

Restorative Justice

Clinical Manual

Prepared by:

Abdulmalik Abubaker

**Prepared under the Sponsorship of the Justice and Legal
System Research Institute**

2010

Welcome to the Restorative Justice Clinic. This is a manual prepared to introduce students to that clinic. To that effect attempt is made to set forth basic information on objectives and operations of the clinic. Students who elect this clinical program are advised to read this material before they come to class.

This manual contains the following:

1. Clinical Program Identification

1.1. Title of the Program

1.2. Program Code

1.3. Credit Hour

1.4. Attendance Policy

1.5. Pre-requisite Courses

2. Clinical Program Description

3. Goals or objective

4. Methodology

5. Structure

6. Evaluation and grading

7. Learning goals

8. Case handling obligations

9. Office procedures

10. Procedures for closing/transferring cases

1.1 Title of the Program: Restorative Justice in Juvenile Offences

1.2 Program Code:

1.3 Credit Hour: 3

1.4 Attendance Policy: Students involve in this clinical program at two levels.

The first one is when they attend classes (please refer to no. 5 B below) and when they actually engage with parties affected by the offence (please refer to no. 4.1 and 4.3). In the former case the instructor could adopt similar attendance policy as any other courses conducted in class rooms and allot

some points to attendances. In the latter case the follow up is not made by taking attendance. Rather the follow up is made by looking into what is actually accomplished by the students in the field. One way of doing that is through reading progressive report made by the student after each conferencing (please refer to no 6 below). Finally it has to be clear that in this course we have to trust students and allow them to do things by them selves by easing the orthodox controlling mechanism.

1.5 Pre-requisite: Family Law, Customary Law, Criminal Law I & II, Criminal Procedure, ADR, Professional Ethics and any course related with diversity.

2. Clinical Program Description.

Ethiopia knows three codified Penal/Criminal Laws. The first two were promulgated during Haile Sellassie administration. There was especial criminal regulation which was issued by the military government. The contemporary one is the FDRE Criminal Law issued in... What is common to all of them is their enforceability at national level.

The Penal Laws of Haile Sellassie and the military government were mainly focused on punishment of the offenders as their main objective. They did not have any room for the victims, the families, the offenders and the community to take part in resolving the offence, heals the victims, the families and the community and re-integrates the offender into the community through rehabilitation.

True there were some isolated rehabilitation measures in the Addis Ababa and other prisons which enabled the prisoners to learn limited types of trade and attend elementary and higher education in especially in Addis Ababa Prison Compounds. Those were, however, limited to few inmates who were paid less payment. More over, the involvement of the community was unthinkable. Thus when the inmates served their term and came out they consider them self as heroes rather than regretting for what they did to the victim and the community.

The new Criminal Law, however, (has)... “indications of the existence of some spots through which the principles, values and programs of Restorative Justice can be ‘slotted’

in”.¹ More over Ethiopia’s diverse culture is a rich resource in resolving both criminal and civil conflicts with the involvement of all parties concerned. Thus, this course will bring both the community and law students together and enable the students to learn from the community how to resolve criminal cases with the involvement of the victim, the offender, the families of the parties, the community and the state.

This course requires a close co-operation from the institutions involved in handling criminal offences, such as Police, Public Prosecutor Offices and Courts. Thus the Law Schools have to see that permission is secured from these institutions so that students work with the victim, the offender, the families, the sociologists, the social workers, etc. to resolve the case using Restorative Justice. So for the time being, therefore, Law Schools could start with petty offences related with juvenile or any other petty offences for which permission is obtained from courts to apply Restorative Justice to resolve the conflict.

3. Goals /Objectives

3.1 General Objectives:

1. Identify diverse methods in various cultures in resolving criminal offences;
2. Identify methods of involving all stake holders in the Restorative Justice;
3. Learn how to help the victims, the offenders and the community to reach into agreement or making decisions;
4. Develop skills and apply the same in the process;
5. Develop professional responsibility and ethics in their relations to the victim, offender and the community.

