

Research Article

PROPOSING RESTORATIVE JUSTICE MODELS AS ALTERNATIVE APPROACHES TO ADDRESSING CRIMINAL MATTERS: A CASE STUDY OF JUDICIAL SYSTEMS IN CIVIL AND COMMON LAW COUNTRIES

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ABSTRACT

Background: In recent years, restorative justice has emerged as a mechanism to enhance the involvement of victims in criminal proceedings. Its primary objective is to repair the damage caused by the offence, acknowledging it as a genuine injury in need of healing. While criminal proceedings might vary across jurisdictions based on fundamental principles of human rights, the broader aim is to offer a more comprehensive response to crime, aiming not only to punish but also to reform offenders and reduce future criminal behaviour.

Methods: This qualitative study employed a descriptive, analytical method, utilising case studies and comparative analysis to explore restorative justice models in established judicial systems and their applicability to unestablished framework countries. By analysing and synchronising secondary materials, the research aimed to provide in-depth insights into successful practices and potential adaptations.

Results and conclusions: The results reveal that several restorative justice models have been developed all over the world to align with the legal, socio-political, and cultural contexts of different regions and jurisdictions, such as Canada, New Zealand, and Norway. Despite the variety of restorative justice models, this exploratory study scrutinised four non-adversarial decision-making models: victim-offender mediation, community reparative boards, family group conferencing, and circle sentencing. These four models illustrate an alternative approach to community involvement in crime response, emphasising the diversity and shared themes of community engagement in sanctioning processes. The results offer resourceful guidelines for unestablished judicial systems like Vietnam to choose models best suited to specific needs.

1 INTRODUCTION

Restorative justice is an alternative approach to addressing criminal behaviour that not only violates legal regulations but also causes harm to victims and the community.¹ It aims to address the lack of comprehensive and empathetic perspectives experienced by those affected by a crime, which often leads to feelings of exclusion from proceedings and lack of compensation.² The UNODC encourages its State Members to adopt restorative justice by introducing basic principles on the use of restorative justice programmes in criminal matters.³ Restorative justice promotes dialogue between victims and offenders, allowing all individuals involved in a crime or conflict to actively participate in repairing the damage and pursuing a favourable resolution. This approach falls under the broader scope of restorative practice, a flexible method to actively address problems, promote strong relationships, and resolve harm by facilitating effective and positive communication between persons.⁴ Restorative justice is becoming increasingly used in schools, children's services, corporations, hospitals, communities, and the criminal justice system.⁵ It encompasses preemptive strategies to mitigate harm and conflict, as well as interventions designed to rectify damage in cases where disputes have already occurred. If necessary, mediated restorative gatherings can be organised to foster collaboration among individuals and organisations, improving their collective understanding of a subject and working together to obtain the most effective solution.⁶ Restorative practice emphasises the

- 1 Yvon Dandurand, Annette Vogt and Jee Aei (Jamie) Lee, *Handbook on Restorative Justice Programmes* (Criminal Justice Handbook Series, 2nd edn, UNODC 2020) 4.
- 2 Michele R Decker and others, 'Defining Justice: Restorative and Retributive Justice Goals Among Intimate Partner Violence Survivors' (2022) 37(5-6) *Journal of Interpersonal Violence* 2844, doi:10.1177/0886260520943728; Alana Saulnier and Diane Sivasubramaniam, 'Restorative Justice: Underlying Mechanisms and Future Directions' (2015) 18(4) *New Criminal Law Review* 510, doi:10.1525/nclr.2015.18.4.510; Masahiro Suzuki and Xiaoyu Yuan, 'How Does Restorative Justice Work? A Qualitative Metasynthesis' (2021) 48(10) *Criminal Justice and Behavior* 1347, doi:10.1177/0093854821994622.
- 3 UNODC draft resolution E/CN.15/2002/L.2/Rev.1 of 18 April 2002 'Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters: revised' <<https://digitallibrary.un.org/record/469889?ln=en&v=pdf>> accessed 10 June 2024.
- 4 Jane Bolitho and Jasmine Bruce, 'Science, Art and Alchemy: Best Practice in Facilitating Restorative Justice' (2017) 20(3) *Contemporary Justice Review* 336, doi:10.1080/10282580.2017.1348896.
- 5 Daniela Bolívar, *Restoring Harm: A Psychosocial Approach to Victims and Restorative Justice* (Routledge 2019); Avery Calhoun and William Pelech, 'Responding to Young People Responsible for Harm: A Comparative Study of Restorative and Conventional Approaches' (2010) 13(3) *Contemporary Justice Review* 287, doi:10.1080/10282580.2010.498238; Daniel W Van Ness and others, *Restoring Justice: An Introduction to Restorative Justice* (6th edn, Routledge 2022) doi:10.4324/9781003159773.
- 6 Jane Bolitho, 'Putting Justice Needs First: A Case Study of Best Practice in Restorative Justice' (2015) 3(2) *Restorative Justice* 256, doi:10.1080/20504721.2015.1069531; Ian M Borton and Gregory D Paul, 'Problematising the Healing Metaphor of Restorative Justice' (2015) 18(3) *Contemporary Justice Review* 257, doi:10.1080/10282580.2015.1057704; Jennifer L Lanterman, 'Models Versus Mechanisms: The Need to Crack the Black Box of Restorative Justice' (2021) 17(1) *British Journal of Community Justice* 60.

importance of personal responsibility and accountability for one's choices and conduct, enabling individuals to reflect on their interpersonal relationships and carefully consider the most efficient methods to prevent harm and discord.⁷

Another perspective relating to restorative justice, as stated by Wallis,⁸ is that it represents a paradigm shift in the criminal justice system, emphasising healing, rehabilitation, and the reintegration of offenders into society. It is based on the idea that crime causes harm to individuals and communities, and justice should focus on repairing that harm rather than punishing the offender.⁹ Restorative justice involves various practices, such as victim-offender mediation, community reparative boards, family group conferencing, and circle sentencing, which aim to bring together victims, offenders, and community members to address the aftermath of crime, promote healing, and agree on steps to make amends.¹⁰

In this framework, a criminal act is seen as an irregular action that causes damage to an individual or community rather than merely a violation of the law warranting punishment. This innovative interpretation of crime promotes accountability and the moral responsibility of offenders to rectify the harm caused by their actions and pursue the restoration of the affected relationship.¹¹ To achieve this, restorative justice promotes restorative dialogue, where victims, offenders, and community members come together to discuss the incident.¹² Common formats for these encounters include victim-offender

7 Masahiro Suzuki, 'From 'What Works' to 'How It Works' in Research on Restorative Justice Conferencing: The Concept of Readiness' (2020) 3(3) *The International Journal of Restorative Justice* 356, doi:10.5553/ijrj.000049; Lode Walgrave and others, 'Why Restorative Justice Matters for Criminology' (2013) 1(2) *Restorative Justice* 159, doi:10.5235/20504721.1.2.159.

8 Pete Wallis, *Understanding Restorative Justice: How Empathy Can Close the Gap Created by Crime* (Bristol UP 2014) doi:10.2307/j.ctt1t89gbn.

