



## The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence from South Africa

Patrick Bashizi Bashige Murhula and Aden Dejene Tolla  
University of KwaZulu-Natal, South Africa

### Abstract

Restorative justice is a holistic philosophy that has become increasingly popular in reformist criminal justice debates and criminological research. However, there is some debate as to whether its programs adequately address victims' needs. To this end, this paper analyses the effectiveness of restorative justice practices on victims of crime. Drawing on my interviews conducted with victims of crime and legal experts in South Africa, the findings of this study offer support for the effectiveness of a restorative justice approach to addressing victim satisfaction. Restorative justice can enable the needs of victims to be more fully considered during the criminal justice process. This is very different from contemporary criminal justice, which has often effectively excluded victims from almost every aspect of its proceedings despite its continuous reform to protect and promote victims' rights.

### Keywords

Restorative justice; criminal justice system; victim; offender; effectiveness; South Africa; African indigenous criminal justice system.

Please cite this article as:

Murhula PBB and Tolla AD (2020) The effectiveness of restorative justice practices on victims of crime: Evidence from South Africa. *International Journal for Crime, Justice and Social Democracy* 10(1): 98-110. <https://doi.org/10.5204/ijcjsd.1511>

Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use with proper attribution.  
ISSN: 2202-8005



## **Introduction**

Over the past decades, restorative justice has gradually emerged as a very important theme in reformist criminal justice debates and criminological research. The idea of restorative justice refers to a constellation of models of justice. This idea, like the theoretical and political concepts that it feeds, floods the numerous books, which, for more than forty years, have invaded the libraries of the faculties of criminology, victimology and penology. Among this abundant literature devoted to it, restorative justice is considered and supported as a third way, situated between the model of retributive justice and that of rehabilitative justice (Sherman and Strang 2007). The first of these two models focus on the offence and the punishment. By punishing the offender, the State aims to deter him/her from reoffending. The rehabilitative model, for its part, defines the offence as a symptom and places the offender at the centre of this definition. By considering the offender as a person to rehabilitate, the State's response is aimed at treating him/her. The victim is totally absent from these two models.

In contrast to the retributive and rehabilitative criminal law theories, restorative theory based on restorative justice principles focuses its attention on victims within criminal justice (Leyh 2011). Restorative justice views crime as harm done to the victim and the community. Theoretically, restorative justice starts with the recognition that crime disrupts social interactions among individuals and community members and causes harm. Criminal behaviour is, therefore, seen as harming personal relationships between victims and offenders rather than solely violating the laws of the State. Even if the victim and offender did not know each other before the crime, the crime itself establishes a relationship immediately in need of repair. When a crime is viewed as a violation of relationships rather than solely an offence against the State, it changes the focus from punishment to repair by taking care of the immediate needs of all the involved parties (Zehr 2002).

The main focus of this paper is to investigate the effectiveness of restorative justice practices on victims of crime in South Africa. In the context of this paper, the effectiveness of restorative justice can be understood as equity in the justice system, which is a process in which justice is achieved through maintenance of law and order and the fair treatment of both victim and offender by the criminal justice system. Equity in the justice system is considered a significant part of the South African Constitution, but at the same time, it is widely violated in practice. Issues of equity in the justice system arise in the treatment of offenders and victims in the criminal justice proceedings. The rights of the accused are protected at every stage of the criminal justice process. On the contrary, the victim is one way or another neglected and forgotten. The participation of victims remains at the periphery of the criminal justice system, at the time of giving a complaint and during prosecution as a witness (Shapland, Willmore and Duff 2012). This imbalance is reflected in the Constitution of South Africa, in various statutory provisions and apex court judgements. Therefore, the objective of this explorative study is to gain a more in-depth understanding of the restorative justice approach as a system that protects the needs of the victims.

To present the goal of this study in a logical format, this paper starts by defining the concept of restorative justice and a way in which it can be understood. Second, it links the African indigenous criminal justice system to restorative justice and contextualises the introduction of restorative justice in the South African contemporary criminal justice system. Third, it briefly explains the theoretical framework and the research methodology used. Last, it analyses and discusses the findings of the study before concluding. As repairing the harm caused by crime is central to restorative justice and assisting victims in their recovery is considered its core element, the results of this study prove that restorative justice better satisfies the needs of victims compared to the contemporary criminal justice.

## **Defining Restorative Justice**

Restorative justice is a developing concept of the criminal justice system with roots in traditions and practices of several different cultures (Hadley 2001). Its modern concept was developed in the 1970s, particularly in Canada, New Zealand and the United States, based on criticisms of the contemporary

criminal justice system and its administration (van Ness and Strong 1997). However, there are disagreements and different interpretations of many fundamental concepts within restorative justice, both in the way they are defined and the way they are implemented and practised (Doolin 2007).

