

# Ngwana phosa dira ga a bolawe<sup>1</sup>

## The value of restorative justice to the reintegration of offenders

MIKE BATLEY

Restorative Justice Centre  
mike@rjc.co.za

*Does restorative justice have anything to offer the field of offender reintegration? Restorative justice is defined, and distinctions are drawn, between a restorative justice worldview and processes and programmes that are restorative. Restorative justice processes focus on relationships and create opportunities for individual, family and community restoration and reconciliation. In doing so they open up new social spaces for offenders and nurture social inclusion. They also help offenders accept responsibility and help all parties manage the process of release from prison.*

While the concept of restorative justice has been well articulated at an academic level and has become a significant aspect of the academic discourse on justice, there remains a lack of clarity in the public discourse about what it is and how it can be integrated into the criminal justice system. It is thus important to start by defining what is meant by restorative justice.

Although there is no universally accepted definition of restorative justice, the following is gaining currency:

Restorative justice is a theory of justice that emphasises repairing the harm caused or revealed by criminal behaviour. It is best accomplished through inclusive and cooperative processes (Van Ness 2004).

From this statement it is clear that a distinction needs to be made between restorative justice as a **theory** (or way of thinking) and restorative justice

**processes.** It may be helpful to consider a third element of restorative justice, namely **restorative programmes.** The UN Handbook on Restorative Justice Programmes defines a restorative justice process as ‘any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator’ (UNODC 2006:7).

Although terms are sometime used interchangeably, and there can be variations within models, common examples of restorative justice processes include:

- **Victim offender mediation** where the starting point is bringing the individuals involved together, but possibly drawing in other relevant people

- **Victim offender/family group/restorative justice/community conferencing.** The emphasis is on involving all who have a stake in the offence/incident
- **Victim offender panels,** in which groups of offenders meet with groups of victims, but are not matched according to offences. This application is normally used when no offender has been apprehended.

The typical outcomes of these processes (apart from victim offender panels) are:

- An apology
- Restitution in kind or in monetary terms, aimed at compensating the victim for the loss suffered
- Performing some service for the victim
- Performing community service as a way of making right to the community
- Referral of the offender to some form of assistance programme to address some of his/her needs
- A plan to address what future steps can be taken by all involved to reduce the possibility of the recurrence of the crime committed.

A restorative justice **theory** and restorative justice **processes** must be distinguished from **programmes** that are **restorative**, such as:

- **Victim support,** arranged either individually or in groups, at any stage after a crime or violent incident
- **Victim awareness.** This is usually targeted at offenders in either a custodial or non-custodial setting with the purpose of helping them understand the impact of their behaviour on others
- **Life skills and mentoring for offenders.** These would typically be the kind of assistance programme that an offender could be referred to after a restorative justice process.

Alone, these programmes cannot be called 'restorative justice' in the sense that they do not meet the criteria of a process stated above, but they do contain restorative elements and values and can thus be regarded as being part of an overall restorative justice system.

At this time in South Africa we need to understand how restorative justice applies to the realm of rehabilitation, treatment and reintegration of offenders. These terms are deliberately used simultaneously, as they are often used interchangeably but with different nuances in meaning that are not always recognised.

Bezuidenhout (2007:54) is critical of the impact restorative justice processes have on rehabilitation, and regards restorative justice activists as being far too idealistic in their approach to rehabilitation, although he does not detail or substantiate this. Skelton and Batley (2008:37-51) have challenged this, showing that internationally restorative justice theory and practice have been substantially documented, and have withstood critical analysis. Despite the loss of credibility of rehabilitation due to the famous article by Robert Martinson (1974:22), and the ensuing 'nothing works' debate, the concept of rehabilitation refuses to disappear. In South Africa it remains a central feature in criminal justice. Furthermore, South Africa's Department of Correctional Services states clearly in its White Paper (2005:3) that 'rehabilitation is central to all our activities'. The dream of offenders mending their ways remains alive, despite having been broken repeatedly. For example, some analysts suggest that the recidivism rate in South Africa could be as high as 94 per cent (Cilliers and Smit 2007: 86).

