



RESTORATIVE APPROACHES TO JUSTICE IN SOUTH AFRICA: HIGHLIGHTS AND CHALLENGES OF MULTI-SITE IMPLEMENTATION AND EVALUATION



Dr Hema Hargovan

Introduction



- Restorative justice (RJ) is one of the most significant developments in criminal justice practice and criminological thinking to emerge over the past two decades (Crawford, 2007: 1).
- It is a flexible model varying from country to country and area to area, depending on local needs and customs.

What is restorative justice?

- Term first used in 1958
- Albert Eglash: **3 types of criminal justice**
 - ▣ **Retributive justice (based on punishment)**
 - ▣ **Distributive justice (based on therapeutic treatment of offenders)**
 - ▣ **Restorative justice (based on restitution)**
- Punishment and treatment models focus on actions of the offender-deny victim participation and minimal involvement of offender.

Restorative justice

- Shift in focus where crimes are no longer viewed as a wrongdoing against a 'remote and impartial state but against individuals- 'specific victims in specific contexts'.
- Aims to 'empower victims by providing them with a forum in which their voices are both heard and respected'.
- Focuses the harmful effects of offender's actions
- Actively involves victims, offenders and community members in the process.

Restorative justice practices

- Key restorative practices:
 - ▣ **victim offender mediation (VOM)**
 - ▣ **victim offender conferences (VOC)**
 - ▣ **family group conferences (FGC).**
- Panel models
- Assistance programs
- ‘Maximalist’ definition of RJ- includes every action that is primarily oriented toward doing justice by repairing the harm that has been caused by the crime.
- A wide variety of services falls under this ‘tent’
- Many different responses can be plotted on the **‘continuum’**.

Enabling policies in SA

- TRC
- South African Constitution and Bill of Rights
- Probation Services Act 116 OF 1991
 - ▣ First piece of legislation specifically referring to restorative justice.
- Services Charter for Victims of Crime and Minimum Standards for Services of Victims of Crime
- The Child Justice Act 75 of 2008
- The Children's Act 38 of 2005
- Both pieces of legislation have adopted a human rights framework and uses RJ as one of its main engines by
 - ▣ promoting human rights of children
 - ▣ enhancing the prospects for a crime-free life in the future.
 - ▣ holding children responsible and accountable.

Youth diversion

- The Child Justice Act – provides for referral to VOM, FGC or ‘other’ restorative process
- **Key questions re. diversion programmes**
- **Does the programme have a restorative ethos?**
 - Does it address harms and causes?
 - Is it victim oriented?
 - Are offenders encouraged to take responsibility?
 - Are all stakeholder groups involved?
 - Is there an opportunity for dialogue and participatory decision making?
 - **Is it respectful to all parties?**

Draft RJ National Policy Framework (2010)

- Aims is to deal with crime in a more focused and coordinated manner by
 - Increasing community participation in the criminal justice system
 - Providing better support for victims and offenders
 - Supporting offenders in reintegrating back into society
- RJ is regarded as helpful and supportive of these broad aims.
- Guided by the Constitution of South Africa and the Medium Term Strategy Framework, the DOJCD's aim is to strengthen and support civil society.
- A whole host of strategic goals for the RJ sector are outlined.



- Strategic goal of DOJCD
 - Promote the rule of law and access to justice.
 - Build a RJ programme by adopting an integrated cluster approach to justice, crime prevention and security.
- Necessitates the building of partnerships between state and non-state actors (government and civil society).
- The cluster's main goal is: to work towards a transformative approach to justice, crime prevention and security
 - ***'by adopting a RJ approach, building and strengthening civil society organizations that promote, protect and advance human rights, particularly those giving special attention to the needs of the most vulnerable and marginalized'***