The main point of debate between proponents of restorative justice relates to whether the concept should be defined in a way that emphasises the process to be used, or rather the outcomes to be achieved (Doolin 2007). In a process-based definition of restorative justice, a description of what the process entails is emphasised. An example of such a definition is offered by Marshall (2009: 5): ‘Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future’. This definition is endorsed by the Working Party on Restorative Justice<sup>1</sup> (Gavrielides 2011) and is the most frequently cited in the restorative justice literature; however, it is often criticised by scholars in the field such as Bazemore and Walgrave (1999). Although it is conceded that this simple definition includes some of the core elements of restorative justice, many proponents believe it to be too vague because the importance of the aims and outcomes of the process are not emphasised (Armstrong, Maloney and Romig 1990; Bazemore and Maloney 1994; Bazemore and Walgrave 1999; Gavrielides 2007). Many scholars in the field prefer a definition in which the outcomes to be achieved in a restorative justice process are emphasised. An example is Bazemore and Walgrave (1999: 48), who define restorative justice as ‘every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime’.

Despite the differences in the two definitions mentioned above, they should be considered complementary rather than irreconcilable. Therefore, the definition that will form the basis of the present study is the one from Zehr (2002), who offers a combination of a process-based and an outcome-based definition of restorative justice. According to Zehr (2002: 15), ‘restorative justice is a process of exploring harms, needs, and obligations to try to repair relationships and put things as right as possible’. The needs and obligations discovered in past research for both victims and offenders are shown in Table 1. However, the scope of this study focuses only on the needs of the victims.

**Table 1. Identified Needs and Obligations of Victims and Offenders**

VICTIMS	OFFENDERS
Safety and protection from the offender	To be accountable for their actions
Restoration of a psychological sense of safety	To express remorse
An opportunity to tell their story and be heard	To tell their story and be heard
Answers to questions about the crime	To offer some kind of reparation of their actions
Financial or symbolic reparation	To explore the precursors to their criminal involvement
Full accountability by the offender	To address issues, such as alcoholism, drug dependency, lack of job skills, mental health issues, etc.

**Literature Review**

*African Indigenous Criminal Justice System and Restorative Justice*

It has been asserted by African scholars that the traditional African method of administering justice is very similar, if not exactly the same, as restorative justice (Mangena 2015; Tshehla 2004; Tutu 1999). In confirmation of this claim, Skelton (2007) highlighted several factors common in both traditional African justice and restorative justice: both processes aim for reconciliation and restoring peace in the community, both approaches promote social norms that emphasise community duty as well as individual rights, dignity and respect are considered central values, both processes share the view that a crime is a harm

done to the individual and the broader community, simplicity and informality of procedure are common features of both approaches, the law of precedent does not apply to the outcomes of either process, community participation is actively encouraged in both processes and restitution and compensation are highly valued by both traditional African justice and restorative justice.

This approach to social life and conflict is characteristic of the African philosophy of *ubuntu*, *utu* and *ujamaa* in which understanding and not vengeance is a basic concept (Mokgoro 1998). Described as such, it is clear that the concept of restorative justice resonates with the philosophy of *ubuntu*, *utu* and *ujamaa*. Van Niekerk (2013: 412) also emphasised that South Africa's highest courts have commented on their 'interrelation with the African principle of ubuntu, which is regarded as a fundamental postulate of African customary law and in effect the foundation of restorative justice in African jurisprudence'. While the term 'restorative justice' may be foreign to African elders, its values and procedures accord with their own understanding of justice. It can easily be asserted that modern restorative justice is a renaissance of indigenous criminal justice.

It is important to note that restorative justice in South Africa traces back to the jurisprudence of *ubuntu*, which is regarded as the major philosophy of reconciliation in the country. *Ubuntu* became popular after being adopted as an indigenous law enshrined in the South African Interim Constitution of 1993 (Cornell and Van Marle 2012). For the first time in the history of its recognition in South Africa, indigenous law and its application have what can be viewed as Constitutional status. Section 21(1), taking its cue from the interim Constitution, recognises the indigenous law institution of traditional leaders and the systems of indigenous law that they observed (Mokgoro 1998). According to Mokgoro (1998), courts are specifically enjoined to apply this law where it is applicable and do so subject to the Constitution and applicable legislation.

However, even though the philosophy of *ubuntu* does not directly feature in the 1996 Constitution, it still exists through the South African Bill of Rights and has continued to influence judicial interpretations by the Constitutional court (Skelton 2013). Section 39(2) of the Constitution provides that in the interpretation of the Bill of Rights or any legislation, courts have a specific injunction to develop indigenous law, taking into account the spirit, purport and object of the Bill of Rights (Mokgoro 1998).

Skelton (2007) and Mangena (2015) argued that South Africa's indigenous basis of knowledge of traditional justice practices is an enormous advantage in explaining and promoting restorative justice in South Africa. Because the principles of restorative justice are not new, one can argue that the restorative justice movement is simply a recent return to traditional methods of African justice. Despite the traditional heritage of restorative justice and wide familiarity with its principles, however, it does not play the role it deserves in the contemporary criminal justice system of South Africa.

