while the workers' belief system complimented the restorative goals of the process. This informed the students' negative construction of the Reitz Reconciliation Process in contrast with the meaning of forgiveness and healing that the workers assigned to the process.

The students assigned a strong meaning of exclusion to their experiences of the process. They mostly constructed this exclusion around the public apology they were required to give. This experience served to further reinforce their denial and caused them to actively disengage from the process. The suggestion however is that on the basis of their cultural beliefs they were never willing to engage the process or accept its authority to begin with. In the private ceremony the students offered a private apology to the workers that was plagued by denial and indicative of their inability to accept responsibility for the wrongfulness of their actions. Yet the workers perceived and received this apology as sincere, remorseful and worthy of forgiveness. This showed that in practice apology has a much more fluid quality than is catered for in the theoretical literature.

The workers positioned the students' apology as significant to their process of healing along with a number of other factors. They felt that the process enabled them to experience empathy for the students which empowered them to rediscover the students' humanity. They also constructed the process as a place where they could voice important questions and concerns about the incident and have them answered. The topic of reparations was also central to the workers' meaning of healing and forgiveness and the researcher found that the origin of the reparations, who they came from, and the symbolism of transfer was considered more important than the quality or content of the reparations. The workers constructed reparations as an action to prove a verbal expression of apology.

On the basis of these findings this study has determined that the students and workers constructed the Reitz Reconciliation Process very differently and that the Reitz Reconciliation Process was able to achieve its restorative goals pertaining to the workers but not those relevant to the students. This meant that the process was unable to restore the students and workers relationship to an ideal of social equality because the process was unable to address the students' prejudicial beliefs about the workers. The students denied



their culpability throughout the process and thus left still believing that their treatment of the workers was acceptable. It was found that the main cause of the students and workers divergent constructions of the process is their differing cultural values and beliefs. As will be discussed in the conclusion chapter to follow, this suggests that in a culturally diverse South African context restorative justice processes face a number of challenges. It also implies that restorative justice processes operate within a certain range of acceptable values and struggle to address the needs of those whose values fall outside of this range.

## **Chapter 5: Concluding comments**

### **5.1 Introduction**

This study set out to explore the meaning that the students and workers assigned to their experiences of the Reitz Reconciliation Process, with the main aim of determining whether they experienced the process as restorative, or not, and why. The researcher undertook to answer three sub-questions asking whether the students and workers felt that the restorative justice process had met their needs and whether the process had been able to restore their relationship to an ideal of social equality.

The findings of this study, and their contribution to existing knowledge, are significant for three key reasons. First, South African policy makers have demonstrated an increasing willingness to include restorative justice principles in policy documents. This can be seen most recently with the development of a National Policy Framework for Restorative Justice. This has led to a growing debate around the implementation of restorative justice principles in a contemporary South African context. The findings of this study provide in-depth insight into one example of restorative justice in practice in this context, illustrating some of the most powerful components of the process as well as significant challenges that need to be overcome. This knowledge can help inform a restorative justice implementation plan in South Africa.

Second, South African society is plagued by issues of a persistent past. These issues have a significant impact on incidents of wrongdoing in this country and as a result it is important that justice processes are equipped with the tools to engage and address these issues. The findings of this study have provided insight into the powerful nuances of second-generation prejudice and this chapter will present some suggestions of how this pervasive challenge might be engaged in a restorative justice context.

Third and finally, this study has contributed to an existing scholarly debate on the role of apology in a restorative justice context. The findings have challenged the accepted approach in the literature by suggesting that there is a need for a more fluid and dynamic understanding of apology. An understanding that enables apology to have a more intentional role in restorative justice processes. This was based on the finding that there has been a shift in the South African restorative justice narrative. While in the 1994 transition apology was not considered a requirement for restoration and reconciliation, the Reitz Reconciliation Process suggests that at this point in South Africa's transformational journey apology is necessary.

