There is a growing consensus across the international community,\textsuperscript{1} that Restorative Justice\textsuperscript{1} can be a desirable alternative or addition to ordinary criminal justice approach to resolving conflicts. Indeed, this is reflected in the international standards and instruments implemented by the United Nations and other regional bodies, which have increasingly been referring to mediation and Restorative Justice measures over the last 15 years. The modern concept of Restorative Justice builds on the view that the traditional criminal justice process is an inadequate forum for resolving conflicts between victims and offenders and for meeting both their needs and those of the wider community in which their conflict is set. In this conceptual approach of Restorative Justice, participation and involvement are key to focus on the harm, need and obligation of all involved within a framework that incorporates international human rights including proportionality and confidentiality.

Restorative Justice is a complex notion that is constantly evolving, but in order to provide a conceptual definition of a restorative approach, some scholars\textsuperscript{2} have highlighted the characteristics of the process, underlining the positive aspects of a less formal forum in which the parties involved actively and voluntarily participate in a dialogue. A personal interaction of this kind is considered to be beneficial in fostering personal responsibility and successful reintegration. Moreover, other scholars\textsuperscript{3} have instead focused on the outcome, emphasizing how restorative practices can effectively repair harm and improve conflict resolution. A restorative approach can produce beneficial results which help all the persons involved in an injustice, which benefits society on a whole.

Furthermore, while the flexibility of restorative justice measures is promising, the question of their efficiency still remains and it is thus necessary to evaluate their impact in practice. Restorative practices promote a vision of justice based on participation, dialogue and reparation, rather than retribution. Access to such measures contributes to diverting young people from the criminal

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\item \textsuperscript{1} ‘Any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator’. (ECOSOC Resolution 2002/12)
\item \textsuperscript{2} Christie’s re-appropriation of conflict is about restricting the role of the state and providing for a less formal forum where parties can actively resolve the crime. Braithwaite’s reintegrative shaming theory states that committing crimes is constituted as unthinkable because of social processes of shaming.
\item \textsuperscript{3} For instance Liebmann focuses on acknowledging the impact of the crimes that have been committed, so amends can be made.
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justice system, avoiding the deprivation of their liberty while simultaneously promoting individual reintegration. A clear educative purpose is the fundamental cornerstone of all restorative justice practices. At the same time, the role of the victim is given greater attention and relevance than in traditional criminal proceedings. Positive consequences of this approach also include generally elevated rates of parties' satisfaction with the process; healthy reintegration into society and lower recidivism rates.

Moreover, the importance of restorative justice is highlighted by the current criminal justice system's difficulty of reintegrating offenders. Restorative Juvenile Justice does just this, addressing the needs and obligations of all parties involved. Bearing these features of restorative justice in mind, the North-American Council on Juvenile Justice (NACJJ) strongly argues in favour of a broader application of these measures, in particular to more serious cases, where they can be effective in reducing recidivism.

**Legislative Framework**

Legislation is the primary instrument capable of enabling and promoting the use of restorative practices. In making these practices more accessible, legislation has a clear and direct influence on individuals responsible for making decisions on what justice procedures to use in relation to young people.

In accordance with international standards, and in consideration of its flexible adaptability, legislation should ensure that restorative juvenile justice is available as a possible alternative to the traditional criminal proceeding at all stages: before trial, during court proceedings, as an alternative sanction, assuming that RJ legislation incorporates the full range of human rights protections included in the Convention on the Rights of the Child and related international instruments. Research also indicates that mandatory rather than permissive legislation\(^4\) can achieve better results in terms of increasing rates of referral.

In order for legislation on restorative justice to be effective, states should undertake a comprehensive legislative review to incorporate human rights standards and restorative juvenile justice processes. This includes implementing legal safeguards to protect the best interests of the child and his well-being, so he can freely participate in the restorative justice process. In practice this means that there should be sufficient options of diverting children away from the criminal justice system.

Furthermore, legislation is crucial in ensuring the quality of the service provided by restorative practices and it should ensure that fair trial guarantees apply equally to restorative measures for both the victim and the offender. Equally, it should also set out to define the fundamental requirements for a fair restorative process, i.e. voluntary participation; confidentially; neutrality of the facilitator. Confidentiality protections include assurance that all communications will be

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\(^4\) In mandatory legislation the prosecutor and the judge are obliged to consider referral to restorative justice, and to report the reasons for not referring in case they do not deem it appropriate.
confidential, and that there will not be any negative inference from a participant's failure to participate or acknowledge culpability.