According to Batley (2005), this can be justified in some point by the fact that the whole paradigm of restorative justice is so contrary to the way most legal practitioners, especially prosecutors and magistrates, in South Africa think. Legal practitioners often perceive restorative justice as not taking seriously the fundamental concerns of a criminal justice system (Batley 2005). Given the high levels of crime in South Africa, particularly violent crime, it is likely that restorative justice will be viewed by some legal practitioners as being 'soft on criminals'. While restorative justice certainly is a very different lens to the one that is usually used in contemporary criminal courts, it does, in fact, seriously consider the concerns of contemporary criminal justice and responds more adequately to them than the contemporary models used in the criminal justice system.

### ***Restorative Justice in the South African Criminal Justice System***

In pre-colonial Africa, many African citizens were resolving their disputes using indigenous justice forums. Despite the popularity of this system among the Africans, these forums were regarded as obstacles to development during the colonial area, perhaps due to a clash of paradigms between existing methods of

doing justice and that of colonial power (Omale 2006). Therefore, South Africa, as with other African countries, has been imposed to follow the Western criminal justice system. Despite some adaptations to suit the South African community, the vast majority of rules governing criminal conduct origins in Roman-Dutch law with adversarial trial and incorporates English procedural law. The adversarial system engages the parties in dispute resolution with the assistance of a magistrate or judge who sits as an independent observer (Wodage 2011). While the community can witness the process, their participation is always restrained. The adversarial system imposes a responsibility on parties to argue for their justice regardless of whether they understand the law (Wilson 2015). While the State takes over the victim's case, the offender has a right to representation by an attorney (Roche 2003; van Ness and Strong 2010).

In response to the challenges<sup>2</sup> faced by the criminal justice system and to simultaneously transform the administration of justice, the South African Justice Crime Prevention and Security Cluster<sup>3</sup> has adopted the restorative justice approach for several reasons, including that restorative justice is largely informed by indigenous and customary responses to crime and that it refers to processes within and outside the criminal justice system, including 'non-state forms of ordering and justice' (Skelton 2013). There is a similarity between restorative justice and justice as practised by Africans through community and customary courts, which have also found expression in urban forums such as street committees and people's courts. At the same time, although informally integrated within the criminal justice system, case law and practice, which emphasise the principles of respect for dignity and programs such as diversion, have positively influenced the legal policy framework of the justice system. Within the South African context, the integration of restorative justice into the criminal justice system is described as a new way of doing justice, either as an alternative or within the contemporary criminal justice system and that, while offenders are held accountable, the victim is always central (Skelton and Batley 2008).

## **Theoretical Framework**

The restorative justice paradigm shifts the view of crime from the violated norm to the harm caused to the individuals most affected by the crime. Zehr (1990) provided a short but thorough understanding of what he calls 'the restorative lens', describing it as the view that crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions that promote repair, reconciliation and reassurance.

Although this description is not flawless, it offers a clear understanding of the restorative justice paradigm (Gabbay 2005). It emphasises people rather than norms. It highlights the obligation imposed on offenders, holding them accountable for the offence they committed. It illustrates the necessity of involving the real stakeholders affected by the criminal offence in the justice process and shifts the objective of that system from punishment and the infliction of pain to repairing the harm (Gabbay 2005).

At the global level, three key models dominate the practice of restorative justice: victim-offender mediation, community group conferencing and sentencing circles (Zehr 2002). Although similar in general terms, these three practical methods of restorative justice differ according to the number and personality of the participants and according to the style of supervision chosen by the organiser of the meeting (Zehr 2002).

### ***Victim-Offender Mediation***

Victim-offender mediation consists of the possibility offered to the victim and the offender to meet voluntarily to discuss the aspects and consequences of the conflict between them and to find a fair solution with the help and under the conciliation of a mediator/facilitator, whose role is to supervise the meeting in a completely neutral manner. Mediation aims, first of all, to make such a meeting possible and to encourage the author to measure and take responsibility for the human, social and/or material effect of their behaviour, but also to lead each party to reconsider and take more account of the point of view of the other and to consider the forms of the reparation of damages (van Ness 2007).

According to Chupp (2009), mediation takes place in several stages. First, it begins with the assessment of the relevance of a mediation measure in the light of the facts of the case, the abilities of the parties and the context in which the offence occurred (Chupp 2009). This eligibility test is usually carried out by the judicial authority, but it may also be the responsibility of the police. Second, once the referral to mediation has been decided, it continues with the preparation of mediation by the facilitator. They meet with the parties, separately, to ensure their informed consent and their psychological ability to participate in the mediation. It is a question of making sure that the offender is ready to engage in such a process. In addition, it is a question of ensuring that the victim is ready to meet face to face with the offender (Chupp 2009). Once these formalities have been completed, the meeting then takes place. During this, the mediator, without ever adopting a commanding and restrictive attitude, invites the parties to express themselves on the circumstances that led to the crime and on the appropriate solutions to repair the damage caused. Finally, the process ends with the conclusion of a memorandum of understanding, the content of which is freely defined by the parties; the judge validates the agreement (Chupp 2009). The implementation of the agreement is supervised by the mediator.