In essence this study has contributed to a deeper understanding of the implementation of restorative justice principles in a contemporary South African context. The study's findings have also contributed to certain broader international debates within the ever growing restorative justice literature. The remainder of this chapter will discuss how the findings of this study have addressed the specific research questions. The researcher will then focus on the implications of these findings, outlining new knowledge and learning that could be of use to other restorative justice scholars and practitioners. On this basis the chapter will be divided into two main sections and a number of subsections. The section to follow, 5.2, will discuss the empirical findings and their broader implications for the application of knowledge. This section will be divided into four subsections, each discussing a theme relevant to the specific research questions. The second section, 5.3, will explore specific limitations of this study along with recommendations for future research.

## **5.2 Empirical findings and theoretical implications**

In brief answer to the three research questions, the findings have shown the following. First, that the workers experienced the Reitz Reconciliation Process as restorative. They felt that the process addressed their needs for apology, reparations, empathy and answers, all of which they constructed as central to their process of healing. Second, the students did not experience the Reitz Reconciliation Process as restorative. They constructed the process as staged and forced and felt that they had been excluded and their contributions ignored. The students consistently denied their culpability, illustrating that the process did not enable them to take responsibility for their actions or ownership of their role in the process. Third, as a result of the students' persistent denial, the process was unable to restore the students' and workers' relationship to an ideal of social equality. The pre-existing inequality persisted beyond the process in that the students were never able to acknowledge that their sense of 'right' relationships was flawed. In other words they refused to embrace a new moral baseline that would construct their treatment of the workers as wrong and enable a new relationship based on equality. The students' beliefs, as shared and supported by many in their community, continue to prevent the students and workers from coexisting with equal dignity and respect within the same community.

The second component of the research questions asked why the students and workers experienced the Reitz Reconciliation Process in these ways. In answering this question the findings of the study can be synthesized into four key themes: Ubuntu, denial, apology and transformation. The first three themes are the elements that had the greatest influence on the

students' and workers' experiences of the process. In other words these themes deal with the first two research questions. The fourth theme speaks to the third research question which looks at the key obstacles to interpersonal transformation in the context of the Reitz Reconciliation Process.

Before discussing each of these four themes in turn, it is helpful to briefly reiterate the two broad research objectives of this study, both of which strongly inform this discussion of the findings. The first objective was to gain insight into the impact of different cultural beliefs and values on the students' and workers' experiences of the Reitz Reconciliation Process. The second objective was to gain insight into the way the students' apology impacted on the students' and workers' experiences. While the first of these objectives permeates all the mentioned themes, the second is specifically discussed in subsection 5.2.3.

### **5.2.1 Ubuntu: When values align**

One of the key findings of this study, as linked to the first research objective mentioned above, is that cultural values and beliefs played a significant role in the students and workers differing constructions of the Reitz Reconciliation Process. The implication is that cultural beliefs and values should be taken under deep consideration when structuring and facilitating a restorative justice process in a South African context. This becomes particularly important when stakeholders have conflicting cultural values, and when the values of one party align with those that underpin restorative justice while the values of the other party stand in contravention of the values entrenched in the law. The reason this cultural conflict can be so challenging, is that without a shared moral baseline it is impossible to restore relationships to a shared ideal of equality. Thus on the basis of these findings, a shared moral baseline and shared sense of 'right' relationships needs to be established between the stakeholders, if the process is going to be experienced as restorative. This is discussed further in sub-section 5.2.4.

The workers' process of meaning construction was underpinned by the ethic of Ubuntu. The values of Ubuntu were found to align with those of restorative justice which meant that the Reitz Reconciliation Process was well positioned to address the workers' needs. The complementary nature of their cultural values and the restorative conception of justice was central to the workers construction of the Reitz Reconciliation Process as restorative. A large portion of South African society live by the ethic of Ubuntu, and the findings of this study

suggest that these beliefs can and should be used to support the successful implementation of restorative justice principles.

Within the Ubuntu framework, the findings of this study identified four components of the reconciliation process that the workers constructed as most influential on their ability to forgive and heal. First was the students' private offer of apology to the workers and second were the material reparations which the workers constructed as confirmation that the students' apology was genuine. The third factor was a face-to-face dialogue which enabled the workers to have their questions directly answered by the students, and the final component was a space that facilitated an empathic encounter between the students and workers.

