

CHAPTER 3

INTERNATIONAL EXPERIENCES AND LESSONS

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There are many definitions of restorative justice, and various ways of trying to synthesise the principles it is based on. For the purposes of this chapter, the following definition and framework is used:

Restorative justice is...a way of dealing with victims and offenders by focusing on the settlements of conflicts arising from crime and resolving the underlying problems that cause it. It is also more widely a way of dealing with crime generally in a rational problem solving way. Central to restorative justice is the recognition of the community, rather than criminal justice agencies, as the prime site of crime control.²⁸

This framework indicates four programming priorities:

- restoration, with a focus on services to victims whether or not there is an arrest in a particular incident;
- accountability and creating awareness among offenders of the harmful consequences of their actions for victims and the community;
- community protection through community-based sanctions and monitoring compliance;
- competency development, encouraging skills development and positive interaction with others in society.²⁹

The understanding of restorative justice outlined above rests on a number of philosophical principles, the most important of which are:

- Crime is fundamentally about disrespect. Conversely, justice is about respect – respect for the life, property and feelings of others. In experiencing justice, all participants should have a sense of having been shown unconditional acceptance and compassion, and of having had their innate human dignity affirmed.

- Social justice, a state of ‘all rightness’, fairness and equitability in society, cannot be separated from our application of criminal or procedural justice. Substantive justice cannot be presumed to exist simply because procedural justice has been done.³⁰

These principles are not arbitrary – they reflect elements of the understanding of justice that have been embodied in traditional practices and orthodox religion for thousands of years. Proponents of restorative justice regard the current framework of retributive justice as having lost sight of these principles, and seek to infuse our present systems of justice with a renewed understanding of them. In that sense these principles can be regarded as universal, as well as guiding international trends: countries such as Canada, New Zealand, Australia and South Africa have drawn on traditional practices to shape their modern application of restorative justice.

Within this framework, several applications of restorative justice can be found internationally. These are outlined in this chapter in the following contexts:

- criminal justice: community sentences, diversion, prisons and custodial settings, and victim support;
- child protection and family preservation;
- school discipline;
- interpersonal conflict;
- political conflict; and
- labour practice.

The examples that are cited should be regarded as illustrations, and not as an exhaustive list. Furthermore, although the cases discussed below are drawn mainly from developed countries, it is important to recognise that a number of initiatives are taking place in African and Asian countries.

Criminal justice applications

In 1999, the Economic and Social Council of the United Nations requested the Commission on Crime Prevention and Criminal Justice to consider the desirability of formulating UN standards in the field of mediation and restorative justice. These were formulated and adopted at the Tenth United

Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna in April 2000.

Entitled “Basic Principles on the use of Restorative Justice Programmes in Criminal Matters” the document sets out basic definitions and guidelines for the use and operation of restorative justice programmes as well as the actions of facilitators. The document was endorsed and amended slightly at the most recent meeting of the Commission in April 2002.

The Commission also recommended that the secretary-general ensure the widest possible dissemination of the document among member states, the various institutes of the UN and other international, regional and non-governmental organisations. Member states are also encouraged to share information in this regard and assist one another in the development and implementation of research, training and other programmes (see Appendix 1 for the full text of the most recent resolution). Although not binding in the sense that various other conventions are, this document certainly sets a standard and can be expected to add momentum to the use of restorative justice across the world.

In South Africa, a number of policy initiatives since 1995 have drawn on restorative justice. These include the Inter-ministerial Committee on Young People at Risk (1996), the National Crime Prevention Strategy (1996), the White Paper for Social Welfare (1997), the Child Justice Bill (2000), and the SA Law Reform Commission’s Report on Sentencing (Project 82). In addition, the Department of Correctional Services adopted restorative justice as its official policy in November 2001.³¹

Criminal justice applications that have been documented internationally in the areas of diversion, community sentences, prisons and custodial settings and victim support are discussed below.

Diversion

Diversion has developed since the endorsement of the Beijing Rules in 1985,³² which encouraged its use for children in trouble with the law. The practice of diverting cases away from formal court proceedings to other processes is preferable because it becomes possible to deal with some of the underlying issues that led to the child committing the crime. It also encourages him/her to accept responsibility for the offence, but without the stigma of a criminal record. The box below includes examples of diversion programmes and some details about how the programmes work.

Application	Explanation	Further information
Family group conferences (FGCs)	Bringing together the offender and his/her family with the victim in a prepared and structured way. The family is encouraged to support the offender in taking responsibility for his/her actions.	The <i>RealJustice</i> [®] website illustrates their FGCs with juveniles: < www.realjustice.org >
Restorative justice panel	A panel of experts and community members decide on an appropriate outcome in a particular crime incident.	
Competency development	Recognising that children in trouble with the law often have enormous needs to develop social, emotional and vocational skills, a wide range of programmes have developed. These address life skills and vocational training in a residential or non-residential setting, for shorter and longer periods, and include mentorship programmes. Eco-therapy uses the environment to teach disadvantaged youth.	In South Africa, these programmes are run by organisations such as Nicro, ³³ National Peace Accord Trust, ³⁴ Educo ³⁵ and National Youth Development Outreach.
Community service	An offender is required to perform certain duties at a public institution in the community. This may or may not be linked to some of the above options.	

