

Briefing Paper #1

An Introduction to
**Restorative
Peacebuilding**

Restorative Peacebuilding Project
Working Party on Restorative Justice
Alliance of NGOs on Crime Prevention and Criminal Justice (NY)

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Introduction

The work of peacebuilding in post-conflict societies presents significant challenges and opportunities. This paper introduces restorative peacebuilding, and explores its implications for the work of the United Nations Peacebuilding Commission (Commission) and post-conflict societies. This is the first of a series of papers to provide information and support to post-conflict societies and to the Commission regarding the use of restorative justice in the work of peacebuilding. It is offered as an invitation to explore a new way of thinking about justice, and to initiate dialogue about restorative peacebuilding.

Justice in Post-Conflict Societies

The Commission was born out of the recognition that previous international efforts to build sustainable peace in post-conflict societies have fallen short. It was established as an intergovernmental advisory body to propose integrated strategies for post-conflict peacebuilding and recovery, helping countries navigate their ways from conflict to lasting peace.

The Commission is expected to “provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, to develop best practices, to help to ensure predictable financing for early recovery activities and to extend the period of attention given by the international community to post-conflict recovery.”

This mandate requires that it marshal all relevant actors and resources around integrated strategies within post-conflict states. The Commission is to assist, enable and empower these actors to develop and bring to fruition their own visions for peace. This requires that attention be given to the reconstruction and institution-building efforts necessary for recovery from conflict as well as to the development of integrated strategies that lay the foundation for sustainable peace. Its scope includes issues related to economic and social development, governance, security and justice.

The promise and potential of restorative justice in both the *transitional* and *post-transitional* periods deserve careful attention and study.

It may be helpful to think in terms of two categories of justice needs within post-conflict societies. This first is the *transitional* context, meaning the response to civil war, occupation, or wide-spread crimes against humanity that have taken place in the past. The second is the *post-transitional* context for which sustainable domestic justice institutions must be established.

These two contexts exist side by side in time, and initiatives in one will often have implications for the other. The Commission will confront challenges in both contexts as it advises post-conflict societies to build lasting and sustainable peace. It will benefit from acquiring a fuller understanding of restorative justice and its implications for both the transitional and post-transitional arenas.

Thus far the application of restorative justice – and most of the existing literature and research – has taken place largely in domestic criminal justice systems, although there has been some discussion of its use in transitional settings as well. The use of restorative justice is additionally expanding at a significant pace into civil justice, education, employment and health arenas as well. However, when restorative justice theory and practice have been discussed in the context of post-conflict societies, the conversation has focused almost exclusively on the transitional context rather than on post-transitional justice. The promise and potential of restorative justice in both periods is worthy of in-depth and careful attention for the contributions it stands to make to lasting and sustainable peace.

References in this document to restorative justice in a criminal context or to “offence” or “offender” are not intended to limit the application and significance of restorative justice. Rather, such references are offered

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to contextualize the application of restorative justice for the reader. Societies able to address crime and justice in a way that builds and sustains peaceful co-existence will have significant advantages in emerging from post-conflict periods.

What is Restorative Justice?

Restorative peacebuilding is based on a restorative justice framework which focuses on the harm caused by wrongdoing. This harm is not merely material and physical but relational as well, since crime and other wrongdoing tears at the social cohesion of communities and nations. Restorative justice emphasizes the need to take steps to repair that harm to the extent possible. It places a high value on the active involvement of persons affected in determining the extent of the harm and the actions necessary to provide redress. It balances the value of informal, local processes in accomplishing this with the need for formal, societal oversight.

In other words, restorative justice is a theory of justice that reflects four principles: it is harm-focused, relational, participatory and democratic. Let us consider each of these in turn.

Harm-focused. Restorative justice is not limited to the question of whether laws were broken but goes beyond to examine the resulting harms and how those might be repaired. Most criminal laws are adopted to protect potential victims from suffering the harms likely to result from the prohibited behaviour.

Howard Zehr has suggested that traditional criminal justice asks three questions: 1) Was a law broken? 2) If so, who did it? and 3) What does that person deserve? Restorative justice, on the other hand, considers three different questions: 1) Who has been hurt? 2) What are their needs? and 3) Whose obligations are those?

Relational. Restorative justice is relational. It offers a vision of justice that is concerned primarily with addressing the harm that

wrongdoing causes to relationships between and among individuals, groups and communities. Restorative justice invites one to see the world relationally.

