



## RESTORATIVE JUSTICE AND ALTERNATIVES TO DETENTION

Detention conditions and prison overcrowding are among the main challenges that the EU Member States are dealing with. At the EU level there is much discussion on how to develop and promote alternatives to detention that could eliminate potential violations of the core human rights values of the European Union and ensure societal benefits including reducing the costs of maintaining prisons, improving the prospects for social rehabilitation and accordingly, less recidivism. Restorative justice values and practices can make important contributions in this field since it offers a practical alternative to the punitive impulse that results in high levels of imprisonment in many countries.

### What is specific about detention?

The core of restorative justice is to address the harm caused by criminal behaviour to victims and perpetrators and others by the reaction of society and the criminal justice system to them. These harms are particularly severe in relation to imprisonment:

- Imprisonment has an effect on the prisoners' family relationships, the well-being of their children and the families' standard of living.
- A prison sentence stigmatises prisoners and isolates them from society and the resources that they need to desist from offending. It may also actually reinforce criminality by introducing individuals to anti-social values and peers.
- Another serious problem in relation to the prison population in many European countries is the disproportionate number of foreign prisoners. This is discriminatory and will lead to increasingly marginalised and alienated minority ethnic communities in society.
- It restricts prisoners from making reparation for the harm that they have caused their victims and society.

Consequently, prison should only be used with a very small proportion of people who have committed crimes, those who represent a serious risk of harm to society or to themselves.

### What is restorative justice?

*Restorative justice is an approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.*

Restorative justice offers a radically different way of understanding and responding to the problem of crime. It focuses rigorously on the real harm of crime and the suffering it causes. This leads to the inclusion of the experience of suffering felt by victims and their needs and interests. It enables perpetrators to make themselves accountable to those they have harmed and in doing so understand their responsibility for the suffering of others and to take steps to repair the harm and to desist from further acts of harm. Restorative justice has been extensively researched and there is considerable evidence on its effectiveness on victims, perpetrators as well as on the community.





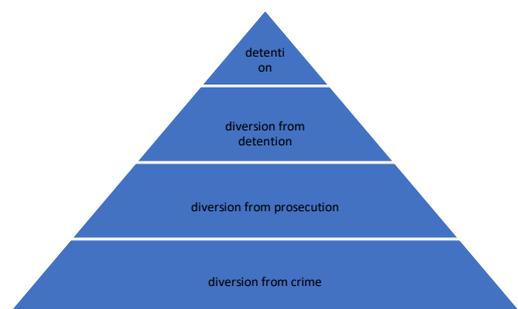
On October 3rd 2018, the Council of Europe (CoE) adopted the most advanced and innovative international legal instrument in the field of restorative justice: the new [Recommendation CM/Rec\(2018\)8](#) concerning restorative justice in criminal matters. It outlines several ways in which governments and criminal justice agencies can utilise restorative justice principles and practices to help maximise the effectiveness of their victim and offender interventions, meet international justice standards and change systemic and institutional cultures.

## Restorative justice and alternatives to detention

The CoE Recommendation urges includes prisons as potential referral bodies to restorative justice. It further states that *restorative justice should be a generally available service. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders* (rule 18). While prison isolates prisoners from the resources and relationships that they need to desist from crime and stigmatises them, restorative justice enables perpetrators of harm to gain respect though taking responsibility for their actions and earning redemption and reintegration through reparation. As asserted also by the CoE Recommendation, no offences are considered unsuitable. The key criteria are the willingness of the perpetrator to meet or communicate in some other way and the obligation to ensure that the process is safe for all parties.

## A coordinated and strategic response

The overuse of imprisonment is at the tip of a pyramid of social causes and decision-making. Imprisonment cannot be reduced simply by community sanctions. Strategic and coordinated responses should be implemented to divert people from crime, to divert people from prosecution, and to divert people from detention.



### *Diversion from crime*

Restorative justice can reduce the risk of crime due to family problems through training in restorative parenting and through family group conferences.

Restorative justice can reduce the risk of crime caused by young people being excluded from or dropping out of school through mediation and restorative circles which not only reduce discipline problems but teach students the values of

responsibility and respect and social skills such as non-violent conflict resolution.

