

Wife Beating: A Case Study

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Abstract

Restorative Justice is one of the buzzwords, which people use when talking about conflict resolution today. For many it is any process, which reduces conflicts and builds the quality of life (Dinnen 2000, p. 1). This is the broad meaning of restorative justice. The particular meaning is a special process developed in the later decades of the twentieth century in North America, New Zealand and Australia. It has now, in a very short time developed globally (Johnstone & Van Ness 2007, p. 113) Its broad goal is to transform the way contemporary societies view and respond to crime and related troublesome behaviour. More specifically, it seeks to replace our existing highly professional systems of punitive justice and control with community based reparative justice and moralising social control (Johnstone & Van Ness 2007, p. 5). Melanesia used a form of restorative justice for thousands of years until the introduction of the legal system of the colonial powers overtook it (Paliwala 1982 p. 191ff). In part, this was an attempt to replace payback and blood revenge with a ritual punishment on the offender, and restore the victim offender and community (Narokobi 1989, p. 50ff). Domestic violence against women and children is very common. The reader is invited to make a judgment on the suitability of restorative justice as an alternative to the present failed system.

Key words: restorative justice, mediation, conflict resolution, domestic violence, Melanesia, custom law, consensus, reconciliation

Introduction: The background and importance of restorative justice and mediation in traditional society

No human community can exist in a state of lawlessness. Laws are a vital necessity (Strauss 1962, p. 129). In Melanesia, the community operated under social contract, which provided a constitution and an ethical standard of behaviour. It forbade activities which destroy a community, such as murder, stealing, adultery, rape, lying and slander, and required community building, and unifying forces, such as reciprocal gift giving and care of the young and old. This was more a matter of survival than of virtue because a small divided community was an inviting target for enemies. 'Blood revenge within the community was unusual, sometimes even impossible, because blood revenge was mutually destructive and potentially could cause more problems than it resolved,' (Weitkamp 1999, p. 75).

Melanesian villages developed custom law to administer the social contract in line with their need to avoid internal dissension and so provide security. The philosophy of custom law was to mend broken relationships, bring peace to the community and satisfy the needs of stakeholders (Narokobi 1989, p. 50 ff).

The four most important processes of custom law were:

- *Consensus* (village talk) took place in all situations of stress or the breakdown of the quality of life. Talk never stopped until they settled the matter (White 1991, p. 191).
- *Reconciliation* to bring a permanent ceasefire and peace to a community when there had been a fight in the village or between two villages (Howley 2001, p. 77ff).
- *Mediation* to settle civil matters (no fault) such as land disputes and matters where families and clans disagreed about property (Howley 2001, p. 86ff).
- *Restorative justice* took place to avoid payback practices by inflicting a ritual punishment on an offender and restoring the victim, offender and the community (Howley 2001, p. 86 ff; Narokobi 1989, p. 53).

Basic to all custom processes are prolonged talk, admission of wrongdoing, apology, restitution, forgiveness, reconciliation, reinstatement of the offender, celebrations of peace and reconciliation.

Custom law had much to recommend it in the small community. It provided a democratic and equitable system of justice, maintained the peace, mended broken relationships and satisfied the need for an urgent solution to conflicts. It was of no great cost and provided satisfaction for stakeholders. Finally, in a situation where there were no jails, the community and the extended family took responsibility for their own people (Narokobi 1989, p. 53) and provided a final solution to the stubborn criminal who was shot to death (Poposil 1981, p. 109).

Life was not a 'garden of Eden' nor was it a hell on earth as many missionaries and colonials claimed.

Weaknesses of the Melanesian way of social contract

Away from the small community village in the modern day nation, the weaknesses of custom law have become glaringly evident.

The contract protected the clan and the village but not outsiders. It did not relate to the development of one nation but rather to the continuance of many tribes and clans, who favoured their own, and were often antagonistic to others.

The social contract was bad for training middle level leaders in the modern world who must make a decision on the rule of law and the good of the state.

Village people tried to avoid conflicts and antagonising others. Custom law was about conciliation, which is not good in running a business or a state.