### *Community Group Conferencing*

The conference models pursue the same objectives as victim-offender mediation, but it is a form of extended mediation because it brings together, around the victim and the offender, all persons or institutions having an interest in the regulation of conflict: their families, friends, referents of one or other of the parties as well as representatives of judicial, police, health or social institutions (Morris and Maxwell 2003). The number of participants varies from 10 to 30. A facilitator intervenes within the framework of this meeting. The conference, thus, makes it possible to consider the characteristics of the support that the family or social environment is likely to bring to the interested parties, in particular to the offender, in order to help them to change their behaviour in the future and to repair the harm to the victim or the community (Morris and Maxwell 2003).

According to Pavlich (2010), the conference is organised in three stages. In the first step, like in the victim-offender mediation, it begins with a preparation carried out by the mediator. It conducts an in-depth examination of the facts and then meets with the parties separately to collect their observations, present the procedure to them and obtain their agreement (Pavlich 2010). The second stage is the conference itself, during which the offender and then the victim express themselves on the facts and their feelings, before the offender and their family retire to discuss the reparation that seems to them the most adequate. The other participants intervene in turn. The parties then return to propose the offer of reparation to the victim and his relatives. The discussion will last until a consensus is reached. Finally, after negotiation, the mediator verifies the legality of the agreement, validates it and monitors its execution (Pavlich 2010).

### *Sentencing Circles*

Unlike the two other methods of restorative justice, the circle models include the community because they are based on the idea that it is the responsibility of the community to fight against problems related to delinquency, to reconstitute or to strengthen the social bond that existed before an infringement was brought to it by the offence (van Ness and Strong 2010). In this way, all those who consider themselves involved (members of the community, victims and offenders, their relatives and representatives of the justice system or other institutions) can participate.

These circles can gather from 15 to 50 people. They aim to determine the wrongs incumbent on each party and allow everyone involved in the crime and members of the community to make recommendations to the judge regarding the appropriate sentence (van Ness and Strong 2010). The solution adopted by the parties takes into account the interests of all and consolidates the common values of the members of the community. The aim of these circles is to achieve recognition by each of their wrongs, while 'the healing circles' are mainly aimed at repairing the whole community (Morris and Maxwell 2003).

According to Sullivan and Tiftt (2006), the circles generally take place in three stages. When the offender and the victim agree to try to resolve their criminal disputes, a preparation phase for each of the protagonists is organised. The meeting between the parties then takes place within a peace-building circle. The participants all take turns to speak. All aspects of the conflict are viewed from a community global perspective. The process ends when all parties have reached an agreement on the response to be given to the victim, the offender and the community; this agreement is validated by the judicial authority. However, not being bound by the recommendations made, the judge remains free to reject them entirely, to adapt them, to supplement them or to validate them in their entirety.

According to this configuration, the circle is a judicialisation process that is fully integrated into the contemporary justice system and is unlike healing circles, which constitute a real holistic process of individual and collective restoration, repair and reconstruction (Sullivan and Tiftt 2006). The recommendations of the participants can lead to imprisonment, a fine or probation as much as to restorative measures, community work or therapeutic follow-ups. The process can benefit from the support of a group generally made up of four to six people, representing the community to help the parties in the smooth running of the circle.

## **Methodology**

In order to gain a more extensive understanding of the opinions held by victims of crime and legal experts in South Africa regarding the objective of this study, a qualitative research approach proved to be the most appropriate method. This approach provides the researcher with a deeper and, thus, more comprehensive understanding of the data than do quantitative methods. It is also more flexible and can be adjusted to fit the specific situation (Roller and Lavrakas 2015; Ruben and Babbie 2016).

Following the University of KwaZulu-Natal Humanities and Social Sciences Research Ethics rules, permission was first requested and obtained from the participants to take part in this research. Throughout the research process, all interviews conducted remained strictly confidential, and interviewee confidentiality was not broken under any circumstances. Furthermore, all participation was voluntary.

Two techniques were used for sampling and data collection. In January 2020, a total of 10 victims were purposively selected using a non-probability sampling technique. The records of victims contacted to participate in this study were not active at the time of the interview. The choice to retain only victims whose cases were closed was made based on one objective, that is, whether the victim considered that they had been satisfied by the process. Face-to-face semi-structured interviews were used to collect data from the victims. Each member of the sample had to comply with the following eligibility criteria for inclusion in this study: (1) being a victim who had the experience with the South African contemporary criminal justice system and (2) being a victim who participated into the restorative justice process. In total, five victims were selected, three of which were also victims of violent crimes (i.e., attempted murder, armed robbery and sexual offence) and two of minor crimes (i.e., theft and fraud).

