

Restorative justice: Concepts and Practices
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Abstract

Restorative justice is a concept that has been defined, interpreted and practiced in many divergent ways. This paper will examine various theories of restorative justice emphasizing key issues they address, including mediation between victims and offenders and sometimes communities; remorse by the offender and pathways towards healing; forgiveness or mercy from the victims; and reparations for victims. It will then identify key practices that are often used to exemplify restorative justice around the world. Examples will be used from victim-offender mediation, family group conferencing, circle sentencing and truth and reconciliation. Finally, it will review a set of model principles of restorative justice that would bring together critical elements of the theories and practices previously presented.

Introduction

“[There is] the belief that there is nothing one man or one woman can do against the enormous array of the world’s ills — against misery and ignorance, injustice and violence.”

Robert F. Kennedy

The enormous array of the world’s ills that Robert Kennedy referred to are still in evidence today: the tremendous toll of crime, disasters, terrorism and war. Perhaps, never before has there been such a need to examine our ability and capacity to find resolutions to violence and to explore more deeply the demands of justice. The concepts underpinning the theories of restorative justice, if merged into a cohesive whole may provide a basis to start exploration of systems that incorporate ways to address the primary concerns of individuals and societies as they seek physical, mental, emotional and spiritual well-being. This paper will examine the concepts of restorative justice. It will then look at some examples of practices of

restorative justice. Finally it will explicate some proposed principles of restorative justice that merges many of the singular ideas from the concepts and practice into a cohesive whole.

Theories and Issues of Restorative Justice

Restorative justice generally refers to a paradigm that is a major alternative to retributive justice. It seeks to use peaceful approaches to disagreements, conflicts and violations of the social order. Most restorative justice theories explicitly or implicitly use crime as the primary point of reference. And, in most such theories the targets for the application of restorative justice are property and white-collar crime or violent offenses. However, there have been instances where communities have employed restorative justice to deal with what some call “minor crimes” such as truancy, loitering, bullying and vandalism or anti-social behavior. It is not based on an adversary system, but rather focuses on reconciliation among the parties and restores individuals and communities to the center of any controversies, rather than the state.

Restorative justice is not concerned only with just and balanced processes but with effective outcomes and consequences for those involved. It does not necessarily conform to predominant perspectives on the administration of law. If there are cultural differences within a nation or a community, or when the administration of law or the law itself is inconsistent with internationally recognized human rights, it can be a useful adjunct to other legal philosophies.

Some of the issues that arise from various theories and applications of putative restorative justice programs or practices are:

- response to victims’ suffering and trauma;
- concepts of shame and remorse;
- accountability and responsibility;
- appropriate responses to wrongdoing;
- forgiveness or mercy;
- relationships between victims, offenders and communities;
- the role of victims, offenders and communities in the processes of justice;
- reparations for harm done to victims or communities;
- reintegration of the offender or victim back into society;

- the relationship of restorative justice to common or civil law;
- the need for consensus in decision-making;
- and, communication styles.

Response to victims' suffering and trauma

Most practices in restorative justice seek to address victim needs and to understand victim perspectives. One problem with this is that many practitioners themselves do not accurately understand those needs and perspectives. Victims have two primary needs after the restoration of physical safety and the alleviation of imminent threat.

The first is a need for a sense of emotional safety in response to the fear of what happened and what might happen again. The second is a need for security is most often found in their cries for justice or fairness within the context of the trauma they experienced. A description of the traumatic impact of victimization is beyond the scope of this paper, but the emotional impact can be summarized as fear, anger, guilt, shame and grief. The cognitive reactions, synthesized with the emotional responses are manifested through a lack of a sense of control, confusion, frustration, powerlessness and an inability to understand not only what happened but why it happened.

Victims' perspectives on these two needs can only be felt and articulated by them. Since every experience is different, they are the only people who can tell their own story. They have their own memory of what happened, obscured by mental and emotional overlays as well as their personal history, but still their own memory. They need to be able to organize these feelings and thoughts into a working narrative so that they can begin to integrate this event into their lives.

The need for justice is a call by victims for social acknowledgment of their suffering and the fact that they have been violated. This is most clear in criminal, terrorist or war events, but is also an issue in survivors of disasters. It is remarkable how victims and survivors of all kinds of catastrophes can adapt to the situations. It is significant, however, that many succumb to despair. Barriers to achieving justice can seem and sometimes are insurmountable. This is why compensation or reparations are important and symbolic. It is also why justice processes should include such things as accurate and appropriate information on the event and the aftermath,

participation in processes of justice and expectations for the future in the social and political order.

A third need of victims is to regain control over their lives and a sense of power in shaping their future. Empowerment of victims is a crucial factor in victim services and rights. They need a voice, a role and sometimes an advocate in whatever happens to them in the aftermath of victimization. Their victimization occurred as a result of the offender taking power away from them and exerting control over their person or property. Power is often further diminished when the criminal justice system takes control over their lives in the “processing” of justice.

Restorative justice should look to helping victims reclaim their power and influence in designing their current and future lives.

Concepts of shame and remorse

Many theories and practices of restorative justice focus on shame for an offender. This is problematic in two ways. Shame as a result of an external force such as judgment by others may be resented by an offender. It may reinforce a desire by the offender to join with communities of offenders to rebel against the judges in anti-social ways, rather than seek more benign methods of re-integration into society. Being shamed can be considered punitive by both offenders and those who seek to shame others.

Shame is a cultural phenomenon. What is critical is whether one's action is the precipitator of shame or whether a person is deemed to be shameful. How one deals with shame has two aspects. It can be positive if it motivates one to modify behavior in conformance to positive relationships within a community and then the community and the person shamed puts the action that has been shamed in the past. But, the negative results of shame often outweigh positive motivations because it can result in anger and resentment because it is stigmatizing and degrading.

If shame comes from an internal feeling of conscience, usually as a consequence of feelings of guilt, then it may lead to a sincere way to finding something to show remorse.

Remorse is another complicated issue. For example, someone who says, “I am sorry,” in response to someone else who says, “You should be ashamed,”

or “You can’t know the grief you caused me.” Is that a response of remorse? Maybe, but in many cases it is a response to try to mitigate consequences. True remorse needs to take the form of actions. It might be manifested in questions from an offender such as, “What can I do to help repair the damage I have caused?”