Community sentences

Once an offender has been found guilty s/he may be sentenced in such a way that s/he remains in the community. The options outlined in the box below may be applied at a pre-sentence stage and then incorporated in some way into the sentence, or they may be applied once sentence has been imposed.

Application	Explanation	Further information
Victim-offender mediation or reconciliation	A facilitated mediation or reconciliatory meeting between the victim and the offender.	Center for Restorative Justice and Peacemaking, University of Minnesota: < www.ssw.che.umn.edu > Victim-Offender Mediation Association, University of Wisconsin Law School: < www.voma.org > European Forum for Victim Offender Mediation: < www.kuleuven.ac.be.upers/vom.html >

Application	Explanation	Further information
Victim-offender conferencing	A meeting between the parties that includes others who have been affected in some way by the incident.	New Zealand Restorative Justice Practice Manual: < www.restorativejustice.org.nz >
Community service	An offender is required to perform certain duties at a public institution in the community. This may or may not be linked to some of the above options.	
Restitution	An offender is required to repay the victim in some way for the loss they have incurred. This is often an outcome of one of the above applications.	See DW van Ness, Crime and its victims, Inter-Varsity Press, Appendix B, 1986 for a discussion on "How much restitution?".
Competency development	An offender is required to attend some course that will address his need to improve his existing skills and develop new skills.	Balanced and Restorative Justice Project, University of Minnesota: < www.ssw.che.umn.edu >
Community protection	Specific practical measures are put in place to ensure a sense of safety for the community.	The Sentencing Circles practice in Canada is used for this purpose. ³⁶
Reintegration efforts	Efforts that are directed at helping an offender integrate better into society.	

Prisons and custodial settings

A number of restorative applications have been developed for use specifically in a prison setting.

Application	Explanation	Further information
Victim awareness courses and victim impact panels	Information is provided that aims to increase the level of awareness offenders have about the needs of crime victims.	Restorative Justice in Custodial Settings: < www.extern.org/restorative/rjreport >
Victim-offender groups	Groups of offenders meet with groups of victims and explore the meaning of key restorative justice principles.	Prison Fellowship International facilitates the Sycamore Tree Project in a number of prisons around the world: < www.pfi.org > < www.restorativejustice.org >

Application	Explanation	Further information
Victim and community involvement at parole hearings	Victims are invited to state their case at a parole board as part of considering whether or not a person should be released on parole.	Following the trend in a number of countries, South Africa has recently adopted this position.
Victim-offender mediation or conferencing	Similar to the option described above under community sentences, except that the meeting takes place in prisons and the outcome has no bearing on the sentence. It is focused on the victim's need for healing and/or helping the offender to take responsibility for his/her actions.	An excellent video illustrating this option is available from Real Justice, entitled 'Facing the Demons'.
Restorative justice prisons	A number of initiatives have tried to operate an entire prison on restorative justice principles. These typically involve inmates directly in the running of the prison.	APAC (Association for Protection and Assistance to the Convicted) Prisons, Prison Fellowship International. Begun in Brazil in the 1970s, various countries have adapted and implemented the model: < www.pfi.org >
Pre-release initiatives	Efforts that are directed at helping an inmate integrate better into society upon release from prison.	Healing Circles are used extensively in Canada with the First Nation people at this point as well as at the sentencing stage. ³⁷

Victim support

In 1985, the National Assembly of the United Nations adopted a Declaration of "Basic Principles for Victims of Crime and Abuse of Power". These principles highlight the needs of victims for access to justice and fair treatment, restitution, compensation and other assistance. A number of countries have used the declaration as a basis for attempting to make criminal justice systems more sensitive to the needs of victims, and to establish a range of general support services, including compensation schemes for victims of violent crime and services to victims of domestic violence. An example of this is the model that has been implemented in two districts in the Netherlands which emphasises the importance of making victim services a part of crime prevention.³⁸

It must be noted that many of the applications listed above also impact directly on services to crime victims. Because they present the possible outcomes for offenders within the criminal justice system, they are in that sense offender oriented rather than victim oriented. Despite this, victims benefit greatly from participating in restorative justice applications as these methods provide an opportunity for their questions to be answered and their needs to be addressed. Research has shown that it is more important for victims to have a sense that justice has been done than to receive material compensation.³⁹

Viewing the matter of victims' needs and rights through the lens of restorative justice, it is apparent that providing care and support for victims – while justified in itself – is not necessarily applying the principles of restorative justice. This is seen clearly with victims groups that become punitive and even vindictive, tending towards vigilantism. In fact, these activities can be seen as violating the principles of restorative justice.

