

Restorative Justice: An International Perspective

The United Nations and its different agencies have developed substantive work on restorative justice. During the Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, the *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century* (2000) advocated the “development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all of the parties”.¹

In August 2002, the UN Economic and Social Council adopted a resolution calling upon Member States implementing restorative justice programmes to draw on a set of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. In 2005, the declaration of the Eleventh UN Congress on the Prevention of Crime and the Treatment of Offenders (2005) urged Member States, for very practical reasons, to recognize the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution. This is so because restorative justice programmes can be used to reduce the burden on the criminal justice system, or divert cases out of the system and provide the system with a range of constructive sanctions.

UNESCO’s Asia Pacific Network for International Education and Values Education (APNIEVE) has been active in Restorative Justice processes in the classroom, particularly in Australian Schools, through the Victorian Association for Restorative Justice and the Association of School Councils in Victoria. The UNESCO Office in Brasilia promotes the use of RJ processes for youth in Brazil. The UNESCO Chair and Institute of Comparative Human Rights in the University of Connecticut, in its human rights education, promotes the understanding of the processes and relevance of restorative justice. UNESCO's Associated Schools Project Network (ASPnet) supports and encourages innovative programmes such as restorative practice projects in different schools worldwide.

Restorative justice and restorative processes focus on redressing the harm done to the victims, holding offenders accountable for their actions and often engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. Restorative Justice processes can be adapted to various cultural contexts and the needs of different communities. The victim, the offender and the community regain some control over the process. The process itself can often transform the relationship between the community and the justice system as a whole.

Features and Conceptions of Restorative Justice

There are many terms that are used to describe the restorative justice movement. These include communitarian justice, making amends, positive justice, relational justice, reparative

¹ The *Vienna Declaration on Crime and Justice : Meeting the Challenges of the Twenty-first Century*, 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000, A/CONF. 184/4/Rev.3, para.29.

justice, community justice and restorative justice. Restorative justice gives as much importance to the process as to the outcome. In Europe and in many parts of the world the process is often referred to as “mediation” as distinct from legal adjudication.

The UN Handbook on Restorative Justice Programmes² mentions some features of RJ programmes:

- A flexible and variable approach which can be adapted to the circumstances, legal tradition, principles and underlying philosophies of established national criminal justice systems;
- A response to crime which is particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders some new values and skills;
- A response that recognizes the role of the community as a prime site of preventing and responding to crime and social disorder.

The Handbook also delineates underlying assumptions of restorative justice programmes:

- That the response to crime should repair as much as possible the harm suffered by the victim;
- That offenders should be brought to understand that their behaviour is not acceptable and that it had some real consequences for the victim and community;
- That offenders can and should accept responsibility for their action
- That victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation
- That the community has a responsibility to contribute to this process.

A key feature of restorative justice is that the response to criminal behaviour focuses not only on the offender and the offence. Peacemaking, dispute resolution and rebuilding relationships are viewed as the primary methods for achieving justice and supporting the victim, the offender and for interests of the community. It can also be helpful for identifying underlying causes of crime and developing crime prevention strategies. Several different conceptions or ideas about what restorative justice is have emerged.

One understanding is what has been called the **encounter** conception.³ This focuses on the meeting together of parties to discuss the crime, its consequences and what should be done to rectify the situation. Persons who work within this conception could suggest that restorative processes be used even when there has not been a crime, such as when neighbours have a conflict or a family needs to solve a problem.

A second idea is the **reparative** conception. This focuses on the need to repair the harm resulting from crime. People who work within this conception agree that this is best

² *Handbook on Restorative Justice Programmes*: Criminal Justice Handbook Series, UN, New York, 2006

³ Johnson, G. and Van Ness, D. (Eds.) *The Meaning of Restorative Justice, The Handbook on Restorative Justice*. Cullompton: Willan Publishing, 2006

done in a restorative process (encounter) but are willing to find other ways to repair the harm even if there is no encounter process, for instance if the offender is never caught or the victim is unwilling to participate.

The third idea has been called the **transformative** conception. This is the broadest perspective as it not only embraces encounter and reparation, but also focuses on structural and individual injustice. For instance, it draws attention to structural injustice by identifying and attempting to resolve underlying causes of crime such as poverty or idleness. However, it also challenges individuals to apply restorative justice principles in their interaction with those around them and to their environment. This can generate internal spiritual transformation even as it calls for external societal transformation.