Reflecting for a moment on the number of intersecting relationships in which we live makes clear the ways in which harm to victims is felt by those connected with them. It also becomes clear that wrongdoing causes harm to those connections and relationships. This includes harm to the relationship between direct victims and offenders, between victims and their communities, between offenders and their communities, and often between groups within the wider community.

Restorative justice values responses to wrongdoing that address the needs of these parties and the harm caused to relationships, and seeks to restore relationships that can support just and peaceful co-existence.

Participatory. Restorative justice is participatory. This is in marked contrast to courtrooms or tribunals where lawyers and judges and other professionals are the primary actors and in which victims, offenders and community members have very limited roles, if any at all.

In a restorative response, those who were affected by an offence are invited to meet directly with the others, usually with the assistance of a facilitator, to discuss what happened (causes, context and consequences), and to plan how to address those harms and build a different future. Agreements normally specify concrete actions to be taken by the offender to make right the wrong and actions from the community to support these efforts. This agreement is fashioned with active participation of all parties. Participation is voluntary.

In a restorative response, the victims are invited to meet with the offender and others affected by the crime, with the help of a facilitator. The purpose is to discuss what happened, find ways to address the resulting harms, and how to build a different future.

Democratic. Restorative justice reflects the subsidiarity principle. According to the European Commission, the subsidiarity principle “is intended to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at [European] Community level is justified in the light of the possibilities available at national, regional or local level. Specifically, it is the principle whereby the [European] Union does not take action... unless it is more effective than action taken at national, regional or local level.”

It may be helpful to illustrate how restorative principles influence justice processes and outcomes. The *UN Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (UN Basic Principles) defines a restorative process as “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 processes may include mediation, conciliation, conferencing and sentencing circles.”

The “restorativeness” of such a process depends on the extent to which it reflects the four principles mentioned above. A process that limits participation to direct victims and offenders will be less restorative than one that invites others who have been affected by the offence to participate. One that limits participation to particular forms (for example, testimony to a fact-finder) is less restorative than one that allows broad participation.

A process that considers only certain wrongdoing (for example, only criminal acts) will be less restorative than one that allows parties to discuss other wrongful behaviour. One that considers only material and financial harms is less restorative than a process in which emotional, relational, spiritual and other intangible harms are discussed.

The UN Basic Principles define a restorative outcome as “an agreement

reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.”

The primary test of the “restorativeness” of an outcome is the extent to which it results from a restorative process. For example, if a highly restorative process resulted in an agreement that the offender’s apology and act of symbolic restitution was sufficient amends, this would be considered a highly restorative outcome. It would be a more restorative outcome than a judicially imposed order of financial restitution for tangible and intangible harms resulting from the wrongful act. This is because the adequacy of reparation is best determined by the parties affected by the wrong themselves.

However, there is a secondary test as well, and that is the extent to which the outcome increases or decreases the harm experienced by the parties. To the extent that it does not decrease the harm, it should be considered a less restorative response even if it was negotiated in the context of a highly effective restorative process. In other words, there are limits to the subjective judgment of the immediate parties.

The ultimate test over time of the restorativeness of a process and outcome is its contribution to the restoration of relationships.

The Benefits of Restorative Justice.

Restorative justice is rapidly gaining prominence throughout the world. It is used primarily in the context of domestic criminal justice reform efforts. For example, the 2001 Framework Decision of the European Union Council obliges EU Member States to incorporate restorative justice in their responses to crime. In 2002, the United Nations’ Economic and Social Council (ECOSOC) reflected the increasing import placed upon restorative justice in this sphere by endorsing the UN Basic Principles to guide their use. The preamble called on all Member States to incorporate restorative justice in their domestic criminal justice systems.

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Restorative justice offers a number of benefits in post-conflict societies. As the demands for justice are satisfied, people and relationship are restored and forgiveness becomes possible.

There are a number of reasons for preferring a restorative form of justice over a non-restorative one. First, the beneficial effects of restorative processes on victims and offenders have been widely documented. This may be why restorative resolutions tend to stay resolved. Second, attempting a restorative approach does not prevent use of a more coercive approach should the restorative process prove unsuccessful.

From a deterrent or retributive perspective, nothing is lost by attempting it and both deterrence and just deserts goals are achieved if the restorative process is successful. No system of law can maintain order without cooperation from the citizenry, and the participatory nature of restorative processes is more effective at producing this cooperation.