9 Geoffrey C Barnes and others, 'Are Restorative Justice Conferences More Fair than Criminal Courts? Comparing Levels of Observed Procedural Justice in the Reintegrative Shaming Experiments (RISE)' (2015) 26(2) *Criminal Justice Policy Review* 103, doi:10.1177/0887403413512671; Nick Burnett, Nicholas Burnett and Margaret Thorsborne, *Restorative Practice and Special Needs: A Practical Guide to Working Restoratively with Young People* (Jessica Kingsley Publ 2015); Mary Hallam, *Victim Initiated Restorative Justice: Restoring the Balance: Final Report of the UK Pilot Project* (Restorative Justice at the Post Sentencing Level Supporting and Protecting Victims, Thames Valley Probation; Victim Support June 2015).

10 Cao Thi Oanh, 'International Standards and Experience of Some Countries on Restorative Justice' (2019) 7 *Jurisprudence Journal Hanoi Law University* 68; Gerry Johnstone, 'Towards a "Justice Agenda" for Restorative Justice' (2014) 2(2) *Restorative Justice* 115, doi:10.5235/20504721.2.2.115; Lanterman (n 6).

11 Gregory D Paul and Emily C Swan, 'Receptivity to Restorative Justice: A Survey of Goal Importance, Process Effectiveness, and Support for Victim-Offender Conferencing' (2018) 36(2) *Conflict Resolution Quarterly* 145, doi:10.1002/crq.21238.

12 Giuseppe Maglione, 'Restorative Justice and the State. Untimely Objections Against the Institutionalization of Restorative Justice' (2021) 17(1) *British Journal of Community Justice* 4; Estelle Zinsstag and Inge Vanfraechem (eds), *Conferencing and Restorative Justice: International Practices and Perspectives* (OUP 2012).

mediation and victim-offender conferences, both widely employed models in restorative justice programmes and report higher satisfaction levels among participants.

In recent decades, there has been a growing recognition of the limitations of conventional justice systems, which often fail to address the root causes of criminal behaviour and do little to support victims.¹³ Restorative justice offers an alternative to reduce recidivism, promote victim satisfaction, and strengthen community ties.¹⁴ It aligns with broader societal shifts towards more humane and rehabilitative approaches to justice.¹⁵

The successful implementation of restorative justice relies heavily on a supportive legal framework. Legal structures provide the necessary authority, guidelines, and resources to integrate restorative practices into the broader justice system.¹⁶ Such frameworks ensure that restorative justice processes are standardised, transparent, and accountable, thus enhancing their legitimacy and effectiveness.

Well-established judicial systems, such as those in Canada, New Zealand, and Norway, have successfully integrated restorative justice practices, demonstrating significant benefits in reduced reoffending rates and improved community relations.¹⁷ These systems provide valuable models that can influence the development of restorative justice frameworks in other contexts, including unestablished countries such as Vietnam.

This research, utilising secondary sources, explored the potential of restorative justice as a transformative tool for unestablished judicial systems. By examining well-established frameworks and identifying key success factors, the study sought to propose referential frameworks that could be adapted and implemented in these contexts. The following questions underscore the necessity and relevance of restorative justice in the current situation:

1. What benefits does restorative justice offer to unestablished judicial systems?
2. What requirements are necessary for restorative justice to become effective?
3. How can unestablished judicial systems identify the best-suited models of restorative justice frameworks?

13 Johnstone (n 10); Catherine S Kimbrell, David B Wilson and Ajima Olaghere, 'Restorative Justice Programs and Practices in Juvenile Justice: An Updated Systematic Review and Meta-Analysis for Effectiveness' (2023) 22(1) *Criminology & Public Policy* 161, doi:10.1111/1745-9133.12613; Elizabeth Tiarks, 'Restorative Justice, Consistency and Proportionality: Examining the Trade-off' (2019) 38(2) *Criminal Justice Ethics* 103, doi:10.1080/0731129X.2019.1638597.

14 Ellie Piggott and William Wood, 'Does Restorative Justice Reduce Recidivism? Assessing Evidence and Claims about Restorative Justice and Reoffending' in Theo Gavrielides (ed), *Routledge International Handbook of Restorative Justice* (Routledge 2019) 359.

15 Lanterman (n 6).

16 Maglione (n 12); Saulnier and Sivasubramaniam (n 2).

17 Cao (n 10); Samantha Jeffries, William R Wood and Tristan Russell, 'Adult Restorative Justice and Gendered Violence: Practitioner and Service Provider Viewpoints from Queensland, Australia' (2021) 10(1) *Laws* 13, doi:10.3390/laws10010013; Tran Tuan Minh, 'Restorative Justice and Some Restorative Justice Programs Around the World' (2023) 23 *Vietnam trade and industry review* <<https://tapchiconghuong.vn/tu-phap-phuc-hoi-va-mot-so-chuong-trinh-tu-phap-phuc-hoi-tren-the-gioi-115433.htm>> accessed 10 June 2024.

2 METHODS AND MATERIALS

The qualitative research mainly employed a descriptive and systematic approach, utilising case studies and comparative analysis to provide in-depth insights into restorative justice models in established judicial systems and international instruments as well as their applicability to unestablished framework countries. It systemised, analysed, examined, and synchronised secondary materials, following a theoretical research approach given by Long-Sutehall et al.¹⁸ By overviewing some crucial international instruments, such as ECOSOC Resolution 2002/12, UNGA Resolution 67/187, UNODC restorative justice programmes, values and standards of restorative justice EFRJ,¹⁹ and other secondary source studies on restorative justice initiatives, this exploratory and descriptive study aims to propose a potential restorative justice framework tailored to meet the evolving needs of unestablished judicial systems in the context of the 4.0 era.

3 DISCUSSION

3.1. Critical theories and principles influencing the legal foundations of restorative justice

Restorative justice is guided by key legal principles that ensure its alignment with broader legal frameworks and fair implementation. These principles provide the foundation for restorative practices, ensuring they are legally sound and ethically robust.²⁰ Restorative justice can create a more holistic, empathetic, and effective approach to justice, focusing on healing and positive outcomes for all parties involved.²¹

Three crucial theories underpinning restorative justice include reintegrative shaming theory, procedural justice theory, and peacemaking criminology. Braithwaite's reintegrative shaming theory,²² in particular, highlights the importance of cultural commitments to

18 Tracy Long-Sutehall, Magi Sque and Julia Addington-Hall, 'Secondary Analysis of Qualitative Data: A Valuable Method for Exploring Sensitive Issues with an Elusive Population?' (2010) 16(4) *Journal of Research in Nursing* 335, doi:10.1177/1744987110381553.

19 ECOSOC Resolution 2002/12 of 24 July 2002 'Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters' <<https://www.refworld.org/legal/resolution/ecosoc/2002/en/27056>> accessed 10 June 2024; UNGA Resolution 67/187 of 20 December 2012 'United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems' <<https://www.refworld.org/legal/resolution/unga/2013/en/94967>> accessed 10 June 2024; Dandurand, Vogt and Lee (n 1); Tim Chapman, Malini Laxminarayan and Kris Vanspauwen (eds), *Manual on Restorative Justice Values and Standards for Practice* (EFRJ 2021).

20 Bolitho (n 6); Decker and others (n 2); Saulnier and Sivasubramaniam (n 2).

21 Borton and Paul (n 6); Lawrence W Sherman and others, 'Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review' (2015) 31 *Journal of Quantitative Criminology* 1, doi:10.1007/s10940-014-9222-9.