Should everything be labelled as RJ or are there aspects that are complimentary but different? Controversies on what restorative justice is or what it is not arise. For instance the following questions have been raised in the UN handbook:

Is there a role for punishment in restorative justice? Some argue that there is none because the purpose of restorative justice is to repair harm and not to cause more harm. Others, while agreeing with this, think that restorative processes have many features of punishment such as having to pay a price for violation.

Are victim support services and offender reintegration programmes restorative justice? If there is no encounter, those who have an encounter perception would say that while victim support services and offender reintegration programmes are valuable, they are not restorative justice. Those working on reparative and transformative conceptions would likely say that they are restorative.

What happens if a victim or offender is not willing or able to participate in a restorative process? There are a number of ways that a party might participate. If victims cannot participate personally, they can participate indirectly e.g. sending a representative or communicating their views in writing or in some other way. If they are not interested or able to participate even indirectly, those who work in the encounter conception would conclude that there is no suitable restorative response. Those who work in the reparative and transformative conception would explore other reparative options such as victim support services and offender reintegration programmes and the possibilities of inviting victims to meet with other offenders – not necessarily their own offender – to discuss general issues of crime and justice.

Can there be restorative justice in an unjust world? Some people are long-term victims of systemic injustice. Can violators be held accountable for injustice without taking substantial steps to address the underlying injustice? Those who work within the transformative conception would say that systemic injustices as well as individual injustices must be confronted. Those who work within the encounter and the reparative conceptions would say that restorative justice does not compel this.

The use of restorative justice for certain types of offences is more controversial than for others. “What is most controversial in a given context depends on a number of factors, including the characteristics of the community, the cultural context or the nature of the programme. The use of restorative justice in cases of domestic violence and sexual assault, for instance, is often controversial. Some advocates of restorative justice see it as appropriate, subject to carefully thought out practices and safeguards, for all types of offences and advocate the extension of restorative justice programmes to domestic violence and sexual assaults. Others, including some women’s organizations, have expressed concerns that a restorative approach may re-victimize women victims and not provide adequate denunciation of the offending behaviour.”⁴

Restorative Approaches and Restorative Justice across Cultures

What aspects of RA or RJ are transferable across cultures, and what kinds are not? I will try to answer this question by describing RA and RJ processes and practices in certain countries/cultures.

Aspects of the restorative justice approach are found in many cultures. The first seminar discussed practices in **Australia and Canada**, where indigenous informal participation in sentencing procedures has been occurring in remote communities for some time. Many of them are informal.

In many African countries, customary law may provide a basis for rebuilding the capacity of the justice system, where restoration of social responsibility, reconciliation between the offender and the victim and a sense of justice are the primary aims. In South-Eastern **Nigeria** and many parts of West Africa, the “age grade” systems encourage reconciliation within communities through peer group interventions. In **Uganda**, the local council courts have the power to grant remedies such as compensation, restitution, reconciliation or apology, as well as more coercive measures. In the **Philippines**, the *Barangay* justice system consists of a locally elected *Barangay* captain and a “peacekeeping committee” hearing cases involving conflicts between residents. There is a mediation session that is facilitated by the captain or another member of the committee. Agreements reached through this process are legally binding and are recognized by the courts.

Victim-offender mediation programmes were among the earliest restorative justice initiatives. In the **Czech Republic**, the Probation and Mediation Service is involved in pre-trial and court proceedings in an attempt to mediate effective and pro-social resolutions to crime-related conflicts. Mediation may only be carried out with the voluntary consent of the two parties. Mediators are skilled in effective negotiations. They help the disputing parties to settle their conflict and to find a mutually acceptable solution to the situation. Their task is to

⁴ Handbook on Restorative Justice, op.cit. p.45

manage the negotiation process, to create conditions allowing understanding between the participants, the reaching of a solution taking into account both parties' interests.

A **Community and family group conferencing** model was adopted into national legislation and applied to the youth justice process in **New Zealand** in 1989. The majority of cases is handled by the police through restorative caution and by police-directed or court family group conferencing. It is based on the dispute resolution traditions of the Maori. This model is now also widely used in modified form as a police initiated diversion approach in **South Australia, South Africa, Ireland, Lesotho, as well as in U.S. cities in Minnesota, Pennsylvania and Montana**. Each conferencing process has a convenor or facilitator. It brings together the family and friends of both the victim and the offender and sometimes also other members of the community to participate in a professionally facilitated process to identify desirable outcomes for the parties, address the consequences of the crime and explore appropriate ways to prevent the offending behaviour from reoccurring. The mandate of family group conferencing is to confront the offender with the consequences of the crime, develop a reparative plan and in more serious cases (in the New Zealand model), determine the need for more restrictive supervision or custody. In Australia and the U.S., police officers generally serve as primary gatekeepers, while in South Africa it is the prosecutors. Community conferencing is also used sometimes as an alternative measure programme to which an offender can be diverted from the criminal justice system. Such programmes tend to be managed by community groups or agencies with or without financial support from the government. The offender's compliance with the terms of agreement may or may not function under the direct supervision of law enforcement or justice officials.