The community was in a position to place sanctions on the big-man if he failed to satisfy their needs. Today the community is unable to place sanctions on the big-men when they break the laws of the state and are rarely punished (Bureau of Democracy USA 2002, p. 1).

The protection of women and children provided by the social contract did not translate into the urban situation and, as a result, today in Papua New Guinea 67% of rural women and 56% of urban women have been victims of wife abuse, and 67% and one million children live with violence (UNICEF 2006; Unifem 2002). UNICEF estimate that laws, courts and jails have done little to change the transgression (Human Rights Watch 2005, p. 86).

After World War II, the ethic of self-expression and spontaneity grew; and avoiding guilt became more important than accepting shame (Braithwaite 1989, p. 145).

Crime flourishes best in organisations that isolate people into sealed domains of social responsibility; Crime is controlled in organisations where shady individuals and crooks and are exposed to shame by a responsible majority in the organisation (Braithwaite 1989, p. 144).

The founders of the independent state of Papua New Guinea wrote mediation and restorative justice into the constitution. However, the state accepted the law provided by the colonial government without change.

The law in Papua New Guinea allows the use of mediation. Restorative justice, on the other hand, had been set aside, although in the last forty years almost every country in the world has written it into their law.

The following case study demonstrates the process of Restorative Justice in the Autonomous Region of Bougainville.

Restorative justice case study

During the Bougainville civil war, when the rule of law disappeared from the island, many of the villages returned to custom law to settle their differences. The purpose of this paper is to demonstrate how, quite recently, Seth Gaemate has applied restorative justice to a case of wife beating. Seth Gaemate is a secondary school inspector from Suangu village in the Tinputz District on Bougainville. This is his story. Pseudonyms have been used to protect the identity of the characters.

Roger Hukama and Anita Teivamis had been married for only eleven months at tender ages. They do not have any children. Pastor Kao Brus married them in church. They live a normal life and go about their chores without any problem. Their neighbours would hear laughter coming from their house, and they would

marvel the friendly life they must live. They had harvested cocoa the previous week and Roger went to Buka to sell the five bags they produced. After he had made his sale, he bought what he could for the house and a carton of beer. He consumed his carton of beer on the way home with his friend James Rosu. Though Anita Teivamis did not approve of his drinking, she welcomed him home with the usual friendly smile. After a while, there was the usual laughter. Roger was dancing and putting on a bit of show for Anita Teivamis.

Anita Teivamis Oh, so that is how you dance with all the girls you meet
(wife) at the Fishing Club?

Roger abruptly stops dancing and speaks angrily.

Roger Hukama What did you say?
(husband)

Before Anita could say anything, Roger was throwing punches at her face. Blood was flowing down from a cut made above the right eye. She was crying and screaming for him to stop beating her. Roger then got a tree branch and beat Anita Teivamis from her legs to her head. She could barely crawl; even utter a word, as her lips were swollen and bleeding. She was not the Anita she was a few minutes earlier. Others could scarcely recognise her. Roger then left her helpless where she lay.

Anita's aunt, Lucy, ran from her garden to the scene but could do very little. Neighbours peeped from a distance. Others walked away with their heads hung in shame and disapproval of what they had just witnessed. Her aunt Lucy assisted Anita to her parent's house nearby, and they called Dorothy, the local nurse to attend to Anita's bruises. Anita continued to stay at her parent's house for a week. Then news came from Rogers's parents, through the village chief, that they wanted to solve the problem in the village as soon as possible. Anita and her parents agreed. The aunt, Lucy Vanai, took the matter to Susan Ganogano (village hetmeri) who took it to Paul Itovi (village chief) who made arrangements for a community justice meeting using Arnold Wanhet (male mediator), Ida Belisi (female mediator) and Henry Konfaol (recorder).

The mediators met with the two families of the victim and the offender. At the meeting were: Roger Hukama (Anita Teivamis's husband), Peter Hukama (Roger's father), Mary Hukama (Roger's mother), Jim Pa'una (Roger's uncle), James Rosu (Roger's friend) and Anita Teivamis (Roger's wife), Tony Teivamis (Anita's father), Honey Teivamis (Anita's mother), Thomas Keruka (Anita's uncle), Lucy Vanai (Anita aunt). Also present were: Paul Itovi (village chief), Susan Ganogano (village hetmeri), Kao Brus (pastor) and Dorothy Ename (community nurse).

