



# Repairing harm

An introduction to restorative justice for victims of wildlife offences

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Wildlife crime is one of the greatest risks to the survival of many of the world's threatened species. Previously, there was little understanding of the impacts of these offences on victims, many of whom suffer considerable losses and trauma. The 'victim' of an offence is an individual or group of people who has suffered harm. In the case of a wildlife offence, this could be:

- a private landowner or ranger,
- an entity such as a protected area or reserve,
- a representative of a reserve or group of rangers,
- a group of people/community affected by wildlife offences.

Apart from the loss of wildlife, victims often experience high financial costs and psychological distress and trauma, particularly if violence or confrontations are experienced and if animals suffered due to the offence. Costs associated with damage to fences, buildings, crops, and other assets can run into millions of Rands, which, together with the escalating costs of security, can affect operations and business viability. Those employed in protected areas in which rhinos and elephants occur often face life-threatening risks when protecting the animals from poachers.

## What is a wildlife offence?

A wildlife offence can be described as any prohibited or unauthorised activity taken in respect of any legally protected species, part or whole.

The most common wildlife offences are the illegal killing or harvesting of species (commonly referred to as poaching) and the illegal possession, transport, and trade of legally protected species.



Arrest and conviction rates for wildlife offences vary but tend to be low. Even if offenders are convicted, the conventional criminal justice approach has limitations. During proceedings, the victim is seldom able to adequately express the extent of harm caused or talk directly to offenders, limiting both parties' understandings of the circumstances and impacts of the offence. Although offenders may be punished when a prosecution results in a conviction and sentence, they do not make direct restitution to the victim. As a result, victims often do not receive the support they need to recover and heal. In addition, South Africa has a high re-offending rate, partly because offenders often experience many challenges reintegrating into society.

## What is restorative justice?

### The Department of Justice and Constitutional Development defines restorative justice as:

*"...an approach to justice that aims to involve the parties to a dispute and others affected by the harm (victims, offenders, families concerned and community members) in collectively identifying harms, needs, and obligations through accepting responsibilities, making restitution, and taking measures to prevent a recurrence of the incident and promoting reconciliation; this may be applied at any appropriate stage after the incident."*

Restorative justice offers a more victim-centred approach that focuses on the harms caused by the offence and how the offender can make reparation to the victim. Through the process, the offender can better understand the harm caused by their actions. For example, suppose the offender acknowledges the harm and is willing to make restitution. In that case, the parties can identify specific actions and steps that the offender can take to repair the harm caused to the victim as far as possible, in addition to informing an appropriate penalty.

Restorative justice has been integrated into South Africa's criminal justice system, and cases can be referred to a restorative justice process at any stage of proceedings. More serious offences are normally referred at a later stage, for example, before or after conviction. If the case is referred to a restorative justice process as a diversion, offenders

will still receive consequences. Participating in the process can enable offenders to be lawful, contributing members of society, particularly when linked to restorative justice programmes which offer social support services and training and skills development opportunities.

### Several international reviews of restorative justice programmes found that:

- The process enabled victims to tell the offender how the offence affected them and obtain restitution from the offender.
- When successful, the process can support healing.
- Restorative justice approaches are more likely to reduce re-offending rates if carried out as part of a broader rehabilitation framework.

## Rights and legal safeguards

- **The right to consult with legal counsel:** The victim and the offender have the right to obtain legal advice at all stages of the restorative process but legal counsel do not participate in the processes themselves. Translation and/or interpretation services must be provided if one or more parties need these services.
- **The right of children to the assistance of a parent or guardian:** Children have the right to the assistance of a parent or guardian.
- **The right to be fully informed:** Before agreeing to participate in a restorative process, the parties should be fully informed of their rights, the process, and the possible outcomes.
- **The right not to participate:** Neither the victim nor the offender should be pressured or persuaded to participate. The parties participate equally in identifying actions to repair the harm caused, but if there is a difference of opinion, each party has the right to disagree to part or all of these actions.
- **The consent of each party is required at all phases** of the process, including the development and acceptance of the formal agreement. Children may need special advice and assistance to enable them to form valid and informed consent.