Restorative approaches to justice

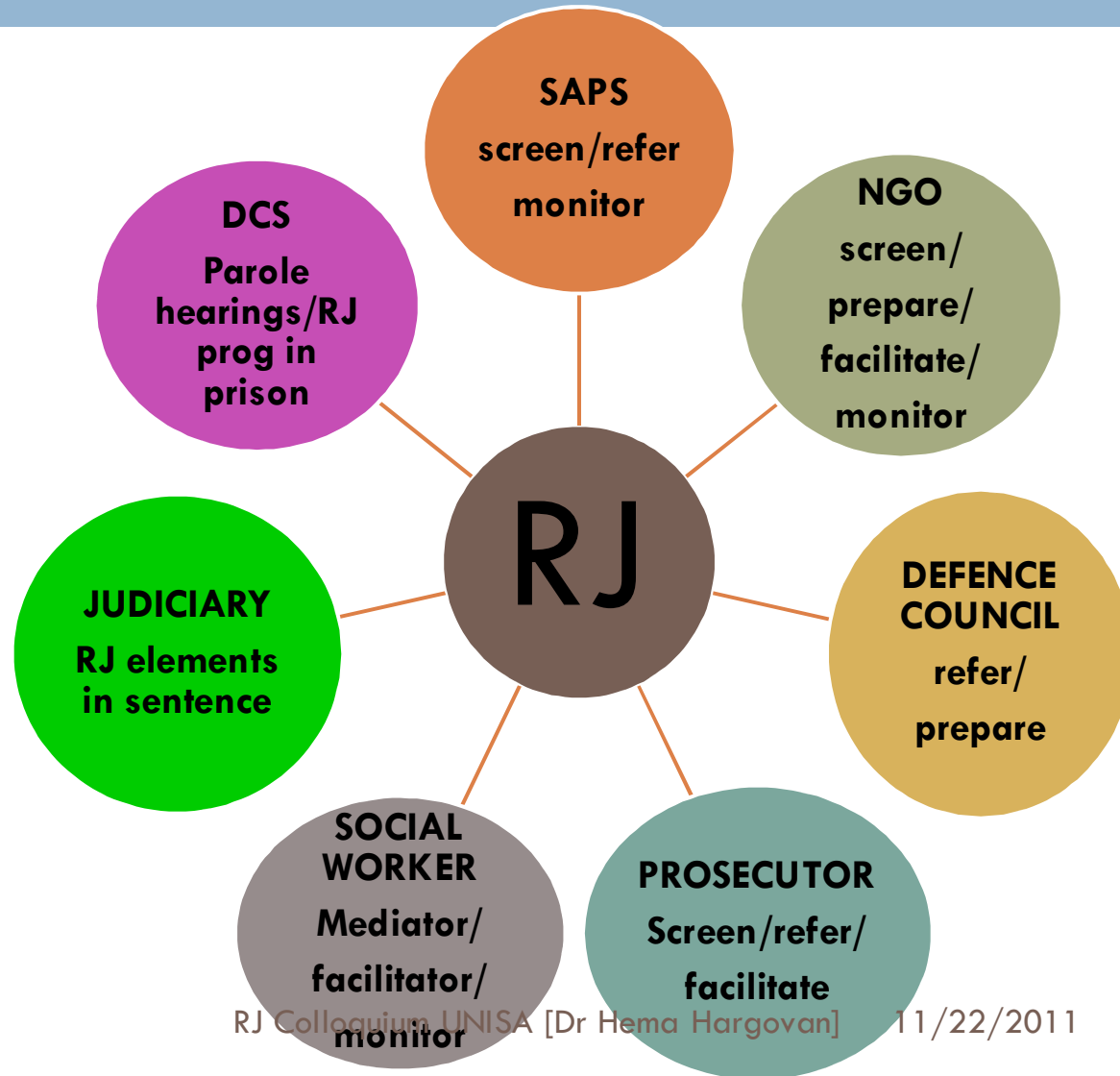


- Currently RJ approaches complement rather than replace the existing approaches in the criminal justice system.
- They represent a shift away from a purely punitive approach.
- Includes any number of initiatives that operate within a restorative justice mindset, philosophy or framework.
- Operate in the interest of both adult and youth offenders, within and outside the criminal justice system.
- Criminal justice practitioners can make their work more restorative by integrating as many restorative elements as possible.

Restorative justice and criminal justice

- RJ is characterised by uncertain engagement with CJS role-players and hesitant support of victims and community members.
- Relatively little experience in actually adopting RJ approaches and providing RJ services, particularly in the context of adult criminal justice.
- RJ interventions can be used at any stage of the criminal justice process.
- Collaborative arrangements with voluntary sector organizations sometimes alongside the CJS and sometimes completely independently, form the 'back bone' of RJ initiatives in South Africa.

Who are the role-players?



The prosecutor

- Prosecutors exert a huge influence over the administration of justice.
- Heartening to note a change of mind-set of the prosecutor.
- In the absence of legislation or other guidelines, prosecutors exercise considerable discretion in determining which cases are suitable for a particular RJ process.
- Most important role-player in terms of
 - ▣ Identification of cases for RJ
 - ▣ Screening and referring
- Decision to divert depends on the individual nature of the case or the circumstances of the accused.
- RJ processes may include diversion but diversion on its own, with no participation by the victim, is not necessarily restorative in nature.