Peacemaking committees operate in **Zwelethemba (South Africa)**. The process started as an experiment in 1997, aimed at mobilizing local knowledge and capacity on issues of dispute resolution and community building. The peace committees are made up of local township residents who undertake both peacemaking and peace building. Peacemaking involves resolving specific conflicts while peace building addresses the underlying problems in the community such as poverty or lack of access to services. Peacemaking activities deal with a range of legal disputes, including both civil and criminal matters. The peace committees initially received almost all of their referrals directly from the community, not from the police or the courts. As the project evolved, there has been increased interaction with state agencies, notably the police. The peacemaking process does not involve adjudication but rather focuses on discovering what can be done to reduce or eliminate the problem. The outcomes of peacemaking meetings are restorative in nature: apologies, restitution and compensation.

Sentencing circles are conducted in many aboriginal communities in **Canada**. In circle sentencing, all participants: the judge, defence counsel, prosecutor, police officer, the victim and the offender and their respective families and community residents, sit facing one another in a circle. Circle sentencing is generally available to those offenders who plead guilty. Discussion among those in the circle are designed to reach a consensus about the best way to resolve the conflict and dispose of the case, taking into account the need to protect the community, the needs of the victims, and the rehabilitation and punishment of the offender. The sentencing circle process is typically conducted within the criminal justice process,

includes justice professionals and supports the sentencing process. The outcome of the circle is generally submitted to the judge, who may or may not have participated directly in the circle, and is not binding on the court. Circle sentencing is an example of how the principles of restorative justice can be applied within a holistic framework in which justice system personnel share power and authority with community members. In contrast to the formal and often adversarial approach to justice, circle sentencing can help reacquaint individuals, families and communities with problem-solving skills, rebuild relationships, promote awareness and respect for values and the lives of others, address the needs and interests of all parties - including the victim, and focus action on causes, not just symptoms of problems.

Examples of restorative programmes for youth: Restorative practices in schools

Many programmes have been developed for use with youth in conflict with the law and have also provided the basis for the subsequent development of programmes for adult offenders. Restorative programmes offer effective alternatives to the formal and alienating youth justice measures. Because of their educational value, they are particularly useful in diverting youth from incarceration or expulsion from schools and provide alternative measures that would deprive a young person's liberty. Many such programmes offer opportunities to create a community of care around youth in conflict with the law. Gaining public support for restorative justice programmes for youth is relatively easier. In many countries, juvenile justice legislation provides specifically for the creation of diversion programmes for youth, which can be developed in line with restorative justice principles. Moreover, many programmes developed completely outside of the criminal justice system, in schools or in the community, can provide an opportunity for the community to respond appropriately to minor offences and other conflicts without formally criminalizing the behaviour or the individual. A number of programmes including peer mediation and conflict resolution circles already exists in schools that facilitate a response to minor youth crime (such as fights, violent bullying, minor theft, vandalism of school property, extortion of pocket money) that may otherwise have become the object of a formal criminal justice intervention.

Restorative approaches include peer mediation, circles (peacemaking circles) and community conferencing. Practical steps include: training key staff in process skills; enhancing peer mediator and/or similar programs; providing forums to introduce restorative practices to members of the school community; appointing one or more staff members to program coordinators positions; developing community-based partnership with local providers of social services such as parenting workshops.

Conferencing has now been used extensively in schools in Australia and New Zealand, Canada, and the United States, the UK and other parts of Western and Central Europe, and in some pilot programs in South East Asia. The process has had various titles "group conferencing" or "community conferencing" probably now the most widely used. The results from early evaluated programs have largely been replicated, with high levels of participant satisfaction with process and outcome, and high levels of compliance with agreements. Researcher Brenda Morrison of the Australian National University provides her overview of

current practices: “education systems in a number of countries are realizing that a whole school approach to behaviour management requires (i) that members of a school community have access to practices that support pro-social behaviour; (ii) systems to support practices; (iii) data to support policy making about systems.”⁵

The following programmes illustrate some initiatives that have been developed worldwide. These programmes are in line with UNESCO’s Associated Schools Network (ASPnet) goal to promote peace and international cooperation through education. Schools that are part of the ASPnet undertake projects that prepare young people to meet current challenges. ASPnet teachers and students work together to develop innovative educational approaches, methods and materials at the local, national and global levels.