Establishing a relationship from the very beginning of a meeting is a very important matter. The mediators need to go out of their way to relate to the stakeholders. The mediators should provide a comfortable neutral place with coffee and biscuits or at least a jug of water and glasses. The mediators

introduce themselves and then make introductory remarks that establish the tone of the meeting, what are the boundaries, the ground rules and the expectations.

Arnold Wanhet
(male mediator) Restorative justice is about avoiding payback because a crime has been committed. When one person committed a crime against another, there was always a strong possibility of payback, which could be carried out secretly or publicly. This process is about admission of guilt; it is about the harm done to the victim, the sorrow and apology of the offender, restitution or compensation, forgiveness and reconciliation.

Ida Belisi
(female mediator) ... and both the victim and offender must agree to restorative justice. In this case, Anita and Roger must agree because restorative justice is only suitable if both agree to the process. If the victim or offender is not happy with the way things are going, they may withdraw and go to court.

Arnold Wanhet
(male mediator) Furthermore, there are ground rules, which we must follow during the mediation. The following must be noted. You will not go back to the story; there will be no name calling; we will deal with what happened to the victim and there will be no threats or violence.

When the parties have agreed to use restorative justice, a time is set for three separate meetings with (1) the family of Anita Teivamis, (2) Roger Hukama and his family and (3) the village leaders.

Meeting with Anita's family

Each person tells his/her story and is allowed to express their anger and outrage.

Tony Teivamis
(Anita's father) When our daughter got to the house, her mother and I cried for her. We were so sorry to see the state she was in. You see, we have never treated our daughter this way and to see her the way she was has convinced us that Anita is not going back to Roger.

Other members spoke in a similar way. Ida (mediator) then reminded the group of the rules.

Ida Belisi
(female mediator) Before we leave, I would like to remind you of a few important things. When we meet tomorrow, I would like you to agree that you will not go back to the story, instead you will talk about the harm done. You must speak out about the effect of what was done to Anita. It

is important that you speak about the harm, not the person. There are ground rules that we must follow. As I said earlier, you will leave the story behind, there will be no name calling. We will deal with what happened to Anita and please, there will be no threats or violence'

The mediators then met with Roger Hukama's family

Ida introduces Arnold and the recorder.

Ida Belisi (female mediator) We understand that you have agreed that the matter should be dealt with internally within the community rather than taking it to the police and the court. Is this correct?

Ida Belisi (female mediator) Roger, would you like to tell us your story?

Roger Hukama (Anita's husband), I came back from Buka, drunk, but not too drunk. As usual, Anita and I were laughing. I got up and did some dance styles when Anita made a comment that made me very cross so I started punching her face.

His remark sounds to Ida as though he is making excuses for himself, so she says:

Ida Belisi (female mediator) So, you are saying that whenever Anita makes any unacceptable comment to you, you will beat her up. Is that what you are telling me?

Ida continues with the instructions to the Hukama family on their role during the meeting:

Ida Belisi (female mediator) In the first place, restorative justice is not a court. We are not magistrates. Everyone knows what has been done and who did it. So, there is no need for witnesses. The main purpose for all this is to mend the damage that has been done and try to make sure that it does not occur again. We are not looking for punishment.

During the meeting, the Teivamis family will tell us about how they felt when their daughter was beaten and the effect that it had on them, especially Anita.

It is important that you show you really are sorry for the wrong that has been committed. It must come from your heart. In this way, it will also help Anita and the Teivamis's family to be appreciative of your being sorry.

Meeting with the village elders

The mediators then meet with the village elders to hear their views and instruct them in their role.

The chief expresses his satisfaction at the meeting.

The nurse speaks of Anita's trauma.

Arnold then tells them that their role is to speak in general terms of drinking and wife beating and its impact on the community and how they should be looking at control measures.

Community Justice meeting proper

There is a new round of introductions and Roger thanks the chief for providing accommodation for the meeting. He explains again the difference between court and community justice meetings, outlines the matter of restitution (not money restitution but other traditional valuables).