The terms 'rehabilitate' and 'treat' reflect a medical understanding of offending. Brunk (2001:43) is highly critical of the therapeutic approach to punishment, as it implies that offenders have a certain 'illness' that needs to be cured and do not need to take personal responsibility for their actions.

Restorative justice is both backward-looking, in that it includes dealing with the 'aftermath of the offence', and forward-looking, in that it is a process that looks at implications for the future. This introduces a crime prevention element to the process in that an effort is made to identify how future incidents may be avoided. The standard criminal justice response is rarely forward-

looking. It generally aims to incapacitate the offender as a strategy to avoid future crime – chiefly through imprisonment. (See Muntingh's article in this edition of SACQ). Alternatively, imprisonment is intended to prevent crime by deterring potential criminals through instilling fear of the punishment that will follow. A restorative justice process represents a break from this thinking and a fresh approach that involves those with a stake in the crime considering implications of that crime for the future, meaning that those who are personally and directly involved can formulate targeted strategies to avoid further incidents (Skelton 2007:228).

The White Paper on Corrections in South Africa (2005) provides a vision for viewing correction as a societal responsibility:

Correction is therefore not just the duty of a particular department. It is the responsibility of all social institutions and individuals (starting within the family and educational, religious, sport and cultural institutions), and a range of government departments. It is only at that final point at which the society has failed an individual, where the criminal justice system and the Department of Correctional Services step in (White Paper on Corrections 2005:34).

In addition, reconciliation of the offender with the community is listed as a key objective by the White Paper (White Paper on Corrections 2005:39) and the principles of restoration are stated as a 'correctional management objective' (White Paper on Corrections 2005:40). However, as Sloth Nielsen (2003) has pointed out:

It is not clear that the concepts restorative justice, corrections and rehabilitation are at all coterminous, and there may well be tension between the restorative justice philosophy (and its advocates) when contrasted with the statements to the effect that the core mission of the Department is to correct offending behaviour. Alternatively, since the Corrections aspect is intended to take place after, among other things, assessment and the development of individual plans for prisoners, it may be that restorative justice sits 'next to' correction as a distinct policy initiative.

This vision of correction as a societal responsibility resonates well with the various writings of Bazemore and others. Bazemore (1999:155–184) refers to the concept of 'relational rehabilitation'. He criticises treatment programmes that are insular and one-dimensional, and makes a plea for them to nurture relationships. He advocates for the use of 'sanctioning needs' (imposing constructive consequences, setting limits and reparations) as well taking public safety into account. Taking this thinking further, Bazemore and Bell (2004:119–132) have developed a restorative model of rehabilitation. They concur with the view of Brunk that it is difficult to reconcile the 'strengths-based' assumptions of a restorative approach with a 'medical model' perspective that views offenders primarily in terms of deficits and 'thinking errors'.

A restorative model of rehabilitation would have the following features: A *collective* approach to offender reintegration that focuses on building or strengthening relationships damaged by crime, or on building new, healthy relationships; a *naturalistic* focus that does not always assume the necessity of formal intervention; and an organic process of informal support and social control that emphasises the *community* role in offender transformation and increased reliance on the role of citizens as 'natural helpers'. When specifically needed, professional treatment would be utilised, but only of those models that adhere to the principles of Effective Corrective Treatment.

Bazemore and Bell (2004: 129) conclude that 'a blend of restorative justice and effective treatment principles builds on the assets of offender, victim and community by broadening the rehabilitative context to include victim and community, emphasising the non-punitive accountability for harms in a way that reinforces reciprocity in human relationships, and finally by connecting the offenders with informal supports and controls'. This is a very different approach to regarding offenders as having something 'wrong' with them that needs to be 'fixed' by a professional in an isolated context.

