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## RESTORATIVE JUSTICE WITH YOUTH SEX OFFENDERS: ISSUES FOR PRACTICE

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**Thulane Gxubane**

Senior Lecturer, Department of Social Development,  
University of Cape Town  
Thulane.Gxubane@uct.ac.za

### ABSTRACT

*The South African child justice system has adopted the philosophy of restorative justice in the management of child and youth offenders in general as reflected in the preamble of the Child Justice Act 75 of 2008. Whilst restorative justice has been easily applied to less serious youth crimes generally, there seems to be some reservations regarding its appropriateness to dealing with youth sex offenders. This article looks at restorative justice approach within the context of diversion and seeks to highlight practice issues that need to be considered with regard to the application of the aforementioned approach in dealing with youth sex offenders. The article draws from the findings of a Doctoral study that the author conducted which explored this area of social work practice.*

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**Key words:** youth, youth sex offenders, diversion, restorative justice, issues for practice, family group conferencing

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## INTRODUCTION

In this article the word 'youth' is used interchangeably with the word 'child', referring to any person under 18 years of age as stipulated in the United Nations Convention on the Rights of the Child (1989) and the Constitution of the Republic of South Africa (1996). The Child Justice Bill (CJB) was approved by Cabinet in November 2001 for introduction into Parliament in August 2002 as Bill 49 of 2002. Having disappeared from the public eye for more than five years, the re-drafted CJB of 2007 was brought back before Parliament in February 2008 for public hearings. The CJB of 2007 excluded children who committed serious offences from the process of assessment by a probation officer and, consequently, excluded from the possibility of diversion. In other words, the cases of children charged with serious offences like rape, would proceed straight to trial in a child justice court. Diversion refers to the process of referring children who are under the age of 18 and who have committed offences, in cases where there is enough evidence to prosecute, away from formal criminal justice proceedings to informal procedures as recognised by the legislation.

The bifurcation of offences by the re-drafters of the 2007 CJB seems to have been informed by the conviction that diversion and restorative justice are inappropriate when dealing with youth sex offences since restorative justice is often applied within the context of diversion although it can be used a sentencing option according to the Child Justice Act 75 of 2008 (CJA). Bifurcation refers to a policy of separating out the minor offences from the serious offences with the intention of being tough on the latter. Restorative justice refers to an approach to justice that aims to involve the child offender, the victim, the families concerned and community members to identify and address harms, needs and obligations collectively, through accepting responsibility, making restitution, taking measures to prevent a recurrence or the incident, and promoting reconciliation (CJA). It is against this backdrop that the author was motivated to conduct a study which explored the application of restorative justice within a residential diversion context in dealing with youth sex offenders in SA.

A brief discussion on conceptualising restorative justice, and on youth sex offenders' programmes based on restorative justice will be presented so as to firstly, build a theoretical foundation for this article. Secondly, the concerns which seem to undergird the reservations regarding the appropriateness and /or applicability of restorative justice to dealing with youth sex offenders will be explored in relation to issues for practice. Issues for practice refer to the application of direct and/or indirect forms of the restorative justice process.

Finally, the practice of family group conferencing (FGC) in working with the families of both the victims and youth sex offenders will be explored. Family group conferencing refers to a restorative justice response to the offence that enables an offender and his or her victim together with their families and/or support systems to find solutions to their own difficulties within a professionally supportive framework, and it is the most preferred form of restorative justice process in dealing with youth offenders generally.

### **CONCEPTUALISING THE RESTORATIVE JUSTICE APPROACH**

Van Ness and Strong (2002:27) maintain that the term “restorative justice” must have been coined by Albert Eglash in 1977 in an article, in which he distinguished between different types of criminal justice systems. Skelton (1999), conversely, argues that restorative justice is nothing new to SA. Restorative justice is a theory of justice that promotes reconciliation rather than punishment of offenders. Skelton further argues that, long before apartheid and colonisation, restorative justice was known and understood by people living in SA. She claims that “(r)econciliation, restoration and harmony lie at the heart of African adjudication” (Skelton, 1999:93-94).

