

CHAPTER 12 CONCLUSION AND RECOMMENDATIONS

Traggy Maepa and Mike Batley

Conclusion

The discussions in Part 1 indicate that restorative justice has been well conceptualised internationally and that there is a high degree of consensus about the approach. A review of restorative justice principles, as well as the arguments for and against it, confirms that we can benefit from adopting the approach even though the country experiences high levels of violent crime. Moreover, South Africa has the advantage of being able to draw on the growing international body of knowledge and practical experience. Empirical data on views of selected groups of crime victims, as well as some of those who must implement restorative justice – prosecutors and magistrates – indicates a receptiveness to the approach that needs to be consolidated and extended.

Part 2, which considers some of the ways that restorative justice is currently being practiced in South Africa, illustrates both the challenges and the benefits of the approach. As the most ambitious of restorative programmes, the Truth and Reconciliation Commission struggled to balance the needs of victims and offenders, and in doing so, to achieve one of the core goals of the model – that of restoring victims’ civil dignity. Other case studies, however, such as those on victim–offender conferencing and the practice of youth diversion, demonstrate the applicability of restorative justice in this country.

These discussions build on conclusions drawn in Part 1: the challenge is to ensure that practitioners, including police, court personnel, and those dealing with child offenders in particular, are trained to recognise the value of restorative justice and make use of the available options. Although some restorative applications, like diversion, have taken root, communities and practitioners still need education on its use.

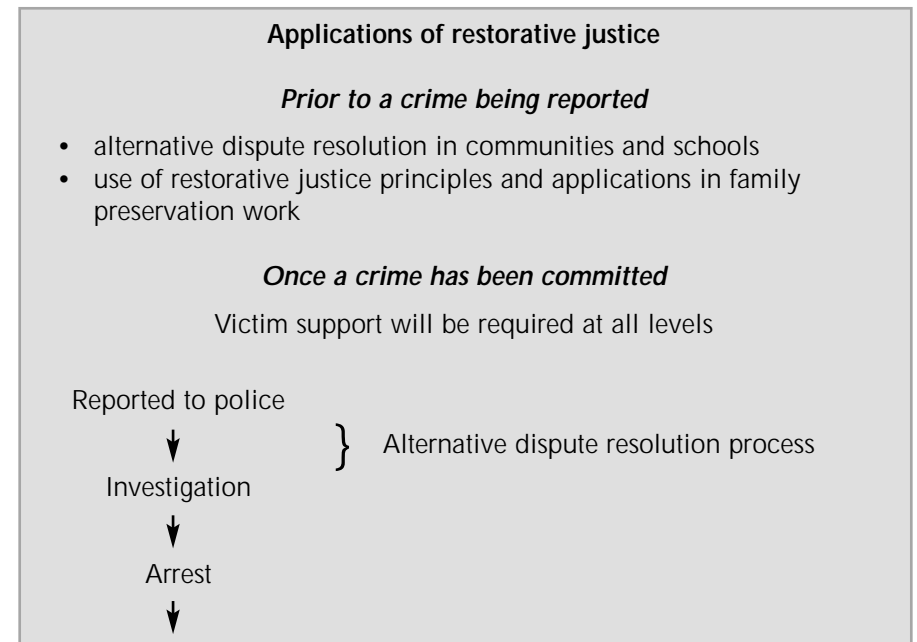
This was well illustrated by the analysis of the use of non-custodial or ‘alternative’ sentences. There is currently very limited integration of restorative

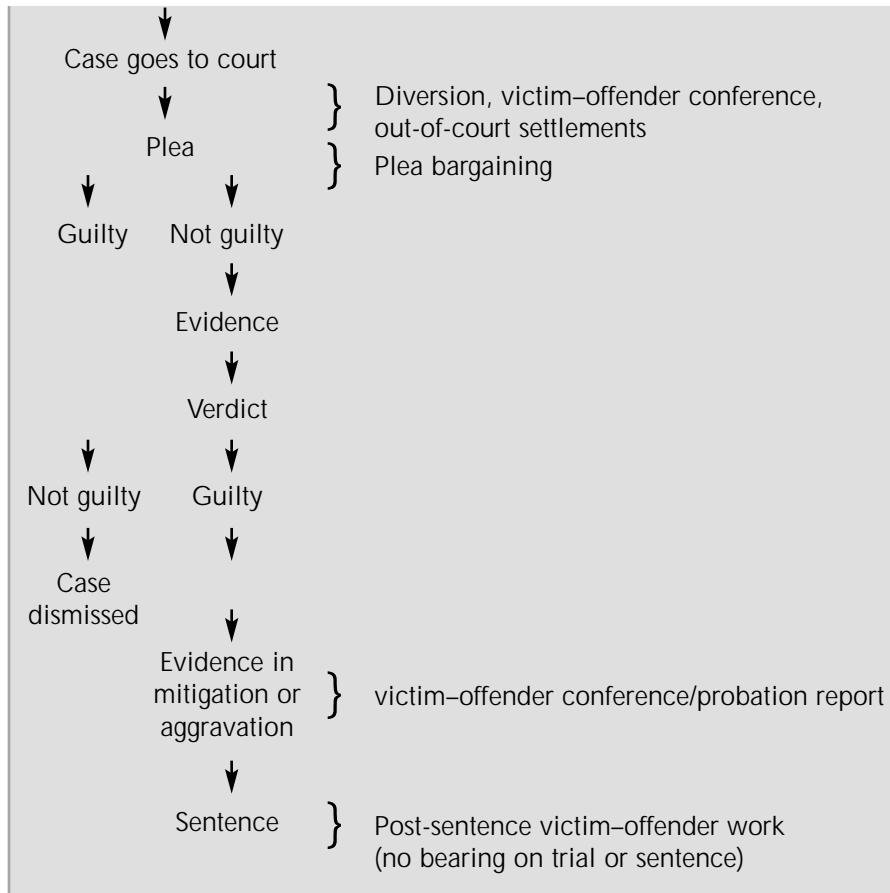
justice principles in alternative sentencing procedures, and these sentences will only be used more often if stricter guidelines for doing so are in place. This again confirms the need for training and protocols on the purpose and application of restorative approaches.