Accountability and responsibility

These concepts are very blurred in the context of restorative justice. I think they should be distinguished. Responsibility should refer to how all peoples behave with respect to each other in both every day life and in their actions in the public sphere. They have a duty to uphold universal standards of human rights. (See Appendix A) The Universal Declaration on Human Rights, together with the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the so - called International Bill of Human Rights.

Accountability should refer to how someone is held to duties and standards of human rights. If a person violates such rights then there should be consequences. Such consequences should be considered in terms of the seriousness of any violation as well as the age of the violator and the impact on the victim. Consequences should also be focused on the outcomes for the victim, the community and tempered by education, compassion and the treatment of a violator with dignity.

Consequences should be based on mutual respect that can motivate people to act constructively because of a need to belong and feel part of a group. (See Dreikurs, R. and Maslow, A.) All people have a desire to feel they have value and to feel they can contribute to others. They also want to know that others appreciate them.

There can be two types of consequences: autocratic or relational. Autocratic consequences are perceived by offenders as dominating or demanding. Relational consequences allow offenders to seek ways to resolve their behaviors with those harmed. They focus on acknowledgment of harm and restitution for damage done and cooperation between all parties.

Appropriate responses to wrongdoing

Sentencing of an offender is the most common judicial/quasi-judicial forum for the appearance of restorative justice practices. It is the basis for

family group conferencing, circle sentencing and even for practices in transitional justice systems. Most such processes involve victims, families, communities and offenders in decision making. All parties should have an opportunity to participate in reasonable discussions of an outcome. Outcomes should involve reparations to the individual harmed and the community as a whole. Responses should not be punitive but rather educational and productive.

Forgiveness or mercy

“I have been bowled over by the incredible humility one has experienced from the victims, both black and white, who have suffered as much as they have. By rights they should have been hate-ridden by lust for revenge. They have exhilarated me by how ready they are to forgive. I have come to see that. Yes, of course you have an acknowledgment by the wrong doer that they have done something that was very wrong, that they owe to us confession so that the victim, the survivor be enabled to forgive. But I have come to believe fervently that forgiveness is not just a spiritual and ethereal thing unrelated to the real world, the harsh world out there. I have come to believe very fervently that without forgiveness, there is no future.”

Archbishop Desmond Tutu

Forgiveness is a central theme of some forms of restorative justice. Many victims and their advocates in the United States find this difficult to accept. I think the problem lies in the definition of forgiveness. If it means that victims must accept an apology from the offender and simply say “what is done is done,” it may be impossible for some victims. (A tangential problem is that victims may be made to feel guilty if they cannot bring themselves to forgive.) If forgiveness means releasing the rage against the violation, it may be more accessible. In this case it does not excuse the violation nor does it diminish it, but rather integrates it and its consequences into the narrative of the victim’s life and allows that life to go forward rather than be mired in a past than cannot be changed. Remaining in a state of rage locks one into a state of victimhood and a dependent relationship with the offender. It is corrosive of the human spirit and future relationships with others.

Forgiveness cannot and should not be demanded of a victim. Each must find his or her own definition. But, victims may be able to find mercy

for their offender when they employ their capacities of empathy or compassion. They might be able to say, “I cannot forgive you for what you took from me – my son’s life or my peace of mind – but I do not want you to die or go to prison for that deed, I want you to learn a better way of life.”

Relationships between victims, offenders and communities

If a community is to exist, it must be founded upon positive relationships. Restorative justice seeks to rebuild fractured relationships and to build trust between community members. Here, the key word is trust. If an individual or a community is harmed by the actions of another, it is hard to invest in trusting the other. Some action must be taken by the violator that shows a willingness to reconsider his or her actions. Some action must be taken by the violated persons that shows a willingness to accept the reconsideration by the violator and his or her desire to become a part of the community again.

An experimental program in the United States called “Puppies behind Bars” is an example of how wrong-doers can find ways to exhibit their remorse and to learn new ways to trust in themselves and others. It provides young puppies to inmates who learn to train the puppies as service dogs for veterans or to search for drugs. The inmates must take care of the puppies for up to two years (24 hours and 7 days a week). The puppies “reward” the inmates with unconditional love and trust. The inmates learn that their care insures the health and welfare of their dogs and the gratitude and respect of a community to which they will return.

The role of victims, offenders and communities in the processes of justice

An essential tenet of restorative justice is the need for all parties in the processes of justice to participate. Participation should be voluntary. Coercive or mandatory participation is counter-productive. Participation should be focused on respect for human dignity. This does not mean that participants cannot express emotions, indeed, it is an expectation that both victims and offenders may express emotions that are often painful and sometimes verbally abusive. However, an atmosphere of acceptance of such emotions can be maintained with clearly articulated goals of restoration and rules of civility.

Reparations for harm done to victims or communities

There are two primary reasons for providing reparations to victims or communities: restoring resources and acknowledgment of harm done. Both are concerns for restorative justice. They are complicated by the lack of resources, in many cases, to provide adequate recompense for harm done and to provide what recompense in a fair way.

- The first reason for reparations is to restore resources (usually monetary) to victims so that they can live a life that is similar to what they did before they suffered from crime or disaster. While this may seem simple if it involves replacing a bicycle that has been stolen, it is fraught with difficulties in the aftermath of major crimes or disasters. The initial difficulty is assessing the value of the loss. Values placed on human life are random and arbitrary. Arguably, the value of a family wage-earner is greater than a person who does not produce any financial contributions to a family. A counter-argument might place value on sentimental attachments or future expectations that rest with an elderly person or a child. Destroyed property may be more objectively appraised, but there, too, the perceived value may depend upon the ties a survivor or victim may have with the property or the environment around him or her.
- The second reason for reparations is to serve as a source of symbolic social recognition for victim suffering. Even if victims do not receive reparations that equate to what they think they lost, they can feel vindicated that the loss was acknowledged. A crime victim may feel a sense of justice upon receiving victim compensation even if the traditional system of justice did not respond in ways they had hoped. A disaster victim is acknowledged for his or her suffering through reparations.

