



## *Restorative Justice Note # 2*

### **Restorative Justice at Different Stages of the Criminal Justice Process**

So far, the institutionalization of restorative justice in various countries has taken many paths.<sup>1</sup> That process resists any easy generalization. At the same time, there is a frequently expressed concern that the institutionalization of restorative justice leads to a compromise of restorative justice values and a return to a more retributive focus.<sup>2</sup> There are also concerns about the subjugation of restorative justice objectives and principles to managerial objectives and process within the criminal justice system.<sup>3</sup>

Through its varying expressions, restorative justice can intersect to varying degrees with the criminal justice process and also function totally independently from that process.<sup>4</sup> That intersection can occur at various stages of the criminal justice process and, as a result, adopt many different forms.

### **Restorative Justice in Diversion and Pre-sentencing Programs**

Restorative justice programs are perceived as an ideal diversion mechanism for children in conflict with the law and dozens of countries have experimented with this approach. However, few of these countries have managed to provide such a diversion alternative on a national scale. In fact, existing programs rarely achieve the required level of public acceptance and support required for their implementation on a broad scale, and criminal justice resources tend to continue to be channelled towards more traditional criminal justice response mechanisms.<sup>5</sup>

Although there may be some obvious limitations to the suitability of restorative justice programs as part of diversion schemes for serious offences, the same reservation about the use

---

<sup>1</sup> Aertsen, I., Daems, T. & Robert, L. (2013). *Institutionalizing restorative justice*. Cullompton: Willan Publishing.

<sup>2</sup> Woods, W. R. & Suzuki, M. (2016). Four challenges in the future of restorative justice, *Victims and Offenders*, 11, 149-172.

<sup>3</sup> Jones, G. & Creaney, S. (2015). Incentive for insincerity – Presentence restorative justice: In whose interests? *Safer Communities*, 14 (3), 126-137.

<sup>4</sup> Gavrielides, T. (2017). *Restorative justice theory and practice: Addressing discrepancy*. Helsinki: Heuni.

<sup>5</sup> Dandurand, Y. (2012). Integrating restorative approaches in the criminal justice process: From slow progress to cautious optimism. In S. M. Redo, *Blue Criminology - The power of United Nations ideas to counter crime globally*. Helsinki: Heuni, 87-91.

of restorative justice do not necessarily apply at the post-sentencing stage, either in prison-based or community-based programs.

### **Restorative Justice Programs in Prison**

Several promising prison-based programs (usually for adult offenders) have been developed over the last decade or so.<sup>6</sup> Prison can be an opportune time to work with offenders and help them reach a point where they may be ready to engage in restorative justice. Restorative justice programs and other mediated interventions, starting while the offenders are still detained, can help them find their place in the community. This is sometimes referred to as a restorative reintegration process. There is in fact a growing movement to use restorative practices to facilitate the social reintegration of incarcerated persons returning to the community.

Restorative justice programs in prison vary widely. Many of them were criticized because they lacked a clear conceptualization of restorative justice and because of the narrow way in which they have institutionalized restorative justice principles. However, the practice is evolving and many of the programs are now linked more closely with broader rehabilitative work. In fact, it is generally agreed that restorative justice in prisons needs to be integrated with other kinds of rehabilitation programs, rather than being treated as a standalone intervention.<sup>7</sup> It is also agreed that obstacles to victim participation in that context need to be carefully addressed.

Restorative justice practitioners have encountered many challenges in working with prisoners. There are difficulties with accessing prisons and prisoners, process disruptions and delays due to the relocation of measures, as well as limits imposed on the process by various security measures. For example, victims' access to prison may be delayed or denied following a risk assessment or prison personnel may be unresponsive.

### **Restorative Justice and the Social Reintegration of Offenders**

There is now greater use of the restorative justice model to support the social reintegration of offenders, and in particular, their successful re-entry into the community after a period of detention or institutionalization. Observers have noted that “restorative justice interventions are too often focused on the ‘soft end’ of the justice process, when a growing body of evidence suggests that restorative practices might be more effectively focused on the reintegration process for more serious offenses.”<sup>8</sup>

---

<sup>6</sup> For example: Walker, L. (2009). Modified restorative circles: A reintegration group planning process that pro-motes desistance. *Contemporary Justice Review*, 12 (4), 419-431. Also: Rossi, C. (2012). Le modèle québécois des rencontres détenus-victimes. *Les Cahiers de la Justice*, Dalloz, 2012-2, 107-126 ; Crocker, D. (2015). Implementing and evaluating restorative justice projects in prison, *Criminal Justice Policy Review*, 26 (1), 45-64.

<sup>7</sup> Olliver, R. (2017). *Restorative justice in prison – A report for governors*. Restorative Justice Council, U.K.

<sup>8</sup> Bazemore, G., & Maruna, S. (2009). Restorative justice in the reentry context: Building new theory and expanding the evidence base, *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, 4 (4), 375-384, p. 375.

