

Role of Probation and Parole Services in the Restorative Justice Process: A Monitoring and Evaluation Perspective

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Introduction

The use of restorative justice practices was commonly used across the country's 856 linguistic diverse social and cultural ethnicities. Even after colonization and independence these practices continue to maintain peace and order in most parts of the country. In particular, peace mediation ceremonies accompanied by compensation payment consisting of money, food crops and livestock from the offender to the victim are prevalent throughout the country.¹ Today, restorative justice is used in the criminal justice system, as a response remedy to manage and deal with criminal actions and socially harmful behaviors of offenders and satisfy the victim from the loss and injuries suffered.² The role of restorative justice practices to maintain peace and good order in our communities are supported and implemented by the courts in Papua New Guinea (PNG).³ Surveying the literature, Dinnen observes that:

A variety of labels are found in the international literature to describe what is most frequently referred to as restorative justice. The concept focuses primarily upon the need to restore individuals who have been injured or otherwise suffered loss as a result of crime. Other formulations extend to the need to restore the perpetrators of crime whose offending is viewed as symptomatic of personal or social problems, usually treated as peripheral under the western criminal justice model. At an institutional level, restorative justice involves the development of a more victim-centred process, as well as one that actively seeks to reintegrate offenders into "a wider web of community ties and support"⁴

Whether intentionally or unintentionally, criminal actions and socially harmful behaviors create disharmony and conflict between individuals and communities, and therefore, requires punishment of the offender to deter crime and restore justice for the victim. For the offender, the criminal justice system of PNG focuses on sentences and punishment in the form of imprisonment or correction in the community, depending on the seriousness and circumstances of the offence. The offences may range from minor (that require probation supervision and restorative justice programs) to very serious offences (that require imprisonment and may require restorative justice programs during the parole stage). Where the punishment involves restorative justice programs, the role of Probation Services and Parole Services to facilitate probation or parole orders on restorative justice becomes critical.

In order to evaluate the quality of the implementation of restorative justice programmes; this paper provides an analysis of the programs in the Probation and Parole Services, over a period of 15 years. The paper describes the role of the Probation and Parole Service in implementing restorative justice process in the criminal justice system in the country and identifies and discusses the challenges that confront the Probation and Parole Services in implementing, monitoring, evaluating and reporting the successful outcomes of restorative justice programs.

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¹ Sarei, N, "Country Report: Papua New Guinea" (Resource Material Series No.63) 145 at https://www.unafei.org.jp/publications/pdf/RS-No63/No63_20PA_Sarei.pdf.

² See for example the *Criminal Law (Compensation) Act* 1991 which is used to compensate victims of crime.

³ Sinclair Dinnen, "Restorative Justice in Papua New Guinea" *International Journal of the Sociology of Law* (1997) 25, 245–262, See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/232388085>.

⁴ Ibid, p254.

This is in response to the United Nations requirements on the use of and outcomes of restorative justice programs in criminal justice matters.

The paper will conclude with some actions as proposed in the 'United Nations Handbook of Restorative Justice Programs in Criminal Justice Matters, 2006' (UNODC Handbook)⁵. The publication:

.. offers, in a quick reference format, an overview of key considerations in the implementation of participatory responses to crime based on a restorative justice approach. Its focus is on a range of measures and programmes, inspired by restorative justice values, that are flexible in their adaptation to criminal justice systems and that complement them while taking into account varying legal, social and cultural circumstances. It was prepared for the use of criminal justice officials, non-governmental organizations and community groups who are working together to improve current responses to crime and conflict in their community.⁶

It is suggested that applying the lessons and principles in the UNODC Handbook will improve the administration and implementation of restorative justice programs by the Probation and Parole Service.⁷

Crime and Restorative Justice

There are various criminal offences that are provided by several pieces of legislation. The most common of these are the *Summary Offences Act 1977* and the *Criminal Code Act 1974*. A criminal act harms and affects individuals, families and relatives, local communities, the larger society, and established institutions. The effects of crime on the victim are devastating as it can lead to depression and anxiety, eating and sleeping disorder, physical injuries and even death.⁸

The traditional method of dealing with criminal behaviour is imprisonment of offenders to deter or discourage others from committing similar crimes, while providing safety for the victim. As pointed out by Dinnen, this approach has not effectively reduced law and order problems in PNG.⁹ This is where restorative justice becomes imperative. Restorative justice does not have a precise meaning. The UNODC Handbook describes it as:

a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders.¹⁰

The Handbook clearly describes restorative justice process as a way of responding to crime that includes all parties of the crime who come together to repair as much as possible the harm suffered by the victim and prevent victimization. In addition, the mediation practice should respect the dignity and equality of each party involved and affected. Importantly, the parties to the crimes are both the victim and the offender. The offender is helped to understand that the behaviour is not acceptable and that it had several consequences on the victim and community. Therefore, he should express remorse, apologize and make amends to the victim. The UNODC Handbook provides the steps involved in the restorative justice program:

The following are features of restorative justice programmes:

⁵ The book was published by the United Nations Office on Drugs and Crime (UNODC) in 2006. It is titled: Handbook on Restorative Justice Programme (Criminal Justice Handbook Series), (Vienna, UNODC, 2006).