Child protection and family preservation

Based on the same model and process as that used for children in trouble with the law, Family Group Conferencing (FGC) in the child protection and family preservation field involves the wider family network in partnership with social agencies. This method differs from traditional approaches in the field by being more family centred and less bureaucratic. Based on the philosophy of restorative justice, FGCs are a means of enabling families to find solutions to their own difficulties within a professionally supportive framework.

The application has been piloted in a number of countries and more information can be found at the Essex County Council Social Services, the Department of Sociological Studies, University of Sheffield and the Hampshire County Council.⁴⁰ The Department of Social Services in Denmark also utilises the FGC process for the planning and preparation of families for any significant change in familial circumstances.⁴¹ Many other European countries are using similar processes in the area of child protection and placement.

School discipline

Using the concept of 'discipline that restores' as opposed to punitive discipline, a number of initiatives have applied the restorative justice philosophy to school discipline.⁴²

Application	Explanation	Further information
Peer mediation	Children are used to mediate in conflict situations that arise in schools.	There are many such programmes in the USA. One example is the Colorado Schools Mediation Project: < www.csmp.org >
Teacher–pupil mediation models	Teachers use the restorative justice philosophy in dealing with individual discipline incidents.	See < www.restorativepractices.org > and Centre for Conflict Studies and Peacemaking at Fresno (CA) Pacific College: < www.fresno.edu >
School based mediation approaches	A school's entire disciplinary framework is rooted in the philosophy of restorative justice. This may include restorative justice and peacemaking components in the curriculum, and mediation and alternative dispute resolution programmes with the school community.	RealJustice have a programme called SaferSanerSchools™: < www.saferanerschools.org >
Child care work	The principles of restorative justice are applied in maintaining discipline in institutional settings with children who have been removed from the care of their parents.	SaferSanerSchools™ is also being used in group homes and schools for juveniles at Buxmont Academy, Pennsylvania, USA.

Interpersonal conflict

This field has been strongly influenced by the development of mediation theory and practice. It generally deals with cases in which the two parties concerned have similar levels of power, and there is not necessarily clarity that one party has done something wrong – there is simply conflict or a dispute between them. This field has contributed much to the practice of restorative justice with the process frameworks and mediation competencies that it has developed. However, it does not always draw on the principles of restorative justice or recognise the principles of social justice that may be relevant in a given situation.

Political conflict

Although covered in detail in Chapter 6, it should be noted that South Africa's Truth and Reconciliation Commission is regarded as an exercise in restorative

justice by its chairperson, Archbishop Tutu.⁴³ There are currently a number of initiatives in other parts of the world such as Sierra Leone to undertake similar exercises.⁴⁴

Labour practice

In responding to interpersonal conflict in the field of labour, the theory and practice of mediation has been extremely influential. South African labour law recognises some of the dimensions of social justice. The 'Code of Good Practice: Dismissal' states that the "key principle in the Code is that employers and employees should treat each other with mutual respect. A premium is placed on both employment justice and the efficient operation of business."⁴⁵

It seems that in South Africa at present there has been a strong focus on utilising mediation approaches once a matter has come to the formal structures for resolution. However, much remains to be done at an earlier level to prevent disputes from escalating further. The framework of restorative justice is certainly relevant here.

Lessons from international practice

Restorative justice is an active attempt to return to traditional understandings of justice. That there are many examples of this across the world at the turn of the twentieth century indicates the extent of disillusionment with current justice systems. It also points to the need for new methods and responses that better reflect the common humanness of all those who have been affected by crime.

However, in seeking to implement restorative justice principles and projects, many common obstacles and problems have been encountered. These include issues such as:

- the time it takes to build relationships with roleplayers in the formal criminal justice system and gain credibility;
- receiving appropriate referrals; and
- receiving the necessary finances to carry out these tasks.⁴⁶

Given our recent history and current policy environment, South Africa is well placed to begin the process of implementing restorative justice. However, this will require building the infrastructure at community level to carry out these tasks. In addition, mindsets will need to change if new partnerships are to be

formed between the formal and informal justice systems. The complexity and scope of these tasks should not be underestimated.

The wide range of contexts in which restorative justice principles are applied across the world, points to the creativity that is possible. This is a particular challenge for South Africans: practitioners should not simply apply the principles in a particular mould, but should be prepared to experiment in simple ways to discover what works in our context.

Recognising that South Africa remains a violent society, restorative justice and its applications hold much promise. South Africans at all levels of society need to take up the challenge. In doing so, the principles of restorative justice must be upheld. The following questions are helpful in this regard:

- Do victims experience justice?
- Do offenders experience justice?
- Is the victim-offender relationship addressed?
- Are community concerns taken into account?
- Is the future being addressed?
- Is the way we are working transformational?⁴⁷

South African methods need to be adapted to the local circumstances, while incorporating all local and traditional practices that are relevant.