Finally, restorative justice offers a number of benefits in post-conflict societies. Redemption is earned when offenders acknowledge the damage they have caused and take steps toward reparation. Their contrition and willingness to listen to accounts of the specific harms they caused demonstrate good will to their victims and community members. This in turn allows others to release their ill-will and establish a constructive relationship between the parties.

When victims tell offenders how they were affected and recognize that the offenders understand, and when they are allowed to actively negotiate a reparative agreement, the recognition and empowerment helps their recovery from trauma. Support from communities toward victims and offenders helps reconnect and strengthen relationships. As demands for justice are satisfied, people and relationships are restored and reintegration and forgiveness become possible.

Restorative Peacebuilding in Post-Conflict Societies

Restorative peacebuilding is a framework for an integrated strategy based on restorative justice theory as applied to post-conflict societies. It applies to transitional as well as post-transitional justice as those are experienced by both the elites and citizens of those societies. It helps rationalize the roles of all relevant actors within and outside the United Nations in the context of a commitment to national ownership and sovereignty.

Transitional Justice. Post-conflict societies must deal with the legacies of serious and widespread human rights abuses, established criminal networks, war crimes and large numbers of displaced, traumatised people. The work of transitional justice includes unearthing what happened, understanding the harms that were caused, holding those responsible to account for their actions, addressing the needs of victims and communities for healing and redress, and laying a foundation through reintegration and reconciliation for a just and peaceful future so that history does not repeat itself.

The principles of restorative justice, discussed earlier, are highly relevant to transitional justice. Its focus on repair means that appropriate attention must be paid to the past and to the harms done, but with an eye toward a future in which steps have been taken to repair those harms. Its relational emphasis recognizes that peacebuilding within communities is essentially about building healthy and just relationships.

This is enhanced by the attention given to allowing all those with a stake to participate in addressing the past and future. And its democratic adherence to the principle of subsidiarity means that those living in communities will be invited to participate, in stark contrast to

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conventional peacebuilding strategies that focus on negotiations at the top levels of countries and intergovernmental organizations.

At one time it was assumed that post-conflict states had to choose between peace and justice. Experience has shown, however, that this represents a false dichotomy. The search for an alternative approach to traditional justice focused efforts has emerged in large part out of the weaknesses and limitations of conventional trials and punishment. Those processes generally do not provide a complete picture of the past.

They do not provide a vehicle for victims to tell their stories and receive redress. They often have been compromised by the political power of offenders who are difficult to successfully prosecute. Furthermore, the nature of their offences often demand more nuanced treatment and response than trials can offer. They are slow, expensive, and can exhaust or outstretch the resources of post-conflict societies. Finally, they risk serving as rallying points for political factions, thus renewing or increasing violent conflict.

Restorative justice offers a means of resolving this peace vs. justice dilemma. Its vision of justice is at its core concerned with and committed to establishing peaceful relationships based on values of mutual respect, concern and dignity. These fundamental commitments for just relationships also underpin international human rights. This vision of justice does not force a choice between peace and justice; rather, it offers an approach that calls for and allows both, and it seeks them simultaneously through the same processes.

Experience shows that lasting and sustainable peace is best achieved through broad-based engagement of the population. Given this, an effective, integrated strategy will extend beyond the political or social elites to broad-based and participatory processes. Restorative processes can and should be employed at both national and local levels. They provide the means during design and implementation to engage a broad base of society and not merely the political and social leaders.

We need restorative strategies that transform not only the elites, but also the hearts and minds of the ordinary people, among whom will be found the next generation of fighters.

Post - Transitional Justice. The Commission will also face the challenge of developing an approach to justice that will outlive the transitional period and ground domestic response to crime and other justice issues. Lasting and sustainable peace can only be ensured by equipping members of post-conflict societies with skills and processes to deal with conflict in the future without returning to violence.

The principles of restorative justice provide a framework that is relevant not only for the transitional period, but for the post-transitional period as well. The use of restorative processes during transitional periods can provide experience and training for restorative responses to ordinary crime and other justice issues. Citizens can acquire skills and experience in confronting wrongdoers in a peaceful and productive way.

Employing restorative justice framework in the transition therefore contributes to the establishment of restorative justice processes and institutions for the future.

