Chapter 3

The Traditional Restorative Justice Practices That Have Influenced Southern Africa

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ABSTRACT

The indigenous peoples of Southern Africa have a tradition of using restorative justice practices. The region has used restorative justice practices primarily until European colonization had enforced a Western criminal justice and legal system. During and after colonization, Southern Africa has continued to use traditional methods for public safety and resolving conflicts in communities. This led to governments having a dual system in which nonserious violations are usually handled in the traditional courts, and the more serious crimes are handled in the formal criminal courts.

INTRODUCTION

Throughout the known history of Southern African justice systems, there have been restorative justice practices and traditions used by the indigenous people of the land (Anderson, 2003). The traditional method of justice in this region has shared many similarities with modern restorative justice practices including the goal of restoring peace, reconciliation, and promotion of community norms, with the perspective that crime harms the victim and the community. They also share the emphasis on informality, community participation, and restitution (Mangena, 2015; Murhula

& Tolla, 2021). In Southern Africa, nations like Botswana, Eswatini (Swaziland), Lesotho, South Africa, and Namibia have used traditional and restorative justice practices that they have combined with Western legal systems under their governmental systems (Gavrielides & Artinopoulou, 2016).

The traditional justice practices have focused on restorative practices in contrast to the Western justice practices of punishment, imprisonment, and vengeance. The traditional justice practices in the region rely heavily on restorative justice to promote the healing of the victims, perpetrators, and the community. These nations in Southern Africa share many similarities in their legal systems, as they have been greatly influenced by Roman-Dutch law through colonization (Wessels, 2013). These nations also share similar history and culture as they are all made up of primarily Bantu people and are the five nations that make up the Southern African Customs Union (SACU).

The traditional justice practices throughout pre-colonial Southern Africa had been used for minor crimes and violent and serious crimes including rape and murder. The Bantu of Southern Africa have terms that define restorative justice in their tradition. These terms include *Ubuntu*. The Ubuntu philosophy is based on the concept of a community to achieve just there must be a restoration of the accused perpetrator so they will no longer cause harm to others (Elechi et al., 2010). This perspective of justice was founded on the understanding that when wrongdoing is done, it is in the community's best interest to help reintegrate the wrongdoer back after being rehabilitated. When a crime happens, the entire community is harmed, and the community is responsible for its members, so they must work together and not marginalize the perpetrator (Rautenbach, 2015).

The focus of the chapter will be on restorative justice practices regarding traditional justice. Restorative justice in Southern Africa attempts to engage everyone that was affected by the crime in an attempt to create a process where each person can heal from the harm that was caused and move on from the incident (Skelton & Batley, 2021). The process allows the victim and perpetrator to better understand the situation and attempt to create improved relationships. The chapter will review the indigenous justice practices, the history of traditional justice practices in Southern Africa, and how colonization has impacted the traditional justice systems.

SOUTH AFRICA

South Africa is the largest nation in Southern Africa, with over 60 million people. The majority of South Africa is made up of indigenous Black South Africans, with minority groups of White South Africans (8%), Multiracial 9% (Coloured South Africans), and Asian mostly Indian South Africans but more recently Chinese

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