In discussion of this final component, the findings of this study have shown that some of the most powerful restorative moments emerge from the unpredictability of human encounter. This suggests that ideally restorative justice processes need to find a balance between the control that ensures the safety and protection of those participating, and the flexibility that allows for honest human engagement in all its unpredictability. The way emotions interact is powerful in its elusiveness and there needs to be a contained space that provides for this level of capriciousness.

Another related finding is that the most powerful restorative encounters don't necessarily require verbal dialogue or actively facilitated spaces. The Reitz case suggests that it can be enough that these encounters take place in a space of physical and emotional togetherness, within the broader context of restorative justice. In other words the relationship between seeing and feeling can be enough to facilitate powerful experiences of empathy. Restorative justice should aim to understand and embrace these nuances of human interaction and use them where possible to assist in the process of restoration. As a first step it would serve to develop practical language to discuss these more elusive, and yet no less significant, components of restorative justice practice.

### **5.2.2 Denial: The enemy of restoration**

The findings show that the workers had a very positive experience of the Reitz Reconciliation Process. The students however did not construct the process as restorative. Their denial prevented them from accepting that their treatment of the workers was wrong and it caused them to consistently emphasise their own experiences of victimisation over those of the workers. The study found that the Reitz Reconciliation Process was not able to engage and

address this denial, which illustrates two things. The first is the depth and resilience of the students' beliefs upon which they built their denial. The second is that when dealing with offenders like the Reitz students, restorative justice processes will need to do more.

In response to these findings the researcher makes three suggestions. They relate to acknowledging the experiences of the students, finding new language to engage the complexity and resilience of their denial and considering the role of their community in the restorative justice process.

The first suggestion is that restorative justice processes need to actively acknowledge and engage the offenders' experiences of harm. And they need to do so, within the context of the specific knowledge and beliefs those individuals bring to the process. In other words restorative justice processes need to demonstrate sensitivity towards the knowledge that offenders bring. This suggests that The Reitz Reconciliation Process should have provided a space where the students' could express their feelings of exclusion and victimisation, on the basis that those feelings are symptoms of a deeper system of beliefs that needs to be challenged. This may feel counter intuitive, and it may seem overly indulgent to entertain the offenders constructed experiences of victimisation. However, these experiences were one of the main tools used by the students to maintain and reinforce their denial. Thus to address the source of the inequality that allowed for the incident to take place, and to have a hope of restoring the damaged relationships to an ideal of social equality, requires this level of compassion.

The second suggestion relates to the students' strong aversion to the language of racism, specifically within the public sphere. This study found that the students were adamant that the Reitz incident had nothing to do with issues of racism. They supported their claim by presenting a false distinction between the concepts of human rights, dignity and racism. While this distinction is symptomatic of the students' denial it also indicates a need for new language to engage the complexities that lie behind the students' contempt for the language of racism.

New language is necessary for two reasons. The first is that issues of race based prejudice and discrimination are different in the second-generation. Thus there are significant nuances and complexities that will be overlooked if one is to simply apply the broad language of racism. In addition to this, it is no longer helpful to label prejudice as one thing at the exclusion of others. Prejudice consists of multiple interrelated facets and thus there is a need

for language that is able to engage this quality. The second reason is that the language of racism serves to shut down dialogue and raise tensions in most South African contexts. As such, using this language to encourage individuals to recognise certain challenges within their own belief systems is problematic. What is needed, and something that will serve as a valuable tool in the restorative justice context, is language that can strike a balance. In other words language that recognises the transmitted quality of these dangerous beliefs, while still enabling new and open conversation around how the second-generation manifestation of these beliefs and values may be overcome. This is something that requires further research and development within the South African context.

The third and final suggestion is linked to the second in that it relates to the distinction between what is appropriate or acceptable within the private versus the public sphere. This study has shown that while the students' actions were condemned by a large portion of the public, and were found to be in contravention of the law, the students continued to deny the wrongfulness of their actions by drawing on the support of their community. One of their main strategies of denial was to argue that within their private homogenous residence context, the video was not seen as a violation of the workers' dignity. In other words the students' denial depended heavily on shared knowledge within their community. On this basis they transferred blame to those who released the video to the public, arguing that they were the ones who positioned the video within a context where it would be constructed as wrong. This suggests that to address the students' denial and the beliefs that underpin it, a restorative justice process would need to engage their community in a way that challenged the very foundation of the students' beliefs. The scope of this study did not extend to a consideration of the community as a key stakeholder in restorative justice processes, and so again this is something that requires further research.

