



PROMOTING RESTORATIVE JUSTICE IN SOUTH AFRICA'S CORRECTIONAL SERVICES



PRISONS TRANSFORMATION PROJECT





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COMPILED AND WRITTEN BY

RAZAAN BAILEY, ACTING PROGRAMME MANAGER, PRISONS TRANSFORMATION PROJECT, CENTRE FOR CONFLICT RESOLUTION;

THELMA EKİYOR, SENIOR MANAGER, CENTRE FOR CONFLICT RESOLUTION

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DESIGN: SHEARWATER DESIGN, CAPE TOWN

EDITOR: YAZEED FAKIER, CENTRE FOR CONFLICT RESOLUTION

About the Centre for Conflict Resolution

The Centre for Conflict Resolution seeks to contribute towards a just peace in South Africa and the rest of Africa by promoting constructive, creative and co-operative approaches to the resolution of conflict and the reduction of violence. Associated with the University of Cape Town, South Africa, the organisation is based in the Western Cape but works nationally and internationally to fulfil its mission. CCR's core activities comprise mediation, facilitation, training, education and research, with an emphasis on capacity-building.

About the Prisons Transformation Project

The Prisons Transformation Project (PTP) was initiated in 1998 at the Pollsmoor Admissions Centre in Cape Town when its management requested assistance in training juvenile inmates and those correctional officers working with juveniles. The PTP's primary goal is to transform prisons by means of capacity-building through training, equipping and empowering correctional officers and offenders. The overall development objective is to contribute to the transformation of South African correctional centres from a militaristic culture to a culture of learning, growth and development, where human rights are respected and people are treated with dignity in order to achieve a reduction in the rate of crime and recidivism.

Executive Summary

Since its inception in 1998, the Prisons Transformation Project (PTP) of the Centre for Conflict Resolution (CCR), based in Cape Town, South Africa, has worked extensively with the South African Department of Correctional Services (DCS).

The focus of the work has been to assist DCS as it started the transition from an institution guided by a militaristic philosophy to becoming an institution focused on the rehabilitation and safe custody of offenders. Central to the work that PTP has been doing with DCS is the infusion of restorative justice and conflict management principles into all aspects of the work of DCS. To this end, PTP's work is focused primarily on training DCS officials and working with offenders. PTP also facilitates seminars and public education projects to draw on existing and new knowledge in the field and to provide a platform to inform policy. To this end, PTP hosted a one-day seminar on 6 October 2005. Participants were drawn from DCS, key stakeholders involved in the justice field and ex-offenders who participated in restorative justice programmes while serving their sentence.

The four main objectives of the seminar were to:

- Provide a platform for organisations and individuals involved in restorative justice initiatives to share best practices;
- Provide an opportunity for DCS to identify needs with other stakeholders in implementing successful restorative justice initiatives;
- Discuss the application of restorative justice with regard to sentenced offenders; and
- Explore the role of the community in the implementation of restorative justice programmes.

The themes in this report emanate from the presentations and discussions from the seminar and provide insight into the discourse on restorative justice, with particular focus on the complexities of implementing restorative justice in a post-sentencing environment. This report brings an international perspective to the discussions and shows how DCS fits into the broader discourse on restorative justice. The report also provides a theoretical analysis of restorative justice practices in Africa and across the world and how these experiences can enhance the implementation of principles, policies and practices with South Africa's Correctional Services.

Speakers were invited to address issues such as an understanding of restorative justice and its application after sentencing. Participants also discussed the role and challenges of the community and non-governmental organisations in working with DCS in the social reintegration of offenders on release. A personal account by an ex-offender who had participated in a restorative justice process was also discussed. The inputs provided fresh insights into the challenges that DCS needs to overcome in its quest to implement a programme that is fully restorative in terms of offender rehabilitation.

Key Recommendations

- African traditional dispute mechanisms need to be considered and ways should be found to incorporate this practice into the criminal justice system. The current justice system should explore ways of incorporating the voice of the family, the victim and the community into the process, and social integration and reintegration options must be included from the start.
- Victim-Offender Mediation should be strengthened within the Department of Correctional Services and as part of the sentencing framework. DCS should embark on training programmes that will build a critical mass of skilled mediators working in both the correctional centres and on community reintegration processes.
- While the critical role of the community in improving restorative justice processes is evident, further consideration should be given to the role that communities can play in the restoration and reintegration of offenders. Public education meetings should be hosted to build the relationship between DCS and communities. DCS can enhance its social reintegration work through public participation.
- The link between rehabilitation programmes facilitated by external organisations for offenders and the programmes facilitated by DCS should be aligned. DCS should ensure that external organisations are monitored and their impact evaluated to ensure maximum value is achieved.
- The philosophy of restorative prisons should inform the practices of DCS, which should ensure that every correctional officer is trained in restorative justice and that this practice is integrated into every aspect of her or his work.
- The mainstreaming of gender analysis into the conceptualisation of restorative justice initiatives is essential, as the needs of women and men within the correctional services system differ. The “one-size-fits-all” approach should be replaced with an approach that responds to the specific gender needs of the department, the community and offender.
- As South Africa plays an increasingly visible role on the African continent, DCS should forge partnerships with correctional services in other countries, particularly in the southern Africa region, in an effort to share experiences and learn from other examples of implementing restorative justice processes.



