

## **RESTORATIVE AND COMMUNITY JUSTICE: INSPIRING THE FUTURE**

**Mar 28-31, 2001 Winchester**

Marian Liebmann  
Restorative Justice Consultant and Trainer  
52 St Albans Road  
Bristol BS6 7SH  
UK  
Tel/ fax: (+44) 117 942 3712  
E-mail: MLiebmann@compuserve.com

### **RESTORATIVE JUSTICE IN UGANDA AND RUSSIA**

**(Part of symposium: Comparative Restorative Justice: Different Jurisdictions)**

**Marian Liebmann**

This paper is based on one training visit to Uganda in 1999 and two training visits to Russia, one in 1999 and the other in 2001. The reflections are drawn from personal experience and therefore may not convey the total picture in these countries.

#### **UGANDA**

##### **Background: The Ugandan criminal justice system**

The Ugandan criminal justice system is very punitive, based on the criminal justice system introduced by the Victorians from the UK in the nineteenth century. There seem to be only three penalties in the magistrates' and judges' courts: fines, imprisonment and capital punishment. Few people can pay fines, so prison is the main response to most crimes, large or small. There are many prisons in Uganda, both local low security ones for petty offenders and national high security ones; also women's prisons.

The court system includes magistrates' courts (with paid magistrates, who do a three year legal training) and higher courts with judges. There is also a lower tier of courts, the Local Council Courts, which were developed from the Resistance Committee Courts in 1987, to deal with civil cases and petty offences, and have powers to grant remedies such as reconciliation, compensation and apology; but these do not always provide satisfaction, especially to women (PRI 2001).

There are current moves in several countries in Africa to return to a more traditional restorative justice model, which is more affordable and appropriate for most African societies. Western justice, with its emphasis on the offender, formal courts (usually too far away to walk to, so too expensive to access) and prisons, is too expensive for participants and governments to sustain. And prison is seen by the public as doing nothing for victims, who remain uncompensated for their losses (PRI 2001).

These moves often include the introduction of Community Service, and this was being planned in Uganda when I was there. The group undertaking the mediation training had hopes of using mediation in connection with Community Service, and also to resolve petty offences and divert them from court or prison. Another concern of theirs was for victims at the Local Council courts - they felt they were often ignored completely, and mediation could enable them to have a voice. Members of the group also want to use mediation to help resettle offenders on their release from prison.

## **Training**

My brief in Uganda was to provide victim/offender mediation training for 16 people brought together by the Restorative Justice Initiative, a small NGO trying to promote restorative justice. It had established the Alternatives to Violence Project (AVP) and wanted to introduce victim/offender mediation to the Ugandan criminal justice system.

The trainees were drawn from several organisations: Prison Fellowship, Prisoners Aid Foundation, prison staff trainers, prison social worker, prison chaplain, ex-soldiers/returnees from exile, domestic violence victims' organisation, a retired policeman, a pastor, an international relations graduate. Organisations invited but not represented were Rape Crisis and Local Council court personnel, probably because the information did not reach them (communication is a problem in Uganda).

I had planned the five day course very thoroughly, but had expected nevertheless to make significant adjustments 'on site' - however, this did not seem to be necessary. Uganda has over twenty languages, so English was the language in common. I had a little initial difficulty getting used to people's accent and manner of speaking (different use of words and sometimes more roundabout way of speaking than in the UK), but generally found no large cultural differences with respect to the content of the course.

I had deliberately left the details of the case studies open, to involve the group in developing the scenarios. I had previously discussed with the coordinator of the NGO the range of cases to be included. The situations covered victim/offender cases but also some cases more like community mediation in the UK. We had decided to teach a co-mediation model, including visits to both parties, followed by indirect or direct mediation, so that they could be prepared for all these eventualities. The scenarios developed were:

- (1) Victim/offender mediation - offender in prison. Assault by a woman on her husband's girl friend.
- (2) Victim/offender mediation - theft of watch from another person in minibus park.
- (3) Victim/offender mediation - offender in prison. Housebreaking (= burglary 6 a.m. to 6 p.m.) and theft of food and tools from neighbouring farmer.
- (4) Ex-soldier returning from exile to own village after robbing and pillaging there.
- (5) Offence taken to Local Council court for resolution - young man gets girl pregnant.

(6) False accusation of aggravated robbery (= burglary 6 p.m. to 6 a.m. plus violence) resulting in automatic prison remand of one year.

### **Case study: ex-combatant returnee**

In the scenario concerning the ex-soldier returning from exile to his own village, he had asked for mediation because he had offended a lot of people in his village by his actions while a soldier. People in the village were not sure if they wanted him back. The mediation was between the ex-soldier and an elder representing the village.

Three small groups enacted this role play.