Sharpe (2004) asserted that restorative justice is still a new field of study and that the rapid growth of restorative justice has led to increased confusion on what restorative justice is, and what kinds of practice can be included or excluded from this approach. Skelton and Batley (2006) pointed out that, during the early days of diversion practice with young offenders in South Africa, all diversion programmes were considered to be restorative because their overall aim was to find an alternative to the criminal justice system and to give young offenders a chance to change their behaviour, whilst avoiding a criminal record. They also allude to the fact that “scholars in the field have become increasingly concerned about what they see as this ‘bandwagon’ approach to restorative justice”; they argue that “not all diversion programmes are restorative in nature” (Skelton and Batley, 2006:7).

Zehr (2002:54-57) proposed that the following questions need to be asked as pointers in evaluating whether a process or programme is restorative in nature or not:

- Does it address harms and causes?
- Is it victim oriented?
- Are offenders encouraged to take responsibility?
- Are all three stakeholder groups involved?
- Is there an opportunity for dialogue and participatory decision-making?
- Is it respectful to all parties?

Skelton and Batley (2006) asked whether a process needs to include all the above-mentioned principles and values for it to be considered a restorative justice process. It may not be possible or even desirable for every restorative justice programme or process to address all six questions, but it should include at least some of them (Skelton and Batley, 2006). Hence restorative justice needs to be conceptualised as an approach, a mindset, or a way of thinking about justice rather than a particular process or programme.

## **YOUTH SEX OFFENDERS' PROGRAMMES BASED ON RESTORATIVE JUSTICE**

Dawes (2004) notes that interventions for sexual offenders are a highly specialised area, which requires trained staff, as well as programmes that address the particular needs of these children. Secondly, children who are enrolled in the sexual offenders programme are not a homogenous group. It is one diversion group that is classified primarily by the offence rather than by personal characteristics. For instance, children who have engaged in exploratory sexual behaviour can be grouped together alongside those with high risk coercive sexual behavioural traits.

In most sexual abuse cases, the victims and offenders are treated separately. Such an approach does not offer avenues for closure or perceived misattributions about the abusive sexual incident. However, even though direct contact between the offender and the victim could be helpful, Zehr (1990) notes that, mediation is not always appropriate, depending on the nature of an offence, or when there is severe suffering by the victim or when power imbalances are too big to overcome. The victim may be unwilling to participate in restorative justice processes. The use of surrogate victims was adopted to promote a restorative justice approach where the 'actual' victim is not willing or where it is inappropriate that they participate. According to Zehr (1990:206), the use of surrogate victims, pioneered in Canada and England, is a process whereby "offenders meet with victims other than their own as a step toward assuming responsibility and sharing of information. This can be particularly helpful in emotionally charged situations such as sexual offences".

Roseman, Yeager, Korcuska and Cromly (2008) developed a Sexual Behaviour Intervention Program (SBIP) as an innovative community-based male sex offender treatment programme in the United States of America. The SBIP is a focused, psycho-educational programme rooted in the restorative justice model. It consists of twelve 90-minute group sessions. Surrogate victims are used in victim impact panels as part of the SBIP's victim empathy sessions. Lord (1989, cited in Immarigeon, 1999) describes the 'victim

impact panels' as innovative process of restorative justice that was initiated in the USA by mothers against drunk driving.

The victim impact panels are designed to help offenders to individualise and humanise the consequences of their anti-social and criminal behaviour in relation to the victims of that offence, to change their attitudes and behaviours, to deter the criminal behaviour, and to reduce recidivism (Mercer et al., 1994, cited in Roseman et al., 2008; Immarigeon, 1999; Zehr, 1990).

In some cases the victims may be wary of restorative justice personal encounter processes due to huge power imbalances between the victim and the offender, particularly in cases of sexual abuse where the victims are children. Consedine (1999:185) notes that it is especially in such cases that skillful and well-trained facilitators are needed, "given the effect of such crimes and the amount of grief and pain they cause". The secondary victims, such as family and friends, may benefit from participating in FGCs without the primary victim's presence. This will help repair relationships and enable referral to other sources of help where necessary (Liebmann, 2007; Consedine, 1999).