Finally, Ida reminds the group of the ground rules. She then outlines briefly the story of what happened. She then asks Anita to speak. It is essential for the family of the victim and the community to speak first so that they present the offender with the full force of the damage that he has done. The offender and his family will suffer considerable shame from this.

Shame for bad behaviour is essential to the restorative exercise. It is a healthy shame, which will lead to contrition. Shame that comes from an attack on the person or his character is unhealthy because it is more likely case hardening of heart and retaliation. Wrongdoers feel that public shaming is much worse than anything except capital punishment (Tromph 1994, p. 90).

Anita Teivamis (wife)	Roger and I never had any fights until last week. I made a comment that made him very cross and he beat me up. He beat me up very badly as if I had no life, a punching bag or something. I was so afraid that I could lose my life. I felt humiliated because there were many onlookers, but I didn't care because all I was worried about was getting out alive. What made me cry so much is the fact that I was being beaten for nothing. I am somebody's child. I thought of my parents because they have never treated me this way. I couldn't bear the pain. It was agonizing. I felt safe staying with my parents for the past few days. Even now, I am still scared of going back to Roger.
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Anita's mother speaks of her feelings:

Honey Teivamis	I just had one thing in mind and that is never to send my
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(Anita's mother) daughter back to that good-for-nothing drunkard. How could he beat up my daughter the way he did? Young men today think women grow on trees.

The mediator picks on the personal attack and asks Honey to withdraw her comments. She satisfies the request saying:

Honey Teivamis
(Anita's mother) Sorry for what I said, but it broke my heart when I saw what happened to Anita. Like all women, Anita is not as strong as the men folk. I still cry at times when I think of her disfigured face. I have been thinking about this for the past few days, and I blame myself for that. I have now promised that every comment that I make to Roger or anyone, for that matter, will always be positive or good comments. For the comment I made at Roger, I ask that he will forgive me.

This is a most important phase of the meeting and so should be given sufficient time. Women who have been beaten by their husbands develop a strange belief, deep down, in their psyche that they are unworthy and deserve the beating that they have received. This comes out in a comment by Anita towards the end of the meeting where she accepts blame (Braithwaite 1989, p. 112).

The other members of the family speak, Lucy, the uncle and the nurse.

The moral support and affirmation of the family and the community are powerful remedies to reduce the traumatic stress and rebuild self-confidence.

The community speaks.

Arnold invites the chief to speak. His request is a direction to the chief as to the topic he wants him to address. His words are an invitation to the community to take ownership of their standards of behaviour and involve themselves in their own welfare.

Arnold Wanhet
(male mediator) I believe the community is aware of the problems that occur during the cocoa flush, especially the consumption of alcohol. They may want to have a series of meetings with everyone later to talk about its impact in the community. I would like to ask Chief Paul to speak first.

Paul Itovi
(village chief) Many people did not approve of what happened because it brought shame to the community. We do not want this kind of behaviour in our community. We want a village where there is peace and harmony. I don't know what other villages will say when they hear about this incident. It will be a disgrace if they talk about this incident. As Chief of this village I am aware of the problems drinking has caused especially during the

cocoa flush. This must stop if we want a good community.

It is notable that the Chief refers to the shame brought on the village rather than the harm done to the victim. Women generally have a better understanding. With this opening from the chief, Susan (village hetmeri), Dorothy (community nurse) and Kao Brus (pastor) are all able to speak confidently.

Susan speaks from her position as hetmari.

Susan Ganogano (village hetmeri) I also have something to say. We are not following the good teachings that we have learned from our elders and the missionaries. It is sad when something like this happens because the whole village comes to a standstill to sympathize with the victim. Whatever had happened has affected the whole village one way or another.

Dorothy speaks from her position as community nurse.

Dorothy Ename (community nurse) I deal with casualties all the time. This is one case I wouldn't like to remember. The fear I have is that one day a woman will end up in my clinic dead. This type of behaviour must stop because it is life threatening.

The family of the offender speak

It is common for the mother of the offender to speak first because of the immense load of shame that the family is carrying on behalf of the offender. The mother sets the tone for the rest to follow.