- ?? In one group, the elder and the village forgave the ex-soldier in exchange for an undertaking of good behaviour in the future, and the village provided two elders to vouchsafe his return and speak up for him.
- ?? In the second, the elder and village forgave him and gave him some land so that he could grow food and be self-sufficient.
- ?? In the third group, the elder shuttled between the ex-soldier and the other elders, and took him to meet them. The ex-soldier gave an undertaking of good behaviour, and the elders promised not to wreak vengeance on him for his past actions.

### **Putting Restorative Justice into practice**

An interesting example of Restorative Justice being put into practice occurred during the course itself. A young man working at the prison training school lent his motorbike to a friend who had an accident, injuring a child. The actual offender vanished, leaving the young man accused by the police. He went to the victim's family, offered to pay the child's hospital fees, became friends with the family, found his friend and got him to apologise - and together they went to the police. At the request of the victim, the police dropped the case.

### **Traditional mediation activities**

During the last session we spent some time reflecting on the values on which the course had been based, and compared the model I had offered to traditional mediation activities in Uganda. Village elders still play a large part in resolving disputes in villages, and occasionally mediate but mostly pass judgement. The most likely use of mediation would be religious leaders helping parties (especially families or couples) to understand each others' points of view and be reconciled. All celebrate the resolution of a dispute with food and drink!

### **RUSSIA: Moscow**

#### **Background**

There is currently great dissatisfaction with the criminal justice system in Russia. Although there is a high crime rate, about 60% of victims of violent crimes do not go to the police, because their experiences tell them it will be of no help (Maksudov, Fliamer and Grasenkova 1998). Prison is used for many offenders and only exacerbates their problems, which often stem from their social situation.

Over the last couple of years, the Centre for Legal and Judicial Reforms in Moscow (a voluntary organisation), and its co-directors Rustem Maksudov and Mikhail Fliamer, have been trying to introduce mediation into the criminal justice system, to help both victims and offenders. The group has been in existence for a few years, and has had Howard Zehr's book *Changing Lenses* translated into Russian. They started practising victim/offender mediation in a small way in the Tagansky district of Moscow and are now expanding to several other areas in or near Moscow.

In Russia mediation is legal. Article 9 of the Criminal Proceedings Code allows a case to be withdrawn if it is a first offence, the crime is petty, the offender has reconciled him/herself with the victim and has restored the victim's losses. However, the lack of clear procedures for this can sometimes lead to abuse of the situation. So the introduction of a mediation scheme has been seen as a way of protecting victims' and offenders' rights. The Moscow group has drawn up a list of issues which need to be clarified to enable mediation schemes to work within the Russian legal framework.

There are roots of Restorative Justice in Russian customary law, called 'obshchina', in which village elders helped to resolve conflict in the community, based on the fact that people needed to live together for the rest of their lives. An example quotes a land dispute between two peasants in which one was judged to have no rights but was still awarded some land because 'People need to live together for the rest of their lives.' So the Moscow group does not feel that Restorative Justice is an import imposed from the West.

## **Training**

My brief with this group was to consolidate their existing skills in victim/offender mediation, and to introduce conferencing techniques. The course lasted six days. 16 people attended, mostly social workers or psychologists working with young people in youth clubs or in the courts. This meant that they were inclined to be offender-centred in their approach to victim/offender mediation, a common failing of new mediation services world-wide. Thinking about victims of crime seemed to be new to them.

I soon discovered that, apart from the course organisers, whose knowledge of Restorative Justice was quite sophisticated, the whole subject was new to most participants, as was small-group work and role play. Thus there was a tension between the needs of the inexperienced people, who needed more time for basic concepts, and the experienced leaders, who wanted me to move on faster. These problems were exacerbated by having to work through interpreters.

There were a few cross-cultural problems. The Russian tradition of criticising negatively seemed to run counter to the positive ideals of restorative justice and made it hard to see what was working well. In the role plays some participants acted the offender roles by refusing to speak, to 'set a challenge' - which meant we had difficulty learning the process, in order to evaluate its merits for the Russian situation.

Role plays scenarios were based on cases the leaders had actually dealt with:

1. Robbery of a small amount of money by one teenager from another teenager.
2. Use of an air pistol causing slight facial injury.
3. Theft of money from two friends by a teenager, to spend on drugs.

I used some of these to do more than one role play, to illustrate different models.

### **Case study: the air gun**

I was able to use this scenario to demonstrate the extra dimension that conferencing can bring.

In the morning we did a role play of a victim/offender mediation, in groups of five (offender, victim, two mediators, observer). The crime was the use of an air pistol by a 17 year old boy. He was given it by a friend and thought it was old and didn't work. He was 'mucking about' with it and pointed it at a passing tram. To his surprise it went off, breaking a window which landed a fragment of glass in a girl's face - a classmate, as it happened - causing a slight facial injury. Obviously the girl was very shocked. The police thought it was not an accident and arrested him, but the case was later referred to mediation.

