RESTORATIVE JUSTICE AND ALTERNATIVE DISPUTE RESOLUTION: AN ANALYTICAL DISCOURSE FOR AFRICAN PROFESSIONALS

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ABSTRACT

The strong advocacy for Restorative Justice and Alternative Dispute Resolution in Africa; and evolving models is a welcomed development for penal reforms and conflict resolution. However, as an African adage says "it is when a tripod is being designed and constructed that the legs should be set straight to forestall cook wares falling". This study drew its strength from a completed Doctor of Philosophy (PhD) dissertation initially reviewed with the aim of setting the record straight in the meaning and conceptions of restorative justice and alternative dispute resolution for African practitioners. This is imperative because as the saying goes "words put differently make different meanings, and meaning put differently yield different actions". So if restorative justice and alternative dispute resolution must advance professionally, and as academic disciplines in Africa, practitioners and academics must understand the 'thin' differences inherent in the principles and practice of restorative justice, and alternative dispute resolution.

Keywords: *Restorative justice, dispute resolution, African professionals, analytical discourse*

INTRODUCTION

In contemporary times, restorative justice and Alternative Dispute Resolution are concepts that are as popular as "yahoo populism". However, a careful Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis would show that one potential problem Restorative Justice and Alternative Dispute Resolution might face in demonstrating their effectiveness in Africa lies in their populism. For instance, restorative justice to some people around Africa is readily implied to mean restitution, reparation and compensation for victim of crime; and out of court settlement (Omale 2009). Similarly, 'shaming' as a community correction practices in rural African communities is readily implied to mean ADR, and or restorative justice. This understanding is problematic because they obscure the significant 'thin' differences in these practices.

Whereas the principles of shaming, compensation and restitution are inherent in both restorative justice and Alternative Dispute Resolution. Restorative justice is an Alternative Dispute Resolution mechanism, but not all Alternative Dispute Resolution mechanisms are necessarily Restorative Justice. Thus, a relative understanding in the conceptualisation of restorative justice, and ADR is imperative for criminal justice reforms in Africa; particularly with the emerging African Union Protocols on community justice. This paper advances this argument by reviewing

what shaming, compensation and restitution implies in restorative justice context compares to their meaning in traditional justice, law, and by implication Alternative Dispute Resolution (ADR).

Shaming in Restorative Justice

Re-integrative shaming is a concept theorised by Braithwaite (1989) in his work, Crime, Shame and Reintegration. The theory finds ground within the restorative justice paradigm as an essential part of the healing process. Shame, as defined by Braithwaite, is divided into two categories: 'stigmatic'and're-integrative' shaming. Shame, in the context of criminal justice and as practice in rural African communities does not appear to work constructively because, when shaming is imposed as a mode of punishment, the degradation to the offender is often demeaning and far from civil or democratic. Stigmatic shaming, according to Braithwaite is designed to dissociate the offender from the rest of society which inevitably instils anger and hatred into the offender. This is done by labelling the offender in some way such as putting the offender on public display and forcing them to endure the social humiliation; it is what American judges employ when they make an offender post a sign on his property saying 'a violent felon lives here', or a bumper sticker on his car saying 'I am a drunk driver' (Sherman and Strang, 1997).

Similarly, the traditional method of striping offender nude to dance in market square, or placing a stolen item on the heads of thieves to dance on the street in African communities are another examples of stigmatic shaming. These examples are mentioned here because while this study was conducted, a friend e-mailed a facebook link with two nude young men carrying a water can with footnote saying: "Restorative Justice in Ghana". Braithwaite (2002) warns that this practice masquerading as re-integrative shaming and (at worst restorative justice) is a serious threat to the future of restorative justice. Re-integrative shaming means treating the wrongdoer respectfully and empathically as a good person who has done a bad act and making special efforts to show the wrongdoer how valued they are after the wrongful act has been confronted (Braithwaite, Ahmed and Braithwaite, 2005). The fact therefore is that 're-integrative shaming' in restorative justice does not destroy human dignity: it emphasises that while a person has done a bad thing, he is not defined as a bad person, whereas the traditional shaming practice that is used as Alternative Dispute Resolution mechanism in rural communities in Africa humiliates and destroys the dignity of man.

