Make or break? The influence of street-level bureaucrats on access to healthcare (Part 2)
Restorative practices and victim offender mediation

Introduction

For fragile and post-conflict states seeking to consolidate democracy, a key policy goal is to transform repressive institutions into respected instruments of justice. In the immediate aftermath of war and mass violation, priority is usually given to rebuilding state security forces due to their role in past violence and importance for keeping (often-fragile) peace.

Yet, little attention has been given to the health system as a potential facilitator of social reconstruction and peacebuilding, 'to the detriment of the whole peacebuilding enterprise'. Additionally, a public health perspective is urgently needed to assess and shape transitional justice policies 'designed to address the effects of war on traumatized communities and bring justice'.

South Africa's right to access health care is part of a broader socio-political endeavour to 'bring justice' in the aftermath of apartheid. Street-level bureaucrats (SLBs) are frontline providers, tasked with delivering health services and enabling this right (e.g. nurses, doctors and police officers), who represent a gauge of both individual and institutional transformation. With discretionary power and flexibility in dealing with clients (e.g. patients or prisoners), SLBs should be well-placed to promote democracy through their attitudes and actions.

However, authoritarian provider practices persist in post-apartheid health services and negative, even abusive, street-level bureaucracy may impede the right to access health care. Furthermore, the volume of new policies and their 'top-down' imposition have contributed to providers often prioritising the demands of their managers over patients' needs.

Highlights and policy implications

- There is an urgent need for a public health perspective to assess and shape transitional justice policies to bring justice to traumatised communities.

- Negative street-level bureaucracy may aggravate inaccessible care for patients and continue a culture of disempowerment, deprivation and poverty.

- Conversely, positive provider practices are vital for improving access and contributing to the restoration of justice and health in society.

- Strengthening provider accountability and fostering respectful practices that promote patient-provider dialogue are critical for achieving improved access to healthcare.

- Accountability for street-level bureaucrats involves a 'web' of relationships. To foster positive practices, accountability needs to be vertical (to managers, and to patients/ communities), *and* horizontal (to colleagues).

- Individual actions, attitudes and advocacy count and can overcome negative street-level bureaucracy.

Restorative justice focuses on identifying and repairing 'broken relationships and communities' through dialogue, community participation and finding locally relevant 'solutions'. It is often used to resolve conflict in criminal cases through victim-offender mediation (VOM). VOM is a carefully facilitated process between victims, offenders and communities in which the victim's needs are prioritised in decisions about how best to remedy or ameliorate (restore) the harm done.

Methods

Case reporting has been used in restorative justice to highlight the process and impact of VOM. We present Harry Nyathela's[*] story in this tradition. His case, which unfolded alongside the *Researching Equity in Access to Health Care* (REACH) project (a five-year, multi-method study of equity in access to TB treatment, ART and maternal deliveries in four South African provinces), straddles the health and criminal justice systems. It illuminates an approach to transforming abusive institutional norms into accountable, empathetic norms which are important for reforming institutions and positively shifting interpersonal and individual practices.

[*]*In keeping with his activism, Harry requested that his real name be used.*

Health access denied

In 2009, Harry Nyathela an AIDS activist and then-fieldworker on the REACH project, was arrested and detained over the weekend at a police station in Soweto. Although charges were later dropped, his sister delivered his anti-retrovirals and police committed to giving him treatment twice daily as prescribed. However, the night officer refused to give his pills on two consecutive nights, denying his constitutional right to access healthcare during incarceration.

The aggressive refusal of Harry's right to access healthcare by a policeman two decades into South Africa's democracy was reminiscent of the country's apartheid past.

Human rights' violations were entrenched in multiple ways, including through petty abuses by SLBs, as well as the broader dispossession, structural violence and institutionalised racism of an unjust system. As an explicit denial of access to healthcare, Harry's case illustrates the difficulty of *implementing* a human rights culture and *transforming* institutional and interpersonal relationships, despite fundamental policy and legislative change.

