Restorative justice: a viable option in the regional court?

From 13 – 15 November 2003, 202 regional magistrates gathered for a conference in Port Elizabeth on the abovementioned topic.

All regional magistrates, regardless of their affiliation were invited. The conference was initiated by the Association of Regional Magistrates of South Africa (ARMSA) and partnered by the Restorative Justice Centre and the Department of Justice and Constitutional Development: Directorate Child and Youth Affairs. The event was sponsored by the Swiss Agency for Development and Cooperation.

For many attending the conference the concept of restorative justice was unknown. The aim of the conference was therefore primarily to explain and explore the true essence of restorative justice.

Restorative justice and its aims can be defined in many ways; but it consists essentially of the following:

• A victim-centred response to crime that provides opportunities for those most directly affected by crime – the victim, the offender, their families, and representatives of the community – to be directly involved in responding to the harm caused by the crime.

• 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.

• Having the core values of healing, moral learning, community participation and caring, dialogue, forgiveness, responsibility and making amends.

It is clear that restorative justice can be applied only if the accused accepts responsibility for his/her actions and if the victim is prepared to participate in the process.

Once the concept was explained to them, many of the participants felt that in principle it was sound, but that it was surely not meant for serious criminal cases heard by regional magistrates.

The next challenge was therefore to explore the various well-known aims of punishment, namely deterrence, prevention, retribution and rehabilitation, and to ask ourselves as judicial officers whether these aims are absolute and indeed whether they are really achieved. In fact should they be the only aims, or should there perhaps be other aims such as restoration, even in serious cases?

We realised again that as judicial officers we should never fall into the trap of “standard-sentences”, it is our duty to individualize each sentence, to be sensitive to the needs of the offender and the victim, and to be aware that under appropriate circumstances restorative justice principles can be applied even when imposing sentence in serious cases. In appropriate circumstances the restorative option will just make more sense that any other option. It was clear that for a judicial officer to apply restorative justice principles is a challenge and we need a paradigm shift to enable us to be part of the healing process, if at all possible.

Many participants felt attracted to the concept of restorative justice because the victim seems to be properly involved, and acknowledged that without the victim’s participation restorative justice can never succeed. It was stressed that the victim has the right not to get involved in any process at all; and that he or she must not be pressurized into doing so. In many instances victims will not be willing to participate, and it will also not be appropriate in certain cases, for example those involving child victims.

The participants also realised that the victim’s rights and needs are currently not being properly addressed by the criminal justice system, and that this is a major cause for concern.

At the end of the conference we discussed practical case studies, and found that in some cases we already apply restorative justice principles to a certain extent, for example in correctional supervision conditions, suspended sentence conditions etc.

We also realized that one should focus on the suitability of the offender and the victim for the possible application of restorative justice principles and not so much on the crime itself. We came to the conclusion that under certain circumstances restorative justice principles can be applied regardless of the seriousness of the crime.

Restorative justice is still in its infancy in South Africa. The conference took us on an unknown but exciting journey. Its main purpose was to educate and to inform Regional Magistrates about restorative justice and the possibility of applying it in their daily task in court. The conference succeeded thoroughly in achieving this. It left us excited about another possible option with regard to sentencing although the infrastructure necessary to the proper application of restorative justice principles country-wide is not yet in place.

The conference ended with certain resolutions being taken. All the participants undertook to be mindful of and to further the concept of Restorative Justice in all its dimensions and to apply its principles and options when appropriate under the circumstances.

As judicial officers who claim to be serving the interests of justice, it is important that we should contribute, where possible, to the healing of relationships within the wider community and the healing of the community as a whole.

Only then will justice be done in its fullest sense.