An Integrated Approach. Perhaps the most difficult challenge the Commission faces is developing an integrated approach to peacebuilding that can rationalize relationships among the UN's justice and peacebuilding institutions and mechanisms, as well as honouring the different roles of UN, multi-lateral, national and local institutions and mechanisms.

Restorative justice's relational and participatory nature means that matters that can be best handled locally should not be dealt with at the regional or national level. Furthermore, matters that can be most effectively resolved by the parties themselves should not be dealt with through proxies or representatives.

The democratic principle of subsidiarity, however, as well as the emphasis of restorative justice on repairing and preventing harm, underscore the important role of the international community in providing needed resources that are not present locally or nationally and in asserting the over-arching international values articulated in treaties, international law and UN resolutions.

Furthermore, there has been growing experience and expertise on the part of diplomats and peacekeepers in conducting mediation among elites to achieve practical outcomes such as ceasefires. We need to build on that capability to develop restorative strategies that transform not only the elites, but also the hearts and minds of the ordinary people, among whom will be found the next generation of fighters or the next generation of peacemakers.

Preference should be given to the inclusive and comprehensive strategies of restorative justice at all levels. Where that is not possible or where necessary individuals refuse to take part, mechanisms such as the International Criminal Court or other tribunals or courts can serve to achieve a degree of accountability while protecting against further harm by those individuals through incarceration.

Conclusion

The restorative vision of justice that grounds restorative peacebuilding is perhaps nowhere as comprehensible, necessary, and appropriate as in times of transition from conflict. It is because the

harm from wrongdoing extends beyond the individual victim that the necessity of dealing with the past and doing justice is often felt so strongly in post-conflict societies even by those not directly injured. That justice requires restoration of relationships is a fact easily understood in these contexts but it is not less true in established societies seeking to build lasting and sustainable peace.

Therefore, restorative peacebuilding offers an important framework for the Peacebuilding Commission's efforts to encourage and support that work. From a restorative justice lens, an integrated approach can be crafted to peacebuilding, and to rationalizing and prioritizing the relationship between existing international and national institutions and mechanisms. A restorative peacebuilding framework reconciles the roles of international and regional bodies while affirming the importance of national and community ownership.

Restorative building therefore provides an important framework for the United Nations Peacebuilding Commission and the post-conflict societies it supports in the task of peacebuilding.

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About the Restorative Peacebuilding Project

This briefing paper has been produced as part of the Restorative Peacebuilding Project of the Working Party on Restorative Justice (WPRJ), a committee of the Alliance of NGOs on Crime Prevention and Criminal Justice (NY). The project seeks to provide information and support to post-conflict societies and to the Commission regarding the role restorative justice might play in peacebuilding.

This initial brief has attempted to sketch, in broad strokes, restorative peacebuilding. It is intended to serve as an introduction to its possibilities and as an invitation to dialogue about the particular applications of restorative peacebuilding. As part of this continuing dialogue, the Restorative Peacebuilding Project will identify and provide relevant existing work and information about restorative justice in post-conflict contexts.

It will also commission and produce a series of briefs and papers which take up particular issues and topics related to restorative peacebuilding, including for example: the potential of truth commissions to serve as restorative justice institutions; models of restorative practices, processes and institutions that may offer guidance for post-conflict societies; the use of restorative justice in response to particular problems of post-conflict societies (i.e.: the reintegration of child soldiers, integration of international, national and village/local peacebuilding efforts, rebuilding civil society, development of governance structures); country specific studies – exploring the

possibilities and challenges for restorative justice in a particular post-conflict context or sharing restorative practices utilized in other contexts.

The future work of the project will be shaped by the emerging needs of the Peacebuilding Commission and post-conflict states. It is hoped that the efforts of the Restorative Peacebuilding Project will generate a dialogue and marshal resources toward exploring the practice of restorative peacebuilding.

As noted above, WPRJ is a committee of the Alliance of NGOs on Crime Prevention and Criminal Justice in New York. The Alliance was formed in 1972 as a coalition of Non-Governmental Organizations (NGOs) having consultative status with the United Nations and dedicated to crime prevention and criminal justice improvements. The Alliance subsequently broadened its membership to include selected NGOs not in consultative status with UN bodies, but actively interested in international crime and justice.

The purpose of WPRJ is to further the development of restorative justice principles and practices at the United Nations and among member states implementing the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters [*E/CN.15/2002/5/Add.1*].

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