The real question in reparations is who should be responsible for it. In crime or terrorism where there is a known perpetrator, it seems natural for the perpetrator to pay reparations. In the United States this is called restitution. Restitution is sometimes objected to because the perpetrator doesn't have the means to pay. Victim advocates often counter that argument by the fact

that if offenders have a choice between paying restitution or going to prison, they will find the money for restitution. A far better way of reasoning is that restitution is a debt owed and should be in response to all costs of the crime to victims. If they cannot pay immediately, restitution should be ordered and levied against whatever earnings the perpetrator may make over time.

A victim should have the right to select a restitution option that meets monetary issues, timing of pay back and any services that might be bestowed by the offender to the victim or the community. Options may include monetary payment over time for damage done rather than more immediate reimbursement. In a case in Virginia where the daughter of a couple had been killed by a drunk driver, they asked for payment of expenses, \$1 at a time every month until the expenses had been compensated. Their reasoning was that the offender would have to remember their daughter every month and every year while he wrote the check to them. Restitution should not include community service unless it is a public service of the victim's choice. As indicated below, community restitution is a different type of service from volunteer services performed by community members. Restitution should not include such things as writing a letter of apology to the victim or participating in treatment or educational programs. These are privileges and may be symbols of accountability but not what victims are owed by the offender or the state.

In addition, perpetrators should be ordered to pay restitution to the community. They have violated the rules of civilized conduct and in most cases cost the community monies for the processing of police, judicial and correctional involvement. Such monies should be repaid in either cash or services. I avoid the term "community service" since this is often confused with non-reparative services rendered by volunteers. The idea that perpetrators should provide both victim restitution and community restitution is controversial.

A final note on reparations revolves around the question of who should pay the victims. Restitution from the offender is clear but when does compensation from the state become efficacious? In situations where thousands or millions have

been harmed by the abuse of power or genocidal conduct, it seems that some government or an international body might take responsibility for the harm that was done and could offer some compensation to victims. This would be the highest form of acknowledgment of violations to the victims. Compensation from the state or nation also recognizes the duty of government to honor a social contract of protection. As Jeremy Bentham wrote:

“Has a crime been committed? Those who have suffered by it, either in their person or their fortune, are abandoned to their evil condition. The society which they have contributed to maintain, and which ought to protect them, owes them, however, an indemnity when its protection has not been effectual.” (*The Works of Jeremy Bentham*, p.589).

- While reparations can serve these two purposes, there is also the need to respond to victims in a just, expeditious, and equitable manner.

Most proponents of restorative justice would concede that a balance of power is part of the restoration process and therefore demands the centrality of the victim. However, those who see mediation as a restorative process may overlook this important feature. It is the need for victim centrality that calls for voluntary participation on the part of victims and that in discussions, victims have the first right to speak or present their opinions. If victims are not able to do this, they should have a representative to do so. The same is true when communities are victimized. Community members should have a right to present their opinions. This can become confusing when community members are part of an offending population such as in genocidal conflicts and civil wars. The principle still holds – all should be afforded an opportunity to present their views. Victims with grievances should be afforded the first opportunity, they should also be asked to listened to offenders with respect.

All justice processes take time and are rarely expeditious. This seems to be true in both retributive and adversarial systems as well as restorative and participatory systems. The need for participation

and procedures tend to delay rapid resolution of issues. What should be impeded in all processes is purposeful delay for the benefit of one party or another.

Equitable consequences are also rarely achieved. One person, as an offender, may be sentenced to death or life imprisonment, another may receive a sentence of a few months of jail for a similar crime. One person, as a victim may receive state compensation of \$10,000., another may receive compensation of \$1 million dollars. What is fair? Perhaps the only answer can come from victims or offenders who are involved in the determination of reparations. Do victims feel they were heard and that they can live with the results of decision-making? Do offenders feel they were heard and can live with the results of decision-making?

Reintegration of the offender or victim back into society

This is a complex issue. Restorative justice seeks to integrate both offender and victim with other societal and community members. Offenders are often given health, education and employment opportunities, if they behave. Victims are usually given none such offerings. Offenders may have misbehaved, but can become recalcitrant and outwardly remorseful. Victims did not misbehave, in most cases, but now are stigmatized and blamed for their own destruction. It is not unusual for a parent of a murdered child to be asked what they did to contribute to the murder of their child. It is not unusual for a sexual assault victim to be blamed for her victimization. It is not unusual for a family with a lost home to be censored for building a house in a hurricane zone.

Can reintegration work? Can a person ever think of his neighbor who raped his wife with fondness or without hostility? Can the wife ever think of her neighbor without fear or anger? I don't know the answer, but I do know that the lack of civility and actions of destruction are devastating to the human spirit. I don't know whether the impetus to restore relationships is enough.

The relationship of restorative justice to common or civil law

I see restorative justice as an alternative to Eurocentric and America-induced law. The criminal law under constitutional and statutory laws in the United States, Canada, Australia, New Zealand, the United Kingdom,

France, the Netherlands, Spain, Scandinavian countries and many countries that were colonized by Europeans have legal systems that rely upon a concept of “rule of law”. They don’t recognize much that might indicate the law may be wrong. Law can be wrong when it ignores basic human rights. It can be wrong when it allows or condones wife beating. It can be wrong when it allows children and women to be sold for profit.

Both common and civil law is retributive using punishment as a key for responding to offenders. It is questionable whether punishment is helpful to offenders or victims. In some cases, returning an offender to prison is welcomed by the miscreant. Consequences need to be tailored to the violator of laws and the Eurocentric models of justice do not seem to do that. Rather punishments are often articulated and meted out to follow philosophies of “just desserts” “an eye for an eye”, or “the punishment must fit the crime”.

Restorative justice can become an antidote to these dominant philosophies by emphasizing the need for the voices of victims to be heard and recognizing harm done, but also seeking to restore relationships and balance within a community.

The need for consensus in decision-making

Some models for restorative justice focus on the need for consensus in decision-making. If consensus means everyone is in agreement either about what happened to the victim or what should happen to the offender, perhaps consensus can be reached. If consensus is to be interpreted as an agreement on all points of a case, then it is usually not possible. The call for consensus most often is based on people agreeing to disagree and then conceding some points from their perspective.