The mediation enabled the victim and offender to discuss what had happened, and help the boy realise the distress he had caused. He was seen as a leader in his class and had previously seen himself as a hero. The small groups practised their skills as mediators and worked towards understanding regarding the effects of the crime and an undertaking about future behaviour.

However, there was a sub-plot to this situation and this enabled us to expand this scenario to a victim/offender conference in the afternoon. It involved the whole group, in playing roles of the conference coordinators, the victim's parents, the offender's parents and several classmates. The girl who had told adults of the offence had been ostracised by the rest of the group for 'grassing', and the conference coordinators facilitated a discussion between her, the offender, the victim and the rest of the group so that they could repair the damage to these relationships as well.

### **RUSSIA: Ekaterinburg**

Quite independently from the centre in Moscow, an organisation in Ekaterinburg (situated on the eastern side of the Ural Mountains, nearly in Siberia) also became interested in restorative justice. 'Chance' is an NGO founded by Vera Strebizh to provide legal advice

and other forms of help to young people in trouble with the law. They had linked up with the Children's Legal Centre in the UK (based at the University of Essex). They had become interested in restorative justice as a way of preventing juvenile offenders going to prison, and of providing something for their victims. On one of their visits to the UK, The Children's Legal Centre had organised a conference on Restorative Justice for them, in which I and others had taken part.

Their idea was to start a Mediation Lab, as a place where lawyers, psychologists and psychiatrists would be available for consultation. These professionals would make every effort to reach out-of-court decisions for cases involving juveniles. They saw the advantages of this as helping juvenile offenders and providing compensation to victims. At that stage they saw the expertise of these professionals as sufficient to provide the mediation service (Chance 1999).

After visits of several other restorative justice experts who spoke at conferences there, I was asked to deliver a victim/offender mediation skills training course as the final part of the 'partnership package'. The original plan for a five-day victim/offender mediation skills training was changed to a two-day conference by 'Chance', as this was the maximum time people could take off work. They had also asked for training in handling civil cases and schools work, so I prepared a two-day very basic general mediation skills course. I pared the handouts down to seven basic ones and sent them ahead to be translated.

The group of 30 (sat neatly in a block of desks) comprised mainly professionals who work with young people experiencing problems - homelessness, drugs, alcohol and crime. So they were police, social workers, psychologists, lawyers and teachers. Again, I was working through an interpreter.

At the end of the first day, I was doubtful whether they were getting the message. Group after group included in their feedback how the mediators advised the disputants to do this or that. But on the second day we devised a way for each group to report on the skills they were learning and they began to see the differences between mediation and their tradition of advising as professionals.

In the role plays, we used scenarios from Chance's work, and small groups also chose scenarios from their own work. Although my original brief had been restorative justice and victim/offender mediation, it seemed that most of their mediation and conflict resolution cases were family conflicts around teenagers, such as:

- ?? A child is abandoned when her parents go to prison for crimes connected with alcohol. A kind couple look after her. When her father comes out of prison, he wants to take her back, and has some legal rights. The couple want to keep her.
- ?? A teenager living on the street steals some money from a friend. The friend's parents want to report this to the police, but the friend does not.
- ?? The case below, which we simplified into a role play.

Chance's work was more like conflict resolution by 'experts' than mediation, but with the aim of listening to all sides first.

### **Case study: family conflict with teenager**

A girl of 15 ran away from home because of rows with her mother. She truanted from school and went drinking and had sex with other teenagers. She had a good relationship with her grandmother, but her mother did not allow any contact because she felt the grandmother interfered in the family too much. It was the grandmother who contacted 'Chance' for help. 'Chance' got in contact with the girl and helped to facilitate indirect contact with her parents (she refused to meet them directly). 'Chance' then referred the girl for hospital psychiatric/ psychological assessment because she seemed at risk living a 'street life'. They also worked with the parents and persuaded them to let the girl live with her grandmother. The girl returned to school and since then has moved on to college. 'Chance' continued to monitor the family and offer support.

### **CONCLUSION**

Restorative justice seems to have much to offer many different kinds of society. In most places it is seen as a way of helping to divert cases at the lower end of the criminal justice system, and tends to be offender-focused. However, it is also seen as a process with something to offer victims of crime, who get little or no attention in most state criminal justice systems. In all the projects described, the initiative has come from NGOs outside the state system. In the countries described, high rates of imprisonment are seen as disastrous for the offenders and offering little or nothing to victims, so that restorative justice is seen as a good way forward. However, much work needs to be done on the detailed workings of such schemes to ensure they have the desired effect.

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