3.2 Specific Objectives

1. Learn how to approach the victim, the offender and other stack holders;
2. Enumerate, analyze and apply the programs and outcomes identified with Restorative Justice;
3. Identify the principles of Restorative Justice;

¹ Restorative Justice in Oromia, Base line Study made by Tsegaye Regassa, Urgessa Genemo and Tenna Yigezu and published by Justice for All & Prison Fellow Ship Ethiopia, 2008, p XV.

4. Identify the key values of Restorative Justice;
5. Design means to incorporate Restorative Justice into Criminal Justice practice.
6. Identify methods of continuous evaluation and accordingly modifying the Restorative Justice Process and Programs.

4. Methodology

Here students and instructor, as a supervisor, will involve. Their responsibilities and role, however, differs. Attempt is made to identify the responsibilities of students and supervisor. One thing we have to be sure, however, is the students are no more the recipients. Rather they play a proactive role. Hence:

4.1 Student Responsibility

Students will be responsible to:

- 1.1 Approach the victim, the offender and other community members affected by the crime.
- 1.2 Identify whether they are willing to engage in the restorative process.
- 1.3 Assure the parties, that the restorative justice's process can be under taken only on the basis of their free and voluntary consent.
- 1.4 Assure the parties that they can withdrew such consent at any time during the process.
- 1.5 Prepare, analyze and report their work.
- 1.6 Prepare a plan to undertake the program.

4.2 Responsibility of the Instructor

- 2.1 Prepare seminars, readings, exercises etc;
- 2.2 Create link between persons working in the criminal justice process and students participating in the restorative justice process;
- 2.3 Help students to develop their own learning goals and decide how to pursue them;

2.4 Take part, as an observer, in the restorative justice process.

4.3 Detail Methodology

1. Students, with the help of the instructor, prepare conversion plan with the parties.
2. Simulations and models will be used. Here the students first will practice the process among themselves in the class as well as outside the class.
3. This will help the students to practice a skill in a controlled environment so to apply latter in the real process.
4. To that effect the simulations will be videotaped so that the students replay them and learn from them.
5. This will help the students to learn from their own experience through the relationship they create with the victim, the offender, individuals who are affected by the criminal act, their partner, instructors and those who work in the traditional criminal justice process.
6. To that effect the students will be obliged to keep personal notes that reflect some aspect of those experiences.

7. **Team work:** to foster team spirit among the students, students who work in the Restorative Justice will be paired. The pairing will be arranged as much as possible by giving chance to the students to pair themselves. This will take place one semester ahead from the semester in which the clinical program is being offered.

8. Feedback and written work

After each program students will put their experience from \and out come of the process in a written form and submit the same to their instructor. The purpose is to receive a feedback.

The students could be obliged to re-write their experience from and the out come of the process several times. The only purpose of which is to help the students improve their minutes and keeping documents.

5. Structure

This part is consisting three components: conferencing related with juveniles offenders and their victims, classes and team meetings.

A. Conferencing

Conferencing is one among many programs of Restorative Justice. Others are:

- victim - offender mediation (VOM)
- victim - offender panels (VOP)
- victim - assistance programs (VAP)
- prisoners - assistance programs (PAP)
- community crime prevention programs (CCPP) ²

Two conferencing related with juveniles will be handled by each pair of students in one semester. The parties to this conferencing are the victim, the offender, the police, social welfare officials and attorneys. So students who involve in Restorative Justice, in addition to the time they are required for classes and class preparation, will devote a time required to handle Juvenile conferencing out side classes. Their semester load will be adjusted taking into account their engagement in this conferencing.

B. Classes

Students, before they handle Juvenile conferencing, will attend classes. They will learn what Restorative Justice is and other related concepts and principles. Most, however, they will learn skills and given lessons on attitudes. It is in these classes students use role models and simulations.

C. Team Meetings

A team consisting of the pairs and the instructor will be formed. The team will draw its meeting time table. The purposes of the team are:

² All these programs will be introduced to the students during the Restorative Justice class.