For instance, a young child who is molested by a taxi-cab driver may be believed by four people in a jury of twelve in the United States. The jury may reach a consensus decision because those four people decide it is better to sentence the offender for a misdemeanor than a felony since the other eight have voted not to convict at all. This is not consensus. It is a pragmatic decision based on what is conceivably possible and, probably weariness. It may also be dependent on the consequences for the offender, but rarely does it focus on the consequences for the young girl.

A community resolution may make little difference. In some cases the community may sympathize with the girl, but her family and others may take the side of the offender due to his own relationships with the community.

Communication styles

How does communication affect restorative justice? In most restorative justice processes there are limits on communication styles. Parties are often cautioned to avoid interrupting others when they are speaking and to allow everyone a chance to participate without rancor or verbal abuse. These cautions emphasize the need for non-violent communication. Non-violent communication is a term of art for a process based on communicating with compassion and clear thinking. Self-expression is encouraged based on cognitive observations about experiences including bodily reactions. This does not focus on interpretation of events, but simply personal memories of the facts as the observer and participant saw them. Self-expression also involves articulating feelings in reaction to described experiences. In a restorative justice context, such communication should also address the motives of the offender and also the motives of victims in response to the offender. A final goal of communication is to clarify what is wanted from all parties with their respective capabilities. (See Rosenberg, M.)

Non-violent communications seek to avoid judgmental conclusions. Fear, anger, guilt or shame may be expressed by people engaged with each other but not used as a tool for coercing others to comply with responsibilities. Due to the dangers inherent in direct, expressive communications, facilitators are often used in restorative justice processes.

Non-violent communication styles can be particularly helpful in cross-cultural situations since there is an emphasis on listening to what each person is saying and trying to express. Story-telling and the use of parables is important for broadening an understanding of experiences and situations

Transitional justice can be restorative

At times restorative justice methods are used by international tribunals or in transitional justice systems in their design and implementation. Transitional justice is normally used to describe policies and institutions that provide nation-states with methods to address past human rights violations. Its goals are to help rebuild social trust and a sense of community. One of the

primary objectives of transitional justice is to end a culture of impunity in the face of corrupt and insidious rulers. Another objective is often touted as establishing democratic governance. The definition and perception of democracy is often highly disputed.

These are difficult goals for populations that have suffered oppression, civil conflict, torture or atrocities, war, and corruption of their justice system. The goals are even more complex since in many cases, the offending party was the state and the rule of law may very well be an abrogation of human rights. Justice in this context must be more than criminal justice. It must include social, cultural and distributive justice. Due to its relationship with human rights transitional justice must be focused primarily on victims.

Since these goals usually involve a change in government and policy, the obstacles to justice are many. The new government must find methods to deal with the perpetrators of the social violations and to construct a new social and political order. This requires a new justice process that can resolve conflicts without corruption and in accordance with the precepts of international human rights. Usually it involves some type of reparations for those harmed, although reparations may be severely limited due to lack of resources. Any type of reparations to whole populations inevitably confronts problems of equitable and expeditious distribution. Often memorials are erected to recognize the dead, wounded and traumatized. Memorials offer their own challenges since there is hardly ever consensus around the type and manner of memorialization. It is not unusual for educational programs to be developed to accommodate both the understanding of the past; acknowledge the suffering and design new pathways for the future.

Truth and reconciliation processes are most often referred as transitional justice systems. They involve most of the elements of restorative justice and they incorporate many of the problems. They aim to identify the truth of the past, but there can be no universal truth since each individual and collectively each community will have their own perspective on the past. Many times those who were a part of instituting violations also were victimized. Conflicts between populations can become transferred inter-generationally causing continuing sources of violence and violation.

Forgiveness or mercy is very difficult for whole populations to internalize and for individuals who have suffered extreme losses of home or property,

dismemberment or the death of families, friends and whole communities. Traditional sanctions such as imprisonment or executions are nearly impossible to implement universally. There are disparities in the application of sanctions and efforts to provide fairness and impartiality in decision-making. Reparations can never meet the cost or ameliorate the pain of damage done.

Practices in Restorative Justice

Victim-offender mediation

Victim-offender mediation usually takes place through a face-to-face meeting between the victim of a crime and the offender. It is monitored by a trained mediator who has met with both participants before hand. It is most often used after a court decision that has determined the guilt of the offender but has not determined the sentence. The mediation usually involves only the victim and the offender, although both may have a supporter if they desire in most systems. It is most often used as a part of deciding possible alternative court sanctions to prison confinement. In the United States some judges have ordered mandatory mediation. This has been resisted by the general victims movement which believes that mediation should only be used on a voluntary basis by both the victim and the offender.

Victim-offender dialogue

The purpose of victim-offender dialogue is not to resolve a conflict. It is predicated on several ideals: to promote the understanding of the impact of victimization on the victim; to help pursue answers to victims' questions such as why they were attacked or what happened to them; and to allow offenders to express any remorse they may have. In some models, victims are asked to make a statement of forgiveness to the offender(s) at some point in the discussions. Dialogue often takes place over time and can precipitate relationships between the victim and offender(s). Both victims and offenders spend time in preparatory sessions so that expectations are kept to a minimum and any safety concerns can be addressed. Volunteers are trained as facilitators for this process.

It is possible to see the use of victim impact panels in sentencing or in educational sessions with inmates as an extension of victim-offender dialogue. Victims have an opportunity to talk about the impact of the crime

they suffered from with offenders and to hear back from them. Victims may not have particular connection to an individual offender but still may find some comfort in telling their own stories.

Family group conferencing

Family group conferencing involves people connected to the victim, the offender, and others connected to both the victim and offender, for example, family members, friends, and community members. The use of family group conference most often appears in the juvenile justice system and is part of statutory schemes in New South Wales, Australia through the Young Offenders Act 1997, and in New Zealand under the Children, Young Persons, and their Families Act 1989.

Family group conferencing provides victims an opportunity to tell about their experiences during the crime and in the aftermath. They can develop their own narratives and understandings of the event. They can also ask questions about what happened and the perspective of the offender.

Family group conferencing uses public officials rather than trained volunteers as facilitators. It involves more community members in any meeting called to discuss the offense, its effects, and how to remedy the harm. By involving a broader range of people affected by the crime, it allows both primary and secondary victims to participate in decision-making. Community members can help to provide enforcement of decisions and ongoing support to victims and offenders.