In summary, the suggestion is that these three components could help future restorative justice processes achieve a depth of engagement that the Reitz Reconciliation Process was not able to. Together these suggestions imply the need for a balance. A balance between an unmovable clarity that the students' beliefs are not acceptable and a compassionate understanding of just how deep they run and how challenging they are to overcome.

### **5.2.3 Apology: A new role**

The opening section of this chapter explained how the Reitz Reconciliation Process illustrated a more significant role for apology than has generally been seen or written about in

the past. The students' and workers' differing experiences of apology were discussed at length in the analysis chapter and there are just two brief points that are left to be made here.

First, the findings show that within a restorative justice context the offer and acceptance of apology is a dynamic and unpredictable process. Thus the fixed definition of apology that is used in the literature is not well suited to apology in practice. The findings show that the impact of an apology is more than just the intention with which it is offered or the meaning with which it is received. It is all of these things, in all their variations, and restorative justice scholars need to conceptualise a definition that can address this complexity.

Second, the findings show that the students used their apology as a symbol of their exclusion and a tool to support and reinforce their denial. This in turn prevented them from taking ownership of their role in the process. As a result they did not experience the process as restorative and their relationship with the workers could not be restored to an ideal of social equality. This must be addressed, especially if apology is going to become a more integral element of restorative justice in South Africa. Researchers need to consider how apology can be included in restorative justice processes in a way that encourages the restoration of all stakeholders involved. This requires further research into the nuances of the relationship between apology and offender experiences, to develop on the findings of this study.

#### **5.2.4 Transformation: A shared moral baseline**

In the restorative justice context there are two transformative outcomes that any restorative process hopes to achieve. The first relates to the transformation of damaged relationships between stakeholders, to an ideal of social equality. The second, less widely recognised in the literature, speaks to the idea that restorative justice processes should address incidents of wrongdoing with the intention of setting in motion a series of restorative encounters that will facilitate a wide reaching process of restoration and social transformation (Llewellyn & Howse, 1998).

With regards to the first of these two outcomes, this study found that cultural beliefs and values can help or hinder the outcomes of a restorative justice process. However, ultimately, conflicting cultural values will prevent the restoration of relationships between stakeholders. The findings showed that restoration was prevented by the lack of a shared moral baseline or sense of 'right' relationship. In other words the process was unable to transform the relationship between the students and workers to an ideal of social equality because the students continue to hold onto beliefs that position their pre-existing relationship with the



workers as 'right'. These are the same beliefs they use to persistently deny the wrongfulness of their actions.

There are two important things that should be taken from this. First, these findings further reinforce the depth and resilience of the students' inter-generationally transmitted knowledge which was able to withstand direct challenge from a multifaceted justice process. Second, these findings suggest that a shared moral baseline is a requirement for successful interpersonal restoration. This is not to suggest that stakeholders have to enter the process with this shared knowledge but rather that it needs to be cultivated within the process if there is a hope for restoration.

Moving to the second mentioned component of transformation, Llewellyn and Howse (1998) argue that restorative justice processes should aim to set in motion a series of restorative encounters that will facilitate broader social transformation. While this study focussed specifically on the students' and workers' experiences of the Reitz Reconciliation Process, it is important to acknowledge that the Reitz Reconciliation Process became the foundation upon which a much broader process of transformation and reconciliation has been built. The reconciliation process enabled Professor Jansen and others to use the Reitz incident, and the charged emotional energy it produced, as a catalyst for positive change on the UFS campus and in South Africa at large. The restorative justice process was used to put in motion a comprehensive transformation plan which has achieved a lot in addressing issues of inequality, prejudice and discrimination, specifically within the UFS context. This topic of the broader transformational implications of the Reitz Reconciliation Process, lends itself to future research.

### **5.3 Limitations and recommendations for future research**

There are some key limitations in this study that serve to delineate spaces for future research. This subsection discusses four such spaces, elements of which have been briefly mentioned in previous subsections.

