

# Repairing harm

An introduction to restorative justice  
for victims of wildlife offences



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## Summary

Wildlife offences are a major concern for conservation, threatening the survival of thousands of plant and animal species globally. These offences also have severe impacts on human victims, with a worrying trend of increasing violence associated with incidents in some areas. Victims of wildlife offences are affected in a variety of ways, including the loss of wildlife, property damage, and associated financial costs. Many also experience psychological distress and trauma, depending on the nature of the offence and circumstances. Rangers and some landowners face considerable risks to their personal safety, particularly in areas that include rhinos and elephants.

Until recently, efforts to curb wildlife offences have largely been centred on conventional approaches to criminal justice, whereby convicted offenders are punished through prison sentences, fines, or both. While this serves to punish the offender, the victims voice is often lost and it does not address the underlying reasons why the crime was committed, resulting in possible reoffending, and the offender does not directly repair the harms caused to the victim. Restorative justice seeks to address these limitations.

Restorative justice is a victim-centred approach to justice that is increasingly integrated into criminal justice systems globally to address some of these limitations. In this approach, the offender is held accountable, but the focus is to repair the harm caused to the victim as far as possible. To do this, the victim and offender discuss the harm caused by the offence and, with the aid of a trained facilitator, identify ways in which the offender can make restitution.

To participate in a restorative justice process, the offender needs to accept responsibility for the incident. During the process, the offender will be encouraged to acknowledge the harm they have caused and must be willing to do what they can to make reparation to the victim, in addition to other penalties that may be appropriate. The offender may be referred to a restorative justice programme that will provide training, skills development, and the support they need to break free from a cycle of criminal activity. If successful, restorative justice can achieve justice and promote healing and reconciliation between all parties affected by the offence, including the wider community in certain instances.

This guide provides introductory information on restorative justice. More details on the process are available in the accompanying booklet entitled, 'The restorative justice process. What can I expect?', available from the Endangered Wildlife Trust.





In promoting justice, the government is responsible for preserving order and the community is responsible for establishing peace<sup>1</sup>



## Introduction

Wildlife offences threaten the survival of hundreds of plant and animal species in South Africa and cause substantial harm to people.

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 a ranger, or a group of people or an entity such as a protected area or reserve, a representative of a reserve, a group of rangers or the section ranger on behalf of the rangers, or even a community who has been affected by wildlife offences. The impacts on victims are often high, with costs running into millions of Rands through the loss of wildlife, damage to property and associated operational and security costs. Victims of wildlife offences may also experience distress or trauma due to the cruelty of wildlife offences and violence that may have occurred during incidents.

## 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.

South Africa follows a largely punitive-based system of criminal justice. Generally, offenders are punished by imprisonment, fines, or both for crimes that they have committed, in the hope that these punishments will reduce reoffences and discourage others from carrying out criminal activities.

There is an urgent need to find more effective ways to address wildlife offences, both from a conservation perspective and to improve rural safety and security. To achieve this, we need to reduce the number of incidents and deal with offences more effectively and responsively when they occur. We also need to reduce the likelihood of offenders committing additional crimes when they have served their sentence (reoffending). Equally importantly, victims' needs must be adequately addressed and, as far as possible, the harms caused by the wildlife offence repaired. Many countries are now implementing complementary approaches to the conventional justice system to address these challenges, including restorative justice.

However, the system has limitations, which include:

- The offender is not held directly accountable to the victim.
- Although the offender receives punishment in the form of a prison sentence and/or fine, the harm caused to the victim is not usually repaired.
- High rates of reoffending.



# 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.”<sup>2</sup>



**Restorative justice aims to repair the harm caused by crime. When victims, offenders and community members meet to decide how to do that, the results can be transformational. Restorative justice emphasises accountability, making amends, and if they are interested, facilitated meetings between victims, offenders, and other persons.<sup>3</sup>**



A restorative justice process is a voluntary and facilitated process that provides a safe space for parties affected by an offence to meet. The victim and the offender may be supported by a family member, friend, community leader or someone else they trust. Other community members may also attend if they were affected. The offender must acknowledge and accept responsibility for the harm they

## Restorative justice outcomes

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.<sup>4</sup>

## How does restorative justice align with South Africa’s legal system?

- Restorative justice is incorporated into the Probation Services Act 116 of 1991, the Children’s Act 38 of 2005 and the Child Justice Act 75 of 2008. Policies integrating restorative justice include the Services Charter for Victims of Crime, the Minimum Standards for Services for Victims of Crime, the National Crime Prevention Strategy, and several reports issued by the South African Law Reform Commission.
- The Justice Crime Prevention and Security Cluster has also included restorative justice in a national framework (still to be formally adopted).
- Restorative justice is being further established through judgements by the courts of South Africa, including the Constitutional Court.

have caused and will be given a chance to explain further details of the case that the victim may not be aware of, which often aids with the healing process. Restorative justice is gradually being integrated into South Africa’s formal criminal justice system. Non-governmental and other organisations can also implement restorative justice programmes within the boundaries of national legislation.