In June 2020, a convenience sampling methodology was applied to identify five legal experts to participate in this study, with accessibility as one of the main principles. However, only three participants could be obtained. The legal experts' sample was composed of officials in the administration of justice under the South African Law Reform Commission, a statutory advisory body whose aim is the renewal and improvement of the law of South Africa on a continual basis. As a result of practical and logistical constraints (mainly due to COVID-19 pandemic), sufficient data could not be obtained through face-to-face interviews with legal experts. The qualitative research questionnaire ('questerview') method was, therefore, electronically implemented. It was a method the participants preferred and comprised of a self-compiled questionnaire consisting of 10 open-ended questions relating to the objective of this study. The questionnaire was completed by the participants and returned electronically. Questerview is a qualitative

structured interview eliciting more detailed free-text answers than would be expected in a questionnaire (Davies 2014).

In the case of this study, thematic analysis was chosen as the appropriate type of data analysis. Following the recording of the interview, the verbatims of each of the interviews were transcribed in full by the researcher. After reflection and several re-readings, the interviews were coded and divided into themes. To simplify the analysis of the data, a separate document was created for each question, and the responses of all the participants were captured per question. Each question was analysed separately to extract themes related to that specific question based on the responses of the participants. Thematic analysis was chosen to analyse data as it is a flexible method that allows themes to emerge from data. In addition, thematic analysis is not derived from any specific theoretical stance or epistemological position, which aligns with the present study (Kerkela et al. 2015).

**Limitation of the Study**

Although this study produced valuable exploratory insights into the opinions held by victims and legal experts about the effectiveness of the restorative justice approach, the data should be interpreted in light of its limitations. Great caution should, therefore, be exercised when trying to generalise the opinions of the participants. Second, from the biographical data, it is clear that the participants did not represent the demographic composition of South Africa. Therefore, it is important to emphasise non-generalisability of its findings.

**Results and Discussion**

The study was guided by one objective, and two major themes were generated from the data collected under the research objective. The study generalised answers for the reason that almost 90 per cent of participants agreed or said the same things. Data presentation of this study was coded first in groups, then compared with other groups that helped to develop final themes (see Table 2). The participants’ views are indicated as ‘Vc’ in the case of victims who took part in contemporary criminal justice system process, ‘Vr’ in the case of victims who took part in the restorative justice process and ‘Le’ in the case of legal experts.

**Table 2. Themes and Sub-Theme**

THEMES	SUB-THEME
1. Effect of Contemporary Justice System on Victims	
2. Effect of Restorative Justice Practices on Victims of Crime	2.1. Restoring the Victim

**Theme 1: Effect of Contemporary Justice System on Victims**

Research has revealed that victims or those acting on their behalf bring about 90 per cent of recorded offences to the attention of the police (Shapland, Willmore and Duff 2012). Their testimony is essential for the prosecutions and trial process. Without the willing help of victims, neither the police nor the courts would be able to operate (Shapland, Willmore and Duff 2012). However, even though victims play a vital role in the contemporary criminal justice system, the treatment they receive is not as good as it should be, as stated by Vc2:

I made statements to the police, give evidence in court and be cross-examined by the defence during the trial but I was not provided with sufficient information on the proceedings ... I felt neglected by the people who were in charge of my case.

The findings of this study demonstrate that, in general, once a crime has been reported to the police, most victims are unaware of the processes involved in detection and in deciding whether to prosecute; they are dependent on police and prosecutors for information and, as research indicates, many receive very little information.

Victims in South Africa are still undermined by the criminal justice system. This is despite the South African government's commitment to implement measures aimed at continuous reform of the criminal justice system to protect and promote their rights in compliance with international obligations under international human rights instruments such as the United Nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the Prevention and Eradication of Violence Against Women and Children Addendum to the 1997 Southern African Development Community Declaration on Gender and Development (Department of Justice and Constitutional Development 2015). This can be understood by the fact that under South African law, justice is seen through an opposition procedure between adversaries (the prosecutor on one side and the offender and their lawyer (s) on the other side) in which victims remain passive, even ignored. In terms of the logic of the adversary criminal justice process, the objective of equity in justice is defeated because the parties are not equally represented. This is justified by the fact that a victim cannot adequately engage in the process because they are represented by a prosecutor. Consequently, the truth may not emerge, and the needs of the victims may not be fulfilled when a prosecutor is incompetent or lack commitment.

Furthermore, according to *Le3*, in the analysis of the South African Constitution of 1996, it is very clear that arrested, detained and accused persons are entitled to numerous rights as contained in Section 35 of the Constitution. Arrested, detained and accused persons are, thus, expressly catered for and protected by the South African Constitution. On further inspection of the Constitution, it can be noted that victims of crime or the so-called 'silent parties' in the criminal justice system are not granted any direct recognition by the Constitution. What this serves to portray in the perception of the general public is that all these rights that the accused are granted seem to weaken the rights of victims. According to *Le1*, while the South African Constitution contains two-and-a-half pages on the rights of suspects and the accused, it is silent on the rights of victims of crime. According to the *Le2*:

The neglect of victims can also be explained by the high level of crime in South Africa ... the South African criminal justice system is incredibly overburdened by criminal cases.

