Annex 1
Handout 1: Introduction and definitions of restorative justice
Restorative justice is one of the most debated areas of criminology.[1]

Brief history of the modern Restorative Justice movement:

- Criticism increases of the prison and criminal justice system – it does not reduce criminality, detention actually leads to increased offending, it favours the organisation of criminals and their hierarchy, the stigma and conditions attached to release drive reoffending behaviour, victims are not cared for by the system (e.g. Foucault) [2]
- Christie in “Conflicts as property” advocates for participatory and community justice, that “neighbourhoods” are the owners of the conflicts rather than professionals in the justice system.[3]
- 1970s – the first restorative justice dialogue experiments are used in Canada and then in the USA, later called Victim Offender Mediation (VOM). [4]
- Eglash identifies three types of justice (retributive, distributive and restorative), arguing that retributive & distributive justice focus on punishing offenders and ignoring victims, while RJ focuses on the restoration of the harm caused by crime.[5] Eglash is credited with coining the term “restorative justice”, however he borrowed it from German theologians the original word being “heilende Gerechtigkeit” (healing justice).[6]
- Barnett advocates for a new paradigm for crime as an offence committed by one person against another rather than against the state.[7]
- 1980 in New Zealand, a “listening campaign” is held to hear the concerns of the the indigenous Maori community about the overrepresentation of their children in the welfare and criminal justice systems. Family Group Conferencing (FGC) emerges, a model informed by Maori values with an emphasis on including extended family and community. In NZ, conferences are used in child protection and youth justice cases.[8]
- Scholar Zehr advocates for a paradigm shift, a change of ‘lens’, which sees that “crime is fundamentally a violation of people and interpersonal relationships”, it offers an alternative to blame and punishment, and seeks to “address harms, needs, and obligations… to heal and put things as right as possible”. [9]
- Conferences spur experiments and news models in other countries. In the ’90, Judge Barry Stuart in Canada, inspired by the First Nations indigenous people of Yukon, starts using circles in criminal justice cases leading to an explosion of different types of circle practices. [10]
Around the same time, late 70’s and 80s, in Europe victim-offender mediation pilots begin in Norway and Finland. Official programs are then funded in Australia, Germany, Belgium and other EU countries. [11]

By the 1990s, large scale programs and the institutionalisation of restorative justice was happening in Europe, Canada, USA, New Zealand, Australia, UK. RJ is now being used also in Africa, Asia, Latin America, and Oceania. [12]

## Definitions of Restorative Justice

The RJ movement **began and developed from practice by those working in the field**, in response to criticisms of the criminal justice system, and to victim rights movements, therefore theory is often ‘catching up’ with practice. Currently there is **no consensus definition** of RJ and debate exists as to whether this is necessary or not. [13]

Marshall’s “purist” definition of RJ:

> a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future’. [14]

1. Bazemore & Walgrave “maximalist” definition of RJ:

> every action that is primarily oriented toward doing justice by repairing the harm that has been caused by crime. [15]

This definition focuses on **outcomes**— repairing the harm — it does not limit RJ to a specific process. Maximalists aim to transform all conventional justice practices into restorative ones.

2. Braithwaite & Strang suggest viewing RJ not as a dichotomy between process and outcome but as a continuum involving a commitment to both restorative processes and restorative values'. [16]

3. Zehr changed his view of the dichotomy between “retributive” and “restorative” lenses and now argues for a concept of justice along a continuum from ‘fully restorative’ to ‘non-restorative’. [17]

4. United Nations Economic and Social Council Resolution 2002/12 definition:

> “Restorative process”... any process in which the victim and the offender and... 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. Mediation, conciliation, conferencing and sentencing circles.

“Restorative outcome” ... an agreement reached as a result of a restorative process... reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities ... achieving the reintegration of the victim and the offender.

5. Council of Europe, CM/REC 2018 definition on the use of RJ in criminal matters

“Restorative justice” ... any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party....

... it often takes the form of a dialogue ... between the victim and the offender, and can also involve... other persons directly or indirectly affected by a crime.

... victim-offender mediation, penal mediation, restorative conferencing, family group conferencing, sentencing circles or peacemaking circles, inter alia.

Restorative justice may be used at any stage of the criminal justice process.

Practices which do not involve a dialogue between victims and offenders may still be designed and delivered in a manner which adheres closely to the basic principles of restorative justice.

Restorative principles and approaches may also be applied within the criminal justice system, outside of the criminal procedure.

The Legal Basis for Restorative Justice

Restorative Justice can and is practiced in many countries without a legal framework and outside of the criminal justice system, for example in schools universities, businesses or community organisations. Having a legal framework allows for clarity in the criminal justice system and safeguards participant’s rights. However some scholars and practitioners criticise the institutionalisation of restorative justice and the risk of it deviating from its original purposes.

Many countries have developed legislation specific to the use of restorative justice in criminal matters, outlining the stages at which it can be used, the methods and the requirements for the training of facilitators. COE 2018 recommendations encourage member states to establish a clear legal basis for the use of restorative justice in criminal matters, policies regarding its use and procedural safeguards.

Despite these advances some scholars argue that “across Europe, many victims and offenders remain excluded from the well-evidenced benefits of restorative justice.. due in part to some professional gatekeepers being unaware or unsupportive of restorative justice.”[18]
Questions for reflection

► If you were asked, how would you define Restorative Justice? Please explain your definition.
► What is the history of the development of Restorative Justice in your country?
► What do you think are the main opportunities and challenges for Restorative Justice in your country?
References

11. vo Aerts, The idea of restorative justice and how it developed in Europe, euformrj.org
Further Study

- EFRJ Short introductory video on Restorative Justice https://www.euforumrj.org/en
- Council of Europe CM/REC 2018 https://search.coe.int/cm/Pages/result_details.aspx?Objectid=09000016808e35f3