It is further critical to ensure that legislature provides sufficient protections to ensure proportionality of reparations.

Finally, legislation will have a decisive role to play in convincing the most resistant of judiciaries and legal professionals, who may be sceptical of restorative juvenile justice's application in more serious cases, by encouraging referral regardless of the types of offence committed.

Political Framework

Restorative justice should be approached holistically. In other words, restorative juvenile justice should be included in prevention policies, diversion from the formal system, diversion from detention and reintegration. Furthermore, policies should include provisions to collect information and tangible data concerning: the number of cases that were offered access to restorative practices, the number of cases who accepted to participate in restorative justice, the number of people who complete the process; the number of people who did not complete the process; the ratio of cases involving face-to-face exchanges. Such information is crucial in mounting an evidence-based approach to policy-making.

Professional and reliable training of practitioners, possibly recognised by independent bodies and institutions such as universities, can ensure that the quality of the overall restorative juvenile justice process remains high. Training will also contribute to the flexibility that is required in addressing the different needs of different children. Whether restorative practices are delivered by public agencies or by civil society organisations, inter-agency cooperation and good communication between judicial decision-makers and practitioners is essential to the enhanced effectiveness of the restorative justice process.

Furthermore, evaluating the performance and delivery of restorative juvenile justice mechanisms and addressing potential shortcomings is crucial in protecting the dignity and respect of all participants. As such, any form of policy design must include effective monitoring mechanisms.

Restorative Juvenile Justice in Practice

When carrying out restorative practices, the practitioners will not only be responsible for ensuring standards of safety, respect and quality of the service, but also to establish universal accessibility in practice. This means that the restorative process should be tailored to the participants by taking into account any specific needs on the basis of: level of cognitive and social development; linguistic capabilities; emotional awareness; any additional physical or learning needs; spoken languages; culture, religion, ethnicity and sexual orientation.

In practice, restorative processes are diverse and can be carried out in different ways. First, family group conferences can be used when families have problems taking care of their children or when
the behaviour of a child is difficult to manage. Second, the **restorative circles approach** is mostly used for larger groups of young people, for instance when there is a conflict between youth or different ethnic groups. Third, **mediation** has proven to be an excellent measure to resolve an actual conflict or prevent a potential conflict from occurring. The fourth restorative process is referred to as a **restorative conference**. This method is mostly used in more serious cases of recidivism where a more comprehensive dialogue is needed and can include wider family and social workers. Finally, **circles of support and accountability** can be useful for young people who require in-depth support and care in order to remain in the community. Responsible adults in contact with the young person should motivate and encourage the person to engage in positive social activities to address their problems.

Furthermore, the abovementioned restorative methods are not only useful in criminal cases, they can create beneficial outcomes when applied to different contexts as well such as solving conflict in schools or in detention facilities which further serves to highlight the inherent benefits and flexible nature of restorative justice.

### 10 points for Improving the Implementation of Restorative Juvenile Justice

The following 10 points spell out the NACJJ’s aims to lay down the basis for a shared position on the objectives, standards and practices related to Restorative Juvenile Justice, with the intention to encourage its effective implementation in North America:

1. Restorative practices should be made available at all stages of the criminal proceedings;
2. During restorative processes, all the parties involved shall enjoy fair trial guarantees, to avoid secondary victimization and ensure fairness of the proceeding. Restorative principles, such as voluntary participation, confidentiality, proportionality, and neutrality of the mediator, should be guaranteed by law;
3. Legislation should introduce statutory or non-statutory forms of restorative practice that cover more serious offending, in the form of conferencing and circles;
4. Restorative juvenile justice services should be provided on the entire national territory;
5. A set of specific indicators should be developed and applied at the national level, to establish minimum standards of quality for restorative services;
6. Inter-agency cooperation should be ensure through appropriate policy-design;
7. Government agencies and other entities responsible for delivering the restorative service should gather and collect information on the implementation of restorative juvenile justice.
8. Facilitators shall be offered high quality training, both as a precondition to get in contact with children, an throughout their experience in restorative practices;
9. Government agencies and other entities responsible for providing restorative services should be subject to regular monitoring and inspections of their practices;
10. Efforts to raise awareness are recommended in order to provide specific information on the benefits of a restorative approach for victims, offenders and communities at large, and to build support for restorative justice at all levels of society.