Restorative justice and victim offender mediation

After his release, he was assisted by a non-governmental organisation, Lawyers for Human Rights, to lay a charge against the officer who was found guilty of withholding medication in an internal disciplinary process. The station commander asked Harry: *"What would make you happy in resolving this?"*

Instead of recommending a fine or suspension for the officer, Harry proposed that he be involved in training all the station staff on human rights, imprisonment and HIV, including ART and treatment literacy. He requested that the offending officer collect him from his house in a courteous manner, bring him lunch provided by the station, and sit in the front row of training.

Training took place over a week and involved all the members of the station. The night officer complied with all the requirements and at the end of the week, apologised to Harry in a genuinely remorseful way. He kept in touch with him regularly.

"Subsequently, I have facilitated similar trainings at two other police stations in the area and am often invited to delivery motivational talks to police and prison officials. It was a bad experience but for me, justice has been served – personally and also, I hope, by avoiding similar victimization for future arrestees through the education and training I helped to deliver." Harry Nyathela

In its resolution, Harry's case is a classic example of restorative justice achieved through victim offender mediation. VOM is not commonly practised in health care but Harry's case suggests some conditions for challenging abusive street-level bureaucracy and restoring broken relationships in the South African health system:

i. *Consider the nature of the case:* Harry's was a straightforward incident involving one perpetrator violating the rights of one victim. This clearly lent itself to identifying the relevant parties, articulating the experience of injustice, and finally mediating a successful outcome.

ii. *Promote a strong civil society:* Harry's VOM process was initiated with *support and intervention* from Lawyers for Human Rights, a long-established non-governmental organisation that provides free legal support to vulnerable individuals and communities. Their involvement confirms the importance of non-state actors in consolidating 'democratic norms, institutions and practices', and holding the state accountable, long after the attainment of formal democracy.

iii. *Nurture strong, compassionate leadership within facilities and districts:* The leadership and authority of the station commander contributed through his sensitive arbitration and proper implementation of Harry's proposal.

iv. *Empower patients and citizens to confidently claim their rights*: Harry chose not to seek revenge or retreat, but opted to help the police officer redeem himself as well as tackle attitudes at the station.

v. *Encourage self-reflexive, engaged frontline providers*: The police officer's compliance, genuine apology and ongoing engagement rebalanced their relationship. At a community level, the commitment of all members of the station and their involvement in the training helped to transcend the negative experience.

vi. *Institutionalise account-ability 'webs'*: Hold SLBs accountable upwards (to managers), downwards (to patients and communities) and sideways (to colleagues).

vii. *Grapple with the limits:* Bringing equality to social relationships is a central principle of restorative justice and extends beyond redressing relationships and institutional reform to the broader social determinants of health such as clean water, food security and personal safety. VOM alone cannot resolve the structural barriers that constrain the right to access health care. But an accountable health system, built on caring and respectful provider-patient interactions, would be well positioned to promote and lead inter-sectoral action for change.

Epilogue: The ultimate denial of justice

On the afternoon of Sunday, 23 March 2014, Harry Nyathela said farewell to his wife and went to Tembisa on the East Rand of Johannesburg where he worked during the week. He stopped at a nearby spaza shop to purchase a soft drink and some bread. On his way home, he came across a badly hurt man lying unassisted on the street. The man had been beaten by a group of at least four men. Harry stopped to help the injured man and phoned the police and an ambulance. Two of the assailants returned to warn him off. When he persisted with assisting the victim, they beat Harry to death.

South Africa has an average of 47 murders a day, a rate of 32.2% per 100 000 and five times the 2013 global average. For a country not at war, violence and injury impose an 'unprecedented burden of morbidity and mortality'; of grave public health concern.

It is poignant that Harry – so successful in negotiating his own access to health services - lost his life while securing access to health care (ambulance) and justice (police) for someone else in need. His death is a tragic reminder of structural barriers to healthcare and the need for a holistic approach to restorative justice.

While the health system alone cannot be expected to remedy a complex set of inequities, creating a space for street-level bureaucrats to be flexible in responding to structural barriers may be as important for a transitional justice agenda as encouraging respectful provider-patient relationships.