

EXECUTIVE SUMMARY

Part 1: Context

Part 1 outlines the context for the monograph by providing an overview of international experience and lessons, as well as considering the relevance of restorative justice in South Africa at present.

In Chapter 2, Batley reviews the South African context by first discussing the concept of restorative justice, and then considering the benefits of the approach in the current criminal justice environment. The chapter covers the three main principles contained in all definitions of restorative justice, namely that: crime causes injuries to victims, offenders and communities and that the criminal justice process should aim to redress imbalances and restore broken relationships; government, victims, offenders and their communities should be actively involved in the criminal justice process at the earliest point and to the maximum extent possible; and in promoting justice, government is responsible for preserving order and the community is responsible for establishing peace. In discussing the principles, the chapter outlines Rev Don Misener's "five R's" that are central to restorative justice.

The chapter notes the benefits of restorative justice for South Africa and concludes with a discussion of the arguments that might be made against the approach. These include that restorative justice: does not fit the thinking of legal practitioners; is a soft option that ignores the need for punishment; leads to net widening in that more offenders get drawn into the system than would otherwise be the case; has generally not been creative and sophisticated enough in its applications to address the issues it claims to; is not appropriate for dealing with more serious cases such as rape, murder and domestic violence; and overlooks and minimises the seriousness of crime. Other arguments against the approach that are discussed and countered are that many individual victims want retribution, not restoration, and that the level of anger in communities at present is so high that people are not ready for restorative justice processes.

Chapter 3 covers international experiences and lessons and provides a comprehensive overview of the various contexts and applications of restorative justice. With regard to criminal justice applications, these include: diversion, community sentences, prisons and custodial settings, and victim support. Outside of the criminal justice system, restorative justice can be used for: child protection and family preservation, school discipline, conflicts of an interpersonal and political nature as well as labour disputes.

Reference is made to the sense of disillusionment with the criminal justice system across the world, and how restorative justice seeks to infuse these systems with insights from earlier traditions. In considering what will be required to implement restorative justice in South Africa, Batley and Dodd suggest three elements: new partnerships between government and civil society, resources to make these partnerships work, and new mindsets.

Chapters 4 and 5 move away from theoretical discussions to consider empirical data on the views of various constituencies towards restorative justice. In Chapter 4, Leggett presents selected results from a victim survey in central Johannesburg in which victims were asked about their needs and preferences after the crime. Leggett points out that surprisingly, opinion surveys have indicated that the public might be more reasonable than politicians believe when it comes to the treatment of offenders.

The central Johannesburg study showed that victims were not as single-mindedly retributive as many would believe, particularly considering that the area experiences among the highest crime rates in the country. And although many victims expressed a desire for vengeance, they also consistently expressed an interest, across offence types, in telling the offender how they felt. These and other findings support the belief that victims in South Africa are open to creative and restorative approaches to resolving crime.

Chapter 5 by Naudé and Prinsloo reports on a study of magistrates' and prosecutors' knowledge of and attitudes towards restorative justice in the Pretoria area. The survey results indicate that although the respondents were generally positive and receptive to the idea of restorative justice, much more information and understanding about the concept is required. This points to the need for training of prosecutors and magistrates, particularly given the imminent passing of new child justice legislation.

Part 2: Restorative justice in practice

Part 2 continues the discussion on the relevance of restorative justice for South Africa by examining a selection of recent restorative justice practices in the country.

In Chapter 6, Maepa considers the Truth and Reconciliation Commission from a restorative justice perspective. He discusses aspects of the TRC that make it one of the best examples of restorative justice in the country, as well as the challenges to the process that undermined some of its restorative goals. These include the difficulty of finding a balance between the reparations and amnesty processes, and the challenges of restoring victims' civil dignity.

In Chapter 7, Mbambo reviews diversion in South Africa as one of the key applications of restorative justice. She discusses how the practice of diversion has become relatively common for young offenders, considering that it is not currently provided for in legislation. Provisions for diversion in the new child justice system are reviewed, as are the types of existing diversion programmes.