22 John Braithwaite, *Crime, Shame and Reintegration* (CUP 1989) doi:10.1017/CBO9780511804618.

reintegration methods as a key factor in crime control. The theory identifies specific types of humiliation that contribute to crime rather than prevent it. Reintegrative shaming theory comprises three components: shaming, reintegration, and communitarianism.

Shaming is a social process where disapproval is expressed towards an individual's actions, aiming to invoke a sense of guilt or remorse. Reintegration involves restoring an individual to their community after being shamed, encouraging positive connections with family, friends, and community. Communitarianism emphasises the connection between the individual and the community, with communities playing a crucial role in facilitating their reintegration.²³ Thus, restorative justice provides a robust framework for understanding and implementing restorative justice. By focusing on the reintegration of offenders and active community involvement, this approach promotes healing, reduces recidivism, and strengthens social bonds. Implementing these principles requires education, policy development, community engagement, and continuous evaluation.²⁴

Concerning the procedural justice theory, many researchers define procedural justice,²⁵ also known as procedural equity, as the equitable nature of the procedures employed by individuals in positions of authority to achieve particular outcomes or decisions. This theory emphasises that when citizens evaluate the legitimacy of authority figures (or power holders), they often prioritise procedural equity – how they are treated – over the outcome of their encounters.²⁶ In other words, it is a concept in the field of justice and criminology that emphasises the fairness of the decision-making processes, particularly within legal and organisational contexts.

This theory posits that people's perceptions of justice and compliance with laws and regulations are significantly influenced by the fairness of the procedures used to make decisions and resolve disputes. Its core components encompass fairness, transparency, consistency, and correctability.²⁷

23 Canadian Intergovernmental Conference Secretariat, 'Principles and Guidelines for Restorative Justice Practice in Criminal Matters' (Federal Provincial Territorial Meeting of Ministers Responsible for Justice and Public Safety (831-221), St John's, Newfoundland and Labrador, 15–16 November 2018) <<https://scics.ca/en/product-produit/principles-and-guidelines-for-restorative-justice-practice-in-criminal-matters-2018/>> accessed 10 June 2024.

24 Paul and Swan (n 11); Piggott and Wood (n 14); Tran (n 17).

25 Sarah Bennett, Lorelei Hine and Lorraine Mazerolle, 'Procedural Justice' in *Oxford Bibliographies* (OUP 2018) doi:10.1093/OBO/9780195396607-0241; Christopher Donner and others, 'Policing and Procedural Justice: A State-of-the-art review' (2015) 38(1), *Policing: An International Journal* 153, doi:10.1108/PIJPSM-12-2014-0129; Daniel S Nagin and Cody W Telep, 'Procedural Justice and Legal Compliance' (2017) 13 *Annual Review of Law and Social Science* 5, doi:10.1146/annurev-lawsocsci-110316-113310; Tom Tyler, 'Procedural Justice and Policing: A Rush to Judgment?' (2017) 13 *Annual Review of Law and Social Science* 29, doi:10.1146/annurev-lawsocsci-110316-113318.

26 Barnes and others (n 9).

27 Chapman, Laxminarayan and Vanspauwen (n 19).

Hence, fairness emphasises the role of individual involvement, allowing them to express their views and concerns during the decision-making process and ensuring that decisions are made in an unbiased and impartial manner.²⁸ Procedural justice theory emphasises the importance of fair and transparent decision-making processes.²⁹ It requires decision-makers to be perceived as sincere and benevolent, with genuine concern for the well-being of individuals involved. Transparency is crucial, ensuring procedures and reasons are clearly explained and accessible to the public.

Similarly, consistency is also essential, requiring uniform application across similar cases to avoid discrimination. Correctability allows individuals to challenge and appeal decisions they perceive as unfair, improving and refining procedures over time.³⁰ This theory enhances legitimacy, compliance, and satisfaction among individuals by ensuring fair, consistent, and respectful decision-making procedures.

Peacemaking criminology is a theoretical perspective within the field of criminology that emphasises peace, justice, and conflict resolution as key elements in addressing crime and social harm. This approach challenges the traditional punitive and adversarial methods of criminal justice and advocates for more compassionate and non-violent responses to crime. Pepinsky and Quinney officially presented peacemaking criminology to the discipline,³¹ providing nine propositions in their foundational work that offer philosophical insight into the foundations of this approach, laying the groundwork for comprehending it.

Pepinsky addresses the potential for peacemaking criminology via the application of restorative justice programmes and practices,³² whereas Joseph emphasises the influences and history behind the creation of peacemaking and provides the reader with a highly instructive picture.³³ Wozniak evaluates the work of C. Wright Mills and the potential for an integration of the propositions to successfully address social structural problems on a broad basis, all the while considering the possible influence that criminology as peacemaking may have.³⁴ In addition to addressing concerns of societal structural damage, Caulfield highlights the disparities in race, class, and gender. However, she also proposes - as peacemaking implies - that an emphasis be placed on individual reforms.³⁵

28 UK Ministry of justice, *Government response to the Justice Committee's Fourth Report of Session 2016-17: Restorative Justice* (Williams Lea Group 2016).

29 Nagin and Telep (n 25).

30 Tyler (n 25).

31 Harold E Pepinsky and Richard Quinney, *Criminology as Peacemaking* (Indiana UP 1991).

32 Hal Pepinsky, 'Peacemaking Criminology' (2013) 21 *Critical Criminology* 319, doi:10.1007/s10612-013-9193-4.

33 Joseph Moloney, 'Peacemaking Criminology' (2009) 5 *Undergraduate Review* 78.

34 John F Wozniak, 'C Wright Mills and Higher Immorality: Implications for Corporate Crime, Ethics, and Peacemaking Criminology' (2009) 51(1) *Crime, Law and Social Change* 189, doi:10.1007/s10611-008-9151-3.

35 Susan L Caulfield, 'Peacemaking Criminology: Introduction and Implications for the Intersection of Race, Class, and Gender' in Dragan Milovanovic and Martin D Schwartz (eds), *Race, Gender, and Class in Criminology: The Intersections* (Routledge 1997) 91, doi:10.4324/9781315864259.

By outlining the debate over whether peacemaking is more of a philosophical idea for individual life or a more comprehensive conceptual understanding of the causes and correlates of criminal conduct, Klenowski contributes to this conversation.³⁶ Peacemaking criminology offers a transformative approach to understanding and addressing crime by emphasising non-violence, social justice, humanism, community engagement, and restorative justice. In particular, it advocates for non-violent responses to crime, emphasising reconciliation over retribution by encouraging restorative justice practices, community mediation, and conflict resolution that do not rely on violence or coercion.³⁷ Besides, it addresses the root causes of crime by promoting social justice and equality and eradicating social inequalities, and it implements policies that deal with poverty, discrimination, and other social injustices that contribute to criminal behaviour.³⁸

For the issue of humanism, peacemaking criminology is a humanistic approach that acknowledges the humanity of all individuals involved in the criminal justice process, including offenders, victims, and community members. It prioritises rehabilitation and reintegration over punishment, involving communities and empowering them to resolve conflicts.³⁹

Restorative justice is another key feature, focusing on repairing the harm caused by criminal behaviour through inclusive processes like victim-offender mediation, family group conferencing, and peacemaking circles. This approach advocates for addressing the crime's underlying social and structural causes through restorative and reconciliatory approaches.