## Important notes

- Not all cases are suited to restorative justice.
- Participation is voluntary. No one should be pressured to participate.
- Parties must fully understand their rights and possible legal consequences of participation.
- All parties have the right to legal advice at all stages of the process.
- Restorative justice is not a 'soft option'. All penalties available under the criminal justice system are available with restorative justice as well and may include prison sentences, fines, or house arrest.

# How does a restorative justice process work?

When a case is referred to a restorative justice process, a facilitator will be appointed. The facilitator will approach the victim(s), introduce them to the restorative justice concept, and invite them to participate. If they agree to participate, only then will the facilitator approach the offender. The parties must understand what restorative justice is, the process, their rights and responsibilities, possible outcomes, and other details so that they can make informed decisions about participation.

If both parties agree to participate, the restorative justice process begins. The process can be divided into four phases: **1 Preparation; 2 Meetings; 3 Formal agreement; and 4 Post-agreement and follow up.** A more detailed description of the restorative justice process is provided in the accompanying booklet entitled, 'The restorative justice process - what can I expect?'

## Phase 1 Preparation

**All parties must receive thorough preparation.**

The facilitator holds separate meetings with the victims and offenders and explains how meetings will be conducted, the rights, roles, and responsibilities of each party, and possible outcomes of the process. The legal aspects of the case will be explained again, including the right to legal advice and potential legal constraints if the restorative justice process does not succeed.

Parties can ask questions at any stage. During the preparation phase, each person must understand the process and their legal rights, amongst other aspects of the restorative justice process.



## Phase 2 Meetings

**The facilitator will explain their role to parties, let them know how the meetings will be structured, and remind participants of their rights.**

The victim is then invited to explain the harm caused by the wildlife offence and ask the offender questions. The offender then receives an opportunity to describe the circumstances leading up to the incident and the motivations for their participation. In addition to the harm caused to the victim, it is also important to explain the conservation impacts of wildlife offences, and how these affect all of us. Once all harms have been identified, the victim and offender together identify ways to make amends as far as possible.



## Phase 3 Formal agreement

**Terms should be drawn up and signed by the parties.**

The agreement is a formal document with clear steps describing the offence, harms caused, actions that the offender has agreed to to repair the harm caused, and penalties applicable to the offender. It needs to include specific steps and timelines to avoid misunderstandings or other problems in the future.

Parties may withdraw if they cannot reach an agreement, and the case can then be referred back to the criminal justice system.



## Phase 4 Post agreement and follow up

**Parties must ensure that they meet their obligations as specified in the agreement.**

The process is monitored to ensure that each party meets their responsibilities within the agreed timelines. If the offender does not meet the agreed terms, the case can be referred back to the courts.



**The process is voluntary, safe, fair, and transparent, and protects the legal rights and dignity of all parties.**

## Application of restorative justice to wildlife offences

Restorative justice can be applied to all wildlife offences. The outcomes depend on the severity of the offence and circumstances. The seriousness of wildlife offences depends on the type of offence, the type of animal or plant (for example, whether it was endangered), and the circumstances (including the involvement of criminal syndicates).



## Contact details

To report a case for potential referral to restorative justice or for further information, please contact the Endangered Wildlife Trust at [rj@ewt.org.za](mailto:rj@ewt.org.za)

## Further reading and resources

**Repairing harm.** An introduction to restorative justice for victims of wildlife offences.

**The restorative justice process - what can I expect?**

Booklet and summary pamphlet available from [www.ewt.org.za](http://www.ewt.org.za)

## Resources used to inform this pamphlet

Department of Justice and Constitutional Development (2011). *Restorative justice, the road to healing*. Accessible at [www.justice.gov.za](http://www.justice.gov.za)

Frank, C and Skelton, A, 2007. Practice Standards for Restorative Justice: A Practitioner's Toolkit. Pretoria, Restorative Justice Initiative accessible at [www.restorativejustice.org](http://www.restorativejustice.org)

UNODC (United Nations Office on Drugs and Crime). 2020. Handbook on restorative Justice Programmes. Second Edition. United Nations, Vienna.



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