Circle sentencing

Circle sentencing is a practice that has evolved from aboriginal concepts of justice and the practice of “talking circles” in aboriginal life to resolve conflicts and disputes. It is unique in its focus on holistic approaches to human understanding and human behavior. The philosophy behind circle sentencing is on healing, restoration of social harmony and balance within a community. It is significant that many aboriginal languages do not even have a word for “justice” as it would be defined in legal terms. Offenders may be viewed as “out of balance” within themselves – their physical, mental, emotional and spiritual dimensions are disconnected. The goal of sentencing is to help them restore their internal balance and adjust their behaviors so as to reduce harm to the community. In the restoration of

social harmony, balance must also be restored for victims. This may be done in a variety of ways but restitution, support and service for victims become community responsibilities. The centrality of the spiritual dimension of human nature is a major factor in finding new pathways of existence for offenders and victims.

Circle sentencing can follow different kinds of procedures but most involve addressing a crime or a social violation through community discussions that involve a wide range of representatives from the community, victims, offenders and their families. The discussions take place under a series of rules that allow participation from all members of the circle help ensure that communication is respectful and dignified. Some circles are conducted with spiritual rituals. Goals are often identified and established. Circles that initially are formed may come together again and again over time to modify goals and to adjust to new circumstances.

Most circles operate in cooperation with formal justice systems and make recommendations for formal sentences when necessary.

Truth and reconciliation commissions and panels

The Truth and Reconciliation Commission in South Africa is probably the most famous such body. It was established after the abolition of apartheid primarily to try to reconstruct the truth of harm that was done under the apartheid system. Violations of human rights were the central targets of the investigations that were completed. Victims of apartheid violence were encouraged to come before the Commission and tell their stories so that they would be on record and know that the Commission listened to them. These stories can be used to revise official histories of violent periods as well as serve to provide lessons from the past to help create new and more just methods of governing. The value of giving testimony has often been found to be therapeutic for victims.

Perpetrators of violence could give testimony and request amnesty from prosecution, if it were determined that the perpetrators fully disclosed their part in violence and were remorseful.

While the Commission has often been used as a model for other similar commissions, there has been criticism of it as well. The primary criticisms have focused on the provisions for amnesty, the sense that justice

was not done in many cases, and the fact that in a multi-linguistic environment, many stories lost some of their impact in translation.

There have been seventeen countries that have set up truth commissions with varying degrees of success. Most have community members and are parallel to other formal justice processes so that in extraordinary cases, perpetrators can be referred to the formal justice system for prosecution and formal sentences when amnesty is thought to be inappropriate

Gacaca

Gacaca courts were established in Rwanda after the 1994 genocide. They are similar to truth commissions but function somewhat differently. The goals of the gacaca courts include:

- To let the truth be known about what happened during the genocide
- To accelerate genocide trials and to deal with nearly 150,000 prisoners incarcerated after the genocide without trials
- To eradicate the culture of impunity
- To promote reconciliation among Rwandans and the strengthening of their unity.

Gacaca proceedings are well defined. Community judges are elected to serve as the reviewing body for alleged offenders. The panels of judges can range in number from 8 to 12. Lower-level offenses are all dealt with in Gacaca – (these offenses do not include those committed by leaders of the genocide or acts of rape. Those are dealt with in the classic justice system).

Community members are required to attend a Gacaca court when it is held in their area. To ensure attendance, all shops and businesses are shut down in the designated area. This can mean an assemblage of hundreds of people who may testify about their observations of genocidal acts. Victims particularly are asked for their input.

Offenders are asked to state the facts of their offense(s) for the judges. Judges can ask questions of the offenders and request input from victims. The judges then make a determination regarding penalties and sanctions for the offenders. Lawyers are not allowed in the gacaca courts so there has been some concern that alleged perpetrators may not have adequate protections for their rights and interests.

A special feature of the Gacaca courts is the concession programme. This program requires an accused to name of all those who participated along with him or her in return for a lighter sentence. This increases the numbers of accused that would be subject to trials and would probably make it impossible to bring all who are accused to account in the process.

While reconciliation is one of the goals of gacaca, it is unclear whether it is being accomplished. Many victims and witnesses have been intimidated if they choose to speak or testify and there have been reports of retaliation through murder or rape.

Model Principles of Restorative Justice

Having reviewed concepts of restorative justice and some commonly used practices of restorative justice, some key principles can be gleaned.

1. The first principle of restorative justice is that justice must be conceived not only as the doing of justice for an offender but also as the doing of justice for the victims. This means that a violation of the social order must be seen as an offense against society generally - the traditional “social

compact” view – and as an action that harms individuals. The focus is on any wrong, even a noncriminal offense, which contributes to the weakening of social ties or interferes with community living. The victims of such violations may be defined as the individual whom, in the United States, is often described as the complaining witness in a criminal prosecution, but they include family and community members harmed by the wrongdoing, as well.

2. The second principle is that, while governments may establish criminal and civil laws that set the standards of behavior for the general society, communities should be the locus of implementing those standards in order to be responsive to the cultural nuances that vary by racial, ethnic, geographic, religious, and other backgrounds – provided that the norms of international human rights are maintained.

3. Third, the “community” from this perspective is more than a cultural filter for sorting out and prioritizing crimes in its midst; the community and its justice partners are to become engaged in defining and attacking community problems, a process that strengthens the important role of community institutions in a democratic society.

4. The fourth principle is that, by responding to malfeasance, crime and violence skillfully, quickly, and locally, those providing justice interventions improve the chances that offenders and their victims alike will be restored to harmonious relationships with their neighbors.

5. The fifth principle is that people, individually and collectively, have relationships to each other and consequent responsibilities. These responsibilities include treating each other with dignity and compassion and pursuing peace and justice within the social order. These can be framed as reasonable expectations to three audiences:

- *Offenders should be held accountable for their actions.*

Accountability based on their responsibility to the victims and community. It is sometimes thought to include retribution; it need not and probably should not. Agreements by offenders to participate in treatment programs with follow-up supervisions, abide by restrictions of privileges, home confinement, temporary exclusions from community functions, work details, service commitments and the like may be more appropriate signs of accountability.