Part 3 indicates that a sound policy framework for restorative justice exists in South Africa. The challenge lies in the area of implementation. Authors throughout the monograph identified the need for training of criminal justice staff in the aims and outcomes of restorative justice. This will determine the extent to which the potential for building a more restorative criminal justice system is realised. A more dedicated application of restorative justice is required, and the recommendations presented below hope to assist in achieving this.

Recommendations

The following schematic outline aims to indicate the various points in the criminal justice process where restorative justice can be applied. The diagram below should be read in conjunction with the recommendations that follow.





Crime prevention

Chapter 3 noted that restorative justice is not directly applicable to primary crime prevention. Nevertheless, there are ways in which restorative justice can impact on prevention activities and projects.

Recommendation	Who?
Community care and development programmes should be linked more specifically to restorative justice initiatives, and should be recognised as contributing to crime prevention at a fundamental level.	Community development practitioners and civil society groups concerned with skills and personal development.

Recommendation	Who?
More attention should be given to using information obtained in the course of restorative justice programmes in order to inform and develop primary crime prevention strategies.	Community development practitioners, police officials.

Early intervention

For the purpose of this chapter, early intervention refers to at least two levels:

- instituting some alternative process in response to an incident that could have been referred to the criminal justice system; and
- intervening to prevent an incident that has been reported to the police from proceeding further in the criminal justice system.

Recommendation	Who?
The use of alternative dispute resolution programmes should be encouraged within communities generally and within schools.	NGOs, schools, police officials, and all departments of education.
Restorative justice principles and practices should be used more widely in family preservation work.	All family care practitioners in provincial departments of social development and in NGOs.
Diversion options, as proposed in the Child Justice Bill, should be implemented in all jurisdictions as a matter of urgency.	Provincial departments of social development, and NGOs active in the child justice field.
Diversion programme workers should continually seek new ways of ensuring that their programmes are as restorative as possible.	Diversion workers in departments of social development and NGOs.
The mechanism of out-of-court settlements as proposed by the SA Law Reform Commission should be implemented as soon as possible, using the principles of restorative justice.	SA Law Reform Commission, National Directorate of Public Prosecutions, and defence attorneys.

Recommendation	Who?
Extensive training in the principles of restorative justice and their application should be undertaken.	Magistrates, prosecutors, defence attorneys, staff of national and provincial departments of social development, civil society programme providers.
Ongoing training in project management.	Programme providers in civil society and government departments.

Applications at the pre-sentencing stage

Recommendation	Who?
The recently implemented mechanism of plea-bargaining should be fully implemented in all jurisdictions and should use the principles of restorative justice as a basis for doing so.	Prosecutors and defence attorneys.
Typical restorative justice programme applications such as victim–offender conferencing and family group conferencing should be fully integrated into this stage of the criminal justice process.	Prosecutors, magistrates, defence attorneys, probation officers, NGOs.
The principles of restorative justice should be better integrated into pre-sentence reports.	National and provincial departments of social development.
Active lobbying of prosecutors, magistrates and defence attorneys, the NDPP and Magistrates' Commission. This can be done by developing localised projects, which can demonstrate the feasibility of these projects and use criminal justice staff who believe in the projects to communicate to others.	NGOs, programme providers, Justice College

Applications at the sentencing stage

The recommendations made for the pre-sentence stage are also relevant here.

Recommendation	Who?
Community based alternative sentencing options should strive to become as fully restorative as possible. This would include integrating victim–offender conferencing into sentences and imposing restitution orders rather than fines.	Magistrates.
Community based options should be better utilised.	Magistrates.
The benefits of community based options such as saving time and money and promoting community involvement should be better marketed.	NGOs and the Justice College.

Applications at the post-sentencing stage

Recommendation	Who?
Correctional supervision should strive to be more restorative particularly by building more active partnerships with civil society.	Department of Correctional Services.
The needs of victims should to be more actively addressed at all levels. This includes giving victims a more active voice at parole hearings.	All roleplayers within the Victim Empowerment Programme, and the Department of Correctional Services.
A range of programme applications such as letter writing, victim panels, victim–offender groups and victim–offender conferencing should be actively explored and promoted in prison environments.	Department of Correctional Services.

Cross cutting recommendations

The following issues apply to all or most of the above stages:

Partnerships

As was touched on in Chapter 2, the literature indicates that while government has an important role to play in the application of restorative justice, community involvement is equally vital. Government needs to acknowledge that it is not the best implementer of local programmes. On the other hand, civil society struggles to render ongoing services in a sustainable way. The concept of active partnerships and outsourcing, rather than relying on donor funded activities is one option.

Training

Training has been touched on in the recommendations above. The principles of restorative justice cannot be applied in the daily administration of justice unless they are well understood and well integrated into a wide range of programmes. Training of staff at all levels within the criminal justice system, the social services sector and civil society is a high priority.

Evaluation and research

Ongoing evaluation of existing programmes is essential to build the credibility of services and demonstrate empirically what works best. Further research is also needed on the current practices of traditional and community courts and how these can be linked with the application of restorative justice.

Consolidation of roleplayers

The wide range of roleplayers involved in restorative justice programmes need to be consolidated into an association or network. The purpose of this would be for all parties interested in restorative justice to support one another, to focus their lobbying and advocacy efforts and to address matters such as training and standards of service delivery.