Restorative justice is guided by several key legal principles that ensure its alignment with broader legal frameworks and its fair and just implementation. These principles form the foundation for restorative practices, ensuring they are legally sound and ethically robust. Based on previous legal normative documents,⁴⁰ prominent legal principles relating to restorative justice are regulated.

Restorative justice practices must operate within the law to ensure legal recognition, legitimacy, and enforceable actions. All participants in restorative justice processes must be afforded legal rights and protections, which provide transparency and ensure

36 Paul M Klenowski, 'Peacemaking Criminology: Etiology of Crime or Philosophy of Life?' (2009) 12(2) *Contemporary Justice Review* 207, doi:10.1080/10282580902879344.

37 Restorative Justice Council, *Restorative Justice in the Magistrates Court: An introduction to restorative justice in cases involving defendants / offenders aged 18 and over in courts in England and Wales* (RJC 2023).

38 Gregory D Paul, 'The Influence of Belief in Offender Redeemability and Decision-Making Competence on Receptivity to Restorative Justice' (2021) 14(1) *Negotiation and Conflict Management Research* 1, doi:10.1111/ncmr.12176; Pepinsky (n 32).

39 William R Wood, Masahiro Suzuki and Hennessey Hayes, 'Restorative Justice in Youth and Adult Criminal Justice' in *Oxford Research Encyclopedia of Criminology* (OUP 2022) doi:10.1093/acrefore/9780190264079.013.658.

40 ECOSOC Resolution 2002/12 (n 19); UNGA Resolution 67/187 (n 19); Canadian Intergovernmental Conference Secretariat (n 23).

voluntary participation. Responses to crime in restorative justice must be proportionate to the harm caused and the offender's circumstances, avoiding excessive or insufficient responses. Participation in restorative justice processes must be voluntary, with informed consent and withdrawal allowances.

Confidentiality of information shared during restorative justice processes is crucial to protect participants' privacy and encourage open dialogue. Restorative justice processes must be conducted without discrimination, ensuring equal respect for all participants. Facilitators must remain neutral and unbiased throughout the process to ensure fair treatment and outcomes. Offenders must take responsibility for their actions and the harm caused, promoting genuine accountability and actions that repair harm.

Transparency and openness to scrutiny are essential to build trust in the restorative justice system and ensure its legitimacy. Restorative outcomes should be acknowledged through reparative actions, community service, and efforts to rebuild trust and harmony.

The Restorative Justice Council (restorativejustice.org.uk) is the official organisation in the UK that oversees and represents the area of restorative practice. It is an independent membership group with a national scope. The primary goal is to advance restorative justice in all its manifestations for the betterment of society as a method of settling disputes and fostering reconciliation. Restorative justice is a highly efficient approach to addressing crime, allowing victims to communicate with their perpetrators and understand the consequences of their actions. It ensures offenders are held accountable and aids in acknowledging their wrongdoing and making reparations. This approach is applicable to both adult and juvenile offenders, regardless of the offence.

Restorative justice and restorative practice, while related, are distinct concepts. Restorative justice is a comprehensive ideology that encourages individuals most impacted by injury and conflict to discuss the reasons and outcomes, while restorative practice focuses on effective communication among those affected by harm and conflict. This includes discussing the impact of behaviour, examining relationships, and collaboratively determining actions to acknowledge and rectify the harm.

The Restorative Justice Council occurs in various contexts, including restorative discussion, restorative leadership strategies, and direct and indirect restorative processes. Besides, the operation of the Restorative Justice Council is subject to six principles of restorative practice, namely restoration, voluntarism, impartiality, safety, accessibility, and empowerment.⁴¹ Particularly, restorative practice aims to address participants' needs without causing harm, focusing on helping, exploring relationships, and building resilience. Participation is voluntary, based on open, informed choice and consent. Practitioners must remain impartial, respectful, non-discriminatory, and unbiased towards all participants, recognising potential conflicts of interest. Safety is a top priority,

41 Restorative Justice Council, 'RJC Principles of Restorative Practice' <<https://restorativejustice.org.uk/sites/default/files/The%20RJC%27s%20Principles%20of%20Restorative%20Practice.pdf>> accessed 10 June 2024.

creating a safe space for expressing feelings and views without causing further harm. Restorative practice must be respectful and inclusive of diversity needs, such as mental health conditions, disability, culture, religion, race, gender, or sexual identity.⁴² Finally, restorative practice should empower individuals to make informed choices and find solutions that best meet their needs.⁴³

Restorative justice, part of Canada's Restorative Justice Council⁴⁴ for over 40 years, is highly regarded as an efficient method for reforming the criminal justice system and ensuring the safety of communities. Rooted in Indigenous principles and processes, restorative justice in Canada is guided by core principles that emphasise collaboration across systems, with community partners, and within the community. These principles highlight the importance of cultural responsiveness and consider histories, contexts, causes, and circumstances of harm.

The Canadian justice system values transparency, accountability, and transformation, which are forward-focused, problem-solving, preventative, and proactive approaches to restore just relations between individuals, groups, and communities.⁴⁵ By embedding these legal principles into restorative justice practices, jurisdictions can ensure that restorative justice is implemented fairly, democratically, and effectively, promoting healing, accountability, and community cohesion. These principles are set out to align restorative justice with human rights standards, ensuring that the rights of victims, offenders, and communities are respected and upheld.

3.2. Essential legal instruments for establishing a restorative justice framework

Many international instruments impact the formulation of a restorative justice framework for unestablished judicial systems. One of the most influential legislative documents is E/CN.15/2002/L.2/Rev.1. promulgated by UNODC and adopted by ECOSOC Resolution 2002/12, which prescribes some basic principles on the use of restorative justice programmes in criminal matters.⁴⁶

According to Articles 6-11, restorative justice programmes can be implemented at any point in the criminal justice system, provided they comply with national laws. They should only be utilised when substantial proof exists, and the victim and offender provide

42 Heather L Scheuerman and Shelley Keith, 'Experiencing Shame: How Does Gender Affect the Interpersonal Dynamics of Restorative Justice?' (2022) 17(1) *Feminist Criminology* 116, doi:10.1177/155708512111034556.

43 Restorative Justice Council (n 37) 14.

44 Canadian Intergovernmental Conference Secretariat (n 23).

45 Tinneke Van Camp and Jo-Anne Wemmers, 'Victims' Reflections on the Protective and Proactive Approaches to the Offer of Restorative Justice: The Importance of Information' (2016) 58(3) *Canadian Journal of Criminology and Criminal Justice* 415, doi:10.3138/cjccj.2015.E03.

46 UNODC draft resolution E/CN.15/2002/L.2/Rev.1 (n 3); ECOSOC Resolution 2002/12 (n 19).

their voluntary consent while imposing appropriate obligations. The victim and offender should mutually establish the fundamental details of the case, and their involvement should not be utilised as proof of guilt in subsequent legal processes. If restorative processes are deemed unsuitable, cases should be promptly forwarded to criminal justice authorities for decisive action.