Introduction

As part of its restorative justice focus, the Prisons Transformation Project (PTP) of the Centre for Conflict Resolution (CCR), based in Cape Town, South Africa, hosted a one-day meeting on 6 October 2005 to discuss the challenges in implementing restorative justice in South Africa's correctional services system.

Participants were drawn from the Department of Correctional Services (DCS), stakeholders involved in the justice field and ex-offenders who had participated in restorative justice programmes while serving their sentence. This report emanates from discussions at the seminar and from ongoing debates and theories on restorative justice and its usefulness in a post-sentencing environment.

Background

Restorative justice has its roots in indigenous practice and has existed in traditional African societies for centuries. The practice involves members of the community meeting to discuss transgressions or crimes committed and deciding on restitution to be made to the aggrieved party and the community at large. Prisons were introduced to African societies during the period of colonialism. African literature is rich with examples of how communities in Tanzania, Zambia and Zimbabwe have used different restorative justice models to achieve justice and to rehabilitate offenders.

South Africa's Truth and Reconciliation Commission (TRC) and the *gacaca*¹ courts in Rwanda are important examples of the role of African traditional justice systems. Both the TRC and *gacaca*

courts dealt with acts of gross human rights abuses in a manner that sought to reconcile rather than punish those involved. The focus was on uncovering the truth, ensuring that a sense of justice was achieved, and that this contributed to the general promotion of reconciliation of society.

What underpins these approaches is the philosophy of ubuntu, which means “the gift of discovering our shared humanity”. The concept of ubuntu captures elements of restorative justice and community involvement in social harmonisation and justice. Ubuntu has existed in various forms in Africa for many years and has guided traditional conflict resolution. African customary law has always had traditional mechanisms to deal with problems arising in communities. It has been said that “reconciliation, restoration and harmony lie at the heart of African adjudication” and that the central purpose of a customary law court is to acknowledge that a wrong had been done and to determine what amends should be made.²

There are also examples of other indigenous communities, such as the Maori in New Zealand, Aborigines of Australia and the Navajo of Canada, to list a few, which have used and continue to use community forums to settle conflicts. The resolution on the basic principles on the use of restorative justice programmes in criminal matters, adopted by the United Nations (UN) Economic and Social Council (ECOSOC), acknowledges the role of traditional and indigenous forms of justice that view crime as fundamentally harmful to people.³



Participants at a Restorative Justice seminar, held by the Centre for Conflict Resolution on 6 October 2005

- 1 Part of a community justice system, evolved from traditional, cultural and communal law enforcement procedures in Rwanda to achieve truth, justice and reconciliation following the Rwanda genocide in 1994.
- 2 Buyi Mbambo and Ann Skelton, “Preparing the South African community for implementing a new restorative and child justice system”, in Lode Walgrave (ed), *Repositioning Restorative Justice* (Devon: Willan Publishing, 2003), pp.255-283.
- 3 ECOSOC, 2002/12, Basic principles on the use of restorative justice programmes in criminal matters, United Nations.



Retributive Justice v Restorative Justice

Restorative justice as an approach to dealing with offending behaviour first arose as questions about the effectiveness of retributive justice emerged. Much of the doubt regarding retributive justice centred on the increase in the number of people entering the penal system, thus putting a strain on authorities to the performance of their duties.

It is estimated that in South Africa, approximately 80 percent of offenders return to prison within two years of being released. The “revolving-door” phenomenon that “recycles” offenders is an indication that imprisonment as a form of punishment is not effective. Correctional centres are commonly known as “universities of crime” where, due to a lack of resources to implement rehabilitation programmes, offenders spend most of the time negotiating their way through the power structures that dominate prison life. Following are two telling comments that illustrate the argument underpinning the call for a rethink of how offenders are dealt with:

“Prisons are schools of crime; offenders learn new skills for the illegitimate labour market in prison and become more deeply enmeshed in criminal sub-cultures. Prison can be an embittering experience that leaves offenders more angry at the world than when they went in.”⁴

4 Braithwaite, in Johnstone, G, A Restorative Justice Reader: Texts, sources, context (UK: Willan Publishing, 2005).

Howard Zehr, one of the founding advocates of the restorative justice movement, adds a further dimension to the challenge to retributive justice:

“...the system of retributive justice fails to encourage offenders to engage with its judgements and to come to terms with their liability for harm which they have brought about. Instead, retributive justice almost obliges offenders to adopt exculpatory strategies as a way of shielding themselves from the severe judgements it seeks to impose.”⁵

Until the late 1990s, restorative justice was largely based on what is referred to in discourse as the “communitarian-diversionist model”. This model is largely concerned with providing alternative approaches to custodial sentencing and exists alongside the penal system. The communitarian-diversionist model is concerned with the process of restorative justice. This process is about gathering the primary parties in the conflict in order to effect reconciliation. However, “In opposition to the diversionist model, a new trend emerged within the restorative justice movement. This trend questions the current core values of both the restorative and traditional justice systems and attempts to discover some of the essential principles that will allow the development of a fully-fledged model.”⁶ According to advocates of this maximalist approach, traditional approaches to restorative justice fall short of providing true alternatives to the penal system. The challenge from this fully-fledged/maximalist approach to restorative justice is a call for total reform, as a total reform system allows for less chance that the concept of restorative justice will be “hijacked” by the corrections system.