In that context, restorative justice interventions can help offenders take responsibility for their behaviour in a meaningful way, gain insight into the causes of their behaviour and its effects on others, encourage them to desist from crime and help them regain acceptance by their family and community. At the same time, victim participation and community involvement may serve to strengthen ties in the community and to facilitate the development of a community-based capacity to assist offenders.<sup>9</sup> Furthermore, even if many of these programs focus primarily on the rehabilitation and successful reintegration of offenders, there is clear evidence that these programs can also alleviate the emotional effect of crime on the victims.<sup>10</sup>

To some extent restorative justice models can actively involve the community in the rehabilitation, healing and reintegration of offenders. At present, two models are sometimes used to implicate communities more directly in the social reintegration of offenders: sentencing or peacemaking circles and Circles of Support and Accountability (CoSA). Circle sentencing provides for a wide variety of options for restitution and punishment.<sup>11</sup> It can offer flexible solutions that are responsive to the circumstances of each offender, the requirements of each case and the capacity of the community. Circles are designed to strengthen the collective sense of community and empower the victim, the offender and community members through a healing and problem-solving process. The goal is to heal all those affected, but also to facilitate the rehabilitation and social reintegration of the offender by mending the social relationship between the offender and the community. A circle of support and accountability, on the other hand, focuses on inter-agency collaboration to bring a proper balance between assistance and supervision for offenders released at the end of a prison sentence.<sup>12</sup>

### **Restorative Programs and Youth Justice**

The last 15 years have seen an unprecedented growth in the use of restorative justice in the youth justice context, in particular as an alternative to the criminal justice process or part of diversion schemes.<sup>13</sup> This may reflect a paradigm shift in juvenile justice and in the ways in which we respond to offending by young people. In some countries, restorative justice has become almost routine for dealing with young offenders involved in minor crimes. Similarly, in many countries, juvenile justice diversion programs have become the primary location for

---

<sup>9</sup> United Nations Office on drugs and Crime (UNODC) (2012). *Introductory handbook on the prevention of recidivism and the social reintegration of offenders*. New York: United Nations, p. 101.

<sup>10</sup> Bolitho, J. (2017). Inside the restorative justice black box: The role of memory reconsolidation in transforming the emotional impact of violent crime on victims, *International Review of Victimology*, 23(3), 233–255.

<sup>11</sup> See for example: Joudo Larsen, J. (2014). *Restorative justice in the Australian Criminal Justice System*. Canberra: Australian Institute of Criminology.

<sup>12</sup> Brown, R.E. & Dandurand, Y. (2007). Successful strategies that contribute to safer communities. In Maio, S. (Ed.), *Selected papers on successful crime reduction and prevention strategies in the urban context*. Riyadh (Saudi Arabia): Naif Arab University for Security Sciences (NAUSS), 77-88.

<sup>13</sup> Dünkler, F., Horsfield, P., and Păroşanu, A. (2015). *Research and selection of the most effective juvenile restorative justice practices in Europe: Snapshots from 28 EU Member States, Vol.1*, Leuven: International Juvenile Justice Observatory & European Council for Juvenile Justice.

restorative justice processes<sup>14</sup>, sometimes the only location. Unfortunately, the place it occupies is too often on the margins of juvenile justice systems whereas it could certainly be at the heart of the system and be of use in the majority of cases.”<sup>15</sup>

Proponents of restorative justice typically deplore the lack of progress in implementing restorative justice more broadly within youth justice systems. Progress in that regard has remained very slow and most programs are limited to pre-sentence interventions. For instance, the use of restorative justice in the youth justice context in most European countries remains very limited and the potential of restorative justice in dealing with youth crime is far from being reached. As a rule, few restorative justice elements have been integrated systematically into community-based sentences or into post-release programs to facilitate the young offender’s social reintegration. There are, however, some good examples of youth programs that have managed to do so. In the Belgian system, restorative justice does not necessarily function as a tool with which to divert young people from contact with the criminal justice processes, but rather a model that offers both pathways (the restorative and the ‘classical’ judicial) functioning independently.<sup>16</sup>

As mentioned, restorative justice is often seen as one of the best approaches for dealing with young offenders. From an educational and developmental point of view, the benefits of applying restorative justice approaches are quite evident. As long as it is anchored in the respect of the rights of the child, it can promote the accountability and reintegration of children who have committed an offence through a voluntary, non-adversarial, problem-solving process. However, there are also limitations to these approaches. Because their focus is primarily on healing and reparation for victims, they tend neglect the root causes of child offending and the family and social context in which it occurs.<sup>17</sup> It is often suggested that restorative justice programs must treat children differently from adults and take each child specific situation and risk factors into account.<sup>18</sup>

Restorative justice programs, it is sometimes argued, are most valuable when they complement rather than replace the work that needs to be done to tackle the risk factors associated with the behaviour.<sup>19</sup> This includes personal risk factors associated with offending, including mental health conditions associated with the child’s early adverse experiences, as well as other risk

---

<sup>14</sup> Bazemore, G. & McLeod, C. (2011). Restorative justice and the future of diversion and informal social control. In Weitekamp, E.G.M. & Kerner, H.-J. (Eds.) *Restorative justice: Theoretical foundations*, London: Routledge, 143-176.