Concerning the operation of restorative justice programmes (Articles 12-19, therein), this legal normative document suggests that Member States should establish guidelines for restorative justice programmes, including referral conditions, case handling, facilitator qualifications, administration, competence standards, and rules of conduct. It emphasises procedural safeguards for fairness, including consultation with legal counsel, informed consent, and no coercion. Confidentiality is required; agreements should be judicially supervised or incorporated into decisions. If no agreement is reached, cases should be referred back to the criminal justice process. Facilitators should perform their duties impartially, respecting parties' dignity and understanding local cultures and communities. Initial training is required for facilitators.

In terms of the continuing development of restorative justice programmes (Articles 20-22, therewith), the Resolution sets out that each member state should work to establish restorative justice policies and programmes at the federal, state, and regional levels and to encourage their adoption by the judicial, social, and municipal sectors. Criminal justice authorities and programme administrators must regularly consult for restorative justice programmes to be more effective and widely used. Member states must prioritise restorative justice programme evaluation and research to guide future policy and programme development and encourage frequent adjustments.

Another well-known legal normative document which is widely consulted is Recommendation No. R(99)19 by the Council of Europe (1999).⁴⁷ In particular, the general principles (Articles 1-5) emphasise the importance of consent, confidentiality, availability, and autonomy in penal matters mediation, which should be voluntary, available at all stages of the criminal justice process, and given sufficient autonomy within the criminal justice system. The legal basis of the Recommendation (Articles 6-8) states that the legislation should facilitate penal case mediation, with guidelines defining its use and addressing referral and handling conditions. Fundamental procedural safeguards should be applied, including legal assistance, translation/interpretation, and parental assistance. For the operation of criminal justice in relation to mediation (Articles 9-18), the Recommendation prescribes that it is the responsibility of the criminal judicial system to decide whether or not to send a criminal matter to mediation. Each party should know their rights, the mediation procedure, and potential outcomes. There should be no pressure on victims or offenders to participate in mediation. Also, in criminal cases, minors should be protected. If the parties involved in the mediation need help to grasp

47 Council of Europe Recommendation no R(99)19 of the Committee of Ministers to Member States concerning Mediation in Penal Matters (adopted 15 September 1999) <<https://rm.coe.int/0900001680910dbb>> accessed 10 June 2024.

how it works, then it should not go further. Recognising the fundamental facts of a case is essential, and involvement should not be construed as proof of guilt in later judicial processes. Mediated settlements should have the same weight as final court rulings regarding dismissals. Furthermore, the operation of mediation services (Articles 19-32) is laid out as follows: mediation services should be governed by recognised standards, have sufficient autonomy, and be monitored by a competent body.

Mediators should be recruited from all societal sections, understand local cultures well, and demonstrate sound judgment and interpersonal skills. They should receive initial and in-service training to ensure competence. Mediation should be impartial, respectful of parties' needs, and provided in a safe environment. It should be carried out efficiently, on camera, and confidentially. Agreements should be reached voluntarily by parties, with reasonable and proportionate obligations. The mediator should report to the criminal justice authorities on the mediation's steps and outcome without revealing the contents of sessions or judgment on parties' behaviour. As for the continuing development of mediation, Articles 33 and 34 declare that authorities in the criminal justice system and mediation services should meet frequently to establish ground rules. The Member States should also push for more research into and assessments of criminal mediation.

RJC asserts that restorative techniques can be conceptualised as a continuum, which is beneficial for understanding their nature. The term "restorative justice" is occasionally used broadly to encompass several interventions. However, clarifying the differences between different restorative approaches illustrated in Figure 1⁴⁸ below is crucial.

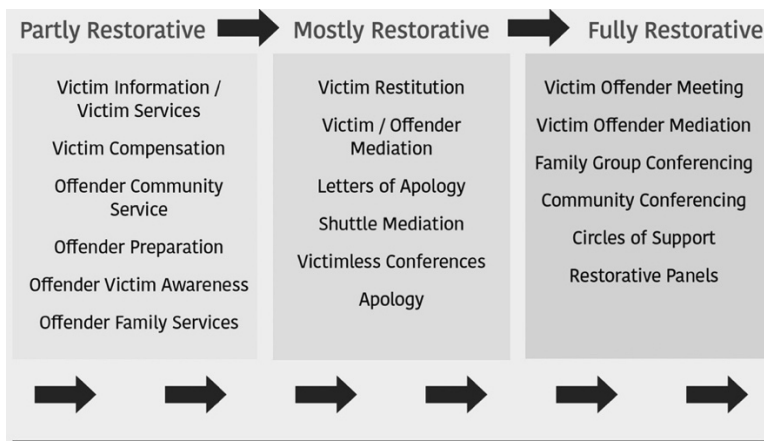


Figure 1. Victim/Offender Restorative Continuum

48 Northern Ireland Department of Justice, *Adult Restorative Justice Strategy for Northern Ireland: Restoring Relationships, Redressing Harm 2022–2027* (Department of Justice, 15 March 2022) 2 <<https://www.justice-ni.gov.uk/publications/adult-restorative-justice-strategy-ni>> accessed 10 June 2024.

The Northern Ireland Department of Justice initiated an Adult Restorative Justice Strategy⁴⁹ to formalise and increase the use of restorative justice approaches across the criminal justice system, from prevention/diversion to community settings and custody and reintegration. This strategy outlines how statutory, voluntary, and community providers can creatively work together to repair offenders' harm and meet their needs. Figure 2⁵⁰ below illustrates the different stages where the opportunity to implement restorative justice arises.

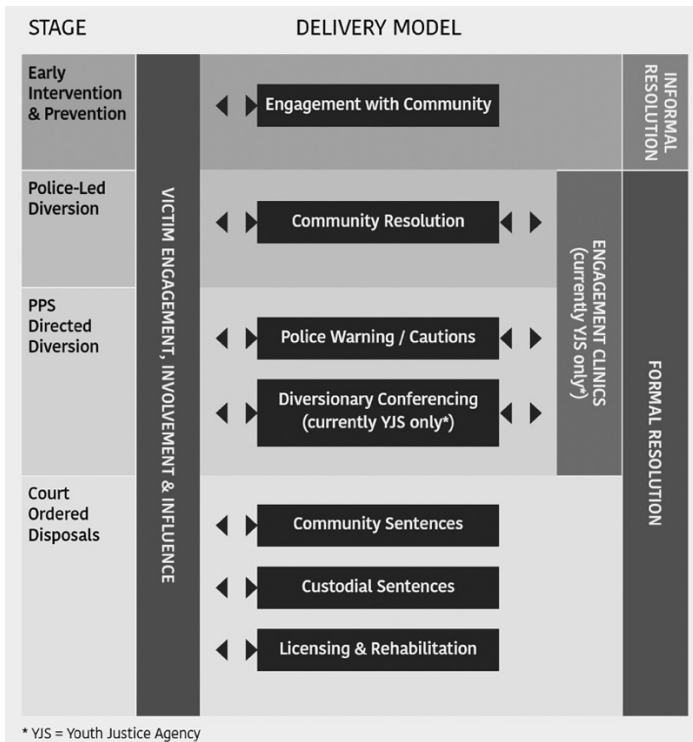


Figure 2. Stages of restorative justice approaches along the criminal justice continuum

A further approach to determining the formation of an effective restorative framework is to consider CICS.⁵¹ CICS offers a comprehensive strategy for meeting the specific requirements of different groups, which in turn reduces the disproportionate representation and improves

49 *ibid.*

50 *ibid* 28.