First, restorative justice theory recognises the wronged, wrongdoer and relevant community as key stakeholders. This study however did not engage or analyse the experiences of the community directly affected by the Reitz incident, for example the families of the students and workers. As discussed by Zehr (2002) there is limited research on the role of the community as a key holder and thus the researcher feels this could be an important area for further investigation.

Second, the researcher was unable to explore the job security element of the out of court settlement because at the time of data collection this condition had yet to be fulfilled. Thus there were still legal constraints on the extent to which those involved were allowed to talk about this condition. Having picked up on the emotional turmoil that this particular condition was causing in the lives of the workers, the researcher believes it to have an important contribution to make to the reparations discussion. The researcher hopes to investigate the details of this condition in the future.

Third, this study did not explore the transformational impact of the Reitz Reconciliation Process on broader society. As mentioned in the previous subsection, scholars such as Wright (2006) and Schoeman (2012) suggest that restorative justice has the potential to promote pro-social values in broader society and thus to transform the quality of social relationships. This study did not interview members of the broader public and thus was unable to reach any definitive conclusions on this topic. However, this is an important area for development, especially in the South African context which continues to struggle with issues of inequality.

Fourth and finally, this study raised an important question that remains largely unresolved. This question is: how should restorative justice principles be incorporated into existing justice processes in a South African context? In other words what is the ideal relationship between restorative justice and the existing justice system, including both civil and criminal proceedings? This case explored one example of the form this relationship could take, however further research is required in order to reach any conclusions on this question.

#### **5.4 Where to from here? The future of restorative justice in South Africa**

This study has illustrated that within a contemporary South African context, restorative justice has a powerful ability to facilitate healing in the lives of individuals who have experienced a deep violation of their dignity. It has also shown that restorative justice processes face significant challenges when dealing with white second-generation offenders perpetrating crimes that belong in an apartheid era 20 years past. Central is the challenge of moving all South Africans towards a shared moral baseline and consensus on the nature of 'right' relationships. This study has helped articulate the nuances of this challenge and it has found that restorative justice processes will need to do more to engage and overcome the deep and overpowering beliefs held by second-generation offenders.

This study has shown the damaging effects of denial, the resilient nature of the intergenerationally transmitted beliefs, the value and danger of a split apology and the

menace of cultural conflict. It has illustrated the power of Ubuntu, the cultural nuances of reparations, the significance of empathy and the necessity to embrace the unpredictability of human encounter. Within the context of this case, we have a better sense of what to replicate and encourage, what to facilitate and simply observe. We know now what to probe, develop and prioritise and the hope is that this will be one of a number of in-depth qualitative studies that help develop responsive restorative justice mechanisms within a specifically South African context.

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## **List of appendices**

**Appendix A:** Individual consent forms

**Appendix B:** Interpreter confidentiality agreement

**Appendix C:** Translator confidentiality agreement

**Appendix D:** Interview protocol

**Appendix E:** Public apologies



**Appendix A: Participant Consent Form**  
**A Qualitative Exploration of the Reitz Reconciliation Process as**  
**an Exercise in Restorative Justice.**

**Consent form**

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University of the Free State

Dear.....

My name is Jessica Taylor. I am a master's student in the department of Political Science at the University of the Free State. I am conducting research into the 'Reconciliation ceremony' of February 2011, which took place as part of the resolution of the Reitz incident, centring on a public apology made by the students. I am interested in learning about this event from the experiences of those who were present and involved.

You will be asked to take part in an interview that will last for approximately one hour. During the interview it is your right to refuse to answer any question, you simply have to say so and we will move on. The interview will be tape recorded but you have the right to turn the tape recorder off at any time during the interview, or delete certain parts of the tape if you so wish. You may stop or withdraw from the interview at any time.

If English is not your language of choice for the interviews, an interpreter will be present to translate. The interpreter will be bound by a confidentiality agreement and the interpreter code of ethics, and thus is not allowed to tell anyone the content of the interviews.

All information given during the interview will be completely confidential and all records of the study will be kept secure and private. No names will be used in the write up of my research and all steps will be taken to ensure and respect your privacy and safety.

A gratuity of Rxxx will be paid to compensate you for your time and transport costs.

I believe that this study has an important contribution to make in that it will provide an in-depth account of some important elements of the Reitz Reconciliation Process, drawn from the experiences of those who were directly involved.