Skelton and Batley (2008:49) suggest that

Apart from its doubtful record, a highly professionalised approach to rehabilitation is

entirely unfeasible, given our current crime levels and scarce professional human resources. Furthermore, the collective nature of South African society as opposed to the highly individualised nature of Western societies, suggests that restorative justice is a more appropriate approach. What we should be aiming for is understanding how a restorative justice approach can be a catalyst to create possibilities for a crime-free life for the offender, and by doing so create a safer environment for all. The prospects of this appear to lie in the way that restorative justice changes dynamics in relationships, and creates space in the community for offenders to connect with opportunities. This has multiple implications for the development of both restorative justice and rehabilitation in the country, as well as the research agendas attached to each. Researchers need to turn their attention to assisting practitioners and policy makers discover what rehabilitative programmes work under what circumstances and what the exact relationship is between these programmes and restorative justice processes.

## THE VALUE OF RESTORATIVE JUSTICE

As mentioned above, restorative justice processes include:

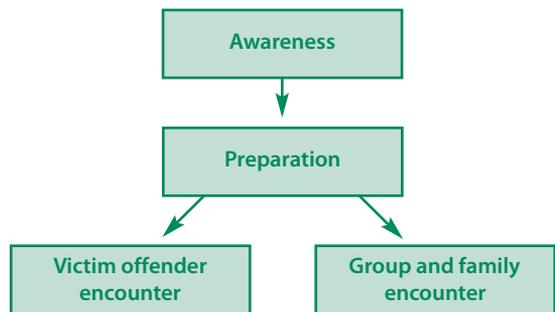
- Victim offender mediation
- Victim offender/family group/restorative justice/community conferencing
- Victim offender panels

A recent evaluation of a victim awareness programme suggested that ‘there is a dearth of research and information about restorative justice in prisons. The little that exists concentrates on changing prisons systemically rather than integrating restorative justice within the existing regime’ (Wilson and Cavendish 2007). In South Africa, the discussion, insofar as it has begun, has tended to focus on the relationships offenders have with their families in addition to relationships with their direct and other secondary victims. The current thinking within

the Restorative Justice Initiative Southern Africa (RJISA)<sup>2</sup> is that restorative justice needs to be viewed as part of reintegration work, and not treated as a separate intervention. This would include awareness raising and a focus on healing and reconciliation, particularly acknowledging other victims besides direct victims. A process of engagement between the Department of Correctional Services and the RJISA is currently underway with a view to expanding the level of implementation of restorative justice within the DCS environment.

The RJISA’s view is also that increasing the level of implementation of restorative justice processes should not be done at the expense of developing general reintegration services. Other important points that have emerged are that individual and group processes need to be considered and that these should be adapted to the needs of a specific client and situation, rather than having a ‘one size fits all’ programme-based approach.

This was represented graphically as follows:



The clear direction emerging among practitioners is that

- Restorative justice processes should include a wider focus than the direct victim of a crime and should include individual and group interventions
- These processes must be linked to rehabilitation/treatment/reintegration/corrections services if these are understood as ‘programmes that are restorative’ and approached from a restorative world view, rather than a medical one

Some significant research has been conducted on elements of this approach. In South Africa, Khulisa has developed a Peacemaking, Restorative Justice and Conflict Resolution Programme that is a holistic and integrated programme combining Khulisa's community development, rehabilitation and reintegration programmes with restorative justice, peacemaking and conflict resolution processes. What is significant about this programme from a conflict resolution point of view is that it not only brought together victims and offenders in dialogue with a narrow focus on healing and taking responsibility by offenders (as is done in North America), but it conducted processes of **peacemaking** within and between families and in communities, and it engaged in **dispute resolution** wherever needed. It also made justice more meaningful and accessible to the public, particularly to disadvantaged communities and vulnerable groups, such as women and children (Haynes 2004, Khulisa 2007).