KZN JARP

- The provision of RJ services is confined to a few well resourced and well established organisations (NICRO, Khulisa).
- The Justice and Restoration Programme was conceptualised, initiated and piloted in Phoenix in 2007.
- External evaluation of the pilot site in 2008.
- Extremely positive results with high levels of satisfaction in the services provided by JARP.
- Awarded European Union funding for extension of the services to the 6 justice clusters in KZN.
- Primary referral source is the NPA.

Research



- Analysis of community scans from each site
- Analysis of M&E reports from the sites
- In depth face-to-face interviews with site managers
- In-depth interviews with key stakeholders
 - NPA-Prosecutors
 - DOJCD
 - SAPS
 - Community members

Aims of the programme

- Address crime, violence and victimization in communities by adopting a restorative crime prevention approach.
- Increase and improve access to justice by addressing the needs of previously marginalized communities who experienced economic, gender, cultural and language barriers.
- Improve the efficiency and functioning of the criminal justice system by providing restorative justice services.
- Reduce recidivism by adopting a holistic crime prevention approach within a restorative context.
- Develop and empower community people to address crime, wrongdoing and conflict so that a sense of mutual accountability is built and community ownership is facilitated.
- Contribute to community cohesion and promoting democracy.
- Develop a provincial good practice model for replication in other provinces.

JARP Sites



- ▣ Phoenix
- ▣ Wentworth
- ▣ Umlazi
- ▣ Ixopo
- ▣ Newcastle
- ▣ Empangeni
- ▣ Types of crimes: common assault/ theft/ malicious damage to property/Domestic violence/

Phoenix

- Site profile: Predominantly Indian, township, low socio-economic
- Who refers?
 - ▣ Phoenix- prosecutors, SAPS, community, schools, walk-ins (approx 50%).
 - ▣ Verulam - prosecutors.
- Types of crimes: common assault/ theft/ malicious injury to property/Domestic violence?
- Courts in the area:
 - ▣ Phoenix
 - ▣ Verulam
- Referring court:
 - ▣ Phoenix
 - ▣ Verulam

Umlazi

- Site profile: Predominantly African, township, low socio-economic
- Who refers? Prosecutors
- Referrals for mostly petty/minor offences/domestic violence?
- Courts in the area:
 - Umlazi
- Referring court
 - Umlazi

Ixopo

- Site profile: Predominantly African, rural area, lower socio-economic, poverty, unemployment
- Who refers? Prosecutors; walk-ins
- Types of crime: minor/petty offences/domestic violence?
- Courts in the area:
 - ▣ Ixopo
 - ▣ Umzimkhulu
 - ▣ Ntsikeni
 - ▣ Highflats
 - ▣ Phungashe
- Referring courts:
 - ▣ Umzimkhulu
 - ▣ Ixopo
- Traditional leaders: training provided
 - ▣ No referrals