When restorative justice emerged as an approach to dealing with offending behaviour it was based on the understanding that restorative processes could be used alongside the retributive system of justice. The focus of restorative justice was therefore largely on providing alternative sentencing options as opposed to imprisonment. In the restorative justice literature this approach is commonly known as the “communitarian–diversionist model” and is still largely employed throughout the world. It is also the model of restorative justice that is being implemented in South Africa. Fundamental to this model is that restorative justice and retributive justice appear to coexist and that restorative justice is, in fact, applied as part of the retributive justice system. New trends within the development of restorative justice theory and practice have started to challenge the effectiveness of the communitarian-diversionist model as an approach which can provide true alternatives to the penal system. This new trend, known as the maximalist approach, advocates a total reform of the justice system, at the core of which stand the principles of restorative justice.

5 Howard Zehr, *The Little Book of Restorative Justice* (United States: Good Books, 2002) p.74.

6 Anne Lemonne, “Alternative conflict resolution and restorative justice: A discussion”, in Lode Walgrave (ed.), *Repositioning Restorative Justice* (Devon: Willan Publishing, 2003), p.46.

The literature is saturated with information that reveals retributive justice and restorative justice as being dichotomous. There are clear distinctions between both systems, including⁷ :

RESTORATIVE JUSTICE	RETRIBUTIVE JUSTICE
Restorative justice views the offence as a crime defined as a violation of one person by another	Retributive justice approaches the crime as a violation against the state
Restorative justice focuses on problem-solving and is future-orientated	Retributive justice is concerned with establishing blame
Restorative justice is concerned with restitution	Retributive justice is concerned with imposing pain

The restorative justice approach is presented as “good”, whereas retributive justice is considered “bad”, as illustrated above. Advocates of the restorative justice approach challenge this clear-cut contrast, arguing instead that these distinctions are not as discernible as they might at first appear. It has been noted that elements of retributive justice are evident in the implementation of restorative justice programmes. However, this intersection of the approaches is not considered the best option in the restorative approach. The differences between criminal justice and restorative justice relate to the process involved in each discipline and not the outcome, and are found in the following areas: the role of the state, the role of the prosecution, the role of the community and the limiting principles of current human rights legislation.⁸

Restorative justice emerged as a practice to assist lawmakers in dealing with the increase in the number of cases of offending behaviour, particularly among young offenders.⁹ For lawmakers, restorative justice is one way of reducing recidivism, while simultaneously allowing the victim the opportunity to “recover” the loss suffered. The literature provides a range of definitions of restorative justice, suggesting that there is no single understanding of what restorative justice is. Restorative justice has therefore been broadened to encompass a diversity of practices. In commenting on the lack of a single definition, restorative justice has been referred to as “an umbrella term which has been stretched over a number of disparate practices and processes which have taken root in different countries and legal cultures”.¹⁰

7 Howard Zehr, *The Little Book of Restorative Justice* (United States: Good Books, 2002), p.21.
 8 Joanna Shapland, “Restorative Justice and Criminal Justice: Just Responses to Crime?”, in Andrew von Hirsch, Julian Roberts, Anthony Bottoms, Kent Roach and Mara Schiff (eds), *Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms?* (Oregon: Hart Publishing, 2003), pp.195-218.
 9 Fifty percent of the South African offender population is between 20 and 29 years old.
 10 Joanna Shapland, “Restorative Justice and Criminal Justice: Just Responses to Crime?”, in Andrew von Hirsch, Julian Roberts, Anthony Bottoms, Kent Roach and Mara Schiff (eds), *Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms?* (Oregon: Hart Publishing, 2003), pp.195-218.

The following statement is a working definition of the purpose of this publication:

“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.”¹¹

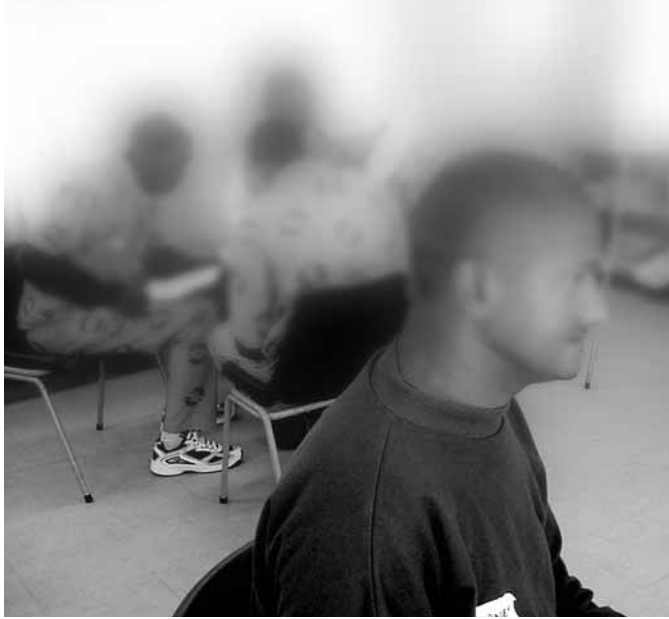
Restorative justice as a way of thinking about corrections can be applied to a range of services – diversion, offender reintegration and victim support. The focus is on bringing affected parties together, drawing on the field of alternative dispute resolution-victim-offender mediation, victim-offender conferencing (VOC) and family group conferencing (FGC). The critical question is to what degree the service that is provided is restorative in terms of the principles and processes of restorative justice.