## KEY DEBATES AROUND RESTORATIVE JUSTICE

Internationally some of the key debates surrounding restorative justice work in prisons<sup>3</sup> include:

*Will the offender benefit from having participated in a restorative justice process?*

A number of victims feel unable to participate if there is a direct link between the restorative work and a sentence benefit for the offender, as they question the real motive of the offender.

*Who should initiate a restorative justice process?*

The typical approach in both Europe and North America has been that only a victim may initiate the process in order to protect victims' right to privacy from further intrusion by the offender. However, as Buonatesta (2004:5) points out, this creates a double bind for offenders:

Sooner or later, the majority of detainees are involved in a conditional release procedure. Among other criteria, according to the same "restorative spirit", they will be assessed by their positive initiatives towards the victims. In such

a context, they often face a double bind situation. On the one hand, if they undertake such an initiative (e.g. a mediation process), they are often suspected to be self-interested. On the other hand, if they do not undertake anything, they do not fulfil the parole release criteria. So, in order to help them to get out of this dead end, we came to consider that detainees' requests to participate at a mediation process have to be admissible in any cases. Moreover, the victim should be given the opportunity to assess themselves their interest in reacting to the proposition. So, it is more relevant to consider that the offender should be judged according to the way he fulfils an agreement towards the victim and not according to his subjective position in the initiation of a mediation process.

Sharpe and Lai Thom (2007:3) reflect that North Americans like this policy (of only victims being able to initiate processes) because it reduces the risk of offender manipulation and frees victims from any concern that their choices might help or hinder the offender. But the policy was perplexing to people in South Africa, where participation in victim-offender dialogue is broadly seen as an appropriate basis for early release. In our conversations about this difference, people asked, "Why would there be a policy against recognising someone's effort to make amends?" More to the point, "When someone has had a change of heart, why would you keep them in prison?" At this stage, there are no restrictions in South Africa to prevent offenders from initiating processes.

*What is the main aim of a restorative justice process?*

If restorative justice is truly about helping victims, it needs to provide services or processes (e.g. victim-offender groups) that they can access independently, no matter what stage their offender has reached or the offender's willingness to be involved, or even if s/he has never been caught. But if evaluations are centred on the effects on the offenders and reduced recidivism, the effects on victims may be negated and can lead to some victims being reluctant to get

involved because they don't want to be 'used' (Liebmann and Wootton 2004:3).

*Restorative justice processes can be an important tool for both parties to manage the parole release procedure in a more consistent way.*

This refers to the practice that has arisen in a number of countries (including South Africa) over the past several years where the victim may make a statement at the parole board hearing that determines whether or not the offender may be released. If this is done without any prior encounter, it is likely to be a negative experience for both victim and offender, for instance when excessively restrictive conditions are set. On the one hand the victim will not understand why his/her expectations are not taken into account by the parole commission and then will feel 're-victimisation', which is quite the opposite of what the procedure intended. On the other hand, the offender will not understand why such harsh conditions were imposed when s/he had good intentions, and may come to consider the victim as his or her tormentor and be reluctant to fulfil those conditions (Buonatesta 2004). Restorative justice processes have proved to be a very effective way of generating more satisfying and realistic release conditions.

## EVALUATING RESTORATIVE JUSTICE PROCESSES

In considering the value of restorative justice processes in general, a recent review of research on restorative justice in the UK and beyond by Lawrence Sherman and Heather Strang (2007) showed that, in 36 direct comparisons to conventional criminal justice, restorative justice had, in at least two tests each:

- Substantially reduced repeat offending for some offenders, but not all
- Reduced crime victims' post-traumatic stress symptoms and related costs
- Provided both victims and offenders with more satisfaction with justice
- Reduced crime victims' desire for violent revenge against their offenders

These conclusions were largely based on two forms of restorative justice: face-to-face meetings among all parties connected to a crime, including victims, offenders, their families and friends; and court-ordered financial restitution. These meetings were compared to conventional criminal justice, without benefit of restorative justice, at several stages of the justice process for violence and theft:

- As diversion from prosecution altogether (Australia and US)
- As a pre-sentencing, post-conviction add-on to the sentencing process
- As a supplement to a community sentence (probation)
- As a preparation for release from long-term imprisonment to resettlement

Evaluations of the Citizens, Victims and Offenders Restoring Justice Program at both the Washington State Reformatory (Lovell et al. 2002) and the Shakopee Women's Prison (Burns 2001) found that victims felt less fear and shame and were more accepting of offenders. Many offenders were finally able to recount their crimes and the terms 'responsibility' and 'accountability' became more real. Other changes included overcoming stereotypes of each other, enhanced awareness of commonalities, enhanced awareness by offenders of harms caused to victims, victims' families, and the pain and suffering their own families experienced, and greater appreciation of the need for atonement and making amends (Armour 2006:4).

There are at least two restorative justice processes that have been developed specifically for use in prison and that have been evaluated: the Sycamore Tree Project (STP), which is run by Prison Fellowship in a number of countries, including South Africa, and Bridges to Life (BTL) that runs in 15 Texas prisons (Wilson and Cavendish 2007).

## SOUTH AFRICAN EXAMPLES OF RESTORATIVE JUSTICE WORK IN PRISON

Apart from the examples from Khulisa and Prison Fellowship referred to above, other initiatives in South Africa include:

- A pilot project by the Restorative Justice Centre offered at Pretoria Local Prison. The project uses a group approach, which deals with the emotional needs of offenders and helps them understand restorative justice principles, before giving them the opportunity of engaging in an individual victim offender conference
- Regular programmes offered at Pollsmoor Prison by Hope Now. These programmes are based on group activities that can lead to individual victim offender meetings
- Programmes offered by Phoenix Zululand in the prisons located at Eshowe, Mthunzini, Stanger, Maphumulo, Empangeni (Qalakabusha), Empangeni (Medium B), Ingwavuma, Melmoth, Nkandla, Nongoma and Vryheid.

## CONCLUSION

From the above we can summarise that restorative justice offers the following to the field of offender reintegration:

- The values and principles of restorative justice offer a sound framework to inform rehabilitation/treatment/reintegration programmes
- A restorative world view seeks to keep victims as a central point of reference and creates additional opportunities for addressing their needs as valid in their own right, not as an adjunct to offenders' needs
- Restorative justice processes
  - Focus on relationships and create opportunities for individual, family and community restoration and reconciliation. In doing so they open up new social spaces for offenders and nurture social inclusion
  - Help offenders accept responsibility
  - Help all parties manage the process of release from prison
- Pursuing a restorative justice world view would help us live the truth embodied in the Sotho proverb, so badly needed at this time, 'Ngwana phosa dira ga a bolawe'. (If a person has erred he does not deserve to be punished too harshly).

It is clear that a restorative justice approach and restorative justice processes and programmes offer valuable additional tools in responding to crime, and need to be integrated at the pre-trial, pre-sentence and pre-release stages of the criminal justice system. Civil society practitioners are currently frustrated with the state's tardy response to this; a far greater commitment and sense of urgency is required.

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## ENDNOTES

- 1 Sotho proverb, 'If a person has erred he does not deserve to be punished too harshly'. This article is based on a paper presented at the Conference "Creating paths for offender reintegration" hosted by the Open Society Foundation and the Department of Correctional Services 14 and 15 October 2008.
- 2 For comprehensive discussions on the classification of models see Robert AW 2004. 'Is restorative justice tied to any specific models of practice?' in H Zehr and B Toews (eds) 2004. *Critical issues in restorative justice*. Monsey, New York: Criminal Justice Press. And Raye BE and Roberts AW 2007. 'Restorative processes' in Johnstone and van Ness (eds) 2007. *Handbook of restorative justice*. USA and Canada: Willan Publishing..
- 3 Minutes of RJISA Task Team 24 June 2008. The Restorative Justice Initiative Southern Africa is a network of organisations and individuals that promotes restorative justice.