<sup>15</sup> Crégut, F. (2016). *The restorative approach to juvenile justice*, Lausanne: Terre des Hommes, p. 15.

<sup>16</sup> Put, J., Vanfraechem, I., & Walgrave, L. (2012). Restorative dimensions in Belgian youth justice. *Youth Justice*, 12 (2), 83-100, p. 89.

<sup>17</sup> Hamilton, C. & Yarrow, E. (2016). Preventing and addressing youth offending: Restorative justice and family focused programming. In Kury, H, Redo, S., & Shea, S. (Eds.), *Women and children as victims and offenders: Background, prevention, reintegration*. Zurich: Springer, 301-339.

<sup>18</sup> Annual report of the Special Representative of the Secretary General on Violence against Children, 3 January 2014, A/HRC/25/47.

<sup>19</sup> Hamilton, C. & Yarrow, E. (2016). Preventing and addressing youth offending: Restorative justice and family focused programming. In Kury, H, Redo, S. and E. Shea (Eds.), *Women and children as victims and offenders: Background, prevention, reintegration*. Zurich: Springer, 301-339.

*Restorative Justice Note # 2*  
**Restorative Justice at Different Stages of the Criminal Justice Process**

factors including poverty and deprivation, and individual as well as structural discrimination, as demonstrated by the overrepresentation of children from minority groups in the justice system.

In 2007, when the Committee on the Rights of the Child provided specific guidance on children's rights pertaining to juvenile justice, it recommended the use of alternative measures such as diversion and restorative justice, as measures that provide States with "possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short and long-term interest of the society at large".<sup>20</sup> The Committee, based on the principle of the primacy of the best interests of the child, concluded that "the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders."<sup>21</sup>

More recently, in her publication on restorative justice for children, the Special Representative of the Secretary General on Violence Against Children explained the need to promote restorative justice in terms of her observation that "countless children face violent and degrading treatment throughout the criminal justice process".<sup>22</sup> Restorative justice is essentially presented as an alternative to that process. In 2014, based on the concern that children who are incarcerated or otherwise institutionalized are at a higher risk of being victimized, the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice recommended the greater use of restorative justice and other diversion programs. However, even as she was writing in support of restorative justice for children, the Special Representative of the Secretary General on Violence against Children, devoted part of her report to the need to ensure that the necessary procedural safeguards for children are in place in a restorative justice process. She suggested that a competent authority, such as a child justice court, should have effective judicial overview to ensure that the rights of the child are respected at all times and that the process is lawfully conducted. In practice, however, the presence of such an overview mechanism is the exception rather than common practice.

It is fair to say that there remains some scepticism about the ability of restorative justice processes to guarantee children's safety, respect their rights and act in a manner consistent with the principle of the best interests of the child. Restorative justice processes do not always offer the procedural guarantees and protection that the conventional system can offer, at least in theory. There are obviously situations where the restorative justice approach cannot be readily applied. For example, how can a street child make reparation for his involvement in various forms of survival crimes (such as prostitution, drug peddling, or pick-pocketing)? And, if so, to whom?

---

<sup>20</sup> Committee on the Rights of the Child (2007). *General Comment No. 7 (2007) on children's rights in juvenile justice*, CRC/C/GC/10, para. 3.

<sup>21</sup> *Idem*, para 10; and, Committee on the Rights of the Child (2013). *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*. CRC/C/GC/14, para 28.

<sup>22</sup> Special Representative of the Secretary General on Violence Against Children (2013). *Promoting restorative justice for children*. New York: United Nations.

There is also a persistent concern that the wide application of restorative justice for young offenders can lead to a net-widening effect. First, young people may unnecessarily be brought into contact with the criminal justice system. Secondly, they may not receive adequate support or assistance to successfully complete a restorative agreement, thus increasing the likelihood that they be redirected to the formal criminal justice system.<sup>23</sup> To mitigate these risks, one must bring rigour and attention to programming elements that can ensure that youth receive the needed support and are provided with evidence-based interventions.<sup>24</sup> In addition, risk assessments can be used to inform the level of intervention based on a graduated model of risk. For example, high risk offenders may receive services that enable their active engagement in psychosocial programs to address their risk factors for crime while low risk offenders may be diverted with only a minimum of services. Interventions can also be appropriately matched with respect to the young person's ethnicity, race, and gender.

*Annette Vogt & Yvon Dandurand*  
*January, 2018*

---

<sup>23</sup> Schwalbe, C., Gearing, R., MacKenzie, M., Brewer, K., & Ibrahim, R. (2012). A Meta-analysis of Experimental Studies of Diversion Programs for Juvenile Offenders. *Clinical Psychology Review*, 32 (1): 26-33.

<sup>24</sup> Schwalbe, C., Gearing, R., MacKenzie, M., Brewer, K., & Ibrahim, R. (2012). A meta-analysis of experimental studies of diversion programs for juvenile offenders. *Clinical Psychology Review*, 32(1): 26-33.