FIGURE 1: RESTORATIVE JUSTICE PRACTICES AS A CONTINUUM¹²



ABOVE: Ms Razaan Bailey, Acting Programme Manager, Prisons Transformation Project, Centre for Conflict Resolution
RIGHT: From right: Mr Irvin Kinnes, of Kinnes & Associates, Cape Town; Mr Bertie Fritz, of the Office of the Inspecting Judge; and other participants

11 Howard Zehr, *The Little Book of Restorative Justice* (United States: Good Books, 2002), p.37.
 12 Howard Zehr, *The Little Book of Restorative Justice* (United States: Good Books, 2002), p.55.



Restorative Justice in a Post-Sentencing Environment

“Restorative justice helps to bring back a sense of value to the lives of damaged people. It enables offenders to set things right and compensate for their wrongdoings. Restorative justice has great value as a rehabilitation programme in correctional institutions. It brings back dignity and pride in offenders because it helps to right the wrongs of the past. It requires offenders to take responsibility for their actions and to be held accountable. The programme enjoys the confidence of prisoners and their trust. It is open to all offenders, helps to build respect for others and their property, and helps them to make the right decisions in future. It is an important part of rehabilitating human beings.”¹³

The retributive approach to criminal justice has largely been proclaimed as being unable to resolve social conflicts effectively. Instead, it transforms social conflicts into legal conflicts.¹⁴ This raises the question of whether restorative justice is compatible with imprisonment – for which there is no definitive answer. However, a significant number of correctional centres worldwide

13 Jonavan Cloete, ex-offender speaking at the CCR seminar on Restorative Justice in Correctional Settings, 6 October 2005, Cape Town.

14 Ottar Hagermann, “Restorative Justice in Prison?”, in Lode Walgrave (ed.), *Repositioning Restorative Justice* (Devon: Willan Publishing, 2003), pp.221-237.

have adopted restorative justice programmes as part of their core functions. Thus, a more appropriate question may be: What is needed to ensure that the principles of restorative justice are not abused in their implementation in an environment that, many would argue, is in contradiction to the values of restorative justice?

One of the first correctional facilities actively to adopt the philosophy of restorative justice was Correctional Services Canada (CSC).

“...Restorative justice clearly had two principal applications that affected the correctional systems. The first principle application could be classified as prison-based restorative, opportunities-creating possibilities for offenders, victims and community members affected by serious crime... The second principal application that had an impact on correctional systems involved restorative correctional environments. Exploring restorative justice concepts to address serious crime challenges correctional environments to revisit their internal processes for responding to conflict and wrongdoing in the prison environment.”¹⁵

One of the criticisms of restorative justice programmes is that most of the recorded cases have involved minor crimes and incidents of juvenile offences. However, New Zealand has piloted restorative justice programmes with adults who have committed more serious offences. “If the concept of very serious crimes being dealt with by means of restorative justice methods is to be accepted, it is then likely that the prison will be the locus of any restorative activity.”¹⁶ Restorative justice would therefore become a key deliverable in a post-sentencing environment. This could present a major challenge in many countries where prison transformation is not considered a priority.

Of some significance is the fact that most of the restorative justice discourse focuses on finding alternatives to punitive approaches in dealing with conflict. Yet none of the approaches, including custodial sentencing, calls for an outright ban of the formal justice system. This discourse, however, is not as populated with voices on how to reconcile restorative justice approaches from within a correctional environment.

15 Correctional Services of Canada, Restorative Justice Portal, International Perspectives on Restorative Corrections: A Review of the Literature (available at <http://www.csc-scc.gc.ca/text/portals/rj/litreview> ; accessed 19 May 2006).

16 Mackay 2002, quoted in a report by the Youth Justice Board, Restorative Justice in the Juvenile Secure Estate (date unknown).



Restorative Justice Initiatives in Prison – International Examples¹⁷

Although New Zealand is considered a leader in restorative practices, it is only since August 2000 that the country applied the practice of restorative justice in its prisons. The Whakatikatika¹⁸ project was started at the Hawkes Bay Regional Prison and facilitates restorative conferences. With the victim's permission, offenders send letters of apology in cases where conferences cannot be held.

The key lesson from the New Zealand experience is the need for offenders to engage in a process of self-healing, which includes addressing their offending behaviour before they can engage in a restorative justice process.

Since restorative practices were first introduced in the prison environment in the United Kingdom (UK), there have been many examples of its successes and challenges. Among the fundamental changes derived from the UK experience has been the notion of the restorative prison. The Restorative Prisons Project started in 2000 as part of a study into the future of imprisonment conducted by the International Centre of Prison Studies, UK. It examined the need to integrate the principles and practices of restorative justice into the functioning of prisons, ranging from management functions to the daily regime.

¹⁷ The literature review conducted by the CSC provides the insights presented in the examples.