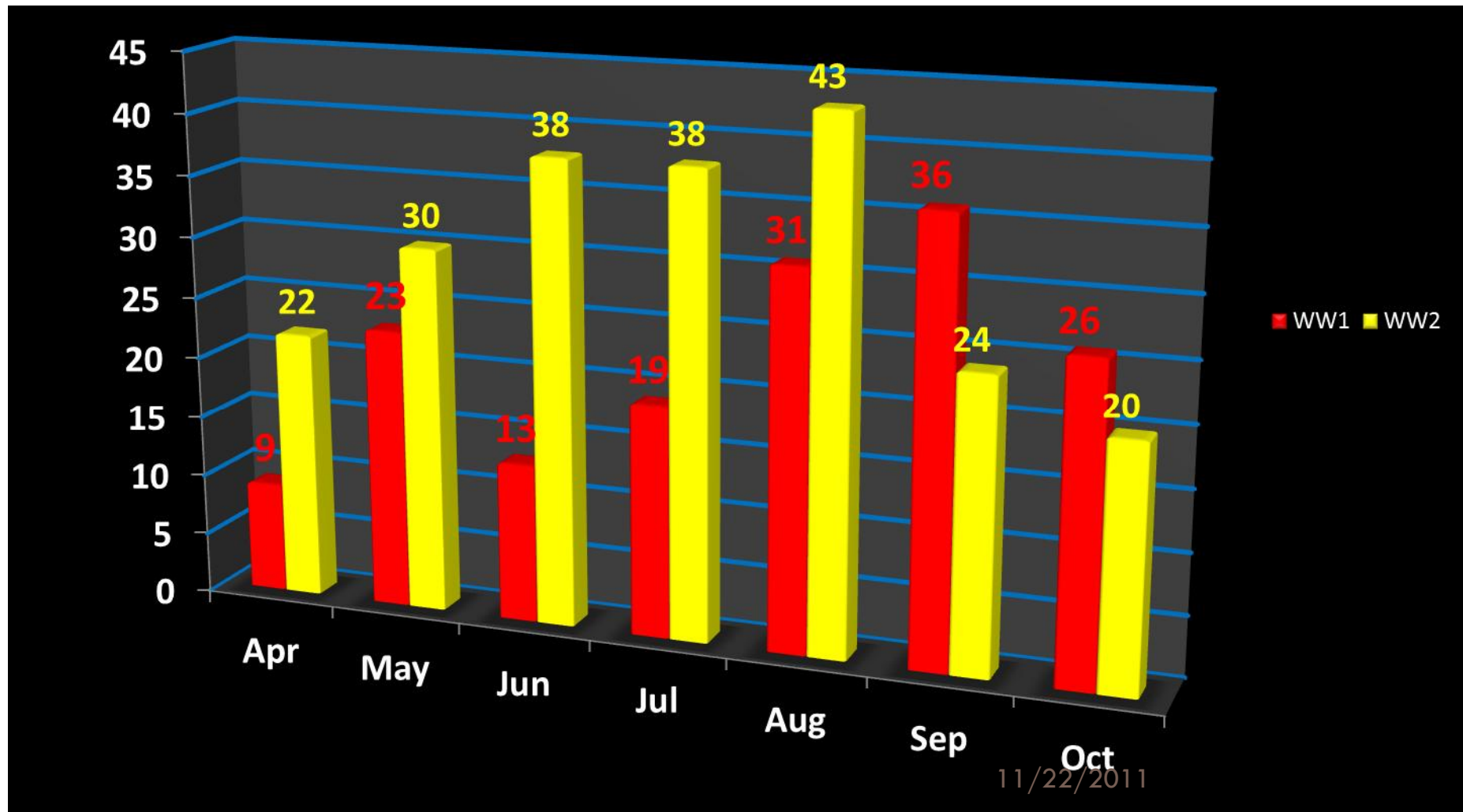
Empangeni

- Site profile: Suburban/rural
- Who refers? Correctional Services/Prosecutors
- Referral for minor/petty offences /domestic violence?
- Courts in the area:
 - ▣ Empangeni
 - ▣ Richards Bay
 - ▣ Ngwelezane / Mbonambi
- Referring courts:
 - ▣ Empangeni
 - ▣ Richards Bay
- Traditional leaders:
 - ▣ Training
 - ▣ No referrals

Newcastle

- Site profile:
- Who refers? Prosecutors, Correctional services
- Referral for mainly minor/petty offences/domestic violence?
- Courts in the area:
 - Newcastle
 - Madadeni
 - Charlestown
 - Dannhauser
- Referring courts:
 - Newcastle (91,7%)
 - Madadeni (6.5%)
 - Charlestown (1,8%)

Stats of ADRS/Mediations



Saved court hours

Actual hours

	APR	MAY	JUN	JUL	AUG	SEP	OCT
WW1	51:00	71:40	76:30	64:00	78:50	73:45	62:40
WW2	64:40	94:30	91:20	84:10	88:10	82:45	85:15

Saved hours

	APR	MAY	JUN	JUL	AUG	SEP	OCT
WW1	18	46	26	38	62	72	52
WW2	44	60	76	76	86	48	40

Saved court days

Actual court days

	APR	MAY	JUN	JUL	AUG	SEP	OCT
WW1	15	20	21	21	22	22	20
WW2	18	20	21	21	22	22	21

Saved court days

	APR	MAY	JUN	JUL	AUG	SEP	OCT
WW1	4.5	11.5	6.5	9.5	15.5	18	13
WW2	11	15	19	19	21.5	12	10

Benefits

- Wentworth:
- Many benefits (prosecutor)
 - ▣ Balance restored in the community
 - ▣ Victim afforded a voice
 - ▣ Justice is served
 - ▣ Case cycle time are reduced
 - ▣ Targets are met?
 - ▣ Justice personnel can focus on more serious matters
 - ▣ ***“If evaluated from the perspective of the State then RJ initiative extremely successful”***

Strengthening a multi-site RJ programme

- Understand the values and principles of RJ and appreciate its potential for both 'youth' and adults.
- Training and information sharing in the philosophy and practice of RJ.
- Facilitate and sustain community partnerships and consultation with key stakeholders.
- Establish report back and accountability mechanisms with key partners.
- Information sharing between stakeholders and the site managers at each site.
- Record and reflect on barriers and challenges at individual sites.