- Enable students to move out of traditional way of student teacher relationship and take the initiative by themselves.
- They learn how to run meetings by doing the following:
 1. Prepare the agenda a head of the meeting and communicate the same in a written-form to the participants.
 2. The students should know that agenda items are not exhaustive. To that end they have to add A.B.O. i.e. any other business
 3. The students will set goals for the meetings and make sure that those goals are attained
 4. The agenda should make clear what the student need from the instructor.

To quote Professor Barbara A. Schatz from her Manual for Non-profit Organizations/ Small Business Clinic, 2003/2006:

Does the student want the instructor to assist her with role play? Does she need to be provided with answer on specific legal or factual questions? Should she be pointed to resources that may help her to resolve her questions? Does she want brainstorm about solutions to an interpersonal issue? Etc.

5. The Juvenile conferencing will be mainly handled by the student while the instructor is having the observer's status. Where, however, the interests of the parties require the interference of the instructor she may do so.

7. This team meeting could be utilized to evaluate the progress of the conferencing. The final evaluation for the purpose of grading, however, will be made at the end of the semester in which the clinical program is offered.

6. Evaluation and Grading

The following will be involved in evaluating the student:

1. The instructor
2. The partner student

3. The parties in Juvenile conferencing

The following, as adopted from Professor Barbara A. Schatz, will be the points to be taken to grade the student:

6.1 Professional responsibility

6.1.1 Professional Ethics:

Has the student performed her duties in an impartial manner based only on the facts of the case and on the needs and wishes of the parties? Has the student respected the dignity of the parties?

6.1.2 Effort

Has the student made utmost effort to bring the parties to the conference? Has she made utmost effort to facilitate for the parties to reach into agreement?

6.1.3 Reliability

Has the student been punctual with regard to appointments and assignments? Has the student leave enough time to prepare adequately for each stage of the conference?³ Were files and personal evaluation forms organized? Were deadlines met? Were any pending conferencing passed on in a manner facilitating continuation of services?

6.1.4 Professional behavior/ interpersonal relations

Were appropriate and effective relationships maintained with the victim, the offender, the families, community support group, police, social welfare officials, attorneys, office staff, the instructor and the clinic partner?

³ The phases are: Preparation, the conference itself and post conference monitoring and maintained.

6.2. Educational Responsibility

6.2.1 Team Meeting

Has the student prepared adequately for the team meeting (clinical partner and the instructor)? Has the student taken the initiative in raising issues? Has the student been responsive to criticism?

6.2.2 Class participation/ Simulations

Has the student been present and prepared at all classes? Has the student been prepared adequately and carefully for all simulations? Has the student contributed significantly to making the classes and simulations successful learning experiences?

6.2.3 Professional development

Has the student taken advantage of opportunities to learn from readings, simulations and actual experiences? Has the student done a thoughtful job of analyzing and reflecting on her own experience and that of classmates? Has the student used course materials effectively in analyzing problems raised by cases? Has she shown improvement over the semester?

6.3 Learning goals

Has the student defined learning goals and develop appropriate plans to achieve them? Has the student taken advantage of opportunities in the clinic to pursue goals? Has the student modified her goals when necessary?

6.4 Conflict resolution skills

6.4.1. Planning

Has the student developed an appropriate schedule for the conferencing? Has she adjusted the schedule where appropriate?

6.4.2 Decisions

Utilizing available information and resources, has the student made appropriate decisions and accordingly set appropriate priorities?

6.4.3. Interviewing and leading the conferencing

Has the student developed an appropriate schedule for interviewing parties prior to the conferencing? Has the student succeeded in extracting relevant information? Has the student helped the parties to express their concern? Has the student given opportunities to the parties to participate in the process?

6.4.4 Legal research and writings

Has the student made a legal research after the interview and while in the processes? Has the research and the outcome recorded in a fashion that made it usable for subsequent students?

Was each written product accurate, organized and concise? Was the intended audience taken into account? Has the student designed a mechanism for monitoring?