¹⁸ Maori for "putting things right".

One of the success stories from the UK is the work done by the former governor of Grendon Prison, Tim Newell. The prison, an example of how it is possible to transform the entire culture of an institution, was considered a place where offenders could heal rather than be caught up in a repressive environment. This ideological shift was institutionalised to involve all prison staff. While Grendon is a small prison comparative to South Africa's prison population, the adoption of the unit management model makes such an initiative conceivable. A further initiative, also from the UK, is the Thames Valley Partnership. Here, correctional practitioners from Winchester, Bristol and Norwich prisons identified a range of key issues regarding the potential for the implementation of restorative justice practices in their centres.¹⁹

Practitioners concluded that restorative justice practises are most effective when integrated institutionally within the prison system and not confined to a programme used by certain sections of the prison. In support of this whole systems approach, all staff working in the prison must be aware of what is involved in restorative practices, including the involvement of the community, the victim (where possible) and the family of the offender. These key stakeholder groups should be seen as a resource by the prison system in the implementation of its restorative practices.

Australia, along with Canada and New Zealand, is considered as leading the field in restorative justice. One of the examples of "best practice" in the field of post-sentencing restorative justice is the three-year pilot project initiated by the New South Wales Department of Corrective Services in 1999. The pilot involved the establishment of a Restorative Justice Unit, which focuses on facilitating restorative processes after the sentencing of an offender. The service is available to any sentenced offender at any stage of their sentence. A key aspect of this project is that "the focus is upon the wellbeing of the victim, rather than the needs of the offender".²⁰ The programme comprised the following:

- A victim register was developed to inform victims about an offender's movements, i.e. date of release, parole consideration, escaped, etc.
- The programme facilitates victim awareness sessions to inform offenders about the effect of their crime on victims.
- Victim-offender mediation was initiated where a trained mediator engages in shuttle diplomacy between the victim and the offender.
- Victim-offender meetings were convened.
- Family group conferencing was arranged for those affected by the crime to meet and discuss the crime, how people were affected by it and, if possible, how amends could be made.

19 Braithwaite, Mclean, Fenwick, Philips and Vine, 2002, as quoted in the CSC literature review. Restorative Justice Portal, International Perspectives on Restorative Corrections: A Review of the Literature (available at <http://www.csc-scc.gc.ca/text/portals/rj/litreview> ; accessed 19 May 2006).

20 Op. cit.

Correctional Service of Canada (CSC) is considered by many as the front-runner in the implementation of restorative processes in prison. One of the initiatives implemented by CSC was the development of a Restorative Justice and Dispute Resolution Unit, which sought to explore the implications of restorative justice for corrections services. The 14 pilot projects implemented by the CSC have contributed to the understanding of restorative practices in the correctional environment.

As the Department of Correctional Services in South Africa embarks on a process to integrate restorative practices into its operations, the key lessons from the experience of its international partners are:

- Staff development and awareness of restorative practices are crucial. By educating all staff, an environment is created in which every correctional officer plays a role in creating an environment that fosters restorative practices. In reality, this would translate into how offenders and correctional staff deal with daily conflict.
- A “whole prison” approach is more effective than having only certain sections engaged in restorative practices. CSC’s adoption of a restorative justice philosophy is a good example of this approach.
- The process is victim-centred; the victim must be involved throughout the process and not only when an offender wants to engage.
- Restoration follows rehabilitation. Thus, an offender must engage in a programme focused on rehabilitation prior to engaging in a process of restorative justice.



ABOVE: The Restorative Justice meeting in session
RIGHT: Mr Jonavan Cloete, Cape Peninsula University of Technology



Restorative Justice in South Africa

African traditional practices have a long history of applying restorative justice practices as a means of maintaining order. However, this practice has largely been kept outside any formal practice dealing with social conflict.

Restorative justice in South Africa is still a fairly new phenomenon; it was formally introduced in 1992, when the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) introduced its Victim-Offender Mediation (VOM) project. Following trends in other countries, restorative initiatives were first attempted with youth at risk. These initiatives were largely focused on restorative outcomes. However, the South African Government has been slow at integrating restorative principles and practices in its approach to justice.

The reference to restorative justice in South African criminal procedure is in its formative stages. There are few known cases of sentencing in criminal offences that make direct reference to restorative justice. However, this is now being reconsidered, with the spotlight shifting to finding alternative approaches to addressing crime. Current indications point to a model constructed along the lines of the communitarian-diversionist approach. The most recent example of considering a restorative approach was the judgement in the High Court of South Africa (Transvaal Provincial Division) by Judge E Bertelsmann,²¹ when he made extensive reference to the importance of considering restorative justice as an alternative to custodial sentencing:

21 The State v Joyce Maluleke and Others, Case No. CC 83/04 section 35, p.10.

“But, on the other hand, restorative justice, properly considered and applied, may make a significant contribution in combating recidivism by encouraging offenders to take responsibility for their actions and assist the process of their ultimate reintegration into society thereby.”²² - JUDGE E BERTELSMANN



TOP: Front row, from left: Dr Joey Coetzee, of the office of the Chief Deputy Commissioner: Development and Care, Department of Correctional Services; Mr Mike Batley, of the Restorative Justice Centre; Ms Sheila Camerer, Democratic Alliance MP; Pastor J Clayton, of Hope Ministries

ABOVE: Participants listen attentively at the CCR Restorative Justice seminar

22 The State v Joyce Maluleke and Others, Case No. CC 83/04 section 35, p.10.



The Department of Correctional Services, South Africa²³

South Africa has 220 correctional centres and currently has the ninth largest prison population in the world. In its effort to deal with overcrowding, the government is planning to increase the number of correctional centres.