In **Canada**, the Society for Safe and Caring Schools and Communities (SSCSC) has special programmes and projects. The SSCSC “offers knowledge and skills for educators, parents, and community helpers to respectfully work with children in a safe, non-coercive environment to help them learn self-discipline and become productive, principled citizens. This restorative approach helps participants understand why they behave and provides problem-solving skills that strengthen people as they learn to fix their mistakes, repair relationships, and return to balance. Self-discipline results in improved self-esteem, healthier relationships, and increased achievement. In schools where the SACSC Restorative Justice approach is implemented as a part of the SACSC comprehensive program, it is expected that discipline incidents will continue to decline, school attendance increase, grades improve, and students, staff and parents enjoy a more caring school community. Negative behaviour does not need to be criminal to benefit from this approach, but simply cause an issue that negatively impacts individuals, classrooms or the school as a whole.”⁶ The SACSC Restorative Justice Program was developed through funding from the Alberta Solicitor General and Ministry of Public Security.

There are a number of youth-centered mediation and conferencing projects throughout **Brazil** that incorporate the philosophy and principles of restorative justice. The UNESCO office in Brasilia is collaborating actively on restorative justice programmes in the country, for instance, the **Youth Justice System in Porto Alegre**. This system is experimenting with conferencing for young offenders. The Children and Adolescent Act of 1990 allows the presiding youth court judge to suspend the legal proceedings for first-time offenders involved in less serious crimes and for the use of sanctions such as community service and reparation. The Porto Alegre youth justice system is piloting use of this restorative process for young offenders.

In **England and Wales**, **Youth Offenders Panels** operate. A widely-used method which has some restorative features is the “referral order”. Young offenders, aged 10-17,

⁵ Morrison, Brenda (200) *From Bullying to Responsible Citizenship: A Restorative Approach to Building Safe School Communities*. Sydney : Federation Press.

⁶ http://www.sacsc.ca/Special_Programs.htm

appearing in court for the first time, are referred to youth offender panels (unless their offence is so serious as to require custody). A panel consists of two trained members of the community, one of whom acts as the chairperson and one professional. The panels are attended by the young person and a parent or guardian. The victim, if any, and a person who may have a good influence on the young person may also be invited. The panel decides on an action plan through which the young person can make reparation and address his or her problems. It meets again at the end of the order to assess progress. Young persons who offend again may be given a reparation order. The victim may be invited to meet the offender to express his or her feelings about the offence and consider what form reparation should take, but the decision remains with the court.⁷

Building on customary justice practices

In many countries, especially in rural and post-conflict countries, the justice system has collapsed and people have to rely on their own to settle disputes. It is possible to build on customary justice practices based on the application of restorative justice principles. In the **Democratic Republic of Congo**, due to the absence of courts, most people consult their chiefs and elders for settlements of disputes including serious criminal matters. The State justice is used mostly when an official stamp is needed (e.g. in civil matters concerning guardianship and adoption). Owing to the displacement of communities and corruption of traditional chiefs and elders, new mechanisms have been developed by NGOs and faith groups to assist people in dispute resolution. For instance, *Héritiers de la Justice*, a non-governmental organization, has set up a committee for *Mediation and Defense*. The members of the committees are trained in human rights and mediation skills and provided with basic introduction to the relevant laws.

In **Bangladesh**, a traditional dispute resolution mechanism at the village level (*salish*) involving village headmen or elders, actively engage the offender and the victim in settling the dispute, with the goal of reaching a mutually agreed solution. The process is highly participatory and results are usually complied with because they have been agreed to by both sides, and because there is community pressure from the villagers who ensure compliance.

In conclusion, Restorative Justice is gaining worldwide momentum owing to its adaptability to different cultures and contexts, its ability to resolve conflicts constructively and its capacity to provide viable alternative solutions.

⁷ Newburn, T., Masters, G., Earle, R., Golfie, S., Crawford, A., Sharpe, K., Netten, A, Hale, C., Uglow, S., and R. Saunders (2001). *The Introduction of Referral Orders into the Youth Justice System*. London: Home Office, RDS Occasional Paper No. 70.