Mary Hukama (Roger's mother) I am ashamed in the eye of the community by what my son did. It has brought me shame even to walk in public. I have all this time been hiding in our house too ashamed to show myself. Roger is not like this. The beer that he drank may have caused him to do what he did and I don't support it.

Rogers's father speaks in similar vein, stressing his own shame.

Peter Hukama (Roger's father), I am also very ashamed and sorry for what my son did. I never thought that he would do what he did. I have not gone to my friends' houses to continue with our village politics because of the shame I bear. Again, I am so sorry for what my son did and I would be relieved if Anita accepts our apology and forgives Roger.

This exchange demonstrates how shame is a major control in the small village (Shame is a sanction, Epstein 1993, p. 9).

Roger is now ready to speak for himself. He has heard the whole community condemn his behaviour and his shame is so intense and there is an urgency to repudiate what he had done.

Roger Hukama (husband) I love Anita very much. What I did to her was wrong and cruel. We are a happy couple but at that moment, I was not thinking right. In fact, straight after I had beaten her I realized I had done something wrong. I am so sorry for what I did to her. For the past days, all I have been thinking about is Anita. Again, I admit I was wrong and I would be very happy if Anita and her family will forgive me for what I did.

Apology and forgiveness are essential outcomes of community justice. Without these, there is no closure to the meeting. Apology provides the victim with an assurance that the fault is with the offender and not with the victim. This brings a reduction of the trauma associated with the beating. Forgiveness is an essential for the offender, if he is ever to go forward, repair the damage, and reform his life.

It is in this area that community justice and the court are at two extreme ends of the justice continuum.

The court	Community justice; restorative justice
Court focuses on guilt and abstract principles.	It focuses on the harm done to the victim and community.
Court focuses on the letter of the law.	Community justice is tested by damage to a person and community.
Court focus on punishing the offender	Focus of community justice is on mending relationships.
Court has no duty of care or reform to a victim and offender.	Care and reform are the principal purpose of community justice.
Court decision based on what a person deserves	Community justice is based on need of the individuals and community

Roger's friend James and his uncle are now anxious to distance themselves from the shameful behaviour in which they may previously have gained a vicarious enjoyment. James now says:

James Rosu (Roger's friend) I would also like to say sorry for all that had happened. I blame myself for getting drunk with Roger on our way back from Buka. I may have been an encouragement for him to get drunk. Anita please accept my apology?

Shaming is more likely to be heeded when undertaken by loved ones whose respect and affection it would be more painful to lose.

The meeting has now developed a climate of understanding and consciousness that naturally leads to an apology on behalf of the Hukama family and a ready acceptance on the part of the Teivamis family. This feeling of justice being done becomes evident to all present.

Restitution is still an important matter because without it there is no closure.

It is essential the mediators remove money altogether from the restitution in restorative justice. Wherever money is brought into the restitution formula, the exercise becomes a financial arrangement of allowing an offender to escape by buying off his victim. The emphasis is on the amount of money that they can claim and not on an effort to reconcile or forgive. The conflict goes on and the people brace themselves for another round of fighting. It is essential that the mediator establishes at beginning of the meeting that money is unsuitable for restitution.

Restitution is not merely a matter of the victim and the offender but of the whole extended family who are ultimately the ones responsible for their people. In the matter of restitution, it is of cultural interest that the uncle rather than the father takes the lead.

Thomas Keruka
(Anita's uncle) Firstly, we are all happy with the apologies given by the Hukama family. We know they are genuine. We are also very much aware of our custom and traditions. We have discussed the restitution according to these customs.

For the hurt and the shame this incident has caused our family, all we are asking, is to bury all and forget about everything. Restitution is set at ten lengths of shell money and four pigs. Of these pigs, three will be female and the other a male. I hope we are not asking too much, but that is what we believe is the value of what was done to Anita.

Again, the response of the Hukama family is through Jim Pa'una (Roger's uncle) who says:

Jim Pa'una
(Roger's uncle) I think that it is fair. What you asked for is not as great as it would have been if this matter was taken to court. I am willing to pay what you have asked. Give us two weeks for the reconciliation to take place.

The implication in Jim's words is that the handing over of the restitution will be a ceremony to be witnessed by the whole village at which time reconciliation (shake hands ceremony) will take place.