51 Canadian Intergovernmental Conference Secretariat, 'Restorative Justice – Key Elements of Success' (Federal Provincial Territorial Meeting of Ministers Responsible for Justice and Public Safety (831-221), St John's, Newfoundland and Labrador, 15–16 November 2018) <<https://scics.ca/en/product-produit/restorative-justice-key-elements-of-success/#fn1>> accessed 10 June 2024.

the availability of justice. Canadian restorative approach follows the *Key Elements of Success*, which encompasses four recommendations as follows:

Recommendation 1: Recognise restorative justice as a strategic investment in a highly successful and efficient Criminal Justice System;

Recommendation 2: Support for the implementation of the guiding principles and goals on a national level to initiate the change of the criminal justice system towards greater effectiveness and fairness through a restorative approach;

Recommendation 3: Establish a structured framework in each jurisdiction to unite stakeholders involved in restorative justice;

Recommendation 4: Emphasise a methodical and ethical approach to teaching, training, and evaluation.

By taking a more comprehensive view of each community's needs, restorative justice helps alleviate overrepresentation and expands access to justice, according to the *Key Elements of Success*.⁵²

Armed with the necessary understanding of restorative justice approaches in essential legal components from international legal instruments, a restorative justice framework can be effectively established and maintained. This ensures that it serves the needs of victims, offenders, and the community while upholding justice and fairness.

3.3. Proposing restorative justice models for unestablished judicial systems

Restorative justice models might vary but share common restorative conferencing elements such as inclusive dialogue, consensus-based decision-making, and reparative actions. Prominent models include four models of restorative conferencing, namely victim-offender mediation, community reparative boards, family group conferencing, and circle sentencing. In this context, the term "restorative conferencing" refers to a variety of strategies that aim to bring together victims, offenders, and community members in community-based processes that are non-adversarial.⁵³ The goal of these strategies is to respond to crime by holding offenders accountable and repairing the harm caused to victims and communities.

While these four models do not cover all the potential approaches for community engagement in addressing youth crime, they illustrate the diverse options and shared principles that reflect a fresh perspective on involving citizens in the decision-making

52 *ibid.*

53 Barnes and others (n 9); Sherman and others (n 21); Suzuki (n 7).

process for imposing penalties.⁵⁴ Countries like Vietnam, which have not applied restorative justice models in criminal proceedings, might select the following approaches instead of using sanctioning processes.

3.3.1. Victim-offender mediation

Victim-offender mediation programmes, or reconciliation or dialogue programmes, are a proposed model in unestablished legal systems.⁵⁵ These programmes allow victims to meet offenders in a secure environment and engage in a facilitated dialogue about the crime. The victim can communicate the crime's physical, psychological, and financial consequences, obtain clarification on any remaining questions, and actively participate in formulating a plan for the offender to repay any financial obligations owed. This method differs from mediation as it is often performed in civil or commercial disputes, where parties are in consensus over their responsibilities.⁵⁶ The primary objective of the process should not only be achieving a settlement but also developing a mutually acceptable plan to address the harm caused by the crime. The terms "victim-offender meeting," "conferencing," and "dialogue" are gaining popularity as alternative words to express deviations from conventional mediation methods.⁵⁷

A victim-offender mediation programme should prioritise the victim's needs, ensuring their safety and well-being. The victim's involvement should be voluntary, while the offender's involvement should be based on their free will.⁵⁸ Offenders are often allowed to engage in mediation or dialogue but should never be compelled or forced to participate. Victims should be able to decide about the processes involved, including timing, location, and speaking order. The preparedness of both the victim and the perpetrator should be thoroughly evaluated. The mediator should arrange face-to-face pre-mediation meetings to clarify matters and establish further communication. The mediator should also oversee the implementation of any agreements made. Overall, the mediator's role is to ensure a successful and respectful mediation process.⁵⁹

This model is suitable for criminal situations where the parties involved can benefit from a facilitated dialogue, focusing on healing, accountability, and restorative outcomes such as non-violent crimes, juvenile offences, first-time offenders, crimes involving familiar relationships, minor assaults and domestic disputes, hate crimes and bias-motivated incidents, or community-based offences. Thus, the key factors for the applicability of this

54 Barnes and others (n 9); Do HY, 'Restorative Justice in Dealing with Juveniles Committed the Crime' (2008) 20(136) Vietnamese Journal of Legislative Research 23; Kimbrell, Wilson and Olaghère (n 13).

55 Hallam (n 9); Paul and Swan (n 11); Paul (n 38).

56 Paul and Swan (n 11).

57 *ibid.*

58 William R Wood and Masahiro Suzuki, 'Getting to Accountability in Restorative Justice' [2024] Victims & Offenders doi:10.1080/15564886.2024.2333304.

59 Paul and Swan (n 11)

model include the willingness of both the victim and the offender to participate in the mediation process and the suitability of the case for a restorative rather than purely punitive approach.

3.3.2. Community reparative boards model

The community reparative board is a form of community-based punishment for youth offenders, also known as youth panels, neighbourhood boards, or community diversion boards. These boards consist of trained citizens who hold public meetings with offenders as ordered by the court.⁶⁰ During these meetings, the boards work with the offenders to develop sanction agreements and ensure compliance, subsequently reporting the offenders' progress to the court.

The boards aim to involve citizens directly in the justice process and promote their ownership of the criminal and juvenile justice systems. They provide a platform for victims and community members to confront offenders constructively, allowing them to address the offender's behaviour.⁶¹ Additionally, these boards offer opportunities for offenders to take personal responsibility and be held accountable for the harm they cause to victims and communities by generating community-driven consequences for criminals and delinquents.

Effective implementation of community-driven reparative board programmes requires effective marketing to the justice system, well-trained staff, and collaboration with victim organisations. It also necessitates expeditious case processing, a positive board experience, quality training, adequate resources, and a focus on successful outcomes for offenders, victims, and community participants.⁶² Judges should support limiting the offender's time in the programme and on probation, ensuring a positive experience for board members and successful outcomes for offenders, victims, and community participants.

In general, this model is most applicable in situations where the crime has a tangible impact on the community, where the offender shows a willingness to take responsibility, and where the community is interested in participating in the process of accountability and restoration. It focuses on repairing harm, promoting rehabilitation, and strengthening community ties. Some situations might be implemented, such as low-level, non-violent offences, i.e., petty theft, vandalism, disorderly conduct, minor drug offences, first-time offenders, juvenile offenders, offences with a community impact like acts of vandalism affecting public property

60 Gale Burford and Joan Pennell, 'Family Group Decision Making and Family Violence' in Gale Burford and Joe Hudson (eds), *Family Group Conferencing: New Directions in Community-Centered Child and Family Practice* (Aldine de Gruyter 2000) 171, doi:10.4324/9780203792186-20; Lanterman (n 6); Maglione (n 12).

61 Gordon Bazemore and Mara Schiff, *Juvenile Justice Reform and Restorative Justice* (Routledge 2013).

62 Kimbrell, Wilson and Olaghere (n 13).

or community spaces, quality of life crimes, i.e., noise violations, public disturbances, or minor environmental infractions, and community disputes and conflict.