Accountability should include full voluntary restitution to victims. Restitution is often mandated by law, and when that is so, a full accounting of damages, past and projected should be determined. It should remain enforceable until fulfilled. Restitution should be acknowledged not as a punishment but rather an enforceable repayment of a loan or the expungement of any other debt, however incurred.

Accountability should also involve restitution to the community as a whole. A violation of the social order through crime or other proscribed behavior harms the community in which the wrongdoing took place. It rents the social fabric of a neighborhood and drains the larger society's resources. Offenders should be held to perform constructive actions on behalf of the community. While much of the law in the United States and the criminological literature calls this kind of activity "community service," the appropriate name should be "community restitution" in order to the confusion of these activities with services voluntarily given by law-abiding citizens.

Accountability also should involve asking the offender to demonstrate remorse. The act of saying "I'm sorry" may seem trivial in the aftermath of a violent crime, but if the act is accompanied by contrition, it can sometimes help victims begin to reconstruct their own lives. Victims often feel that somehow they have contributed to their own victimization. Demonstrations of remorse help to vitiate the victims' self-blame. Remorse may also be coupled with admissions of shame for violating the social order. Plainly, to be ashamed of one's actions is both to acknowledge that the actions were blameworthy and to be sorry that they caused harm. Many offenders cannot find within themselves the sorrow needed to express genuine remorse, yet can honestly take responsibility for having broken a legitimate societal norm.

- *Victims have responsibilities to the community.*

The victims' rights to participate or be involved in decision-making come with parallel responsibilities for participation. The responsibilities which we may fairly ask victims to accept are nothing more than the responsibilities of community membership that we should all assume in the justice arena. We should report violations of the social order to the proper authorities, at least when we believe it safe to do so; we should support legal or social change to improve the development and implementation of justice in the future.

- *The affected communities also bear responsibilities.*

These responsibilities are of two kinds - those of the state, and those of the local community or neighborhood. The responsibilities of the state should include ensuring that appropriate personnel, rules, laws and policies are in place in order to effect a just response in most cases. These should seek to provide parallel rights and services for victims to those available to accused and convicted offenders,

The responsibilities of the local community should include establishing and maintaining a practical system of programs and procedures that support justice services.

6. The sixth principle is that justice should aspire to the restoration of both individual dignity and community relationships.

- *Restoration for offenders involves an act of volition on their part.*

The act of will includes their willingness to acknowledge their participation in the violation of the social order, their acceptance of accountability, their act of contrition through remorse and shame, and their act of reparations to victims and the community.

Communities support the restoration of offenders by providing them with opportunity to reintegrate with their community with appropriate help - such as medical or substance abuse treatment, or social or employment skills, where possible. Most important if the offenders have accomplished the various tasks set for them by the community and the victims, there should be an acknowledgment of their status as a community member. It does not mean that society or victims have to forgive their past behavior or exonerate them, only that they should support opportunities for offenders to construct a new life as law-abiding citizens. Indeed, in some traditional societies where reintegration is an integral part of the justice system, community members are not allowed to talk of the crime or the punishment if the offender successfully fulfills the conditions of accountability.

It is not proposed that all offenders deserve an opportunity for restoration. Some may be excluded from restoration permanently through imprisonment, or a form of exile or ostracism, because the offense or pattern of offensiveness was serious enough that their return would only continue the process of community destruction.

- *Restoration for the victim should be based on reintegration of relationships and appropriate assistance.*

This involves opportunities for crisis and supportive counseling; full restitution from the offender; and, where that is not forthcoming, immediate,

compensation from the state. The community should make a commitment to assist victims in restoring balance in their lives through social and spiritual means. Medical or substance abuse treatment should be available, as well as vocational or other forms of rehabilitation. And victim restoration should include participation rights roughly equal to those of the accused in any justice proceedings (whether in the formal court process or other alternative proceedings).

- *Restoration for the community should involve participation in the processes of justice*

Community members should be provided with the opportunity to be involved with the establishment or reestablishment of community structures as the community adjusts to the impact of the social violations. Depending upon the nature of the violations, some community members may need crisis or counseling assistance. Particular attention should be paid to rebuilding spiritual connections and traditions. Community members should be encouraged to become involved in decision-making at all stages of the justice system.

Conclusion

Restorative justice is difficult to define or describe. But, I believe the principles that underlie the concepts and practices of such justice are sound. They present challenges in implementation. There are also barriers and resistance to the ideas. They require a willingness to change our understandings of victims, perpetrators, communities and justice itself. Change takes time and often creates fear, so it will take determination to confront our choices and increase our compassion and respect for all those we deal with.

Someone once said that “courage is nothing less than the power to overcome danger, misfortune, fear, injustice, while affirming that everything is meaningful even if it is beyond our understanding.” Given the evils that Robert Kennedy described, I think we need to draw upon our courage and work to establish a world of harmony, restoration of victims, restoration of offenders, restoration of communities and restoration of justice.

References

- Barnett, R.E. (1977) "Restitution: A new Paradigm of Criminal Justice", *Ethics. An International Journal of Social, Political and Legal Philosophy*, Vol. 87 no. 1.
- Bazemore, G. and Umbreit, M. (1994) *Balanced and Restorative Justice Program Summary*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency.
- Braithwaite, J. (1989) *Crime, Shame and Reintegration*. Cambridge University Press.
- Dreikurs, R. with Soltz, V. (1964) *Children: The Challenge* E.P. Dutton, NY, 1964.
- Dreikurs, R. and Grey, L. (1968/1993). *Logical Consequences: A New Approach to Discipline*. New York: Plume.
- European Forum for Restorative Justice (2009) "Restorative Justice, Restorative Practices". Report Seminar, June. Leuven.
- Galaway, B. and Hudson, J. (eds.) (1996). *Restorative Justice: International Perspectives*, Monsey, NY/Amsterdam
- Groenhuijsen, M. (2004) "Victims' Rights and Restorative Justice: Piecemeal Reform of the Criminal Justice System or a Change of Paradigm?" paper publication.
<http://www.iovahelp.org/About/MarcGroenhuijsen/2004VictimsRightsAndRestorativeJustice.pdf>
- Hamber, B. (1999) "Do sleeping dogs lie? The psychological implications of the Truth and Reconciliation Commission in South Africa."
<http://www.csr.org.za/papers1dog.htm>
- Maslow, A.H. (1987). *Motivation and Personality*. 3rd ed., New York, NY: Harper & Row.