⁶ Ibid, at p1.

⁷ To clearly understand the mechanisms and requirements of restorative justice programs in criminal justice matters; the author relied on the UNODC Handbook as the guiding tool for this paper.

⁸ Other physical and psychological effects include disability, pregnancy complications and sexually transmitted diseases, heavy alcohol consumptions and drug use, adverse negative impacts on psychological wellbeing, financial and material loss, feeling of anger and frustration, restriction of mobility and community safety due to fear of retaliation.

⁹ See n3, supra.

¹⁰ UNODC Handbook, n5, at p6.

- A flexible response to the circumstances of the crime, the offender and the victim, one that allows each case to be considered individually;
- A response to crime that respects the dignity and equality of each person, builds understanding and promotes social harmony through the healing of victims, offenders and communities;
- A viable alternative in many cases to the formal criminal justice system and its stigmatizing effects on offenders;
- An approach that can be used in conjunction with traditional criminal justice processes and sanctions;
- An approach that incorporates problem solving and addressing the underlying causes of conflict;
- An approach that addresses the harms and needs of victims;
- An approach which encourages an offender to gain insight into the causes and effects of his or her behaviour and take responsibility in a meaningful way;
- A flexible and variable approach which can be adapted to the circumstances, legal tradition, principles and underlying philosophies of established national criminal justice systems;
- An approach that is suitable for dealing with many different kinds of offences and offenders, including many very serious offences;
- A response to crime which is particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders some new values and skills;
- A response that recognizes the role of the community as a prime site.¹¹

For our purposes, restorative justice provides a sense of satisfaction and fairness to the victim (as it repairs the harm), restores peace and rebuilds relationships between the victim and offender, (also amongst family and relatives of both parties, and with the larger community and tribes of both parties). Through peace mediation ceremony, the victim is able to express himself or herself and the impact of the crime on his or her wellbeing and that of his or her family, his or her suffering and damage, his or her views on the behaviour and character of the offender.

On the other side, the offender explains the reasons that led him or her to commit the crime and offers an apology to the victim. The offender also shows remorse for the damage by compensating the victim with money and goods. The victim agrees and receives compensation and apology from the offender. In order to enable the success of the restorative justice program, family members and relatives, clan members and communities of the offender contribute money, food, and livestock to support the offender repair the damage and harm suffered by the victim,

During the restorative justice programme, the victim has the opportunity to meet the offender face to face and seek justice for the crime committed on him or her and is satisfied of the outcome of restorative justice process. The end result is that peace and goodwill is restored to the two opposing parties and the community. As Narokobi J observed in *State v Kiara* that:

Restorative justice gives victims the chance to tell offenders about the impact of their crime and get an apology.¹²

In PNG, the Probation and Parole Services implement the restorative justice programmes. The Probation Service is established under the *Probation Act 1979* while the Parole Service is established by the *Parole Act 1991*. The primary role of the Probation Service is “to provide

¹¹ Id, n5, at pp7-8.

¹² (2020) N8610. See also *State v Solomon* (2022) N9794.

for social rehabilitation of offenders.”¹³. The Parole Service on the other hand is responsible for:

.. a system of parole which will contribute to the maintenance of a just, peaceful and safe society by facilitating the reintegration of offenders into the community as law-abiding people; and for related purposes.¹⁴

The Probation and Parole Services are responsible for the rehabilitation and reintegration of offenders into the community as law-abiding citizens. Both agencies are located within the Department of Justice and Attorney General. Although both agencies are independent in their operations, they administratively report to the Secretary for the Department of Justice and Attorney General.¹⁵

Restorative Justice and Real Justice

The UNODC Handbook pointed out that restorative justice program offers a viable alternative to imprisonment for the offender. It also suggests that it is important to consider and support the victims of crimes, without forcing them to participate in a program they do not agree with. After all, real justice is when the victim is satisfied with the outcome of the restorative justice process.