Mbambo concludes that a range of innovative models exist that can successfully promote a sense of accountability and responsibility in child offenders. The challenge is to ensure that court personnel and those dealing with child offenders recognise the value of diversion and make use of diversion opportunities. Although diversion has taken root, communities and prosecutors still need education on its application.

Chapter 8 reviews a victim-offender conferencing project in three areas in Gauteng between 1999 and 2003. Dissel discusses how the project was conceived as a community based restorative justice approach for dealing with crime through a face-to-face mediated interaction between offenders, victims, and their families or members of other support networks.

Victims participating in the project were satisfied with the process and outcomes of the conferences. Moreover, both victims and offenders could become fully involved in all aspects of their cases and the resolution of the matter. Another key achievement for restorative justice was that most offenders accepted responsibility for their crimes. Dissel notes the importance of developing a system that is compatible with South African values and identity, and the need for active government and criminal justice system support in similar interventions.

In Chapter 9, Muntingh describes the limited use, in South Africa, of non-custodial or 'alternative' sentences, which could include: committal to an institution, fines, community service orders, correctional supervision, caution and discharge, compensatory orders and suspended sentences. The reasons for applying these sentences are considered, and in doing so, Muntingh points out that although they are less retributive than imprisonment, alternative sentences are not necessarily restorative by nature. He argues that there is currently very limited integration of restorative justice principles in alternative sentencing procedures.

Muntingh further cautions against seeing restorative justice as an answer to prison overcrowding due to the complexity of factors impacting on this situation. A detailed analysis of correctional supervision and community service orders reveals that these sentencing options are not widely used by magistrates and judges. Muntingh argues that non-custodial sentences will only be used more often if stricter guidelines for doing so are in place.

Part 3: Policy issues

This section provides a brief analysis of the South African policy environment that is relevant to restorative justice, as well as recommendations based on the material covered in the chapters above.

Chapter 10 provides an overview of post-1994 policy developments that are relevant to restorative justice. The chapter covers the Probation Services Amendment Act of 2002, various SA Law Reform Commission projects including the Juvenile Justice Project and Child Justice Bill, and the sentencing framework, community dispute resolution structures and out-of-court settlements projects. Policy white papers include the White Paper for Social Welfare (1997): Crime Prevention through Development and Restorative Justice, and the White Paper on Safety and Security: In Service of Safety 1999–2004. Strategies briefly considered in the chapter are the Interim policy recommendations of the Inter-Ministerial Committee on Young People at Risk (1996), the National Crime Prevention Strategy (1996), the Victim Empowerment Programme, the Victim Charter, and restorative justice in the prison system.

Batley concludes that although no policy deals explicitly with restorative justice, significant developments have taken place in this arena and the country currently has an extremely favourable policy environment for promoting restorative justice.

In Chapter 11 Skelton discusses the Child Justice Bill from a restorative justice perspective. She shows how the Bill proposes a child justice system that operates as parallel but inter-dependant to the criminal justice system. Although the Child Justice Bill is not a purely restorative model, it contains many elements of restorative justice. Most importantly, *ubuntu* and restorative justice are built into the objectives clause, and, in this way, set the purpose and the tone of the entire child justice system. More specifically, restorative justice options are available at a pre-trial level as well as at a sentencing level. Skelton concludes that training of criminal justice staff in the aims and outcomes of restorative justice will determine how restorative the system will prove to be.

Chapter 12 concludes that South Africa can draw on a well established international body of knowledge and experience about restorative justice. Other encouraging signs are that pilot projects have demonstrated the applicability of the approach in South Africa, there is an openness among prosecutors and magistrates for the approach, and the policy environment is favourable for the development of restorative options. In this chapter, Maepa and Batley indicate specific points in the criminal justice process where restorative justice can be applied. They recommend activities and roleplayers in the areas of prevention, early intervention, and at the pre-sentencing, sentencing and post-sentencing stages. Crosscutting recommendations cover the need for partnerships, training, evaluation and research, and the consolidation of roleplayers into an association or network.