Maslow, A.H. (1994) *Religions, Values, and Peak Experiences*. New York, NY: Penguin, Arkana.

Maslow, A.H. (1993) *The Farther Reaches of Human Nature*. New York, NY: Penguin, Arkana.

Maslow, A.H. (1968) *Toward a Psychology of Being*. New York, NY: Van Nostrand Reinhold, 2nd ed.

McElrea, F.W.M. (1994) "Restorative Justice: The New Zealand Youth Court: A Model for Development in Other Courts?" *Journal of Judicial Administration*, 4.

Rosenberg, M. (2005) *Speak Peace in a World of Conflict: What You Say Next Will Change Your World*. Encinitas, CA: PuddleDancer Press.

Ross, M. and Miller, D.T. (eds). (2002) *The Justice Motive in Everyday Life*. Cambridge University Press.

Ross, R. (1992) *Dancing with a Ghost: Exploring Indian Reality*. Canada: Reed Books.

_____. (1996) *Returning to the Teachings: Exploring Aboriginal Justice*. Canada: Penguin Books.

Taylor, A.J.W. (ed.) (2006) *Justice as a Basic Human Need*. NY: Nova Science Publishers.

Truth and Reconciliation Commission of South Africa. (2002) Report Vol. 7, Cape Town: Juta.

Umbreit, M., with Coates, R.B. and Kalanj, B. (1994) *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. NY: Criminal Justice Press.

Van Dijk, J.A., Schoutrop, M.J., Spinhoven, P. (2003) "Testimony Therapy: Treatment Method for Traumatized Victims of Organized Violence." *American Journal of Psychotherapy*, 57(3), pp. 361-73.

Walgrave, L. (ed.) (1998) *Restorative Justice for Juveniles. Potentialities, Risks and Problems*, Leuven University Press.

Waller, I. (2006). *Less law, more order: The truth about reducing crime*. Westport, Connecticut: Praeger

Weine, S., et.al. (1998) "Testimony Psychotherapy in Bosnian Refugees: A Pilot Study," *The American Journal of Psychiatry*, December, pp. 1720-6.

The Works of Jeremy Bentham. (1962) New York: Russell and Russell.

Zehr, H. (1990) *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.

Appendix A

Universal Declaration of Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,
The General Assembly

proclaims

This Universal Declaration of Human Rights

as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor

shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent

of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right to equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness,

disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948)

Adopted on December 10, 1948

by the General Assembly of the United Nations (without dissent)

International Law



[CHARTER OF THE UNITED NATIONS](#) - 
[format](#)

THE INTERNATIONAL BILL OF HUMAN RIGHTS

- [Universal Declaration of Human Rights 1948](#)
- [International Covenant on Economic, Social and Cultural Rights 1966](#)
- [International Covenant on Civil and Political Rights 1966](#)
- [Optional Protocol to the International Covenant on Civil and Political Rights](#)
- [Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty](#)

THE CORE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS and their monitoring bodies

There are nine core international human rights treaties. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

	<i>Date</i>	<i>Monitoring Body</i>
ICERD International Convention on the Elimination	21 Dec 1965	CERD

	<u>of All Forms of Racial Discrimination</u>		
<u>ICCPR</u>	<u>International Covenant on Civil and Political Rights</u>	16 Dec 1966	<u>CCPR</u>
<u>ICESCR</u>	<u>International Covenant on Economic, Social and Cultural Rights</u>	16 Dec 1966	<u>CESCR</u>
<u>CEDAW</u>	<u>Convention on the Elimination of All Forms of Discrimination against Women</u>	18 Dec 1979	<u>CEDAW</u>
<u>CAT</u>	<u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u>	10 Dec 1984	<u>CAT</u>
<u>CRC</u>	<u>Convention on the Rights of the Child</u>	20 Nov 1989	<u>CRC</u>
<u>ICRMW</u>	<u>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</u>	18 Dec 1990	<u>CMW</u>
	<u>International Convention for the Protection of</u>	20 Dec 2006	

	<u>All Persons from Enforced Disappearance</u>		
<u>CRPD</u>	<u>Convention on the Rights of Persons with Disabilities</u>	13 Dec 2006	<u>CRPD</u>
<u>ICESCR</u> <u>- OP</u>	<u>Optional Protocol of the Covenant on Economic, Social and Cultural Rights</u>	10 Dec 2008	<u>CESCR</u>
<u>ICCPR-</u> <u>OP1</u>	<u>Optional Protocol to the International Covenant on Civil and Political Rights</u>	16 Dec 1966	<u>HRC</u>
<u>ICCPR-</u> <u>OP2</u>	<u>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty</u>	15 Dec 1989	<u>HRC</u>
<u>OP-</u> <u>CEDAW</u>	<u>Optional Protocol to the Convention on the Elimination of Discrimination against Women</u>	10 Dec 1999	<u>CEDAW</u>
<u>OP-</u> <u>CRC-</u> <u>AC</u>	<u>Optional protocol to the Convention on</u>	25 May 2000	<u>CRC</u>

<u>OP- CRC- SC</u>	<u>the Rights of the Child on the involvement of children in armed conflict</u>	25 May 2000	<u>CRC</u>
<u>OP- CAT</u>	<u>Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</u>	18 Dec 2002	<u>CAT</u>
<u>OP- CRPD</u>	<u>Optional Protocol to the Convention on the Rights of Persons with Disabilities</u>	12 Dec 2006	<u>CRPD</u>

UNIVERSAL HUMAN RIGHTS INSTRUMENTS

In addition to the International Bill of Rights and the core human rights treaties, there are many other universal instruments relating to human rights. A non-exhaustive selection is listed below. The legal

status of these instruments varies: declarations, principles, guidelines, standard rules and recommendations have no binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to States in their conduct; covenants, statutes, protocols and conventions are legally-binding for those States that ratify or accede to them. Information on the [status of ratification](#) of selected instruments is available [here](#). Printer-friendly versions of these instruments may be downloaded from the [CD-ROM Compilation of Universal Instruments](#) accessible online [here](#).