## **A BRIEF BACKGROUND ON THE METHODOLOGY OF THE STUDY**

The study combined qualitative and quantitative approaches research designs with a *predominantly qualitative* thrust in the gathering, analysis and presentation of data. The study adopted a *non-probability purposive sampling* method. Three sets of samples participated in the study, namely, 20 ex-youth sex offenders, their significant others (parents or guardians), and the key informants from various professional groups who were involved in the management of youth sex offenders and/or their victims in a variety of settings. Ex-youth sex offenders refer to persons between the ages of 10 and 17 years who were referred to the youth secure care centre through a court order to attend a youth sex offenders' residential diversion programme because they had pleaded guilty for the sexual offences that they had committed. The professionals were drawn from major clusters of youth justice service providers from Gauteng and Western Cape provinces. Three semi-structured interview schedules were developed in advance and used as tools for data collection with each sample set. The primary method of gathering data that was employed in the study was *in-depth face-to-face interviews*.

Only a profile of the professional respondents who participated in the study is presented in this paper since all practice related issues were mainly explored with them. The thirty-one (31) respondents served as key

informants and they were targeted because the author believed that, by virtue of their experience, such respondents would offer deeper insights into the research focus area. These professionals were drawn from three major cross-sectional clusters of youth justice service providers, namely; the justice sector, social workers who operate in the child justice system, the non-governmental organisations (NGOs) sector, which included community based social services professionals. They are called ‘social services professionals’ because they include a wide range of professions, such as social work, child and youth care work, auxiliary social work and volunteers. Some of these social services professionals came from organisations that worked mainly with youth offenders, others from organisations that worked only with the victims of child sexual abuse and others from organisations that worked with both youth offenders and their victims.

The table below presents a profile of the professionals who formed the third sample set. The research participants and their respective organisations were assigned numbers so as to ensure anonymity for their participation in the study.

**Table 1: Respondents’ gender, current occupations, and years of experience in current jobs**

<b>R</b>	<b>GENDER</b>	<b>CURRENT OCCUPATION</b>	<b>YEARS OF EXPERIENCE IN CURRENT JOB</b>
<b>JUSTICE CLUSTER</b>			
<b>MAGISTRATES (MAG)</b>			
1	Female	Magistrate	6-years
2	Male	Magistrate	17-years
3	Male	Magistrate	20-years
4	Male	Senior Magistrate	10-years
5	Female	Chief Magistrate	9-years
6	Female	Magistrate	8-years
<b>PROSECUTORS (PROS)</b>			
1	Female	Control Prosecutor	10-years
2	Female	Control Prosecutor (Sexual Offences)	9-years
3	Female	Senior Prosecutor	20-years
4	Male	Senior Prosecutor	10-years
5	Female	Control Prosecutor	21-years
6	Male	Senior Prosecutor	10-years

<b>SOCIAL WORKERS IN THE CHILD JUSTICE SYSTEM CLUSTER</b>			
<b>PROBATION OFFICERS (PO)</b>			
1	Female	Senior Probation Officer	6-years
2	Female	Probation Officer	7-years
3	Female	Probation Officer	23-years
4	Female	Provincial Manager (Probation Services)	13 years
5	Female	Probation Officer	6-years
6	Female	Probation Officer	22-years
<b>SECURE CARE CENTRE SOCIAL WORKERS (SCCSW)</b>			
1	Female	Chief Social Worker and Child and Youth Care Worker	16-years
2	Female	Social Worker	8-years
3	Male	Social Worker	2-years
4	Female	Social Worker	1-year and 3-months
5	Female	Social Worker	7-years
<b>C. NGO CLUSTER</b>			
<b>NGO RESPONDENTS WORKING MAINLY WITH OFFENDERS (NGO-O)</b>			
1	Male	Facilitator and Manager of Peacemaking and Restorative Justice Dept	12-years
2	Female	Social Worker	4-years
<b>NGO RESPONDENTS WORKING MAINLY WITH VICTIMS (NGO-V)</b>			
1	Female	Social Worker and a Play Therapist	10-years
2	Female	Social Worker and Masters Degree Student in Social Justice	1-year
<b>7. NGO RESPONDENTS WORKING WITH BOTH VICTIMS AND OFFENDERS (NGO-B)</b>			
1	Male	Intake Worker and Programme Facilitator	7-years and 6-months
2	Male	Social Worker	3-years
3	Female	Manager of VOM and Diversion Programmes	5-years
4	Female	Social Worker	17-years

## **Gender**

- With regard to the overall gender representation amongst the professional respondents, 71% (22 out of 31) were females and 29% (9 out of 31) were males.
- The justice sector shows an equal gender ratio representation, male to female, of 1 to 1. The social services sector gender representation shows a male to female ratio of 1 to 4.