The above statement is in line with the Crime Index by Country (Numbeo 2020) report that shows that South Africa is among the top five countries with the highest crime rates in the world. The high level of crime automatically results in a large number of victims. This high level of dissatisfaction is probably caused by the fact that, because of the numerous matters in court due to the high number of crimes, there is very little time to give every victim the attention they require, and also its delay of court cases. However, according to Shapland et al. (2012), victims do not only need their cases to be heard, but they also need to be informed. Most importantly, victims have a wish to be listened to, to be believed and to be treated with respect by the criminal justice system. However, this is not the case, as stated by *Vc3*:

I would have to call to get updates on hearings about my own case ... I felt humiliated, angry, and depressed about the way I was being portrayed.

Due to the above issues faced by victims, the South African criminal justice system developed a document termed the Minimum Standards on Services for Victims of Crime (Minimum Standards), which is an information document intended to provide guidance relating to improving service delivery for victims of crime. This document outlines not only basic rights but also supplies detailed information to enable victims to exercise their rights and to enable service providers to uphold victims' rights as well. However, thus far, its implementation has failed. According to Coetzee (2013), some victims of crime are still being subjected to secondary victimisation by the inefficiency of some members of the criminal justice system.

### *Effect of Restorative Justice Practices on Victims of Crime: Restoring the Victim*

The concept of overcoming crime through restorative justice is considered one of the options to conceal the weaknesses and dissatisfaction with the retributive and rehabilitative approach that has so far been used in the South African criminal justice system in general. The central goal of restorative justice is to restore the victim. Restoring the victim means reinstating the material, the physical and emotional loss and, most importantly, restoring to the victim a sense of security and dignity.

In this study, most of the participants indicated that they were satisfied with the restorative justice process in which they took place. According to *Le1*, this can be justified by the fact that restorative justice is innate to the South African philosophy of *ubuntu* and is not something new to the participants. The concept of *ubuntu* requires the treatment of any person with dignity irrespective of that person's status. Thus, what can be learned from *ubuntu* philosophy in this regard is that equity in the criminal justice system cannot be reached without fulfilling victims' needs.

The findings of this study demonstrate that the restorative process responded to the victims' need to be informed, in particular by allowing them to ask questions relating to the offence and to the offender who in priority holds this information. The face-to-face meeting with offenders in a safe atmosphere is said to provide an opportunity for victims to exchange information with offenders. It enables them to find answers to any questions they may have and express their suffering and distress, especially to the ones who caused them. This was done through the victim-offender mediation model. *Le3* stated that when applying victim-offender mediation in South Africa, it focuses more on caring, dialogue, forgiveness, reconciliation, accountability and reintegration. According to the literature, victim-offender mediation is often used in minor crimes such as assault or malicious damage to property (Wright and Galaway 1989). However, in this study, two of the participants were victims of serious and violent crimes, and the mediation process was successfully held after the sentence was handed down. One of the participants was a victim of attempted murder (*Vr5*), and the other one (*Vr3*) was a victim of sexual violence. *Vr5* stated that the meeting changed her life, as it allowed her to have closure to a certain extent, to face the man who tried to kill her and to hold him accountable for his actions.

This study has shown that victim-offender mediation, when applied to violent crimes and especially after the offender has been sentenced, has in certain cases been very beneficial to the victim. What is important is the stage at which the restorative justice process is introduced. Each case will have to be carefully considered, and an appropriate decision will need to be made as to whether the restorative justice process or program should be introduced before the charge, before the trial, during the trial, before sentencing or after the sentence. According to Gaudreault (2005), certain offences can pose particular challenges for the restorative process if it is introduced at the early stage of the case, such as sexual offences, hate crime and domestic violence. However, restorative justice can still help victims of these offences at the advanced stage and need to be handled by senior practitioners who have relevant skills and experience. Petty offences may be diverted without a trial, but offences that involve a level of violence may have to involve the restorative justice process only before or after sentencing.

Furthermore, the offence dispossessed the victims of their possessions and their emotions. Restorative justice aims to ensure that victims are comprehensively and effectively restored both in material and in symbolic terms. This is one of the important goals of restorative justice. If the offender is unable to pay the material damage to the victim, a restorative justice request from them is a symbolic reparation. Symbolic reparation, sometimes called emotional reparation, is even more important because it makes a substantial difference in the life of the victim. According to Strang (2010: 23), 'studies of victims over the past decade have repeatedly shown that what they want most is not material reparation, but symbolic reparation, primarily an apology and sincere expression of remorse'. Moreover, there is evidence showing that an offender's act showing remorse can also at least heal victims' wounds and increase victim satisfaction, as stated by *Vr3*:

He apologised about what he did, and it helped us as a family ... it is just about understanding and being able to accept what has happened and trying to move forward and making the situation better for everybody.