WORLD CONFERENCE ON HUMAN RIGHTS AND MILLENNIUM ASSEMBLY

- [Vienna Declaration and Programme of Action](#)
- [United Nations Millennium Declaration](#)

THE RIGHT OF SELF-DETERMINATION

- [United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples](#)
- [General Assembly resolution 1803 \(XVII\) of 14 December 1962, "Permanent sovereignty over natural resources"](#)
- [International Convention against the Recruitment, Use, Financing and Training of Mercenaries](#)

RIGHTS OF INDIGENOUS PEOPLES AND MINORITIES

- [Declaration on the Rights of Indigenous Peoples](#)

- [Indigenous and Tribal Peoples Convention, 1989 \(No. 169\)](#)
- [Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities](#)

PREVENTION OF DISCRIMINATION

- [Equal Remuneration Convention, 1951 \(No. 100\)](#)
- [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#)
- [International Convention on the Elimination of all Forms of Racial Discrimination \(ICERD\)](#)
- [Declaration on Race and Racial Prejudice](#)
- [Convention against Discrimination in Education](#)
- [Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education](#)
- [Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#)
- [World Conference against Racism, 2001 \(Durban Declaration and Programme of Action\)](#)

RIGHTS OF WOMEN

- [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#)
- [Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW-OP\)](#)
- [Declaration on the Protection of Women and Children in Emergency and Armed Conflict](#)
- [Declaration on the Elimination of Violence against Women](#)

RIGHTS OF THE CHILD

- [Convention on the Rights of the Child \(CRC\)](#)
- [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography \(CRC-OPSC\)](#)
- [Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict \(CRC-OPAC\)](#)
- [Minimum Age Convention, 1973 \(No. 138\)](#)
- [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#)

RIGHTS OF OLDER PERSONS

- [United Nations Principles for Older Persons](#)

RIGHTS OF PERSONS WITH DISABILITIES

- [Declaration on the Rights of Mentally Retarded Persons](#)

- [Declaration on the Rights of Disabled Persons](#)
- [Principles for the protection of persons with mental illness and the improvement of mental health care](#)
- [Standard Rules on the Equalization of Opportunities for Persons with Disabilities](#)

HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: PROTECTION OF PERSONS SUBJECTED TO DETENTION OR IMPRISONMENT

- [Standard Minimum Rules for the Treatment of Prisoners](#)
- [Basic Principles for the Treatment of Prisoners](#)
- [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#)
- [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#)
- [Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)
- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(CAT\)](#)
- [Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(OPCAT\)](#)
- [Principles of Medical Ethics relevant to the Role of Health Personnel,](#)

[particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)

- [Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)
- [Safeguards guaranteeing protection of the rights of those facing the death penalty](#)
- [Code of Conduct for Law Enforcement Officials](#)
- [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#)
- [United Nations Standard Minimum Rules for Non-custodial Measures \(The Tokyo Rules\)](#)
- [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\)](#)
- [Guidelines for Action on Children in the Criminal Justice System](#)
- [United Nations Guidelines for the Prevention of Juvenile Delinquency \(The Riyadh Guidelines\)](#)
- [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#)
- [Basic Principles on the Independence of the Judiciary](#)
- [Basic Principles on the Role of Lawyers](#)
- [Guidelines on the Role of Prosecutors](#)

- [Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions](#)
- [Declaration on the Protection of All Persons from Enforced Disappearance](#)
- [Basic Principles and Guidelines on the Right to a Remedy and Reparation](#)
- [International Convention for the Protection of All Persons from Enforced Disappearance](#) (not yet into force)

SOCIAL WELFARE, PROGRESS AND DEVELOPMENT

- [Declaration on Social Progress and Development](#)
- [Universal Declaration on the Eradication of Hunger and Malnutrition](#)
- [Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind](#)
- [Declaration on the Right of Peoples to Peace](#)
- [Declaration on the Right to Development](#)
- [Universal Declaration on the Human Genome and Human Rights](#)
- [Universal Declaration on Cultural Diversity](#)

PROMOTION AND PROTECTION OF HUMAN RIGHTS

- [Principles relating to the status of national institutions \(The Paris Principles\)](#)
- [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

MARRIAGE

- [Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#)
- [Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages](#)

RIGHT TO HEALTH

- [Declaration of Commitment on HIV/AIDS](#)

RIGHT TO WORK AND TO FAIR CONDITIONS OF EMPLOYMENT

- [Employment Policy Convention, 1964 \(No. 122\)](#)

FREEDOM OF ASSOCIATION

- [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)
- [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)

SLAVERY, SLAVERY-LIKE PRACTICES AND FORCED LABOUR

- [Slavery Convention](#)
- [Protocol amending the Slavery Convention signed at Geneva on 25 September 1926](#)
- [Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery](#)
- [Forced Labour Convention, 1930 \(No. 29\)](#)
- [Abolition of Forced Labour Convention, 1957 \(No. 105\)](#)
- [Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others](#)
- [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#)

RIGHTS OF MIGRANTS

- [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families \(ICPMW\)](#)
- [Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime](#)

NATIONALITY, STATELESSNESS, ASYLUM

AND REFUGEES

- [Convention on the Reduction of Statelessness](#)
- [Convention relating to the Status of Stateless Persons](#)
- [Convention relating to the Status of Refugees](#)
- [Protocol relating to the Status of Refugees](#)
- [Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live](#)

WAR CRIMES AND CRIMES AGAINST HUMANITY, INCLUDING GENOCIDE

- [Convention on the Prevention and Punishment of the Crime of Genocide](#)
- [Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity](#)
- [Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity](#)
- [Statute of the International Tribunal for the Former Yugoslavia](#)
- [Statute of the International Tribunal for Rwanda](#)
- [Rome Statute of the International Criminal Court](#)

HUMANITARIAN LAW

- [Geneva Convention relative to the](#)

- [Treatment of Prisoners of War](#)
- [Geneva Convention relative to the Protection of Civilian Persons in Time of War](#)
- [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts \(Protocol I\)](#)
- [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts \(Protocol II\)](#)

Also available:

- [Ratifications and Reservations](#)
- [Status of ratifications of human rights treaties](#)
- [CD Compilation of International instruments - Universal instruments](#)
- [Conventions, Declarations and Other Instruments Found in General Assembly Resolutions \(since 1946\)](#)