In 1999, minimum sentencing was imposed to meet calls for a harsher response to crime, and extended the period of imprisonment. Minimum sentencing is based on the belief that longer sentences act as a deterrent to the commission of offences. It is not yet apparent that this linkage is effective, although international experience has shown that extending the period of imprisonment does not deter others from crime.

Penal and prison reform has a long history in South Africa. The first significant action was the call by the 1945 Lansdowne Commission on Penal and Prison Reform for the humane treatment of offenders, which “asked for an increase in the emphasis on rehabilitation...in particular black offenders”.²⁴ In addition, the commission was critical of the militarised system of governing prisons and saw this as contrary to the evolving worldwide trend of prisoners’ incarceration terms as a rehabilitative experience. Since the 1990s, DCS has undergone

23 Aspects of the following section are drawn from a paper written by DCS Chief Deputy Commissioner: Development and Care Ms Jabu Sishuba, and from DCS documents on restorative justice.

24 White Paper on Corrections, Chapter 2, S2.3.1, 2002.

fundamental change, which has seen an ideological shift away from the militaristic mindset to the ideal of a democratic political system that recognises the human rights of offenders and focuses on rehabilitation. The Correctional Services Act of 1998 defines the purpose of DCS as contributing to maintaining and protecting a just, peaceful and safe society by:

- Enforcing sentences of the courts in the manner prescribed (by this Act);
- Detaining all prisoners in safe custody while ensuring their human dignity; and
- Promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

[Correctional Services Act, No. III of 1998, s (2)]

The mandate that DCS derives from the 1998 Act finds expression in the following strategies:

- To strike a balance between security and rehabilitation, from a punitive to a rehabilitative approach.
- Rehabilitation as a long-term goal to crime prevention.
- The potential of rehabilitation for humanising and democratising social reaction to crime.
- Building offender capacity for social participation and responsibility.
- Offering opportunities that will make a crime-free life a practical option.
- Assisting offenders to assume responsibility and to be active participants in the rehabilitation process.

While the legislative changes attempt to implement an approach of working with sentenced offenders that is rehabilitative, the department is still confronted with a system inherited from the apartheid regime. This is characterised by overcrowding, staff shortages and no guarantee of safety for community members, offenders or staff. Further challenges to the transformation of DCS into an institution of new beginnings were highlighted by the September 2001 Jali Commission²⁵ investigation into corruption among correctional staff.

The White Paper on Corrections in South Africa of 2005 clearly indicates that the country's approach to correctional management and community correctional supervision is based on the principles of restorative justice. It states that the management of correctional centres within an ethical context that respects the humanity of all those involved in a correctional centre, including inmates, staff and visitors, is essential for rehabilitation-focused correctional centres.

The principles underlying the DCS approach to restoration that shape its approach to corrections are:

25 The Jali Commission was set up to investigate allegations of prison corruption among officials on 27 September 2001.

- Addressing offences committed and assisting the offender to take responsibility for an offence, which may include restoration of relations with victims where appropriate.
- Addressing offences suffered and assisting the offenders to reach a stage of forgiveness.
- Addressing anti-social addictions and anti-social habits that increase the opportunity for rational thinking, decision-making and behaviour.
- Promoting the restoration of the offender as a member of the family.
- Promoting the restoration of communities and community institutions, and “good governance” and enhanced social cohesion.

The approach of DCS to rehabilitation is therefore informed by a commitment to the restoration of normative behaviour by the offender. It is envisaged that a restorative approach will assist offenders to recognise the wrong that has been done and accept responsibility for their behaviour; deal with instances where they themselves have been victims; to encourage forgiveness and restoration of relations with concerned parties; and come to terms with their court-imposed sentences.

Furthermore, the department is committed to encouraging the restoration of relations between offender and victim/s. The following three principles of restorative justice serve as a guide:

- Recognition of the human rights of all people.
- Recognition that crime is often a violation of one person by another, with only the state assuming an intervening role.
- Recognition that the reintegration of rehabilitated offenders into society entails restoration of the rights of citizenship.
- DCS recognises the restoration of relations between offenders and victims of crimes as vital for the prevention of repeat offences.

The focus of the DCS strategy is on the rehabilitation of the offender and recognises that many offenders have themselves been victims of dehumanising and anti-social behaviour. In its efforts to rehabilitate offenders, an emphasis is placed on them understanding the impact of their own social background and personal experiences in the commission of a crime.

DCS attaches great importance to the restoration of the normal functioning of families. In this regard, it views the restoration and maintenance of close familial relations between offenders and their families as central to cultivating healthy relations. The participation of families of offenders in their rehabilitation programmes is encouraged in order to facilitate better relations between the family and the offender, once released. This may include family group conferencing and support.