If you have any questions or would like additional information about this research, please contact me at 051 401 7161 or [jessjtaylor@gmail.com](mailto:jessjtaylor@gmail.com).

Kind regards,

Jessica Taylor

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I have read and understood the above information of what this study is about. I agree to take part in the study.

Signature:

Date:

Contact no.:

E-mail:

**Appendix B: Interpreter Confidentiality Agreement**  
**A Qualitative Exploration of the Reitz Reconciliation Process as**  
**an Exercise in Restorative Justice.**

**Interpreter Confidentiality and Non-disclosure Agreement**

*Jessica Taylor*

Department of Political Science

University of the Free State

I \_\_\_\_\_, as an interpreter have been informed of the all relevant information concerning the research being conducted by Jessica Taylor. In my role as interpreter for the researcher, I understand the nature of the study and requirements for confidentiality. I have had all of my questions concerning the nature of the study and my role as interpreter answered to my satisfaction.

A. Maintaining Confidentiality

I understand that all information discussed between the parties during the interviews and meetings is considered to be confidential. I agree to hold confidential or proprietary information in trust and confidence and I agree not to reveal in any way to any person other than the researcher any data gathered for the study by means of my services as interpreter. I understand that this duty will extend after I am no longer working as an interpreter in this research study.

B. Acknowledgement of My Services as Interpreter

I understand that the researcher will acknowledge the use of my services in any reporting on the research. I have indicated below whether I wish that acknowledgement to be anonymous or whether it may recognize me by name.

\_\_\_ I do not wish my name to be associated with the acknowledgement of the use of an interpreter in data gathering for the research.

OR

\_\_\_ I agree that the researcher may associate my name with the acknowledgement of the use of an interpreter in data gathering for the research.

C. Signature Indicating Agreement

By placing my signature below, I hereby indicate that I understand and agree to maintain the privacy of all the participants involved in this research study, as discussed above.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Should you require further information please feel free to contact me on 051 401 7161 or at [jessjtaylor@gmail.com](mailto:jessjtaylor@gmail.com)

**Appendix C: Interpreter Confidentiality Agreement**  
**A Qualitative Exploration of the Reitz Reconciliation Process as**  
**an Exercise in Restorative Justice.**

**Translator Confidentiality and Non-disclosure Agreement**

*Jessica Taylor*

Department of Political Science

University of the Free State

I \_\_\_\_\_, as translator have been informed of the all relevant information concerning the research being conducted by Jessica Taylor. In my role as translator for the researcher I understand the nature of the study and the requirements for confidentiality.

I understand that all information discussed in the audio data I have received from Jessica Taylor is considered confidential. I agree to hold this confidential information in trust and confidence and I agree not to reveal, in any way to any person other than the researcher Jessica Taylor, any information I learn about this project and its participants by means of my services as translator. I understand that this duty will extend after I am no longer working as a translator in this research study.

Acknowledgement of My Services as Interpreter

I understand that the researcher will acknowledge the use of my services in any reporting on the research. I have indicated below whether I wish that acknowledgement to be anonymous or whether it may recognize me by name.

I do not wish my name to be associated with the acknowledgement of the use of a translator in data gathering for the research.

OR

I agree that the researcher may associate my name with the acknowledgement of the use of a translator in data gathering for the research.

Signature Indicating Agreement

By placing my signature below I hereby indicate that I understand and agree to maintain the privacy of all the participants involved in this research study by holding the information I receive in strict confidence, as discussed above.

Translator – Mike Mahase

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Researcher – Jessica Taylor

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Appendix D: Interview guide**

### **Interview protocol**

This protocol is designed to guide the interviews, remaining flexible so as to reflect the individual participants' role in the process. As mentioned in my methodology I will make use of open-ended questions in my interviews. These questions will be used to guide focus to particular areas of importance for my research, while leaving space for the participants to speak freely about the elements of the process they consider important.

My questions will be broadly structured around the chronological occurrence of the various events involved in the Reitz affair. I will begin with the state of affairs before the incident took place and follow through to the reconciliation process and some of its after effects. There will likely be many overlaps and connections between the various events which will come out in the way the participants speak about their experiences, and this will be encouraged as my suggested order is merely a general structure to guide the interviews. The reason for this approach is that the incident took place more than four years ago and so it seems best to trace the events as they happened, to help participants reconnect with the experience.