Restitution in Restorative Justice

Linking restitution and compensation to restorative justice is not erroneous as both concepts are often an important part of restorative justice practices. Restitution is the law of gains-based recovery; and compensation is the law of loss-based recovery. However, is restorative justice all about restitution or compensation as in the context of criminal law and arbitration? A better understanding of the term 'restitution' in the context of restorative justice paradigm is therefore worthy of analysis in this paper.

This clarification has become imperative because, at the formal presentation

of 'Understanding Restorative Justice: A Handbook for Criminal Justice stakeholders' (Omale, 2005), a professional colleague who is sceptical of restorative justice argued that "restorative justice is nothing more than the principles of compensation in tort law". This argument tends to lump together as restorative almost all alternatives to penal sentencing that apply compensation in their outcomes. There are however, important and unmistakable differences with this conception.

This paper draws support for this argument from an insightful argument of Llewellyn and Howse (2002). They argue that while restitution can serve a number of purposes in criminal law and arbitration, most of the restitutions applicable therein are not restorative. For instance, in Nigeria while freezing of accounts, seizure of cars, mansions and properties that have been acquired with "419/fraud" money of arrested fraudsters (as was in the case of late Emeka Anejemba vs. the Nigeria Economic and Financial Crime Commission-EFCC) does satisfy the demand of restitution in criminal law and arbitration, it however, does not satisfy the demands of justice conceived of as restorative in nature.

RESTITUTION IN CRIMINAL LAW AND ABITRATION

In criminal law and arbitration, restitution denotes the idea that a gain or benefit wrongly taken or enjoyed should be returned. Similarly, Braithwaite and Pettit (1994) argue that restitution in criminal law holds that the satisfaction of justice requires the wrongdoer to repay or return what he/she has taken from the sufferer of wrong. The idea being that through the offender's action he/she has been enriched at the expense of the victim of crime. By disgorging himself/ herself of the benefit of his/ her actions and returning that which was taken from the victim, the offender or wrongdoer `rights' the wrong he/she created. Restitution in this context interprets our moral intuition that "something must be done" as demanding that things be returned to the way they were before the offence occurred. The offender or wrongdoer must thus return that 'thing' which he/she has taken from the victim of crime.

Consequentially, through its focus on returning that which was lost to the victim of crime, restitution places the actual sufferer at the centre of any attempt to do justice-a common principle shares by both restorative justice proponents and arbitrators. This is why Van Ness and Strong (2002) argue that, restitution has its roots in justice systems which viewed crime as an injury more to the victim than to the (state) government. Restorative justice shares this focus on the actual harm done by the offender's act and on the person who suffers this harm (the victim of crime). In other words, restorative justice and restitution in this context are both outcome focused, directing their attention to the results of an action and not some inherent nature of the action itself.

However, this paper argues that restorative justice does not limit its focus to victims and material reparation only. Restorative justice expands its focus to include the offender and the community in attempting to respond to the harm done to the victim. This expanded focus Van Ness and Strong (2002) argue is a product of the difference between restorative justice and criminal law restitution with regard to

their understanding of the harm resulting from offending behaviour and in what is required to address the situation. In the context of "ordinary" restitution or what most common law guidelines for restitution represent; what justice requires is a material transfer between offender and victim. Hence in an historical review of law by Van Ness and Strong (2002), it shows a striking similarity between this form of restitution practiced in European law and King Ethelbert's schedules for restitution developed about 1,400 years earlier. Van Ness and Strong (2002) argue that the Anglo-Saxon ruler King Ethelbert's idea of restitution was as conceived in modern criminal law. King Ethelbert it was argued developed elaborate schedules of restitution according to the specific harm done. For example, loss of a finger was worth so much while the loss of a nail was worth less and the loss of a foot worth much more.

The first problem with this schedule of restitution or what McLaughlin and Muncie (2003) call 'ordinal proportionality' is the assumption that it is possible to assign a set value for particular losses. It assigns an objective value for the loss of a finger and the loss of a foot that is deemed appropriate in all cases. The arbitrariness of this value assessment; this paper would argue becomes clear when one compares what the loss of a bicycle would mean to a desperate poor man in Nigeria as compared to a loss of car to a multimillionaire; or what a loss of a finger would mean for instance, to a basket ball player; or painter; or a writer as compared with a soccer or footballer. Set values as conceived in criminal law restitution are thus necessarily arbitrary because they cannot reflect the relative value of a loss for the individual affected. Even if it were possible to devise a system to account for the various permutations and combinations of people's lives and arrive at an appropriate value for the material loss a victim experiences, McLaughlin and Muncie (2003) argue that the notion of quantification, as it is applied, still suffers problems. Because criminal law restitution requires quantification and valuation of that which must be transferred between perpetrator and victim, it cannot account for the non-material harms a victim can and often does suffer.