6.5 Evaluation process

Under 10 here in above it is stated that all parties, the instructor and the partner would be engaged in evaluation. Evaluation format with questions related with concerned party

will be prepared and completed by each party. The aggregate total will be turned into letter grade and entered into the student's grade report.

7. Learning Goals

Until you have started this clinical program you have been taught in such a way that the harm caused by a criminal behavior could be "rectified" by sending the criminal offender behind bars. And you know the activists are state institutions. Let alone the offender the role of the victim is minimal or none.

Now this clinical program requires you to make a paradigm shift from the traditional criminal justice process. Here the actors are mainly the victim, the offender and other s affected by the criminal behavior. So this needs not only new skills but also change in attitude, for instance the attitude you have towards an offender. This is very important for unless we ourselves reveal attitudinal change we can not help others specially the victim to engage in the Restorative Justice. So the first learning goal of this clinical program is to convince ourselves that wounds would be held better by Restorative Justice Process than Criminal Justice Process. So:

- First we have to love the work we are doing
- This requires us to:
 - Improve our ability to collaborate with other stack holders: partner victim, offender others affected by the offence and instructor;
 - learn how to listen and listen to learn;
 - learn to accept and give constructive criticism;
 - learn to manage time, resources effectively and efficiently;
 - develop self confidence and rely less on your supervisor;
 - learn how to engage others in a work;
 - learn to say no where the condition warrants so;
 - learn to work with all irrespective of age, sex, nationality, religion, political outlook, economic status and the like;

- learn how to lead a meeting;
- respect the law and ethical standards;
- Learn to be impartial.

Others could be enumerated. Once, however, the goals are stated the corresponding obstacles 'could also be stated. So before the student resumes the conferencing she has to complete the following format and submit to the instructor as an exercise: *

The student will write her name and take two out of the following skills and state the obstacles she may encounter:

- interviewing
- facilitating
- legal research
- Conflict resolution through informal processes.

The student will take two out of the above goals and set obstacles. Then the student should prepare plan in which she state actions to overcome the obstacles and achieve that goal.

8. Case handling obligations

1. The conferencing started by one student may either bring results or closed or may be transferred to the next coming student. So the active student should take all necessary actions which make visible all these.
2. The student should keep the files orderly and up to date.⁴ This means:
 - 2.1 Case files must stay in the clinic office. If a student wants to work on the case she can have the photocopy.
 - 2.2 Files should be kept in alphabetical order in the file drawer meant for the conferencing program.

⁴ A format will be developed to that end

2.3 The files should be organized in the following manner.

Left Side

- Letter of request (original or photocopy) from the parties.
- letter of advice from a court
- assignment letter from the instructor
- other letters to and from stack holders
- parties full information
- Student activity sheet.

Right Side

The full progress of the case will be stated here. To end:

- 1 The student should prepare detailed work plan which shows the activities, the date for each activity, the goals of each activity and required resources.
- 2 The student should submit documents to the instructor before delivering them to the parties and other stack holder.
3. The proceedings of each conferencing should be kept in a file and one copy be submitted to the instructor.
- 4 If the student uses internet connected computer she must create a folder for a client and which is accessible to the instructor and other students.
5. The research undertaken by the student should be in such an order to be accessible by future students.
6. The student should keep the parties update about the progress in the case.
7. The student must know under professional responsibility towards the parties.
8. In case the case is not over or closed the student is expected to complete either a continuation memo or a close out memo where she would like to continue or she would like to quite the semester respectively.

9. Office procedures

9.1 Addresses

Here the instructor's and her assistances full information will be stated. The assistances could be those who receive messages, well come parties, and those who will help the students with all technical or administrative issues.

9.2 Clinic Office

This part describes the structure of the clinic office.

9.3 Rooms and video equipment

This is a room where an interview and other related matters, taping simulation are done. This is a room where equipment for that purpose is kept.

9.4 Word processing

A computer is available in the clinic office for word processing which will be done by the students. They may seek help from the clinic administrator.

