

EXECUTIVE SUMMARY

Restorative justice after mass violence: Opportunities and risks for children and youth

Laura Stovel and Marta Valiñas

There has been growing interest in the role that restorative justice can play in providing justice after mass violence. With its emphasis on healing victims, perpetrators and communities; rebuilding relationships through accountability processes after a crime has been committed; and involving communities in providing justice, restorative justice seems ideal for the needs of post-conflict societies.

Recent truth commissions in South Africa, Sierra Leone and East Timor have adopted some elements of restorative justice, providing victims with sympathetic hearings, affirming that crimes committed against them were wrong, recommending reparations and, in East Timor, involving communities actively in reconciliation efforts. Other post-conflict efforts related to restorative justice include, restorative encounters and dialogues between former combatants/security forces and victims in Northern Ireland and South Africa, restorative justice training for thousands of people in Bougainville, and tradition-inspired justice and peacebuilding efforts in Northern Uganda.

In the West, restorative justice is often equated with face-to-face encounters between victims and offenders or with community-supported accountability processes that facilitate reintegration of offenders. These accountability processes usually occur after the offender has been identified or arrested. This highlights the fact that restorative justice encounters usually involve some coercion, often by the state. Societies emerging from mass violence usually lack the capacity or will to hold perpetrators accountable. Many peace deals include amnesty provisions; armed factions still threaten security; the police and judiciary are often weak or implicated in violence; and too many people are usually involved in the violence to make justice for all feasible.

Restorative justice highlights the role that community plays in holding young offenders accountable for their actions. This must be done in a way that reintegrates offenders into their respective communities while addressing their responsibility for crimes they willingly committed. As institutions of justice are often weak after mass violence, this community role is particularly important in such contexts.

The willingness of communities to hold offenders responsible for crimes will be heavily influenced by the nature of the conflict. Communities in an intra-communal conflict (a conflict within the community) will find it easier, and may be more willing, to hold offenders accountable for their crimes than communities involved in inter-communal (ethnic) conflicts. This is because in an ethnic or religious conflict, communities often support the actions of offenders and see them as heroes. Restorative justice practices are much more likely to be effective if we work with conflict dynamics, instead of formulating blanket policies.

Just as governments and judicial systems have difficulty holding offenders accountable where perpetrating groups still threaten peace, communities also have difficulty holding

offenders accountable even when they condemn their crimes. As a result, processes designed to help reintegrate offenders, which are sometimes called restorative justice processes, often lack the element of accountability while they focus on reintegration and unconditional acceptance.

Restorative justice must be seen, not just as a procedure involving an encounter between victims and offenders, but also as an approach to justice or as a guiding philosophy. While formal restorative justice encounters may often not be appropriate in dealing with serious war-related crimes, especially where accountability is lacking, a restorative justice approach suggests a range of actions that can be taken to help victims and offenders heal from crimes and restore social trust.

The biggest contribution may be in helping young victims heal and reintegrate on fair terms into their communities. Justice for victims may or may not include trials but a restorative justice perspective reveals that justice will never be limited to trials. Assessing justice needs of victims must begin with the open question: How can we help victims recover from this crime and reintegrate into his/her community on fair terms? By identifying the many reintegration and justice needs of victims we can see that many practical steps can be taken, even when accountability for offenders is not feasible.

While restorative justice stresses the role of the community in helping children, youth and their supporters recover from their losses, communities can – and often do – hinder fair integration and justice for victims. A key part of justice is to address community attitudes towards victims and helping communities support victims in their healing and reintegration in a way that does not further the injustice. This must be an explicit part of the justice picture.

A restorative justice perspective suggests that accountability helps offenders come to terms with their past actions and rebuild trust with communities they have harmed. In poor societies emerging from war, many people assert that offenders are too poor to provide redress. Victims therefore look to the government or NGOs to compensate them for their losses. Restorative justice helps us recognize that redress does not have to be exclusively financial. Everybody has the capacity to make amends for their harmful actions in a way that is meaningful to the victim – perhaps by helping an injured victim on his or her farm or helping rebuild a house.

Violent conflicts invariably cause a breakdown in a society's social fabric and in the relations of trust among its members. Justice processes must strive to help rebuild social trust. A restorative justice perspective is attentive to social harm caused by crime and aims to contribute to the restoration of relations at the national, group and interpersonal levels. This is particularly important in inter-communal conflicts where entrenched and high levels of mistrust between groups tend to persist over time.

While many forms of traditional justice in communitarian societies have similarities with restorative justice, the two should not be equated. Restorative justice is concerned with the rights and needs of individual victims and offenders yet many forms of traditional

justice emphasize community harmony over individual justice. Often, victims are asked to sacrifice justice for the sake of communal peace. Traditional justice may also reinforce problematic hierarchies that contributed to the war in the first place and exclude young people and women from decision making. Thus tradition-inspired justice processes must be analyzed on a case by case basis if they are to be declared equivalent to restorative justice.

The most affected parties in a conflict and in a given crime are often absent or given a mere secondary role in resolution and in the debate on how to move forward. This is even more so in the case of vulnerable individuals, including children and youth. This results in a fundamental disregard for the views of those most concerned and hinders their fair healing and integration. Restorative justice calls for a broad inclusion and active participation of all stakeholders in the process of addressing a conflict.