In fact, it is the exception not the rule when the primary loss a victim suffers is material in nature. Restitution in criminal law thus ignores the very real harm victims experience - harm to their sense of security resulting from a breach in the social relationship between victim and perpetrator as members of society. Examples of this type of harm are easy to find in our contemporary society. Take a case where one's car is stolen and the person who took it is caught. He/She can, according to this theory, make restitution by returning the car. This does indeed make up for the material loss one suffered from the theft of the car, that is, the lost car is replaced. What it does not return however, is the feeling of security the victim had when he/she locked the car up before it was stolen. It cannot return the feeling that one is safe from being a victim. Furthermore, the simple act of returning the car fails to offer even security in the knowledge that the same individual will not take the car again, as it does not involve any consideration by the offender of the wrong and its effects on the community where the offence was committed.

In essence the problem here is not the notion of restitution per se; rather it

is restitution as the ultimate aim of justice. Restitution in and of itself is not enough to address the harm a victim experiences after a wrong has been committed. If restitution is justice as understood by criminal law or as practiced by some arbitrators, should we then call it justice when the rich in Africa (as they often do), victimise the poor and simply say for instance, "mention your worth and I will pay" Justice in this form amounts to a 'bean counting view of justice' where all justice requires is that the scales are balanced by ensuring that each side has the beans they started with (Llewellyn and Howse, 2002), and justice conceived of in this way according to Van Ness and Strong (2002) is backward looking in that it is oriented towards the status quo ante.

So while restitution in law wants the return of things to the way they were before the wrong, in contrast, restorative justice does not take restoration of the status quo ante as its goal because if it does, it will be encouraging the demands for 'revenge' or 'pounds of flesh' which would be in contradiction of its forward-looking orientation. Hence, Van Ness and Strong (2002) argue that the language of restoration has led some people to misunderstand the ambitions of restorative justice because the word 'restore' to many people in common usage suggests a return to the way something was such as for instance, when one restores a historical building the aim is to re-create the previous condition of the building. This understanding of restore the authors argue has prompted some to argue that restorative justice is better called by some other name like 'transformative', 'relational' or 'community restorative justice' (Morris, 1994).

Others have reacted by pigeonholing restorative justice as appropriate only to situations where there has been an identifiable or specific act causing the harm. But if restorative justice is understood this way how could it for instance, address victimless crimes, and intergenerational situations and issues traditionally identified as 'distributive injustice' in our communities for example? According to this view, it would follow, that restorative justice would be but one 'kind' of justice appropriate only in certain circumstances rather than a theory of the general nature of justice. This is a misconception of restorative justice which this paper seeks to address. Thus, restorative justice, contrary to restitution, this paper would argue is not a slave to rectifying a wrong by restoring the status quo ante. Instead, restorative justice aims at restoration to an ideal. Restorative justice seeks to restore the relationships between the parties involved to an ideal state of social equality. It stands juxtaposed to the backward focus of legal restitution, as it is attempts to address a wrong by transforming the relationship between those involved such that the same situation could not arise again.

Hence, Llewellyn and Howse (2002) argue that conscripting restitution as a 'tool' of restorative justice addresses the problems restitution experiences when taken as an end in itself. But restitution as a part of a restorative justice process, this paper would argue is no longer backward looking but rather an important and often necessary step towards establishing a better relationship between the parties in the future. Also, owing to the fact that it is part of a larger process, restitution need not concern

itself with non-material and unquantifiable harms for these can be addressed through other means (for example, an apology, ablution ceremony, etc). In addition, as part of a restorative process, restitution should avoid the charge of arbitrary valuation of harm, as value would be determined through a process of negotiation between the parties involved. Thus, the subjective worth of loss of a hand to a painter in a community for instance, could be accounted for as the painter himself/herself tells or interprets the impact of the harm to self and the community.