What then is real justice? A simple search of the internet reveals a number of definitions. Generally, real justice involves, fairness, impartiality and equity. Or in other words, there must be fairness in the process and outcome. Dr Eric Kwa, the Secretary for Justice, describes real justice as:

When there is **peace** and **harmony** in the family, clan, community, district, province and the workplace, then there is real justice! The role of the Department of Justice and the Law and Order Sector is to promote, strengthen and sustain peace and harmony in our communities, clans and families. When that is achieved – that is real justice!¹⁶

Thus, the real justice outcome is measured by how peace is restored to the victims of crime, the poor, the disfavoured, vulnerable women and children, the old age, foreigners, people with disability, and the incarcerated who face the harsh realities of injustices in the criminal justice system.

The process encompasses the moral and ethical standards by which individuals are treated honestly and equally. Thereby, upholding the principles of fairness, equality and righteousness in resolving disputes, protecting individual rights, and promoting peace and harmony which are the basic principles of restorative justice programmes as adopted by the UNODC Handbook.

It is also important to note that in the context of PNG, spiritual enlightenment through sharing the Word of God (Holy Bible) has helped prisoners and offenders see their need for God who gives them grace and comfort by forgiving their sins. As a Christian country, Papua New Guineans believe that God Yahweh is the foundation of justice and His principles are Real

¹³ Preamble to the *Probation Act*.

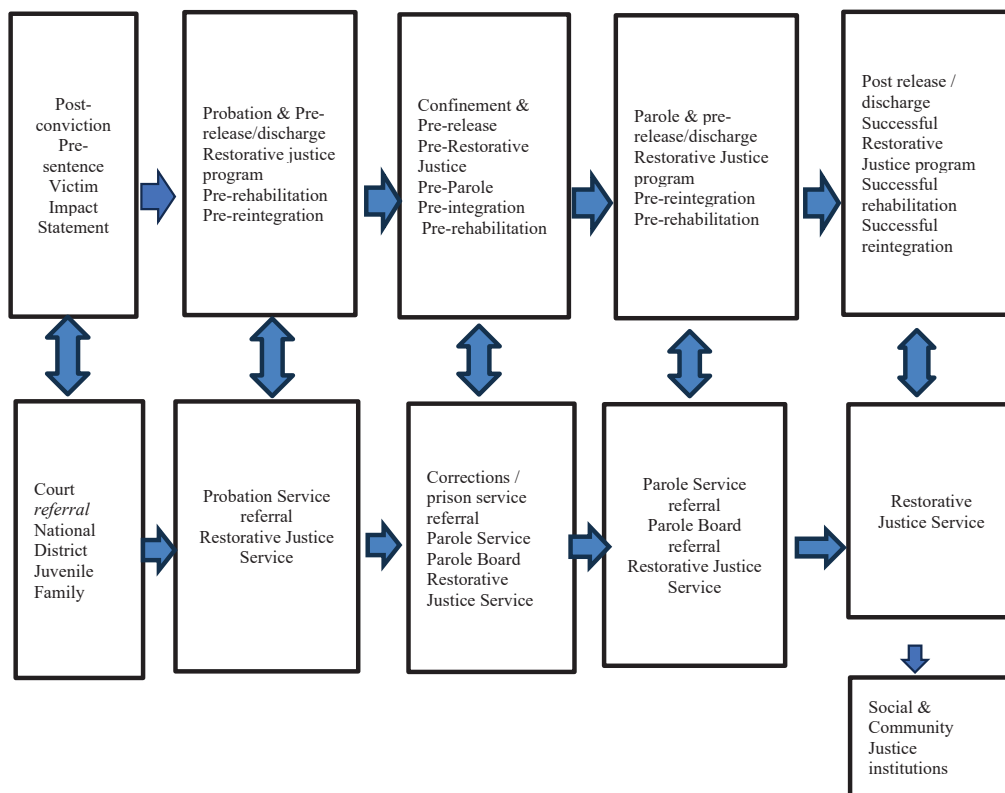
¹⁴ Preamble of the *Parole Act*. In relation to the work of the Parole Service and the Parole Board see Kwa, E, “The Power of the Parole Board: In the Matter of an Application for Enforcement of Human Rights; Dr. Theo Yasause v Commissioner of Correctional Service, The State and The Parole Board” (2021) 3 *Attorney General’s Law Journal* 57.

¹⁵ See the *Department of Justice and Attorney General Corporate Plan 2019-2024* (Port Moresby: Department of Justice and Attorney General, 2019).