## **Current occupations**

- Thirteen out of 31, almost half (42%) of the respondents occupied senior positions in their current jobs.
- In the justice sector, all the prosecutors were either senior or control prosecutors. One magistrate was a Chief magistrate, whilst another one was a senior magistrate.
- The social workers who operated in the child justice system, one was a senior PO, one was a provincial probation services manager and one was a Chief social worker in the youth secure care centre.
- In the NGO sector, two were managers in their different departments in addition to their respective therapeutic roles.

## **Years of experience in their current jobs**

- The highest number of years of experience a respondent had in his or her respective occupation at the time of research was 23 years (a PO), whilst the lowest number of years of experience a respondent had in the current occupation was 1 year (NGO social services professional).
- The overall average number of years of experience the respondents had in their occupations during the period of this study was 10 years. The lengthy period of experience many respondents had in their current jobs was in line with the type of key informants that were targeted, since the author believed they would bring rich insights to the study.
- The justice sector and the POs' median years of experience in their current jobs were above the median of 10 years, at 12.5 and 12.8 years respectively. The secure care centre social workers and the NGO sector social services professionals fell below the median of 10 years at 6.8; and 7.3 years respectively.



## **THE APPLICABILITY OF RESTORATIVE JUSTICE AND PRACTICE ISSUES**

There are a number of concerns about restorative justice that have been raised in the literature. The ones that are discussed below are those that the author believes are important in conceptualising and applying restorative justice processes.

### **Understanding restorative justice**

The research findings from the three clusters of youth justice service providers showed a range of understandings of the concept of restorative justice which could be placed in a line of a continuum. On the one end some responses reflected an extremely poor understanding of restorative justice whilst on the other end some responses reflected a very sophisticated and insightful understanding of restorative justice.

### **Restorative justice as a direct mediation between the victim and the offender**

The findings showed that most of the respondents, particularly those from the justice sector, conceptualised restorative justice as a process in its purest form which involves direct mediation between the victim and the offender. Whilst this is an ideal form of restorative justice process, however, the reality has shown that it may not always be desirable as discussed above. Sharpe (2004) notes that the application of restorative justice can take the form of direct and/or indirect practice. The face to face dialogue is obviously the most desirable form of restorative justice practice since it allows rich exchange of information between the parties. The indirect forms of restorative justice practice such as correspondence through letters or video recordings might as well serve the desired purpose (Sharpe, 2004).

An understanding of restorative justice only in the form of a physical mediation between an offender and the victim by some magistrates and a few other respondents is a cause for a concern to the author more so that the CJA seeks to entrench the principles of restorative justice in the management of young offenders in SA in general. In their attempt to give effect to restorative justice approach in the management of youth offenders, those with poor understanding of the concept may cause more harm than good. For instance, it can be very harmful if restorative justice is imposed on either the offender to meet with the victim or vice versa when they are not ready. This could lead to re-traumatisation of the victim and/or offender manipulation of the

restorative justice processes. To illustrate this, the following are statements from two prosecutors interviewed in a conjoint interview who had the following to say regarding their attempts to deal with the lack of social workers to facilitate the restorative justice processes:

*Our problem is that because there is nobody else who does this, our prosecutors end up having to do it. We get the parties together and we sit down and talk (PROS4).*

*We don't have the manpower. Restorative justice that we're talking about is something that we do because we have so many cases on the court roll, and we can't cope with all of them through the normal system, so we try and use some alternatives dispute resolutions by getting parties together (PROS5).*

Although the author acknowledges that there is indeed a lack of manpower, the author has very serious concerns about prosecutors facilitating restorative justice processes. Although they may have good intentions, they could do more harm than good. It has been shown throughout the discussion of restorative justice that its application needs skills and the preparation of both parties. When a decision is made to divert a case, whether minor or serious, to restorative justice processes that are facilitated by prosecutors, the victim's and/or the offender's process rights could be compromised. They might perceive the mediation as a court order and feel duly obliged to participate in it, even if they do not agree with it. The prosecutors are generally presumed to have authority due to their position in court and the power vested in them. One wonders how a mediation process that may be imposed could meet the needs of both victim and offender. Hence I have serious reservations about prosecutors referring matters to restorative justice processes and mediating the encounters. Perhaps with more training on the philosophy, principles and facilitation of restorative justice processes, however, they could be helpful.