RESTORATIVE JUSTICE AND THE EQUANOMICS/EQUITY THEORY

Whereas, there are many examples (some of which were addressed above) where restitution is not restorative in any sense, there are also circumstances where a transfer of wrongfully gotten or used gains from offenders to victim can serve the purposes of restorative justice- the restoration of an ideal of equality in society so that both victim and offender can now relate to one another as free and equal citizens of that society. A very important instance is where the taking of property has itself, although only part of the wrong tangibly worsened the social (including economic) inequality between victim and offender. It is important to stress again at this point that because restorative justice requires restoration and not restitution (as the ideal of justice in and of itself) much more may need to happen to effect restoration than simply the return of property. While it is certainly possible for restitution to play an important role in achieving restoration, this is not always the case.

For instance, a story is told of a three term New York Mayor Fiorello La Guardia. One day La Guardia (the Mayor) took the place of the court judge and a shivering old man was brought before him. The man was charged for taking a loaf of bread from a bakery. The accused man gave the excuse that his family was starving. 'The law allows no exceptions. I have to punish you. I have to fine you ten dollars', declared La Guardia. But then he felt his pocket and added 'Here is ten dollars' to pay the fine. And raising his voice, he continued, 'I now impose on everyone present in this courtroom a fine of fifty cents each; for living in a town where folk must steal bread in order to live; sergeant, collect the money at once and hand it over to the accused'. The hat went round and the accused man left the court with forty-seven dollars fifty cents in his pocket (Lefevre Pierre, 1991).

So on the other end of the spectrum, there are cases where restitution may actually impede the goal of restoration and social equity. This relates, in part, to the recognition in restorative justice theory that, although a disturbance of the status quo ante can trigger distinctive needs for restoration, since what is to be restored is an ideal of equality in society as between victim and offender, a mere return may not accomplish this goal, or could even worsen it. Take the example of the offender cited above who is very poor and hungry, who steals that day for economic reasons to support his family. Placing a burden of repayment on him may actually frustrate the achievement of an ideal relation of equality that restorative justice seeks, making it more difficult for him to achieve a new socio-economic status that allows a relationship of equal dignity, concern and respect.

Thus, the old adage, which says: `two wrongs don't make a right' holds water here. Making the offender worse off in fact moves us further away from the ideal of social equality, and, thus, further away from meeting the demands of justice. Restorative justice thus holds that such wrongs can only be addressed by restoring the relationship between offender and victim to one in which the rights of both are respected. Restoring social equality then cannot be achieved through punishment (like restitution in this case). Indeed, mandatory restitution according to this argument could actually serve to let offenders avoid responsibility for what they have done because it allows them to focus on the injustice they themselves are suffering in a society. Take the case of Nigeria for instance, 'compensatory crimes' (robbery, burglary, and 419/fraud) is high among youths nowadays because every day they hear on the news how millions and billions of Naira are stolen by people in government in the face of high unemployment, dearth of infrastructures and poverty among the people.

The argument here is not to encourage the poor to steal or commit crime, or to give support to the argument that restorative justice is a 'soft option' for offenders but, where it thus occur that the socio-economic status of the victim outweighs that of the offender, and the offence is minor; and the offender is by no means able to pay material compensation, it thus becomes imperative that the mediator take this argument into consideration if restorative justice is to make any meaning to the poor offender. So recalling the earlier claim that justice is a response to a powerful moral intuition that something must be done; restorative justice claims that what is required to satisfy this moral intuition, that `something' that must be done is the establishment or re-establishment of equality. It is important to note that this offers an explanation for how the instinct, that justice must be done, can arise even in the absence of any specific act or omission, which disturbed the way things ought to be. If justice means equality, Llewellyn and Howse (2002) then argue that our moral intuition will be activated (or should be activated) whenever things are out of balance or unequal. However, we have seen that justice cannot be concerned with equality in the abstract. Rather, this equality needs to be a social equality. If justice is to be a human concern, then it must be focused on equality between human beings. Hence, Llewellyn and Howse (2002) argue that justice must be about 'establishing, or re-establishing, a social equality, and not some abstract or ethereal notion of moral equality'.