¹⁶ Since assuming the role of Secretary to the Department of Justice and Attorney General on 19 November 2018, Dr. Kwa has consistently reminded the officers of the Department and the Law and Justice Sector to deliver real justice to the people of PNG.

Justice.¹⁷ This aspect of restorative justice is encouraged and promoted by the Probation and Parole Services. Pointing the offender and the victim and their families to the Gospel of Jesus Christ has helped reduce or eliminate tensions between the aggrieved and offending parties.

Entry Points of Restorative Justice Program by Probation and Parole Services



Role of Probation Service in the Restorative Justice Process

The Probation Service provides reports for District and National Courts as well as implement and coordinate rehabilitation and restorative justice programs for offenders. The *Probation Act* establishes the Service under Section 4 and provides for the office of the Chief Probation Officer (CPO) under Section 5(a). The duties of the CPO are set out under Section 8. These include:

1. being responsible for the preparation of such reports of investigation and supervision as are necessary;
2. assigning probation officers to serve in such areas and for such cases as he or she determines;
3. direct and supervise the work of probation officers and other employees assigned to him or her;
4. formulate and implement methods of investigation, supervision of probationers, record keeping and reporting;

¹⁷ According to the Holy Bible, Deuteronomy 32:3-4; “I will proclaim the name of the Lord. Oh, praise the greatness of God! He is the Rock, his works are perfect, and all his ways are just. A faithful God who does no wrong, upright and just is he”.

5. conduct training courses for staff of the Service; and
6. develop policies and procedures for probation work.

The duties of the CPO are delegated to Probation Officers. Two of the main functions of the Probation Officers are set out under Section 9 of the Act. The first is to prepare a pre-sentence report (PSR)¹⁸ and a means assessment report (MAR)¹⁹ for the Criminal Court as prescribed under Section 4 of the *Criminal Law (Compensation) Act*. The reports assist the court to make an appropriate decision on penalty for the offender. The report contains information about the prospect of collective and individual participation in the restorative justice programme.²⁰

In this regard, a Probation Officer can conduct an investigation to establish: (1) the background of the offender, (2) views of the victim and relatives of the victim on the damage and suffering, and if there is any proposal for a restorative justice program, (3) the perspectives of the relatives of the offender on the restorative justice program, and (4) the community's (and others) views of the offender and victim.

The second function of a Probation Officer is to manage and supervise probationers and parolees in the community to ensure that they comply with all the conditions of the probation or parole order. There are four steps involved in the management and supervision of a probationer or parolee.

- Step 1. A Probation Officer creates a casefile and develops a supervision plan for the probationer or parolee in accordance with the probation or parole order.
- Step 2. Supervision plan for restorative justice is developed to ensure mediation is facilitated and compensation payment is completed on time as ordered by the court or the Parole Board (under the *Parole Act*).
- Step 3. Mediation is facilitated and restorative justice agreement is signed off after the payment of compensation from the probationer to the victim as ordered by the court.
- Step 4. A probationer or parolee is discharged upon successful completion of orders and discharged.

It is critical that there is equal and transparent participation of the parties of the crime in the restorative justice process.

There are two specific elements of the restorative justice process that needs to be reviewed and reframed to ensure all parties of the crime are satisfied with the process of restorative justice. These are:

1. *Collective level of participation*: The collective level of participation involves the victim, the offender, family and relatives of both offender and victim, clan members and communities of both victim and offender.
2. *Individual level of participation*: The individual level of participation of restorative justice program is specifically designed for the victim (individually) and the offender (individually), who are the primary parties of the crime.

At the collective level, it is given that the signing of an agreement between the victim and the offender signals the success of the restorative justice program. In the mediation and compensation payment stage, there is collective level of participation. At this stage, most (90%) of restorative justice programs are considered successful and the agreement is signed between

¹⁸ See *State v Kendiagl* (2009) N4212 and *State v Samban* (2007) N4998.

¹⁹ See *State v Kekene* (No.2) (2014) N5768.

²⁰ See *State v Lavai* (2020) N8660.

the victim and the probationer or parolee. However, there are disadvantages of implementing the restorative justice program at the collective level. Some of these negative impacts include:

1. Manipulation by justice officers in the criminal justice system for the victim to be compensated and the offender granted probation order despite taking into consideration other risk factors pertaining to the safety of the victim.
2. The offender, his family, and clan members may threaten the victim, particularly women victims and their families to receive compensation because the victim and her family are disadvantaged or vulnerable.
3. The amount of K5000.00 compensation payment under the *Criminal Law (Compensation) Act* may not be commensurate to the level of physical and property damage and other forms of suffering the victim received from the crime. The victim may refuse to receive the compensation.
4. A compensation agreement form is signed by both parties during the restorative justice program (of compensation payment). However, a victim satisfaction statement of the restorative justice program during the time of discharge of the probationer or parolee is unavailable. This creates doubt as to whether the outcome of the process of restorative justice program in the criminal justice system is transparently and equally successful.