Shame followed by contrition followed by forgiveness is a more powerful instrument for building up the strength of the law than a shaming ceremony

alone. Nothing has a greater symbolic force in community wide conscience than this (Braithwaite 1989, p. 96).

It is at this stage that Paul (village chief) places his stamp of the decisions.

Paul Itovi
(village chief) When we were discussing the restitution we were expecting something much tougher. If the Hukama family is happy with what is being asked of them, then we are also happy. The reconciliation will take place right here in two weeks time.

He then attempts to bring good out of the harm that has been done. He calls on the Hukama family to set up controls on Roger's drinking and provides a strategy, which will avoid any future happening.

Paul Itovi
(village chief) We talked about two other things. The first thing was dealing with the consumption of alcohol during the cocoa flush. I will be calling a meeting were all our elders will gather to talk about how to control this.

The second is, though Roger is sorry for what he had done, what we are worried about is that he may get drunk again in the future and beat up Anita. I would like the Hukama family to come up with ways of making sure that this does not happen again.

Before we conclude, the meeting is it is important to pick up all the loose ends.

The agreement should be in writing and signed by both parties. When this is done, there are matters, which are outside final agreement, which should also be noted. Counseling by the pastor and arrangements to avoid future occurrences. It is also very likely that the Hukama will seek a formal reconciliation (shake hands party) at hand-over of shell money and pigs.

Arnold Wanhet (male mediator) asks the recorder to clarify the agreement that has been reached.

Henry Konfaol
(recorder) Thank you everyone. I will now read to you what I have written down as important: That Anita is willing to go back to Roger if he changes his attitude. The Teivamis family accepted apologies. Hukama family agreed to pay ten lengths of shell money and four pigs. Chief will call a meeting to control the consumption of alcohol. Roger will not buy beer again.

Roger will be the leader of a group preaching against

alcohol consumption. Anita will not make negative comments. Pastor will provide counselling. Honey will visit the couple once a week. Reconciliation will take place in two weeks time at the chief's place.

The reconciliation will take place later, when the Hukama family have organised the restitution payment.

Conclusion

The purpose of the restorative justice meeting was four fold. The first was to restore the condition of Anita, the wife. It is doubtful if her shame and fear can ever be removed completely, even over a period of time. Anita's apology for making negative comments and the final admonition of the meeting, indicate that she is still shamed and fearful and culturally conditioned to blame herself for being in some way the cause of the incident. However the support of family and the granting of restitution go a long way to bring normalcy. The second was to bring genuine sorrow and purpose of amendment to Roger, the husband. This seems to have been very successful. He has gone past the stage of being merely sorry for what he has done. His shameful behaviour has exposed him before the whole community and is emphasised by being shared by the shame his extended family. The third purpose was that of reconciliation. The involvement of the two and the families, the extended family and the individual community leaders generate such a strong condition of shame and forgiveness that reconciliation is assured. As well, there is the matter of restitution which places Roger in debt to his relatives. The final purpose was to strengthen the community by involving all of them in a powerful rejection of a behaviour which is both criminal and unacceptable in civilised society. When the community does this itself it is many times more effective than any external admonition.

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Seth Gaemate is a secondary school inspector in the Autonomous region of Bougainville. In his position, he has been handling conflicts among teachers, students and parents for many years. In a recent Mediation and Restorative Justice Workshop, he was able to upgrade his skills. The present paper based on a verbatim of restorative justice meeting which he conducted.

Pat Howley is a member of the Marist teaching order and a lecturer at Divine Word University. He has spent more than forty years in Papua New Guinea as teacher and Headmaster at St Xavier's, Principal of Passam National High School and Director of Student Affairs at Divine Word Institute. Working as field officer, he set up training in Mediation and Restorative Justice in squatter settlements around Port Moresby and train trainers to extend the work. While conducting training in Bougainville, He was able to study Custom Law and Restorative Justice in the way that Melanesians have practiced it for thousands of years. The book, *Breaking Spears and Mending Hearts*, provides the full story. He is presently lecturing at the Faculty of Flexible Learning at Divine Word University Madang. Readers who wish to read the full verbatim can make enquiries at phowley@dwu.ac.pg .