### **Community involvement in restorative justice processes**

Van Ness and Strong (2002) believe that central to all definitions of restorative justice there seems to be three important principles and philosophy underlying the concept, in that, crime is seen as something that causes injuries to victims, offenders and communities. Not only government, but victims, offenders and their communities should be actively involved in the criminal justice process at the earliest point and to the maximum extent possible.

Most respondents who participated in this author's study pointed out that restorative justice needs to promote community involvement in dealing with

the aftermaths of an offence. This was also linked to how such an approach will help to reintegrate the offender back into the community:

*It is basically for a community to have a saying on what should happen to the offender (PROS2).*

*The concept of restorative justice means that I need to restore the wrong that I've done to other person that I have wronged in the community (SCCSW2).*

*We need to communicate with....the people that have been offended and the offender as well as the families.... and other stake holders like the community forums...if there is no one from the community then restorative justice will not be achieved. We need the community to be there (NGO-B2).*

The principle of community involvement seems to be based on the assumption that in a society there are groups of people who share a common vision and take care of each other as members of communities. Whilst it may have been like that in the traditional pre-colonial and pre-industrial era, community ties seem to have been eroded with the emergence of powerful social forces such as industrialisation, capitalism and urbanisation.

Drawing from the author's experience of social work practice, families were often very particular about who should and should not be involved in a family group conference. They did not want other members of the community or even other members of the extended family to be aware of and/or to interfere in their private matters particularly with regard to sensitive issues like sexual offences. Therefore, practitioners of restorative justice need to be mindful about such family dynamics when applying the principle of community involvement. The family has a right to privacy and it needs to be respected.

### **The goals of the restorative justice process**

It might be assumed that there is consensus amongst scholars and practitioners within the field of restorative justice about what this approach to justice seeks to achieve. The manner in which a person conceptualises restorative justice will influence the goals they seek to achieve by applying restorative justice processes. As the restorative justice theory expanded, both in research and practice, new perspectives emerged as to what restorative justice processes in the purest forms can and cannot realistically be able to achieve. In addition to that, different views emerged, which prioritised certain goals of restorative justice over the others, as discussed below.

Batley (2005) notes that restorative justice is often aligned with rehabilitation theory. He further asserts that the association between restorative justice and rehabilitation theory is based on the assumption that “(a)n offender who has taken responsibility for repairing the harm done, and now has restored the trust and confidence of the community is ‘rehabilitated’ in a far broader sense than can be said of individualised therapeutic measures” (Batley, 2005:27).

Dyck (2004) and Van Ness and Strong (2002) believe that restorative justice processes need to aim at reintegrating both victim and offender into the community. Braithwaite (1989) theorised this as ‘re-integrative shaming’. Marshall (1996, cited in Skelton, 2005), believes that restorative justice processes need to deal with the aftermath of an offence and its implications for the future. This is supported by Liebmann (2007:27) who argued that “most victims are interested in offenders avoiding future offending, thereby avoiding creation of more victims”.

Van Ness and Strong (2002) stated that, unlike other approaches to justice, restorative justice focuses on the effects of the crime and involves the victim and the offender in the process of reparation and rehabilitation. This conception about justice seems to suggest that part of the perceived goal of restorative justice processes is rehabilitation. Skelton (2005:66), in contrast, argues that “(r)estorative justice advocates do not ignore the importance of a therapeutic and rehabilitative approach, but do not view these as central or [as the] most important aims of a justice process”. In deciding whether an offence warrants a restorative justice response NGO-O1 respondent who had training in Psychology and Conflict resolutions from Canada and had extensive years of working with the youth offenders in facilitating restorative justice processes (See the profile of the respondents above) stated that it is dependent on what goals those who practice this approach want to achieve through its application:

*In my opinion it really depends on what you believe will be the outcome of restorative approaches should be. If you are thinking that the goal of restorative approaches is rehabilitation then of course you might say that using this approach does not rehabilitate if somebody keeps on re-offending. That would imply that the goal of restorative approaches is to deal with recidivism and part of it is rehabilitative. I personally believe that is not the goal for restorative justice approach.*

*The aim and the goal is to bring more empowerment to the victims and people who have been affected by the crime which the criminal justice system does not do in general. There is also belief that restorative justice equals to forgiveness and equals to reconciliation which doesn't. These are possible*

*outcomes if the parties themselves believe in it. It is not the goal of restorative justice practitioners. It is not for us to go and push everybody to forgive or to reconcile (NGO-O1).*

Researcher: (Probing the respondent further). Then what is your primary goal?

*Our goal is to provide a forum where people who are affected by an offence can find healing in ways that they see relevant to themselves. You may for an example have a victim of domestic violence who may agree at the end to separate and not to reconcile. You may not get forgiveness or reconciliation either (NGO-O1).*

Conceptualisation of restorative justice as reflected above raises a serious concern as it could be considered as serving the interests of the offender and working against the very purpose of restorative justice. The victims and community in general may be outraged and feel that it is not fair. This speaks directly to the discussion we had earlier around conceptualisation about restorative justice. The author believes that restorative justice processes are convened with a purpose of helping the offender to gain an insight about the impact of his/her criminal behaviour on others. Hence it is hoped that after a restorative justice encounter, offenders will be able to understand the consequences of their criminal behaviour in relation to the harm caused to other people. Therefore, they would refrain from such offending behaviour in future.

### **Restorative justice processes are offender-centred**

The findings in the author's Doctoral study showed that the respondents amongst all youth justice service providers were divided on this theme. Some felt that restorative justice processes need to be initiated by the victim. Other respondents argued that if restorative justice processes are going to rely on the victims' initiatives then restorative justice processes would be minimally and/ or not be applied. It was felt that due to the harm that most offences cause, victims are not likely to be willing to meet with their offenders. Some victims need ample time to heal before they are ready to meet their offender. Immarigeon (1999) argued that most restorative justice processes, are offender-oriented, only serve the offender's own selfish interests, and that these processes only seek to address the needs of the offender and do not necessarily have the needs of the victims at heart. This may be a valid critique, based on the author's social work practice experience as a new practitioner in the field of restorative justice. It is often easy, though

unintentional, to ignore the needs of the victims by going ahead with FGC, even when the victim has not yet been prepared for such an encounter. This encounter may even trigger painful memories about the sex offence and re-traumatise the victim.

Herman (2004) argued that neither restorative justice nor the conventional criminal justice system fully meets the needs of the victims. As a possible way of addressing this shortcoming, Herman (2004) proposed a parallel system of justice, which is discussed below. Zehr (1990) describes three possible approaches to justice that will not only meet the needs of the victims but those of the offenders and society as well. The first possibility is the replacement of the adversarial criminal justice system with one more like a communal restorative justice system where guilt and punishment are replaced with responsibility and restitution.

The second possibility, supported by Johnstone (2002), is a separate or parallel justice system, in other words, the establishment of a separate restorative justice system that runs parallel to but independent of the mainstream criminal justice system. The third possibility is also a justice system that runs parallel to the mainstream one and is interlinked with it. The third approach only applies where restorative justice responses to crime fail to materialise. This model ensures that offenders can still be dealt with retributively through the mainstream criminal justice system. Skelton (2002) indicates that the South African child justice system reflects the third approach to justice. In such cases, if a child fails to comply with restorative justice alternatives like diversion, the charge is reinstated by the court (Skelton, 2002).

In some cases the victims may be wary of meeting their offenders through restorative justice processes due to huge power imbalances between the victim and the offender, particularly in cases of sexual abuse where the victims are children. Consedine (1999) and Liebmann (2007) note that it is especially in such cases that skilful and well-trained facilitators are needed given the effect of such crimes and the amount of grief and pain they may cause. The secondary victims, such as family and friends, may benefit from participating in FGCs without the primary victim's presence. This will help repair relationships and enable referral to other sources of help where necessary (Consedine, 1999; Liebmann, 2007).