9.5 Coping

A copier will be kept in the clinic office to be useful by students to copy documents.

9.6 Telephone A telephone will be available at the clinic office which will be answered by the clinic administrators. Out-going calls related to the clinical programs will be made under the supervision of the clinical administrator.

9.7 Mails

The clinic office will have a mail address to be utilized by students and direction will be set concerning out-going mails related with the clinical programs.

9.8 Supplies

The clinical office will have its stationary and all forms of supplies

9.9 Security

All clinical students and staff should stand guard for the clinical office. All should make sure they locked the door when leaving even if that is for a short time.

9.10 Transportation

The clinical office will have one vehicle under its disposal. The vehicle will be available for students where the program is to take place outside the Law School.

9.11 Dress

When a student meets a client or leading conferencing she should dress like a lawyer. This gives to your audience that it is respected and will fill comfortable and confident

9.12 Behavior

The clinical program students should be exemplified. They should help to create and maintain a professional atmosphere.

9.13 Confidentiality

The students should keep secret all information they come to know due to the position they held. This includes information they overheard while conversions are undergoing due to the fact that clinic office is one. So students are not allowed to bring in other students who are not clinical program students.

10. Procedures for closing or transferring cases

Since this clinical program is one semester course a student may promote to the next year or graduate before a case she resumes is closed. Under such circumstances the student is expected to transfer the case to the incoming student. Or the parties may not reach into agreement due to many reasons, for instance one of the parties may withdraw from the program.

Whatever is the outcome, the student should complete the check out format. When the student checks out she is expected to do the following;

1. **Complete close-out certificate:** This format will be completed when parties have agreed and the agreement is implemented and evaluated. When the agreement is final.
2. **Transfer or continuation memo:** This format is completed when the case is not closed and where it has to be transferred to another student. The format should describe:

3. **Status letter to client** : At the end of the semester in which the program is offered the parties should be informed;

3.1. The student is leaving the clinic

3.2. The case is being transferred to some one who is assigned.

3.3. If the case is closed the student will inform the parties all that have been done in relation to the case.⁵

4. **Contact Sheet**

This will have the full address and description of people who are key in the case. It has to be up date and complete. The student should check that before closing or transferring.

5. **Journal of Action**

This is a sort of diary. It has to be kept throughout the conferencing and up-to-dated. The student should print the journal and attach it when transferring or closing the case.

6. **House keeping**⁶

By the last case team meeting of each semester tidy up each file. Make certain that all papers are in the appropriate place, that there is a Table of contents in the correspondence and memo files and that all superfluous paper work is removed and discarded. In general, drafts of documents which have been reduced to final form need not be saved. It is sometimes wise to retain drafts of agreements or other documents where there may be some subsequent dispute.

⁵ This is where the student may not continue as a facilitator. If she continues no letter is necessary.

⁶ This one I took it directly from Professor Barbara.

7. Research memos

Research memos are supposed to use by future students. So they have to be attached to the parties' files and to the file meant for research.

References

Books

1. Andrew Woolford and R. S. Ratner, *Informal Reckonings, Conflict Resolution in Mediation, Restorative Justice and Reparation*, Routledge-Cavendish, 2006.
2. Daniel Van Ness and others, *Restorative Justice for Juveniles, Conferencing, Mediation and Circles*, Hart Publishing, 2001.
3. John Braithwaite and others, *Restorative Justice and Criminal Justice*, Hart Publishing, 2003.
4. John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford University Press, 2002.
5. Patricia Hughes and Mary Jane Mossman, *Restorative Justice in Canada. A critical Review of needs, Responses and initiatives*, Department of Justice Canada, Research and Statistics Division, 2001
6. Paul Me Cold and others, *Hand Book of Restorative Justice, Global Perspective*, Routledge-Cavendish, 2006.
7. Tsegaye Regassa and others, *Restorative Justice in Oromia, Base Line Study, Justice for All and Prison Fellowship Ethiopia*, 2008.

Laws

1. FDRE Constitution
2. FDRE Criminal Law