Social equality then means equality in relationship. Social equality exists when relationships are such that each party has their rights to dignity, equal concern and respect satisfied. Restorative justice aims to restore relationships. As such restorative justice is inherently 'relational' (Llewellyn and Howse, 2002). This is a distinguishing feature of restorative justice versus the other conceptions of justice. Restorative justice recognises that if justice is to be meaningful for human beings, if it is to have any sway on earth and not simply in the domain of theory, it must take account of who we are as human selves. It must take into account a truth about human beings that has been obscured by the extremes of individualism and collectivism inherent in some cultures. Through the work of some insightful feminists

such as (Koggel, 1998; Kay Harris, 1987) who have rejected these extremes, the truth that human selves are inherently relational has been put in evidence. According to Koggel (1998:10) 'selves exist in and through and/or are constituted by relationships with other selves'. This is not to deny that we are individuated selves but rather to locate the individual within relationships, because according to Koggel (1998) 'the extreme of collectivism on one hand separates the individual and other by subordinating; the extreme of individualism on the other also separates, placing the individual above the other'.

Indeed, just as we are never wholly independent of other selves, we are not wholly dependent either- we are interdependent. Justice, then, as Koggel argues is concerned with human selves and must start with a focus on relationship. Taking relationships as the starting point for justice reasoning therefore transforms the traditional picture of justice (see the ubuntu philosophy of justice for instance). This starting point according to Koggel (1998) generates a radically different picture from the more familiar abstract rule and principal image of justice embodied in retributive theory, as this conception according to her is founded on the individualist conception of the self and human agency. How then would taking relationships and human connectedness as the starting point for thinking about the requirements of justice make a difference? The answer according to Llewellyn and Howse (2002) is simple- 'Justice should be concerned about creating or protecting human relationship'. In other words, the authors argue that 'justice must take connection as its goal over alienation and separation'. To achieve this goal, justice must be 'contextual not an abstract set of rules and principles applicable to each and every situation'.

They further argue that in order to create, promote, and protect relationships, justice should inquire into the details of such relationships and assess whether they are 'right' relationships in the sense discussed above (that is, relationships of dignity and equal concern and respect). If the relationships are not ones of equality, the authors argue that justice must identify what is necessary to restore them to this ideal. By this understanding, the theory of justice that emerges here is a restorative one and it stands in stark contrast to theories of justice arising out of an individualistic starting point. Thus, this paper would argue that restorative justice looks promising for dealing with longstanding and intergenerational issues of oppression; inequality and disparity in most communities of the world (take the Nigerian Niger Delta question for instance).

The 'relational' nature of restorative justice postulated by Llewellyn and Howse (2002) clarifies the answer to the often-asked question: restore to what? Now that we understand restorative justice is about restoring relationships it is obvious how restoration cannot mean returning things to the status quo ante, to their state immediately before the crime as understood in criminal law and arbitration. For wrongdoing is often not only the cause of but also results from previously existing inequality. Hence, this paper would argue that crime situation in Africa for instance is a factor of skewed social relation. Thus, restoring a situation to the way it was before the wrong will, in most cases, fail to address the problems in the

relationship which permitted or perpetuated the abuse in the first instance. Rather, in order to address the wrong and ensure that it does not happen again, one must address the state of the relationship in which the wrong occurred and strive to establish an ideal state of equality. To support this argument, it appears that the word of Socrates Fundamentum Omnius Cultus Animae (that is to say, the soul of all improvement is the improvement of the soul); is the way forward to crime and conflict resolution in Africa.

It is important to be reminded that this paper does not mean to suggest that this ideal will be achieved the same way in each relationship. So context is vital in any attempt at restoration. It is imperative in a restorative justice approach that the question of what will restore a relationship to one of equal dignity, concern and respect is asked in the context of a specific relationship (the contingency model). The question then is not what will restore relationships generally but what it will take to restore this relationship between these parties in particular in this context. However, the values at which restoration is aimed remain the same for each situation. Relationships of equality are ones in which each of the parties to the relationship enjoys dignity and treats one another with equal concern and respect.

For instance, in a criminal event when an offender attacks his/her victim, the mindset of the offender is to disgrace or ridicule the victim (for instance, in a case of rape where mens rea is established). When the offender is caught and brought to face justice in restorative conferencing for instance, the negative energy (disgrace/ridicule) earlier put on the victim on the course of victimisation is at this time transferred to the offender. This transfer of negative energy could be likened to Isaac Newton's second law of thermodynamics, which postulated that "energy (negative/positive) is never lost but merely transferred from one source to another".