The purpose of the questions is to gather information that will assist in the achieving my research aims. The following are some of the questions that I am interested in exploring with the participants:

### **The students and workers**

Describe your relationship with the students/ workers before the making of the video took place? (student and workers)

- What was your understanding at the time of why the students asked you to participate in the video? (workers)
  - What is your understanding now of the reasons they made the video and for your and the other workers' participation in the video?
- What was the inspiration behind the making of the video? (student)
- What kinds of conversations were triggered in your community (in the male residences among white students) about the incident after the video was made public? (student)

- How do you feel about these views?
- What are your views regarding how incidents like this can be prevented in the future? (student and workers)
- What did it mean for you when the university decided not to pursue any charges against you, and Jonathan Jansen invited you back to the university to continue your studies? (student)
- What was your perception of the reconciliation ceremony (public and private elements)? (student and workers)
- In your view, why do you think the students made the apology? (workers)
- How do you understand the students' apology, what does it mean for you? (workers)
- What specific aspects of the apology led you to forgive? (workers)
- What led you to make the apology to the workers? (student)
- What did the workers forgiveness mean for you? (student)
- How did the reconciliation process influence or not influence your relationship with the workers/ students? (student and workers)
- What did you understand to be the goals of the reconciliation process and do you think it was successful? (student and workers)
- What were some of the main challenges you faced during the process? (student and workers)
- What did you learn from the experience and what recommendations would you make to facilitators who might be involved in setting up similar processes in the future? (student and workers)
- How have the other conditions of the settlement (monetary compensation and job security) impacted on your life since the reconciliation ceremony? (workers)

The goal of these questions is to gain an understanding of how the students and workers perceived and experienced the reconciliation process, how they engaged emotionally with the various stages in the resolutions process, how it impacted on their feelings towards one another as well as their own positioning in society and their experiences since the reconciliation process.



## **Appendix E: Apologies**

### **Original apology written by Ruan for the Public Reconciliation Ceremony**

(This apology has been left in its original form as written by Ruan)

First and utmost importantly I would like to state our heartfelt apology towards Florence, Patricia, Dina, Lindi and William. We always had a friendly relationship towards each other, before and the 6 months after the video was made. It was never our intention to humiliate or hurt you in any way. We never wanted affect your human right or make you feel in superior. It was mean as a funny video with no hidden agenda. It was to be viewed internally only by the members of the hostel and person understanding the history and long withstanding traditions of the Reitz hostel.

Unfortunately it was blown out of context the moment the media got hold of it. People who didn't know of our Reitz traditions were offended by it as they didn't understand it. For this we apologise as it was never our intention to offend anyone.

In conclusion we want to amend the broken relationships, wishing you'd accept our apology thereby dissolving all anger so that we can all take hands towards our journey of reconciliation

(Names changed for confidentiality purposes)

### **Public apology read by Ruan on the night of the Public Reconciliation Ceremony**

I, Ruan on behalf of Jaco, Stefan and Marius and myself do hereby express our sincere remorse and contrition about our conduct which formed the subject matter of the criminal proceedings brought against us. During the criminal proceedings our regret and apology to the five staff members of the university (four of whom were complainants in the case) were publicly stated.

We deeply regret our conduct and the harm it occasioned for the university, the workers of the university, and the broader community of South Africa.

In the past few months and years since April 2008, we have lives through the most horrible period in our lives. We have been rejected by many within our own communities, and reviled by people who don't even know us.

We now wish to address ourselves to the five staff members of Kofsies: Florence, Patricia, Dina, Lindi and William. During the time that we were students, you served the university and our residence, and you treated us with kindness and consideration. We were privileged to know you and you clearly reposed trust in us.

We failed you and we not know that our conduct hurt you deeply. We earnestly request that you find it in your hearts to forgive us for what we did. We are sincerely and deeply sorry. We undertake today in the presence of witnesses that we commit ourselves, and with God's help, to contribute to building a truly non-racial society based on respect for all person.

With true remorse and humility, we ask you to forgive us.