Photo credit: Ashleigh Dore.



# Principles and values of restorative justice

Approaches to restorative justice vary but are usually underpinned by similar values and principles.<sup>5</sup>



A strong focus on the victim and the harm caused by the offence

Compliance with legislation and globally accepted human rights principles, including those enshrined in the Constitution of South Africa



A balanced and fair process



Participation is voluntary, and parties may withdraw from the process at any time

Adequate preparation is essential for all parties



All parties must be fully informed of the purpose, procedures, and possible outcomes of restorative justice, as well as their rights

Victims and offenders have the right to obtain legal advice at all stages



All parties must be provided equal opportunities for participation

The dignity of all parties must be ensured, and there should be no domination or discrimination of any individual



Additional principles are listed in the Department of Justice and Constitutional Development's guidelines 'Restorative Justice, the road to healing'



# 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 all 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.**<sup>6</sup> 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 comprehensive preparation.**

The facilitator holds separate meetings with the victim and offender 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 restorative justice.



## Phase 2 Meetings

**The facilitator will explain their role to parties and let them know how the meetings will be structured. They will 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 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 repair, the harm caused, and penalties applicable to the offender (including imprisonment or the payment of a fine, but also including limitation of movement and house arrest). 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 could 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.**

## Reducing future reoffending

Additional support is sometimes provided to offenders through restorative justice proceedings by linking them to programmes that offer social support, skills development, and other training. Crimes are sometimes linked to drug and substance abuse. For example, and if offenders do not overcome their addictions, they are likely to fall into the same patterns when they return home. Skills development sometimes helps offenders find work when released from prison, support their families, and reintegrate into communities.



## Rights and legal safeguards<sup>7</sup>

The following safeguards protect the rights of parties and ensure fairness to both the victim and offender:

- **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 require special support, advice and assistance to enable them to participate and form valid and informed consent.



The following legal safeguards are applied throughout the restorative justice process to ensure that the rights of all parties are respected:

- Restorative justice may only be used if there is enough evidence against the offender to prosecute the case in a court of law.
- **Participation of an offender is not evidence of guilt:** Participation of an offender in a restorative justice process should not be used as evidence of admission of guilt in any later legal proceedings.
- **Agreements are voluntary, and terms must be reasonable:** Agreements arising out of a restorative process must be arrived at voluntarily and should only contain reasonable obligations on the parties. The measures to repair the harm caused must be in proportion to the offence and circumstances.
- **Safety of the parties:** The safety of the parties is of paramount importance throughout.
- **Confidentiality of proceedings:** Unless otherwise agreed, restorative processes are confidential. No details may be discussed with outside parties during the process or after the case is closed. This also applies to making details of the case available to the media.
- **Human rights safeguards** protect the privacy of children and, particularly, the confidentiality of any proceedings involving children.
- **Judicial supervision:** In cases referred through the conventional criminal justice system, the results of agreements usually need to be judicially supervised and incorporated into judicial decisions or judgements. The prosecutor and/or the court needs to be notified of outcomes.
- **Failure to reach an agreement:** Where no agreement is reached between the parties, the failure to reach an agreement on its own may not be used against the offender in later criminal justice proceedings.
- **There can be no increased punishment for failure to implement an agreement:** Failure to implement an agreement during restorative justice cannot be used to justify a more severe sentence if the case is referred back to the criminal justice system (other than a judicial decision or judgement).



# Is restorative justice an appropriate approach to address wildlife offences?

Arrest and conviction rates for wildlife offences vary but are generally low. There is also a substantial backlog of criminal cases lodged with the National Prosecuting Authority (NPA). South Africa's prison capacity is well over 100% and is described as severely overcrowded.<sup>8 & 9</sup> Several studies have shown that the percentage of offenders who re-offend after serving their sentences is high.<sup>10</sup>

Restorative justice provides an opportunity to hold offenders accountable for their actions and make reparation for their offence. During this process, offenders need to be made aware of the harms caused to species and habitats and how their actions caused specific harm.