Nevertheless, it is important to note that the South African contemporary criminal justice system makes provision for reparation to the victim by the offender. However, it focuses more on material compensation. According to *Le1*, the Criminal Procedure Act 51 of 1977, as amended, makes provision for the award of compensation to victims of crime who have suffered material damages because of the criminal conduct of an accused. The court may, where it finds it desirable, make a compensation order against an offender and avoid imposing an effective period of imprisonment (Ndlovu 2018). This approach is intended to allow the offender to raise the money to pay the compensation. It is clear that the court can only make an award of compensation after the accused has been convicted of the offence in question. Furthermore, the use of the words 'may' and 'where it finds it desirable' means that it is at the court's to make the award or not. Thus, it is not mandatory for the court to impose reparation in the contemporary criminal justice system, which is a violation of the victim's right to restitution.

## Conclusion

The findings of this study provide notable support for the effectiveness of a restorative justice approach to addressing victim satisfaction. Restorative justice can enable the needs of victims to be more fully considered during the criminal justice process. However, despite the high level of satisfaction among victims indicated by this study, one has to remain cautious and refrain from overstating the benefits of restorative justice. Victims' problems are not resolved once and for all by the solutions made available to them. The objective of victims' restoration put forward in this study must not confine to a simplistic view of their needs and the complex processes associated with their recovery.

*Correspondence:* Patrick Bashizi Bashige Murhula, PhD, Postdoctoral Researcher at the University of KwaZulu-Natal, College of Law and Management Studies, University Rd, Westville, Durban, 4000, South Africa. Email: [murhulab@ukzn.ac.za](mailto:murhulab@ukzn.ac.za)

<sup>1</sup> Working Party on Restorative Justice is an alliance of NGOs on Crime Prevention and Criminal Justice. Its purpose is to stimulate sufficient international awareness and interest in restorative justice around the world.

<sup>2</sup> Delay in criminal cases, high level of recidivism, prison overcrowding and high level of crime.

<sup>3</sup> The South African Justice, Crime Prevention and Security Cluster comprises the Departments of Police, Home Affairs, Justice and Correctional Services and Defence and Military Veterans. The cluster works together to streamline resources to achieve its objectives of reducing crime, improving the efficiency of the criminal justice system, dealing with corruption, managing South Africa's borders, improving population registration system and prioritising the fight against and prevention of cybercrimes.

## References

- Armstrong T, Maloney D and Romig D (1990) The balanced approach in juvenile probation: Principles, issues, and application. *Perspectives* 14(1): 6–13.
- Batley M (2005) Restorative justice in the South African context. In Maepa T (ed.) *Beyond Retribution: Prospects for Restorative Justice in South Africa*: 21–33. Pretoria: Institute for Security Studies.
- Bazemore G and Maloney D (1994) Rehabilitating community service: Toward restorative justice service sanctions in a balanced justice system. *Federal Probation* 58: 24–34.