VII



Restorative Justice Contextualised within Correctional Services

The approach of DCS towards rehabilitation is informed by a commitment to the implementation of the principles of restorative justice. This outlines an alternative philosophy, requiring correctional services to devote attention to:

- Enabling offenders to make amends with their victims and community;
- Increasing the competencies of offenders; and
- Protecting the public through processes in which individual victims, the community and offenders are all active participants.

In the context of DCS' efforts, restorative justice could be described as a restorative response to crime that emphasises the importance of the role of victims, families and community members. It provides an opportunity for mediation, dialogue, negotiation and problem-solving which could lead to healing, a greater sense of safety and enhanced reintegration into the community for the offender. The restorative justice approach aims to bring together the offender, victim, families and the community, and to find ways to "make things right" after an offence has occurred. By "putting things right" it is hoped that peace will be restored in local communities.

This approach is embedded in international human rights standards which impact on restorative justice and reparative justice measures. They include the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the UN Convention on the Rights of the Child; the UN Declaration of Basic Principles of Justice for Victims of Crime and

Abuse of Power; the UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules); and Recommendation R(99) of the Committee of Ministers of Member States Concerning Mediation in Penal Matters.

The history of restorative justice within DCS was discussed during the CCR seminar of October 2005. Restorative processes were first introduced through faith-based groups. While many offenders found the programmes to be helpful, others felt that they were prevented from participating because of the religious nature of the programmes. The following narrative outlines a brief history of the introduction of restorative justice into prisons in South Africa and the move away from restorative justice as a religious programme.

DCS adopted the restorative justice approach in May 2000 as one of its key strategies towards strengthening the rehabilitation of offenders. It officially launched the programme in November 2001 and in November 2002, a conference was organised with the different departments of the South African Government's Justice, Crime Prevention and Security cluster (JCPS), and various non-governmental organisations and key stakeholders. In 2003, DCS embarked on a "Gearing DCS for Rehabilitation" process. This resulted in the re-engineering of systems, processes and structures within DCS. One of the outcomes of this process was that restorative justice was strategically positioned within the Correctional Programmes Directorate, which forms part of the Personal Corrections Branch.

Following are some examples undertaken by DCS in its efforts to mainstream restorative justice principles and practices. The initiatives include:

- The incorporation of the principles of restorative justice in offender care, development and corrections policy development.
- Developing a Victim-Offender Mediation protocol.
- The development of victim empowerment guidelines in conjunction with the Department of Social Development.
- The development of a document on community participation.
- Initiating restorative justice awareness campaigns for offenders.
- Canadian experts in restorative justice assisting in the training of 41 DCS members as master trainers in the restorative justice approach.
- The development of a manual on restorative justice for DCS training colleges and an approved module on restorative justice for the basic training of new recruits.

DCS has expressed its ideas on restorative justice in a set of principles that redefines the way justice systems address public safety, including sanctioning and rehabilitative objectives. Within the context of these principles, basic community needs are understood and addressed differently because crime is understood as "harm" and justice is understood as "repair" and/or "healing". The importance of the active participation of victims and community members in response to crime is emphasised.



TOP LEFT: Deputy Minister of Correctional Services Ms Cheryl Gillwald, who delivered the keynote address
TOP RIGHT: Mr Stan Henkeman, Programme Manager, Prisons Transformation Project, Centre for Conflict Resolution; Mr AJ Pansegrouw, Chief Social Worker, Department of Correctional Services, Brandvlei Maximum Prison, Worcester
ABOVE: The CCR seminar on Restorative Justice, 6 October 2005

DCS has expressed its objectives in terms of the three key agents in the restorative justice process: offenders, victims and communities. Each will be discussed in turn.

Objectives in respect of offenders

- Encouraging offenders to own the values enshrined in South Africa's Constitution of 1996.
- Assisting offenders to be an asset to society as productive and law-abiding citizens.
- Addressing offending behaviour in order to curb re-offending.
- Holding offenders accountable by ensuring that they:
 - Face up to their actions;
 - Understand the impact of their behaviour;
 - Understand the extent of harm; and
 - Take steps to "put things right" as far as possible.
- Expecting offenders to assume responsibility, change behaviour and become contributing members of the community through accountability that:
 - Addresses the resulting harm; and
 - Encourages empathy and responsibility.
- Encouraging offenders to experience personal transformation through:
 - Healing the harm that contributed to their offending behaviour;

- Making use of opportunities for treatment;
- Enhancing their personal competencies; and
- Participating in impact programmes as part of correction.
- Encouraging the provision of support systems for offenders to be successfully reintegrated into the community.

Objectives in respect of victim needs

In line with the UN Declaration that promotes the access of victims to mechanisms of justice, the Correctional Services Act of 1998 has, for the first time, made provision for victims to make representation at parole board hearings and has endorsed the South African Victims' Charter of Rights to:

- Ensure that victims have access to the justice system; and
- Minimise obstacles that victims may face in seeking justice.

Other objectives in meeting the needs of victims are:

- Imposing conditions of probation that ensure protection of the victim from harm;
- Informing victims of their rights and responsibilities;
- Protecting victims from intimidation by offenders;
- Allowing victims to tell their stories as an important element of healing;
- Assisting victims to recover a sense of empowerment (control over their bodies, emotions, etc.); and
- Encouraging offenders to make restitution to fulfil the need of victims for vindication.

