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**Enhancing Criminal Justice Reform, Including Restorative Justice
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**PRESENTATION: AN OVERVIEW OF RESTORATIVE JUSTICE AROUND
THE WORLD**

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SPEAKING NOTES

In only twenty-five years, restorative justice has become a worldwide criminal justice reform dynamic. Well over 80 countries use some form of restorative practice in addressing crime; the actual number could be closer to 100. While in many of these countries, restorative programmes are experimental and localized, in an increasing number of others restorative policies and programmes play a significant part in overall criminal justice policy.

Restorative justice is both a new and an old concept. While the modern articulation (including the name) has emerged in the past 30 years, the underlying philosophy and ethos resonate with those of ancient processes of conflict resolution and with indigenous practices.

Definition

There is no single accepted definition of restorative justice. Typically, however, definitions fall into one of two categories. One is made up of process-based definitions. For example: “Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.” (Marshall, 1996)

The second category consists of justice-based definitions built on the insight that crime causes harm to victims and communities, and that justice should address those harms: For example, “Restorative justice is every action that is primarily oriented to doing justice by repairing the harm that is caused by a crime.” (Bazemore and Walgrave, 1999)

A definition that combines the two might be something like: “Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through inclusive and cooperative processes.” (Van Ness, 2004).

The United Nations Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (“UN Basic Principles”), endorsed by ECOSOC in 2002, does not define “restorative justice.” Instead, it assigns usages to the terms “restorative *process*” and “restorative *outcome*.”

“Restorative process’ means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.

“Restorative outcome’ means an agreement reached as a result of a restorative process.”

Restorative programmes

The first contemporary restorative process was victim offender mediation. In its original form, a trained facilitator prepared and brought together a victim and offender to discuss the crime, the harm that resulted, and the steps needed to make things right (Umbreit, 2001). Conferencing, which was adapted from Maori traditional practices in New Zealand, involves more parties in the process than mediation. Not only are the primary victim and offender invited, so are family members or friends of the victim and the offender and representatives of the criminal justice system (McCold, 1999). Circles, which draw from First Nations’ practices in Canada, are the most inclusive process of the three, inviting any interested member of the community to participate. The participants sit in a circle and discussion moves from person to person around the circle until the participants have arrived at a resolution. (Pranis, et al, 2003)

These are the three processes most frequently mentioned, but each of them has variations, and in fact there are other approaches that draw together elements of each into a single programme. The key elements are that the parties are given the opportunity to meet, they are allowed to discuss all issues that concern them, and they participate in finding a solution. That solution often includes steps for the offender to make amends.

There are several ways in which offenders do this. The first is by offering an apology, a sincere admission and expression of regret for their conduct. (Cavanagh, 1998) A second is by paying restitution, wherein the offender pays back the victim through financial payments, return or replacement of property, performing direct services for the victim, or in any way that the parties agree (Harland, 1982). The third is by performing community service, free services to a charitable or governmental agency.

Uses of restorative justice processes in the criminal justice system

Restorative justice processes are used throughout the criminal justice system. They are voluntary for the parties (no one is forced to participate) and they take place only after the defendant has been found guilty or has admitted guilt. They are used at both the juvenile and adult levels. Following are examples of this usage:

Use by police. In a number of countries, police use restorative justice processes to divert offenders from court proceedings. Sometimes the police themselves conduct the restorative processes; in others they send the matter and the parties to programmes that specialize in this.

Use by prosecutors. Prosecutors in both civil and common law jurisdictions have been given authority to divert cases from prosecution prior to filing charges. In some instances they may even divert cases after charges are filed but before the judge has entered a judgment.

Use by courts. Judges use restorative processes to divert cases before trial, and also when they are preparing to sentence offenders. In both cases, any agreement reached by the parties is considered by the judge when deciding on the sentence.

Use by probation officers. Restorative processes may be used with offenders who are on probation when either the victims or offenders were unwilling or unable to meet before sentencing. Any agreement reached is either sent to the judge or to the probation officer, and may or may not result in a change of sentence.

Use in prison. A number of restorative processes are used in prison. Some are aimed at helping prisoners develop victim empathy in hopes that this will reduce recidivism. Others allow prisoners to meet with their own victims; the restorative agreements that result may or may not affect the length of the prisoners' sentences. Finally, a number of jurisdictions are experimenting with embedding restorative values in the prison environment itself. Examples here include dispute resolution programmes to settle conflict between prisoners and among staff members.

Use by parole officers. Restorative processes are sometimes used to determine whether to release the prisoner on parole. They may also be used to prepare offenders, their victims, family members and communities for the offender's release from prison into the community, and to decide what conditions, if any, should be placed on the offender.

Other uses. Restorative justice processes are used outside the criminal justice system, in schools, in workplaces, to address community disputes, and in post-conflict situations.

Issues concerning restorative justice processes

There are a number of advantages to using restorative justice processes, including increased satisfaction with the justice process by victims and offenders, an increased likelihood that agreements or sentences will be completed, an increased sense of safety for victims, and an apparent reduction in the rate of re-offending by the offenders.

Criticisms have been raised concerning restorative justice. One issue that has been addressed by the UN is the concern that the informal nature of restorative justice can lead to due process and human rights violations. These and other matters were addressed in the UN Basic Principles mentioned earlier, which offer guidance to nations seeking to incorporate restorative justice in their criminal justice systems.