In relation to the individual level, the Probation Officer or Parole Officer continues to monitor and supervise the probationer or parolee until the date of discharge from probation or parole order. At this stage, most (90%) of the probationers and parolees are discharged successfully and the discharge form is signed by the probationer and Probation Officer or parolee and Parole Officer. However, there are disadvantages of implementing restorative justice programmes at the individual level. These include:

1. The second function is providing rehabilitation service to the offender (probationer or parolee). The role of a Probation or Parole Officer is to provide rehabilitation services to the offender. As such the responsibility of victim management and supervision required to successfully complete the restorative justice process in the criminal justice system is unavailable.
2. The offender case file is created to enable the management and supervision of the probationer and parolee. However, the Probation or Parole Officer is not required to create and manage the victim's casefile.
3. A breach of a probation condition or parole condition may have occurred during the supervision stage. However, the breach may not be filed in court, or if breach is filed in court, warrant of arrests are not implemented by the police.
4. Discharge of probation order or parole order at the time of discharge. A review of the probationer's or parolee's successful participation in the restorative justice process is not conducted. In the sense that the victim is not called upon to verify the conduct and behaviour of the offender before he or she is discharged. The Probation and Parole Officer signs on the Discharge Form and not the probationer or parolee.

To address these defects and other areas of the restorative justice process, a number of proposals are offered to improving restorative justice in PNG. These include:

1. The current restorative justice practice of the Probation and Parole Services must be reviewed and a new framework introduced to enable effectiveness and efficiency of the current restorative justice programs.
2. The entry point of agreement should take place during a successful mediation and compensation payment, and sometime later, after an offender is discharged from probation or parole supervision. This means, the genuine agreement of a successful

restorative justice program should take place sometime later, after the offender is formally discharged, probably one year later.

3. In addition, the specific aspects of monitoring, supervision and evaluation of restorative justice agreements must incorporate features of victim rehabilitation and reintegration, including offender rehabilitation and reintegration, and, community agreement and satisfaction. These aspects will provide genuine statements about the impact of a restorative justice programmes. Only through this approach, the agreements will enable accurate measurement of successful; restorative justice outcomes, victim rehabilitation and reintegration, offender rehabilitation and reintegration, and community participation in resolving dispute and restoring peace.
4. In order to enable effective and efficient administration and implementation of restorative justice programs, a revised and new victim rehabilitation and reintegration of restorative justice key result area is developed and established by the Department of Justice and Attorney General. The new framework will enable victims of crimes to be given greater consideration in monitoring and supervision at restorative justice program stage, all the way to case management, data collection and analysis, and to administrative reporting.
5. To be consistent with the United Nations proposed best practices, successful restorative justice outcomes and measurements, when reported in the administrative reporting framework of Probation and Parole Services, and the new Restorative Justice Service, will optimistically inform others of compliance to the commitment of developing best approaches when implementing restorative justice programs in the country.

Conclusion

The objective of the restorative justice process is to achieve real justice where fairness prevails. The restorative justice program essentially contains the following key elements: (1) supporting victim, giving them a voice, encouraging them to express their needs, enabling them to participate in the resolution process and offering them assistance; (2) repairing the relationships damaged by the crime, in part by arriving at a consensus on how best to respond to it; (3) denouncing criminal behaviour as unacceptable and reaffirming community values; (4) encouraging responsibility taken by all concerned parties, particularly by offender; (5) identifying restorative forward-looking outcomes; (6) reducing recidivism by encouraging change in individual offenders and facilitating reintegration into the community; and (7) identifying factors that lead to crime and informing authorities responsible for crime reduction strategies.²¹

An advice from the UNDOC Handbook that can be adopted is that a restorative outcome is an agreement reached as a result of the restorative justice process. This means that restorative justice outcomes also include responses and programmes that aim to meet the individual and collective needs of the parties affected and achieve the rehabilitation and reintegration of both the victim and the offender.

As mentioned above, an agreement in itself, should also be the quest of a restorative justice program (of probation and parole monitoring and supervision plans). The agreement should be tailored to the needs of the victim, the offender, and for community inclusion and participation in a restorative justice programme. After all, the affected parties should contribute to the agreement during and after the restorative justice programme.

²¹ See generally the UNODC Handbook, *supra*.