RESTORATIVE JUSTICE IN ETHIOPIA : A PILOT PROJECT

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A dispute resolution researcher and teacher, I was invited to visit the People’s Republic of Ethiopia in June 2006 to work with Prison Fellowship Ethiopia, an Ethiopian non-governmental organization (NGO) advocating for criminal justice and prison reform. My task was to deliver a three-day workshop on Restorative Justice to a group of 45 judges, prosecutors, and government officials from all over the country.

The Formal and the Informal - Ethiopia’s criminal justice systems

One of the poorest countries on Earth, Ethiopia has a population of 74 million people, of whom 45% under 14 years of age. Life expectancy for men is 48, and 50 years for women. Ethiopia contains 62 separate tribal groups, which include at least seven distinct ethnic groups (Oromo, Amhara, Tigre, Sidamo Shankella, Somali and Afar). It is also extraordinarily diverse linguistically, with 80 different languages and more than 200 dialects spoken throughout the country. While a majority of Ethiopians identifying as Muslims, there is also a large group practicing the Ethiopian Orthodox faith, some who follow traditional animist religious practices, and yet others who are converts to Christianity.

The present Criminal Code and Criminal procedure Code date back to the days of Hailie Selassie, but are under review by the present Ethiopian government. The formal criminal justice system is typical of Western models developed 50 years ago. There is little special protection for juveniles, few protections for those arrested or held in prison, and no reference to alternative measures or Restorative Justice (RJ).

But I was about to learn that the formal criminal justice system is not the main player in addressing and resolving criminal and anti-social behaviours in Ethiopia. Instead, Ethiopia’s low level of development and the extent of its diversity mean that in practice, that the formal criminal justice system represented by the judges and prosecutors in my workshop has little impact on the management and resolution of crime. It is freely acknowledged – including by the Minister of Justice himself, Asefa Kesito, with whom I had an hour-long private conversation following the workshop – that the criminal justice processes has little impact of the majority of the population, who prefer their own village and tribal processes of dispute resolution.

I learned that Ethiopia’s traditional tribal processes share some features that are familiar to those of us who have worked in and observed informal dispute resolution processes in different parts of the world. These include, a reliance on elders for authoritative interventions, an emphasis on maintaining and protecting kinship networks, the importance of age and seniority in assessing blame and determining outcomes, and a strong attachment to normative concepts of honor and accountability (although
sometimes implemented in ways that are unacceptable from a human rights / equality rights perspective (1)).

As well, tribal dispute resolution reflects the importance of restoring relationships and community functionality. Living in harsh physical conditions means that resolving conflict was not only an important aspiration but a practical necessity if people are to find a way to share meager resources. Extreme poverty and hardship has an indelible impact on customs of conflict resolution, in ways that we may not fully understand in the West. The African concept of “ubuntu” – roughly translated as “restoring a balance that has been lost” – is widely associated with the work of the Truth and Reconciliation Commission in South Africa, but has a much longer history in African culture(2). Archbishop Desmond Tutu describes “ubuntu” as follows: “Retributive justice is largely Western. The African understanding is far more restorative – not so much to punish as to restore a balance that has been knocked askew. The justice we hope for is restorative of the dignity of the people.”(3)

**Introducing RJ in Ethiopia**

It is tempting to conclude that the resonance of restorative justice principles in African concepts of ubuntu and communitarianism and, to a lesser but significant extent, in traditional tribal practices of dispute resolution, suggest a “fit” between RJ and criminal justice in Ethiopia. Workshop participants and the Minister himself were enthusiastic and hopeful about the potential for developing a partnership, using RJ principles, between the formal and informal justice systems.

This interest and even eagerness is as much a matter of political exigencies as it is a recognition of the benefits of RJ. In many village communities matters are simply not referred to the police or prosecuting authorities, but instead dealt with using traditional tribal processes. Even where a matter is brought to trial, it is preempted by traditional tribal processes – resulting in the extreme reluctance of witnesses to testify and a conviction rate of less than 20%. The present Ethiopian criminal justice system is inefficient and ineffective – as well as internationally criticized for breaches of human rights..

RJ offers a potential opportunity to address the profound disconnect between formal and informal systems of dispute resolution in Ethiopia. If RJ pilots could begin on a community level, with police, prosecutors and community elders working together,

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1 For example, revenge killing; juvenile marriage, child abduction or kidnapping; and the exchange of women between families were among the approaches used to wipe out a “debt” following the murder of a relative
2 See for example Zartman, W. “Traditional Cures for Modern Conflicts” (Lynne Reiner Publishers London 2000) discussing the link between “ubuntu” and tradetional Xhosa – as well as Christian - philosophies at 169-171.
4 Information provided to me in the course of a conversation with the Ethiopian Minister of Justice, Mr Asefa Kesito, June 12 2006
there may be a way to harness the energy of informal processes while working to ensure that human rights – especially for women and juveniles – are protected. RJ pilots which take the form of partnership between formal and informal systems could enable the building of relationships and perhaps, eventually, the trust necessary for the formal system to play a more significant role in the lives of ordinary people – and perhaps to enable more effective oversight of human rights and gender issues.

Minister Kesito spent an hour with me after the workshop going through the present Criminal Procedure Code and identifying how and where diversion into RJ could take place and how. He asked me to draft amending legislation and bring it back to him within 3 months.

**Amending Legislation**

On my return to Canada and with the invaluable assistance of RJ scholars in other parts of Africa I drafted amendments to allow for diversion into RJ programs under stipulated circumstances. Within a general framework of principles, programming would be developed on a regional basis (reflecting the emphasis placed by workshop participants on the need to recognize the diversity of Ethiopia’s races and regions). Regional programs would be administered by Local Justice Committees, composed of community members and representatives of the criminal justice system. The amendments would allow for referral into RJ programs at two stages in the criminal justice process – pre-charge (on the discretion of the prosecutor) and post-charge (at the discretion of the court). In relation to juveniles, the prosecution would be required to always consider RJ and justify why a case should not be referred to a RJ program.

The amendments were forwarded to Minister Kesito via Prison Fellowship Ethiopia and I learned that they were well-received and following some minor revisions were ready to be formally proposed to the legislature. Since that time, events in Ethiopia appear to have overtaken the legislative process. Work is continuing on revisions to the Criminal Procedure Code – of which the RJ amendments are just one part – but the war in Somalia and other political events must be impeding the business of government.

Under these circumstances it is impossible to say what will happen to the RJ initiative and if it will be implemented. If the government does move ahead with these reforms, Prison Fellowship Ethiopia has already earmarked funding to help develop some RJ pilots. I hope to return to Ethiopia to contribute to this work.

_A complete copy of the amendments and the accompanying briefing paper is available for the author on request. As well, an article describing the challenges and dangers of integrating formal and informal systems using RJ – focusing on Ethiopia but using other examples also - will shortly be published by the Cardoza Journal of Conflict Resolution (“Working towards Restorative Justice in Ethiopia :Integrating Traditional Conflict Resolution Systems with the Formal Legal System” forthcoming Fall 2007)_.