In this context, the negative energy (shame/disgrace) that has been inflicted upon the victim by the offender at the point of victimisation could be transferred back to the offender when he/she comes face to face with the victim in a restorative justice meeting. Such a restorative justice meeting provides the victim an opportunity to 'ventilate' his/her emotion by asking questions. Answers to such questions by the offender could go a long way in helping the victim recover from his/her emotional stress. The victim then could be psychologically healed of his/her victimisation while the offender takes up the 'burden of guilt', which would never heal until he recompenses the victim or receives forgiveness.

CONCLUSION AND RECOMMEDATIONS

Alternative Dispute Resolution (ADR) and some native or customary law might share some core restorative principles with restorative justice as discussed above, not all Alternative Dispute Resolution mechanisms share the restorative justice philosophy discussed in this paper. Hence, Barton (2003) argues that there are fundamental philosophical and ideological differences that are readily recognisable in both practices because, within restorative justice programmes, practitioners have a critical choice between taking what he calls 'the surface approach' or 'the deep

approach' to the ways restorative justice processes and meetings are to be conducted. The 'surface approach' is characterised by the focus on reaching tangible agreements and certain fairly specific material outcomes, such as restitution and compensation to victims, keeping the case out of court, and saving the offender from a criminal conviction and jail (these are principles shared by both restorative justice and ADR mechanisms). But while these outcomes and goals mentioned are important, they however do not exhaust, let alone do justice, in the idea of restorative justice and in terms of reconciliation and healing the wound of crime (Barton, 2003). Thus, a good restorative justice practice goes beyond the 'surface approach', beyond the kind of material externalities mentioned above (it should involves some kind of symbolic ceremonies). Because, the fundamental aim and purpose of restorative justice is to bring about closure and healing of the effects of crime, especially the emotional harm, the disconnectedness and social isolation experienced by those most seriously affected by the wrongdoing.

Therefore, in consistency with restorative justice ideology, a good reconciliation practice should be strongly directed towards repairing the damage to individual lives and social bonds; by reconciling the parties in conflict and securing a sense of closure for them. So for restorative justice practitioners in Nigeria and Africa to be able to achieve the above aims and outcomes, they are required to have a thorough knowledge, and understanding of what restorative justice is and what is not, and to take the 'deep approach' in the way they respond to the offending behaviour: looking at its causes, and consequences (which might sometimes be lacking in some Alternative Dispute Resolution mechanisms). And to be able to do this all participants (victims, offenders and the community) need to be enlightened on how they can be empowered and encouraged to speak their minds truthfully and without fear.

It means that participants on both sides ought to be enlightened and encouraged through appropriate preparation and skilful use of prompts in their meeting to talk, not only about facts and figures, but also about their emotional experiences of disappointment, anger, devastation and fear. It is important to note that in dealing with these emotional dimensions of offending behaviour, true healing and reconciliation are unlikely to be achieved in a fear induced environments (as in some courts based ADR pilot projects; and community vigilante group reconciliation meetings ongoing in Nigeria at the time of writing up this paper). The concern of this paper is that if emotional, moral and psychological issues are unexpressed (which are likely to happen at the kind of court based ADR mechanisms being piloted in Nigeria) it hinder not only healing and lasting reconciliation between parties, but also material recompense.

The aim of this discourse is not to offer a comprehensive description or critical examination of other Alternative Dispute Resolution mechanisms or to pass judgment on the effectiveness or utility of such initiatives. Rather, this paper is only interested in the relationship between restorative justice and other ADR mechanisms- that is with the extent to which ADR mechanisms might be viewed as restorative justice, and the extent to which they are not. Obviously, ADR is an interesting area

of investigations for restorative justice advocates and researchers, as it is understood to refer to all practices outside the legal processes, and restorative justice is often mistaken to refer to these same practices as some respondents in a Nigerian study have mentioned (Omale, 2009) for instance. Thus understanding the ways in which ADR reflects restorative values, and how it fails to meet the demands of restorative justice philosophy will provide much guidance for evaluation of any proposed restorative justice practices in Nigeria and indeed Africa, and will give direction for any future trainings needs of the public and professionals. This paradigm muddle argument and need for knowledge base trainings also reflected in a South African study (Naude and Prinsloo, 2005) as the findings indicated that magistrates and prosecutors were unsure of the principles, application and effectiveness of restorative justice. And there were many misconceptions and uncertainties about various aspects of the approach. It is therefore imperative to set the record straight so that practitioners in Africa would not think that the problems with the current criminal justice system could be addressed by merely changing a few practices.

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