3.3.3. Family group conferencing model

Family group conferencing, also known as Family Group Decision Making, is a New Zealand model widely adopted for resolving conflicts and making decisions. It was incorporated into national legislation in 1989 and has successfully resolved various offences, including theft, arson, minor assaults, drug offences, vandalism, and child maltreatment.⁶³ Family group conferencing involves the participation of the most impacted individuals, including the victim, offender, family members, friends, and allies. A skilled mediator works with the affected individuals to discuss the harm caused by the offence and potential solutions. The goal of family group conferencing is to involve the victim in discussions about the offence and decisions regarding punishment, ensuring their needs are considered.⁶⁴ It also aims to increase the offender's understanding of the impact of their actions on others and provide them with an opportunity to take responsibility for their behaviour.

Family group conferencing has been adopted in various settings, including schools, police departments, probation offices, residential programmes, community mediation programmes, and neighbourhood groups.⁶⁵ Conferencing is primarily employed as a diversionary measure for juveniles during the court process. However, it can also be utilised post-adjudication and disposition to tackle unresolved matters or establish precise conditions for restitution. Conferencing programmes have been introduced within individual agencies and jointly developed by multiple agencies. In practice, family group conferencing does not adhere to a single delivery model. As cited in 'The Right To Know (2016)',⁶⁶ the four discrete stages below might be implemented in some circumstances.

Stage 1. Family group conferencing coordinators who are independent spend time conversing with the child and their caregivers to determine the identities of significant individuals in their immediate family, extended network, and other relevant parties who may be included in the process. The coordinator provides a comprehensive explanation of the process to all parties involved, prepares them for the meeting, and subsequently distributes the invitations;

63 Burford and Pennell (n 60).

64 Paul (n 38).

65 Paul and Swan (n 11).

66 Leeds City Council, 'An Evidence Review of the Impact Family Group Conferencing (FGC) and Restorative Practices (RP) have on Positive Outcomes for Children and Families' (*The RTK Ltd*, 26 July 2016) <<https://www.education.ox.ac.uk/wp-content/uploads/2019/06/Family-Group-Conferencing-Background-to-Review-Leeds.pdf>> accessed 10 June 2024.

Stage 2. The starting point of the family group conferencing meeting commences with an exchange of information between the family and the professionals, presided over by the impartial coordinator. Professionals ensure that all parties comprehend their respective roles, obligations, and resources by sharing their concerns. Any participant is permitted to request clarification regarding the procedure;

Stage 3. The next stage of the family group conferencing meeting, known as "private family time," involves the coordinator and professionals leaving the room to allow the family to get involved in an exchange regarding a plan of action, contingency plans, and the review of arrangements and resource requests; and

Stage 4. The coordinator and professionals re-enter the meeting to reach a consensus on the proposed plan during the final step of the family group conferencing meeting. Whenever possible, the accessibility of necessary resources is discussed, and a plan is established as an acceptable approach that meets the child's need for safety and protection. The agreement includes any arrangements for monitoring and evaluating the plan's implementation.

The goal of family group conferencing is to create a support system around the offender, hold them accountable in a constructive way, and work towards a solution that benefits both the victim and the community. As such, this model is particularly applicable in criminal situations involving juveniles or young offenders, minor to moderate offences like property crimes, vandalism, minor assaults, or other non-violent crimes, first-time offenders or minor crimes, and victim willingness.

3.3.4. Circle sentencing model

Circle sentencing is a reintegrative approach that addresses the criminal and delinquent actions of offenders while considering the needs of victims, families, and communities.⁶⁷ Within the "circle," individuals affected by crime, including victims, offenders, their families, justice professionals, and community members, engage in open dialogue to collectively understand the incident. Together, they determine the necessary actions to facilitate recovery and deter future offences.

The circle holds significant significance beyond symbolism; it involves various individuals, such as police officers, lawyers, judges, victims, offenders, and community residents.⁶⁸ They work together to reach a consensus on a sentencing plan that considers all parties involved. Circle sentencing promotes healing for all parties involved in a crime, including the victim, offender, community members, and families, so that offenders can make amends and take responsibility.⁶⁹

67 Barnes and others (n 9).

68 Bazemore and Schiff (n 61).

69 Borton and Paul (n 6).

The circle sentencing process relies on a healthy partnership between the formal juvenile justice system and the community. Participants need training and skill building in the process, as well as peacemaking and consensus building.⁷⁰ The community's planning process should allow time for strong relationships to develop, necessitating a flexible circle process that evolves based on the community's knowledge and experience. Community justice committees lead this process, with a trained community member known as a keeper facilitating the circle.⁷¹

Circle sentencing is not suitable for all offences, as factors such as the offender's character, connection to the community, victim input, and support groups' dedication are crucial. Circles are labour-intensive and should not be used extensively for first offenders or minor crimes.⁷² Barnes et al. claim that the circle's capacity to improve participants' lives and the community's well-being depends on the effectiveness of participating volunteers.⁷³

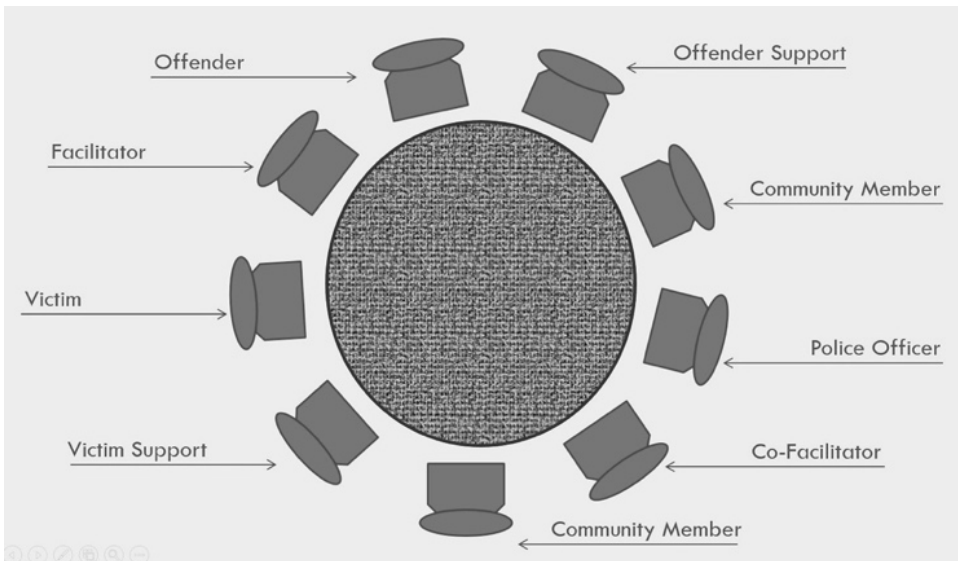


Figure 3. Circling Sentencing Process⁷⁴

70 Pepinsky (n 32); Wozniak (n 34).

71 Lanterman (n 6).

72 Ana M Nascimento, Joana Andrade and Andreia de Castro Rodrigues, 'The Psychological Impact of Restorative Justice Practices on Victims of Crimes-a Systematic Review' (2023) 24(3) *Trauma, Violence, & Abuse* 1929, doi:10.1177/15248380221082085.