Restorative justice has been found to reduce reoffending levels, particularly if linked to restorative justice programmes which provide support services to offenders and training and skills development. During a restorative justice process, the offender explains their motivations behind their illegal activities and the circumstances surrounding the incident. This helps community corrections officers or other professionals guide offenders to the restorative justice programmes and organisations with the most potential of addressing the underlying causes of these activities. These programmes could address substance abuse, violence, anger management, life skills training, and skills development such as basic literacy, artisan skills, and financial literacy. Environmental education is particularly suited to many youth offenders, but adults can benefit as well.

## When can restorative justice be applied to wildlife offences?

Any type of offence can be referred to a restorative justice process at the request of any party. Each case and offender is evaluated before referral to assess whether restorative justice is the most appropriate approach to achieving justice. Cases can be referred at any stage of the criminal justice proceedings. Generally, more serious offences are referred later in the process, particularly if a criminal docket has already been opened.

The case and the offender are both evaluated before a referral is approved. Cases can be referred for a restorative justice process at the pre-trial, pre-conviction, pre-sentencing, or post-sentencing phases. More serious cases are usually referred later in the criminal proceedings.



# An example of a restorative justice process

The following example shows how the process can be applied to a hypothetical wildlife offence.

## Restorative justice in action: Adults caught poaching rhino

Two adults were caught trying to poach a rhino in a protected area. One was a repeat offender, while the other had a history of poaching but had not been caught before. A syndicate had recruited both through a middleman. Fortunately, three field rangers had caught the offenders before they killed the rhino.

During the court proceedings, the prosecutor decided that the case was suited to restorative justice based on the circumstances and that the offenders had admitted their wrongdoing and were sorry for it. Because trying to kill a rhino, which is legally protected in South Africa, illegally is a serious offence, and often connected to organised criminal syndicates, the case could be referred to restorative justice after conviction but before sentencing.

The court considered the case and assessed the offenders to

determine if they would respond well to restorative justice. The court then appointed a trained facilitator.

The facilitator approached the Managing Executive of the protected area to invite them to participate in the restorative justice process. The facilitator explained the concept, process, legal implications, the rights of parties, and other details, and the Managing Executive agreed that the process could be beneficial and appointed the regional section ranger to represent them.

After consulting with the facilitator and legal aid, the repeat offender declined to participate, but the second offender agreed to. The facilitator then explained the legislation relating to wildlife offences, particularly rhino poaching, and the impacts of illegal wildlife activities on people and conservation efforts.

### Preparation

The facilitator set up separate meetings with the victims (represented by the regional section ranger) and participating offender. The offender brought a family member for support and the Induna of his village. The section ranger was accompanied by one of the field rangers who had caught the offenders.

The parties were informed of their rights and responsibilities and reminded that the process is voluntary. The process was explained again, and they were provided with an opportunity to ask questions.



### Meetings between the parties

The facilitator then set up joint meetings between the parties. A translator was used to ensure the offender could participate fully. The parties were reminded of their rights and responsibilities, as well as how the process would work at the start of the meeting.

The section ranger and field ranger described the harms caused by rhino poaching, including impacts on the species, conservation, and tourism. The field ranger described the stress of his job and the impacts of it on his family and co-workers.

The offender acknowledged the harm caused and showed a willingness to try to repair the harm. He explained that the offenders had been approached by a person from a neighbouring village to hunt the rhino and had accepted the deal because they were both out of work.

The parties then talked about specific activities that the offender could take to repair the harm, with inputs from the Induna, which included providing as much information about the syndicate as possible to assist the rangers in preventing further rhino poaching. In addition to serving a custodial sentence, the offender agreed to do community service such as repairing fences or helping to thatch visitor accommodation in the protected area after serving his sentence. Both parties agreed to the terms





### Agreement

A formal agreement was drawn up and signed by the parties. A copy was also sent to the prosecutor, who agreed to the terms and integrated them into the sentence agreement. In addition, the offender was referred to a programme to develop skills he would need to avoid committing offences after being released from prison.



### Post Agreement

After serving four years of a seven-year sentence, the offender was released from prison. As agreed, he provided labour to the protected area for the agreed time period and met the other terms of their agreement. A community corrections officer monitored his progress, and sent a report to the prosecutor when all the activities that had been agreed on were completed.



## Conclusion

Wildlife offences have severe impacts on people and wildlife. We need to find more effective strategies to reduce the number of these offences and improve the way we address cases when they occur. Restorative justice creates a safe space for the harm caused to victims to be voiced and acknowledged and for the offender to make restitution (as far as possible) to those affected by their actions. It can also help heal relations between the victim and offender and reduce reoffence rates, contributing to community safety while ensuring justice to all parties.





## Further information and resources

Restorative justice process - what can I expect?  
Available from [www.ewt.org.za](http://www.ewt.org.za)

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

## 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)**

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