Restorative justice can reduce the risk of crime in neighbourhoods caused by social exclusion, inter-group and inter-cultural conflict and gangs through the development of restorative cities or communities. These approaches involve a coordinated approach to resolve conflicts and prevent harm. The integration of minority ethnic groups within communities can contribute to a reduction of foreigners in prison.

### *Diversion from prosecution*

The public can be sceptical about diversion from prosecution when they do not perceive any element of accountability for wrongdoing and harm. Restorative processes such as mediation demonstrate real accountability and satisfaction from victims and consequently have been used to avoid prosecution. This approach can earn public credibility and support.





## *Diversion from custody*

In some European countries (for example, in Northern Ireland) agreements to repair harm and to avoid further offending made through restorative conferences prior to sentencing can become court orders. This means that the agreements will be rigorously supervised and, if not complied with, the perpetrator will be returned to court. 85 to 90% of victims are satisfied with their experience of restorative justice and do not seek any further punishment. This has made restorative justice very popular with judges and has contributed to a dramatic reduction in the use of custody. There is also a much higher level of compliance to restorative agreements than to other community sanctions.

Restorative justice can also be used post-sentence as part of a community sanction. The involvement of victims and the engagement of perpetrators in reparation have proved attractive to both judges and the general public.

## **How to counteract poor prison conditions?**

Restorative processes such as mediation and circles can have a significant impact on prison culture by reducing violent reactions to conflict. Restorative circles through which staff and inmates engage in dialogue on a range of issues and problems affecting life in prisons can improve respect, responsibility and relationships between prisoners and between staff and prisoners.

The CoE Recommendation promotes the use of restorative principles and approaches within the criminal justice system, but also outside of the criminal procedure, with the explicit example of conflicts between prisoners or between prisoners and prison officers (Rule 60). It advises prison agencies to raise awareness among their staff and managers in relation to the principles of conflict resolution and restorative justice, so that they understand these principles and are able to apply them in the course of their day to day work. It suggests appointing a member of staff with formal responsibilities for promoting and coordinating the use of restorative justice by and within the organisation.

The CoE Recommendation even goes beyond this and calls for a proactive use of restorative practices to build relationships within and outside prisons regarding staff, prisoners, their families and the wider community. It advises to implement restorative approaches in making managerial decisions and consulting staff and in other areas of staff management and organisational decision making to help to build a restorative culture within prisons.

## **How to promote the use of community sanctions and measures?**

1. By the involvement of victims and the community.
2. By demonstrating that perpetrators are repairing harm and contributing to the common good.
3. By informing the public of the negative effects of imprisonment.

Politicians and the media assume that the public is very punitive in its attitudes towards crime and also that there is widespread fear of crime. Consequently, laws are drafted on the basis of the punishment of criminals and the protection of the public. The criminal justice system puts prison at the heart of sentencing and the management of offenders. This leads to community sanctions in many countries being promoted as 'community punishment' and public protection through risk management. In reality community sanctions and measures cannot compete in the public's perspective with the perceived effectiveness of prison to punish and protect.





As Albert Einstein once said: *"We cannot solve our problems with the same level of thinking that created them"*. Underlying this way of thinking about responding to crime is the assumption that the perpetrator is the problem to be solved through retribution, rehabilitation and/or risk management. This assumption leads to an over-reliance on professional state agencies whose technology and expertise is very costly. It distances the public from the reality of crime and criminal justice and it almost completely excludes the voice, needs and interests of the victim. Restorative justice addresses each of the problems effectively.

## Resource kit

- Project MEREPS - Mediation and Restorative Justice in Prison Settings, with case studies from Hungary, United Kingdom, Germany and Belgium. Final report: "Responsibility-taking, Relationship-building and Restoration in Prisons". Foresee Research Group, Hungary.
- Terres des Hommes & European Forum for Restorative Justice (2020). Webinar on Alternative to Detention and Restorative Justice with key experts Ingrid van Welzenis and Tim Chapman.
- Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters.
- Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice (2019/C 422/06).

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Reference: European Forum for Restorative Justice (2020). Research Brief on Restorative Justice and Alternatives to Detention. Leuven, Belgium.