73 Barnes and others (n 9).

74 UNODC, 'Module 8: Restorative Justice: Topic two - Overview of Restorative Justice Processes' in *E4J University Module Series: Crime Prevention and Criminal Justice (United Nations Office on Drugs and Crime, 2018)* <<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-8/key-issues/2--overview-of-restorative-justice-processes.html>> accessed 10 June 2024.

This model is especially suited for cases where the offence has deeply impacted the community and the offender is a community member. It focuses on restorative justice, aiming to repair the harm caused by the crime through a process that includes the victim, the offender, their families, and community members. This model is often applied in cases involving non-violent offences such as theft, property damage, or minor assaults, repeat offenders whose traditional punitive measures have not been effective, crimes impacting Indigenous communities, juvenile offences, and cases with a focus on rehabilitation. Notably, this model is less likely to be used in cases involving severe violence or sexual offences or where the safety of the community cannot be ensured through the Circle process.

On the whole, restorative justice is a dynamic and culturally sensitive approach that involves constructive dialogue to facilitate positive transformation. Various practice models have gained prominence, reflecting legal, socio-political, and cultural contexts. Restorative justice programmes can be classified in various ways, with some situations being fully restorative and others only partly restorative. The outcome of the restorative process depends on factors like the involvement of individuals affected, accountability, and achieved results. This section outlines four non-adversarial decision-making models that can alter the current dynamic in juvenile justice processes. These prominent restoration models can be incorporated into justice systems, serve as a part of diversion programmes, or be utilised independently from the justice system.

4 CONCLUSIONS

One way that society expresses its disapproval of actions that violate its shared norms is through the use of punishment. The moral imbalance that has been created requires that punishments be commensurate with the seriousness of the crime. There are many protections built into the criminal justice system because punishment, which can involve physical harm or the withholding of certain liberties, requires a fair and careful application of the law. What constitutes a "just" sentence is one that is commensurate with the seriousness of the offence. Rehabilitation aims to divert individuals from formal legal proceedings and utilise alternative measures when suitable in criminal cases. Over the past few decades, there have been efforts to enhance the involvement of victims in criminal proceedings through the implementation of different mechanisms that allow victims to provide the court with information regarding the harm caused by the offence. One of the most favourable solutions in criminal proceedings is to choose some forms of restorative justice when applicable.

Restorative justice is a method of addressing crime, wrongdoing, injustice, or conflict that aims to repair the damage caused by illegal actions and restore the welfare of all affected parties. Grounded in a relational theory of justice, it prioritises the restoration of respect, equality, and dignity in relationships affected by wrongdoing. This approach empowers

those directly affected by the incident – victims, offenders, their advocates, and society as a whole – to regain agency, ownership, and decision-making power. Restorative justice is characterised by its values of collaboration and consensus-based procedures over adjudicative and adversarial forms in traditional criminal justice processes. By allowing those who have inflicted harm to honestly own their fault, listen to those they have harmed, and fulfil their responsibility to rectify the situation, restorative justice fosters dignity and addresses the needs of all involved parties.

Criminal offences and other forms of injustice are fundamentally perceived as acts of contempt, characterised by a disregard for an individual's inherent dignity, identity, rights, and emotions. The only way to address this lack of respect is with respect itself, where the offender clearly acknowledges that the victim did not deserve to be treated in such a manner and that their rights, emotions, and interests are just as important as those of the perpetrator. Restorative justice presents a different perspective on the criminal justice system and appropriately prioritises the needs and concerns of crime victims.

In traditional criminal justice systems, accountability often means ensuring the appropriate sentence is given, regardless of the offender's personal responsibility for their actions. Within the context of restorative justice, accountability has a much more rigorous nature. Offenders must demonstrate three essential qualities: acknowledging personal culpability for the harm caused, being open to directly seeing the impact of their actions on the lives of others, and proactively taking steps to rectify the situation.

Implementing restorative justice should go beyond introducing new programmes and personnel roles; it requires a comprehensive systemic transformation. The judicial process must include new principles that clearly define the responsibilities of victims, offenders, and communities as important participants. Therefore, this reform must establish and sustain novel decision-making frameworks that effectively address stakeholders' requirements for significant participation. The potential of these new stakeholders lies in their ability to exert influence and bring about changes in decision-making and intervention within the juvenile justice system.

For victims, offenders, and other citizens to be actively involved in significant decision-making processes, there has to be a significant transformation in the responsibilities of juvenile justice professionals. The job must transition from being the single decision-maker to being a facilitator of community engagement and a resource for the community. In general, restorative justice has the potential to transform legal systems worldwide by promoting a more humane, equitable, and effective approach to justice. Countries like Vietnam, which have not integrated restorative justice models into their judicial systems, should consider implementing judicial reforms by legalising restorative justice in criminal proceedings. Such implementation should be flexible and aligned with the legal foundations of criminal law.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ПРОПОЗИЦІЯ МОДЕЛЕЙ ВІДНОВНОГО ПРАВОСУДДЯ ЯК АЛЬТЕРНАТИВНИХ ПІДХОДІВ ДО ВИРІШЕННЯ КРИМІНАЛЬНИХ СПРАВ: ДОСЛІДЖЕННЯ СУДОВИХ СИСТЕМ У КРАЇНАХ КОНТИНЕНТАЛЬНОГО ТА ЗАГАЛЬНОГО ПРАВА

Оань Ті Као* та Туан Ван Ву

АНОТАЦІЯ

Вступ. Останніми роками відновне правосуддя стало механізмом для залучення потерпілих до кримінального процесу. Його головною метою є відшкодування шкоди, що була заподіяна правопорушенням та яка визнається справжньою травмою і потребує лікування. Хоча кримінальне провадження може відрізнятися залежно від юрисдикцій та базових принципів прав людини, загальна мета полягає в тому, щоб надати більш комплексну реакцію на злочин, спрямовану не лише на покарання, але й на виправлення правопорушників і зменшення злочинної поведінки в майбутньому.

Методи. Це якісне дослідження було проведене за допомогою описово-аналітичного методу із використанням тематичних досліджень і порівняльного аналізу для вивчення моделей відновного правосуддя в усталених судових системах та їхньої застосовності в країнах, в яких відсутня відповідна правова база. Проаналізувавши та синхронізувавши вторинні матеріали, у дослідженні було надано поглиблене розуміння успішних практик та можливих адаптацій.

Результати та висновки. Результати дослідження показують, що в усьому світі було розроблено кілька моделей відновного правосуддя, які відповідають правовому, соціально-політичному та культурному контекстам різних регіонів і юрисдикцій, зокрема Канади, Нової Зеландії та Норвегії. Незважаючи на різноманітність моделей відновного правосуддя, у цьому дослідженні було розглянуто чотири неконкурентні моделі прийняття рішень: посередництво між потерпілим і правопорушником, комісії з відшкодування шкоди, сімейні конференції та кругове винесення вироку. Ці чотири моделі ілюструють альтернативний підхід до залучення громади до боротьби зі злочинністю, а також наголошують на різноманітності та спільних темах для участі громади в процесах застосування санкцій. У результатах були запропоновані нестандартні судові системи, такі як в'єтнамська, корисні рекомендації щодо вибору моделей, які найкраще відповідають конкретним потребам.

Ключові слова: відновне правосуддя, судова система, кримінальний процес, моделі відновної конференції, процеси застосування санкцій.