Objectives in respect of the community

The Correctional Services Act also makes provision for community participation in the correctional system. DCS sees the community as central to the restoration of relationships and reconciliation. Its support for community participation takes the following forms:

- Drafting a community participation policy with guidelines for community involvement in line with DCS rehabilitative objectives;
- Encouraging greater community participation as a powerful way to break the destructive cycle of crime and increasing connections among community members;
- Providing support to both victims and offenders;
- Supporting efforts to integrate offenders into the community;
- Active involvement in the definition of offender obligations;
- Ensuring opportunities for remorse, forgiveness, reconciliation and for offenders to make amends; and
- Ensuring the restoration of relationships for successful reintegration.

Some Practical Interventions

DCS personnel present restorative justice programmes at about 20 correctional centres. It has also identified 36 correctional centres that will be used as centres of excellence to create an opportunity for the accelerated expansion of restorative justice programmes within DCS. Table 1 gives an indication of some of the restorative justice programmes that are presented in South Africa's correctional services.

TABLE 1: SOME RESTORATIVE JUSTICE PROGRAMMES				
REGION	CORRECTIONAL CENTRE	PRESENTER/ FACILITATOR	DURATION	NATURE/ CONTENT
Eastern Cape	St Alban's Max	DCS staff and offenders	1 hour	Awareness of wrongdoing and the need to make amends to community
	Grahamstown	Social workers, correctional officials, spiritual care workers	5 hours	Help offenders to take responsibility
	King William's Town	NGO	2 days	Diversion and victim-offender mediation (VOM)
Gauteng	Umtata	DCS		VOM
	Baviaanspoort	DCS	1 day	Awareness and importance of making peace with victim
	Leeuwkop	DCS Psychologist		Awareness and VOM
Western Cape	Pollsmoor	DCS and external spiritual care workers		Awareness, reconciliation, forgiveness
	Goodwood	DCS staff and offenders, external organisers		



The Role of Civil Society

The relationships between DCS and the community, community-based organisations, Non-Governmental Organisations (NGOs) and faith-based organisations are inherent to the successful achievement of the rehabilitation and reintegration of offenders.

The involvement of the community in the correctional system, through representation on community supervision and parole boards, and in volunteer work in correctional centres and joint projects, must be reinforced and guided by the restorative approach to rehabilitation.

DCS believes that rehabilitation cannot be complete or sustainable without restoring the relationship between the offender and her or his community. Following international trends, DCS views community service as productive work related to the aim of correcting the offending behaviour for the benefit of affected communities. The community service experience allows offenders to create new, positive relationships with members of the community, and the fabric of the community is consequently strengthened. The process is further intended to enhance the offender's investment in the community.

A key DCS objective is to make a meaningful contribution to promoting community responsibility for correction. This will be enhanced by making provision for participation by communities, as well as participation from relevant state departments in the integrated justice system, through the process of community supervision and parole boards.

DCS has outlined six guiding principles for the relationship between the department and civil society:

- Community participation and programmes shall promote the restoration of relationships and bring about healing and forgiveness.
- DCS will actively participate in community initiatives and projects.
- All applications for community participation will be subjected to a screening process to ensure that programmes promote the core business of DCS.
- Programmes rendered to offenders or staff by community-based service providers will be evaluated to ensure adherence to DCS's core business.
- Community participation will aim to enhance effective reintegration of offenders into society as law-abiding and productive citizens.
- DCS will enter into collaborative partnership with the community, and expertise and resources will be shared by both parties.

In addressing the Cape Town seminar, Cheryl Gillwald, Deputy Minister of Corrections at the time, placed great emphasis on the strengthening of relations between DCS and civil society. The extent to which civil society is involved with DCS as partners ranges from the various faith-based organisations running sessions with offenders, to organisations such as the Centre for Conflict Resolution (CCR) working with correctional officers, as well as facilitating workshops for offenders; the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), a national organisation, focusing on the reintegration of offenders; and the Integrated Young Offenders Programme (IYOP), facilitated by the Centre for the Study of Violence and Reconciliation (CSV) in Gauteng.



ABOVE: CCR staff members, from left: Ms Estelle Malgas; Ms Johanna Webb; Ms Juliana Veloen
RIGHT: Mr Stan Henkeman, Programme Manager, Prisons Transformation Project, Centre for Conflict Resolution, left; Mr Irvin Kinnes, of Kinnes & Associates, Cape Town



To accomplish this, it is necessary to build a broad base of support for restorative justice principles and practices. Because restorative justice is grounded in community involvement, it is not possible to implement a comprehensive restorative system without community ownership and support. Building community support involves gaining community approval of new approaches within the criminal justice system and engaging the community as a key actor in the process of responding to crime. The success of a restorative approach depends on community support and involvement, and requires specific attention and adequate resources.



UNIVERSITY OF CAPE TOWN ■ C/O RHODES GIFT POST OFFICE ■ 7707 ■ CAPE TOWN, SOUTH AFRICA
TEL: (27) 21 422 2512 ■ FAX: (27) 21 422 2622 ■ e-mail: mailbox@ccr.uct.ac.za
<http://ccrweb.ccr.uct.ac.za/>



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