Strengthening a multi-site RJ programme

- Modify existing programmatic practices to cater for demographic differences and community needs without changing the essence of the programme.
- Communication and collaboration between other existing support agencies or NGOs in the vicinity of the site.
- Regularly reviewing implementation and identifying emerging issues.
- Comparative analyses between different applications and sites.
- Important to understand why and how particular restorative programmes work, if and when they do in specific contexts.
- This remains a challenge for all those working in this diverse field: policy makers, govt depts, NGOs, RJ practitioners, academics and RJ advocates.

Evaluation

- Evaluation of RJ initiatives address issues such as participant satisfaction, procedural justice and 'restorativeness' and outcomes.
- The important questions in evaluation are:
- **Should the evaluation of restorative justice and its implementation be undertaken from the perspective of the state?**
- **The State?** Here the broad multiple aims are to reduce recidivism, reduce crime and deliver justice fairly and efficiently.
- Reduce court backlogs so more attention can be paid to the more serious offences.
- **The individual?** Here minimum standards in processes, practices and outcomes are deemed important for lay participants
- main concerns are forward looking problem-solving, healing and prevention of repeat victimisation.

Challenges



- The future of RJ may well be determined by how effective it is compared to the conventional criminal justice system.
- However, recidivism rates as the sole measure of success cannot give a full picture.
- Important to also consider factors that may or may not contribute to a positive experience for victims.
- A key challenge is the issue of ‘ownership’- who designs, implements and monitors programmes intended to promote core restorative justice values.

State involvement?

- The question then is not whether the state has a role to play but rather, what its role should be?
- Address issues such as: participant satisfaction, procedural justice, ‘restorativeness’ (restorative quality), and outcomes.
- Provide victim services and support in addition to restorative justice services.
- Court infra-structure enhanced/modified to cater for provision of restorative services?
- Standards for practice that aim to serve as an important tool to secure “specific level of quality in relation to service delivery”.

Pitfalls



- Pitfalls of state sponsored RJ include:
 - Paying lip service to victims needs
 - Re-victimisation of victims
 - The phenomena of net widening
 - Erosion of due process for offenders
 - Formalizing of a process that derives its popularity from its informality.

Some critical issues

- **All justice practices including RJ, are limited.**
 - CJ is limited by its inability to listen to the accounts of crime and their effects on those directly involved.
 - RJ is limited by the abilities and interests of offenders and victims to think and act in ways that are restorative.
- **BUT...these concerns should not be grounds for dispensing with it.**
- Much depends on:
 - Partnerships and piloting
 - The role of all relevant state departments and civil society groupings in developing new programmes and strengthening existing ones
 - Keeping in mind the values, processes and desired outcomes of restorative justice

The way forward

- **Support offenders who take responsibility for their actions**
 - Government/community.
- **Create strong and consistent re-integrative resources for offenders such as skills development and employment opportunities.**
 - Government, NGOs, civil society, business
- **Strengthening resources for non-custodial sentences.**
 - Government, NGOs, communities
- **Develop judicial oversight of processes, agreements and outcomes**
 - government
- **Institute complaints mechanisms for individual participants**
 - State
- **Promote public education and awareness**
 - community, NGOs, state depts.
- **Emphasise ethical obligations of all role-players in respect of offenders, victims and communities**

Conclusion

- It is encouraging to note that many more cases were referred to RJ processes rather than merely diverted where a satisfactory outcome for the victim is often absent.
- The provision of RJ services is confined to a few well resourced and well established organisations (NICRO, Khulisa, RJI).
- The actual referral process is haphazard and dependant on-
 - ▣ capacity of individual courts
 - ▣ availability of social workers
 - ▣ NGOs as service providers
 - ▣ knowledge and training of prosecutors
- Referral of domestic violence cases presents challenges and requires further attention.

Sustainability

- **Sustainability of the RJ programmes?**
 - Greater commitment on the part of the state
 - More awareness raising and education of communities
 - Training of all role-players in the CJS
 - Training and capacity building of less resourced service providers
 - Introduce RJ values and principles in schools
 - Incorporate RJ modules in university curricula (law, social work, psychology)
 - Involvement of academia: internships for students in government and NGO sector
 - Be part of national debates on crime management and control.



THANK YOU!

**DR HEMA HARGOVAN
COMMUNITY DEVELOPMENT PROGRAMME
HOWARD COLLEGE
UNIVERSITY OF KWAZULU-NATAL**

hargovanh@ukzn.ac.za