Examples Of Restorative Justice Applications In South Africa

In determining policy and thereafter considering legislation regarding restorative justice, it is crucial to study international and more particularly local case studies to ascertain the workability of restorative justice. In this regard, the following South African examples are considered to have already had an impact on policy formulation in South Africa.

1. Victim-offender mediation in the Magistrate’s Court, Greyton (KwaZulu-Natal)
   The primary goal of victim-offender mediation is seen as compensating the victim for the loss suffered as a result of the crime by making the offender take personal responsibility for making good his loss. The programme gives the victim an opportunity to tell the offender how the crime affected him or her. The offender, has the opportunity to apologize, explain his or her behaviour and make some reparation or pay compensation.

   In 1995 the process was introduced with the object of introducing a system whereby criminal cases of a less serious nature, eg. assault, malicious injury to property and theft of a petty nature would be resolved out of court. According to the magistrate, the advantages were obvious: not only would it mean less of these cases ending up in court, but also, primarily, victims were to be compensated for the losses sustained. It was agreed that the whole process would be totally voluntary and that no one would be pressurized to participate.

   The summarised process is the following:
   - In a case of a charge of assault or malicious injury to property, the complainant is interviewed to establish whether he or she is prepared to have the matter resolved and what he or she would require,
   - If the complainant indicates that he or she is prepared to resolve the matter, the accused is interviewed separately and the proposals of the complainant are then put to him or her,
   - If the accused agrees then arrangements are made as to how and when compensation will be paid, and the matter is postponed to a date on which the accused will be able to pay the compensation,
   - On the agreed date the accused pays the compensation to the complainant. The parties are assisted to make peace, shake hands and leave the court buildings in harmony, after the matter has been withdrawn in court.

   Should either party not be prepared to resolve their case in this manner then the matter proceeds to trial in court.

2. The National Institute for Crime Prevention and Reintegration of Offenders (Nicro)
   Nicro has been doing pioneer work in this regard for some years now. Its Diversion Project offers a second chance to young people charged with a criminal offence. In lieu of prosecution and conviction, the young person has to participate and comply with one or more programmes. Five programmes are available:
• Youth Empowerment Scheme – a six-part life skills programme spread over six weeks,
• Pre-trial Community Service,
• Victim Offender Mediation – for the victim and offender to work out a mutually acceptable agreement with the aim of restoring the balance,
• Family Group Conferences[37] – involving the families of the victim and the offender in the mediation process,
• The Journey Programme is aimed at high risk children and juveniles and involves life skills training, adventure education and vocational skills training.

3. Stepping Stones One Stop Youth Justice Centre, Port Elizabeth
Stepping Stones is a one-stop youth justice centre initiative of the government, consisting of a police officer (exclusively for children), a youth court (dealing only with children), and a welfare component staffed by probation officers and child and youth workers. A restorative justice approach is followed with an emphasis on:
• Re-uniting young people with their families, and preventing them from being separated from their families,
• Focussing on the least restrictive and most empowering sentence option,
• Giving the young people the opportunity to correct the wrongs committed by them.
Families and the community are involved through Family Group Conferences, with a primary emphasis being placed on the importance of the family as a socialization agent and environment most suitable to child rearing. As such services as far as possible focus on family reunification, taking into account the child’s best interests.
Stepping Stones believes[38] that the approach to young people in trouble with the law should focus on restoring societal harmony and righting wrongs rather than punishment. “The young person should be held accountable for his or her actions and where possible make amends to the victim”.
Restorative Justice is practised by:
• Implementing pre-trial diversion programmes,
• Involving and assisting victims of crime,
• Educating stakeholders about the principles of restorative justice,
• Implementing the least restrictive and most empowering sentence and placement options,
• Making use of sentence conditions such as community service, and diversions such as victim-offender mediation.
Stepping Stones is assisted by social workers from Nicro in its divergent processes and is pioneering an Inter-sectoral Steering Committee comprised of representatives from all the stakeholders involved, namely the Departments of Justice, Welfare, Correctional Services, the National Association of Child Care Workers, the Child Welfare Society and the University of Port Elizabeth.
The success of this project has resulted in legislation being drafted to empower the Minister of Justice and Constitutional Development to establish and maintain such one stop child justice centres.