## Family group conferencing

One of the most important considerations that have to be made by social workers working with the youth offenders and/ or the victims is deciding on an appropriate time to convene a family group conference (FGC). This research theme is linked to the research theme regarding the goals of restorative justice processes such as a FGC which was discussed earlier. Zehr (1990) asserted that one of the major factors that could influence the success or failure of the FGCs is their correct timing. In Flaten's (1996) study, it was found that victims of serious crimes felt that a certain period of time, perhaps up to a year, should pass before mediation should be attempted. However, Umbreit and Bradshaw (1997) found strong support from victims for holding mediation sessions sooner rather than later.

In the author's Doctoral study, he found that all the professional respondents except one felt that FGCs need to be convened a while later because both parties need pre-FGC preparation, high emotions after the offence has occurred will inhibit effective communication in the FGC; a cooling-off period after the offence has occurred is necessary; and that it will be dependent on the victim's readiness and his or her need for such a social encounter.

A different opinion even though it was expressed by one research participant seems very important because it speaks directly to one of the core differences between the Western and the African approaches to justice. Probation Officer respondent felt that FGCs need to be held immediately after the offence.

*A lot of offenders you find that in the African community they almost immediately engage and we have to remember that other families have other motives it can be money and other factors involved (PO3).*

Gallinetti, Muntingh and Skelton (2004) asserted that, the traditional African response to an offence is that if a community member has offended another member of the community, it is expected that the offender or at least their family would take an initiative to approach those that have been offended. Such a step, according to Gallinetti et al (2004), is seen as an indication of remorse and taking responsibility for the offence so that through dialogue all parties can find an amicable solution to the situation rather than taking the matter to the police. On the other hand, in the Western legal system, if the matter has been reported to the police the matter would then be in the hands of the law. Therefore, it would be considered a criminal offence to approach

the victim or the complainant and their families for whatever reason (Skelton, 2002).

The author believes that, even though most of the professionals in the study were in favour of a FGC to be convened sometime after the offence, this should not be assumed as a standard practice. It is, however, recommended that FGCs need to be approached with caution since their success will depend to a large extent on both parties' willingness and readiness to participate in such restorative justice processes.

FGCs need to form an integral part of the youth sex offenders' diversion programmes so as to enable youth sex offenders to engage in a dialogue with their victims to promote closure and reconciliation wherever possible and desirable. This is even more important if the youth respondents had some sort of a social relationship with their alleged victims or if they came from the same family and/or neighbourhood. Implementation of such proposals will go a long way in helping to ease the reintegration process of both the youth ex-offender and his victim in the community.

## **CONCLUSION**

The article discussed a number of critical issues which practitioners need to be mindful of in the application of restorative justice with youth sex offenders. It started by looking at the conceptualisation of restorative justice and argued that the manner in which restorative justice is conceptualised influences the way it will be applied in practice. An example was provided of some respondents from the justice sector who thought that restorative justice is about simply bringing the victim and the offender together for mediation. Restorative justice processes are very complex and they need careful planning and specific set of professional skills particularly in dealing with youth and sexual offences.

A number of concerns regarding the application of restorative justice in general were discussed to highlight important critical issues practitioners to be aware of prior to bringing the two parties together for a mediation session. It was also pointed out that due to certain factors such as power imbalances between child victims and their youth offenders, victims' unwillingness or unreadiness to meet the offender, the practitioners need to be innovative in exploring other indirect forms of restorative justice processes such as victim impact panels, surrogate victims, audio-visual, and letters to the victims to promote the restorative agenda. Finally, FGCs were discussed in relation to factors such as their appropriate timing and careful consideration of who



needs to form part of the restorative justice process. Diversion within the restorative justice framework can afford the victims and their youth sex offenders an opportunity to dialogue about the effect the crime has made on both parties and find a resolution that can bring closure. The retributive approach to justice denies the victim and the offender such a platform. As captured by Zehr (1990:192-193) “(r)etribution often leaves a legacy of hatred” and (s)uch hostilities can impede healing”.

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