- Bazemore G and Walgrave L (1999) Restorative juvenile justice: In search of fundamentals and an outline for systemic reform. In Bazemore G and Walgrave L (eds) *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*. Monsey NY: Criminal Justice Press.
- Chupp M (2009) Reconciliation procedures and rationale. In Wright M and Galaway B (eds) *Mediation and criminal justice: Victims, offenders and community*: 56–68). London: Sage.
- Coetzee S (2013) *Victim Rights and Minimum Standards for the Management of Learner Victims of Sexual Misconduct in South African Schools*. Pretoria: University of South Africa.
- Cornell D and Van Marle K (2012) Exploring ubuntu: tentative reflections. In Cornell D and Muvangua N (eds) *Ubuntu and the Law: African Ideals and Post-Apartheid Jurisprudence*: 354. New York: Fordham University Press.
- Davies M (2014) *Doing a Successful Research Project: Using Qualitative or Quantitative Methods*. Basingstoke UK: Palgrave Macmillan.
- Department of Justice and Constitutional Development (2015) *The Consolidation of the Present Legal Framework Relating to the Rights of and Services Provided to Victims of Crime*. Pretoria: SA Department of Justice and Constitutional Development.
- Doolin K (2007) But what does it mean? Seeking definitional clarity in Restorative justice. *The Journal of Criminal Law* 71(5): 427–440.
- Gabbay Z (2005) Justifying restorative justice: A theoretical justification for the use of restorative justice practices. *Journal of Dispute Resolution* 2(2005): 349–397.
- Gaudreault A (2005) *The Limits of Restorative Justice*. Paris: Dalloz.
- Gavrielides T (2007) *Restorative Justice Theory and Practice: Addressing the Discrepancy*. Helsinki: European Institute for Crime Prevention and Control.
- Gavrielides T (2011) Restorative practices: From the early societies to the 1970s. *Internet Journal of Criminology* 1–20.
- Hadley M L (2001) *The Spiritual Roots of Restorative*. New York: State University of New York Press.
- Kerkela E S, Jonsson L, Lindwall M and Strand J (2015) Individual experiences following a 6-month exercise intervention: A qualitative study. *International Journal of Qualitative Studies on Health and Well-being* 10(1). <https://doi.org/10.3402/qhw.v10.26376>
- Leyh B (2011) *Procedural Justice? Victim Participation in International Criminal Proceedings*. Utrecht: Intersentia.
- Maepa T (2005) *Beyond Retribution: Prospects for Restorative Justice in South Africa*. Pretoria: Institute for Security Studies.
- Mangena F (2015) Restorative justice's deep roots in Africa. *South African Journal of Philosophy* 34(1): 1–12. <https://doi.org/10.1080/02580136.2014.940572>
- Marshall T (2009) *Restorative Justice: An Overview*. New York: Home Office Research and Development Statistics Directorate.
- Mokgoro J Y (1998) *Ubuntu and the Law in South Africa*. Johannesburg: Konrad-Adenauer-Stiftung.
- Morris A and Maxwell G (2003) Restorative justice in New Zealand. In Von Hirsch A, Robert J, Bottoms A, Roach K and Schiff M (eds) *Restorative Justice and Criminal Justice. Competing or Reconcilable Paradigms?*: 257–272. New Zealand: Hart.
- Ndlovu J (2018) *Compensation Orders in Criminal Proceedings*. Centurion: De Rebus.
- Numbeo (2020) *Crime Index by Country*. [https://www.numbeo.com/crime/rankings\\_by\\_country.jsp?title=2020-mid](https://www.numbeo.com/crime/rankings_by_country.jsp?title=2020-mid)
- Omale D (2006) Justice in history: An examination of 'African restorative traditions' and the emerging 'restorative justice' paradigm. *African Journal of Criminology and Justice Studies* 2(2): 33–62.
- Pavlich G (2010) Towards an ethics of restorative justice. In Walgrave L (ed.), *Restorative Justice and Law*: 1–18. Cullompton: Willan Publishing.
- Roche D (2003) *Accountability in Restorative Justice*. Oxford: Oxford University Press.
- Roller M and Lavrakas P (2015) *Applied Qualitative Research Design: A Total Quality Framework Approach*. New York: Guilford Press.
- Ruben A and Babbie E (2016) *Essential Research Methods for Social Work* (4th ed). New York: Brooks/Cole Cengage Learning.
- Schiff M (2007) Satisfying the needs and interests of stakeholders. In Johnstone G and van Ness D (eds) *Handbook of Restorative Justice*: 228–246. London: Willan Pub.
- Shapland J, Willmore J and Duff P (2012) Victims in the criminal justice. *British Journal of Criminology* 24(2): 131–149.
- Sherman L and Strang H (2007) *Restorative Justice: The Evidence*. London: The Smith Institution.
- Skelton A (2007) Tapping indigenous knowledge: Traditional conflict resolution, restorative justice and denunciation of crime in South Africa. *Acta Juridica* 28(2): 228–246.

- Skelton A (2013) The South African Constitutional Court's restorative justice jurisprudence. *Restorative Justice: An International Journal* 1(1): 123–127. <https://doi.org/10.5235/20504721.1.1.122>
- Skelton A and Batley M (2008) Restorative justice: A contemporary South African review. *Acta Criminologica* 21(3): 37–49.
- Strang H (2010) Is restorative justice imposing its agenda on victims? In Zehr H and Toews B (eds) *Critical Issues in Restorative Justice*: 95–105. Devon: Willan Publishing.
- Sullivan D and Tift L (2006). *Handbook of Restorative Justice: A Global Perspective*. Oxford: Routledge.
- Tshehla B (2004) The restorative justice bug bites the South African criminal justice system. *The South African Journal of Criminal Justice* 17(1): 1–16.
- Tutu D (1999) *No Future Without Forgiveness*. London, England: Rider Books.
- UNODC (2006) *Handbook on Restorative Justice Programmes*. Vienna: United Nations.
- Van Ness D (2007) Prison and restorative justice. In Johnstone G and van Ness D (eds) *Handbook of Restorative Justice*: 312–324. Gullompton: Willan Publications.
- Van Ness D and Strong K H (1997) *Restoring Justice*. Cincinnati, OH: Anderson Pub
- Van Ness D and Strong K H (2010) *Restorative Justice: An Introduction to Restorative Justice*. New York: New Providence.
- Van Niekerk G (2013) Amende honorable and ubuntu: An intersection of ars boni et aequi in African and Roman-Dutch jurisprudence? *Fundamina: A Journal of Legal History* 19(2): 397–412.
- Wilson L (2015) The rights of victims vs the rights of the accused: Striking a balance between the rights of victims and accused persons in the international criminal justice setting. *University of Western Australia Law Review* 38(3): 152–174.
- Wodage W (2011) Status and role of victims of crime in the Ethiopian criminal justice system. *Bahir Dar University Journal of Law* 2(15): 103–152.
- Wright M and Galaway B (1989) *Mediation and Criminal Justice. Victims, Offenders and Community*. London: Sage Publications.
- Zehr H (1990) *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale PA: Herald Press.
- Zehr H (2002) *The Little Book of Restorative Justice*. Pennsylvania: Good Books.