

Stimulating the implementation of Recommendation CM/Rec(2018)8 in Ireland

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#RJIreland

Christmas Networking Event, ACJRD
Law Society of Ireland
Dublin, Ireland
5 December, 2018

Today...

- The contemporary position of restorative justice
- The new Council of Europe Recommendation
- Restorative justice in Ireland, today and tomorrow



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The logo for Restorative Justice Week 2018 features a large, stylized purple arc on the left side. The text "Restorative Justice Week 2018" is written in a bold, purple, serif font, with "November 18-25" in a smaller, black, sans-serif font below it.

**Restorative
Justice
Week 2018**
November 18-25

The "Inspiring innovation" logo features the word "Inspiring" in a black, sans-serif font and "innovation" in a purple, italicized, sans-serif font. The text is positioned within a circular frame that is part of a larger, abstract design of purple and orange flowing lines.

Inspiring **innovation**

Restorative justice in 2018

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Restorative justice as a **process**

Rule 3: ““Restorative justice” refers to 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** (hereinafter: the “facilitator”).’

Rule 4: ‘Restorative justice often takes the form of a **dialogue** (whether direct or indirect) between the **victim and the offender**, and can also involve, where appropriate, **other persons** directly or indirectly affected by a crime.’

Rule 8: ‘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** (see Sections III and VII). Restorative principles and approaches may also be applied within the criminal justice system, **outside of the criminal procedure** (see Section VII).’

Restorative justice as **principles**

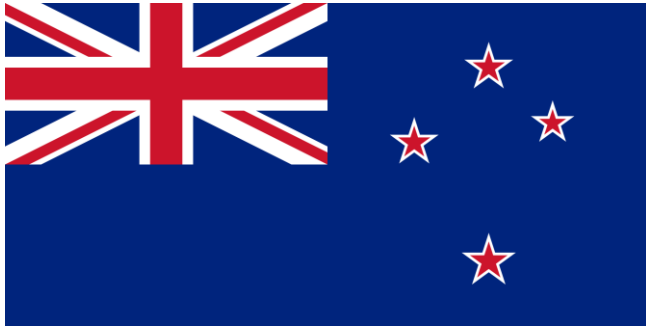
Rule 13: 'The core principles of restorative justice are that the parties should be enabled to participate actively in the resolution of crime (the principle of **stakeholder participation**), and that these responses should be primarily oriented towards addressing and repairing the harm which crime causes to individuals, relationships and wider society (the principle of **repairing harm**).'

Rule 14: 'Other key restorative justice principles include: voluntariness; deliberative, respectful dialogue; equal concern for the needs and interests of those involved; procedural fairness; collective, consensus-based agreement; a focus on reparation, reintegration and achieving mutual understanding; and avoiding domination. **These principles may be used as a framework with which to underpin broader reforms to criminal justice.**'

Why use restorative justice in criminal justice?

- Methodologically-rigorous research indicates that restorative justice processes can **reduce reoffending**, including with persistent, serious and violent offenders (Shapland, et al., 2011; Strang, et al., 2013; Sherman, et al., 2015).
- Positive results for **victim satisfaction and recovery**, with higher levels of victim satisfaction (e.g. 85% in Shapland, et al., 2011) vs. court and significant reductions in post-traumatic stress symptoms (Angel, et al., 2014; Sherman, et al., 2015).
- Restorative justice processes are **cost effective**, with eight times as much benefit in terms of the costs of the crimes prevented across 10 studies (Strang, et al., 2013).
- **Practitioner wellbeing** – criminal justice can often be a thankless task; restorative justice processes can enhance practitioner-citizen relationships, make participants grateful for the service and provide practitioners with closure (Marder, 2018).
- **Humanise criminal justice and transform institutional cultures** – a ‘restorative organisation’ would have certain **default ways of working** (Stockdale, 2015).

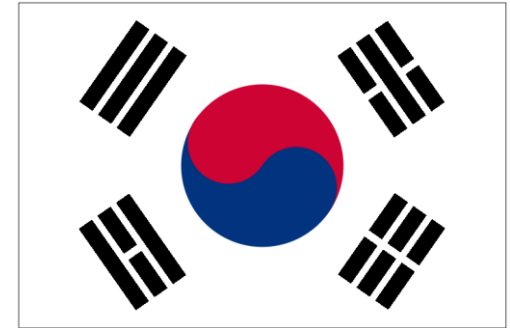
From the margins to the mainstream



New Zealand legislation (2014) requires judges to adjourn court proceedings, following a guilty plea, to explore the suitability of RJ in almost all cases



Canada and Scotland are working on new policies to ensure that RJ is available across each country



In 2016, prosecutors diverted 5.5% of all court cases (111,349/2,024,545) to victim-offender mediation (Kim and Wandall, 2017).



Trained 8,000 justices of the peace in RJ; established hundreds of 'Justice Centres' for delivery (Jamaican Ministry of Justice, 2018).



Norway and Finland have well-established mediation services which can offer RJ at any stage of the criminal justice process, and which deliver RJ in thousands of criminal cases every year.



New juvenile justice codes in Georgia and Albania position restorative justice as a primary option for juvenile diversion

News

Refugee camps ripe for restorative action

Written by Joshua Wachtel Published: July 28, 2016

Community and Family

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Restorative circles are building relationships and mutual understanding at a refugee camp in Belgium. The camp, like many others across Europe, is crowded with asylum seekers fleeing conflicts in Iraq, Syria and Afghanistan. In this environment of tension, hope and clashing cultures, circles are enabling people to be heard and resolve their conflicts. This work has the potential to improve conditions for refugees everywhere.



Stanford University

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Office of Community Standards
Student Affairs

Student Conduct Process Policies Filing a Concern Who We Are

Student Conduct Process

Honor Code and Fundamental Standard

Restorative Justice

Restorative justice offers a conflict resolution path

News

New Dutch law puts family power first

Written by Joshua Wachtel Published: February 13, 2015

Community and Family Europe

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In spring 2014, the Dutch parliament approved an amendment to the country's

United Utilities give £155,000 to charity - to say sorry for polluting waterways with sewage

The company donated cash to three environmental charities after admitting responsibility for sewage blockages

By Sam Yarwood 21:05, 8 FEB 2018 UPDATED: 21:55, 8 FEB 2018

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By Lauren Fox and Daniela Diaz, CNN Updated 21:58 GMT (05:58 HKT) January 22, 2018



NEWS & BUZZ

Qing dynasty vase \$600,000 found in Key US allies 'peril' Trump treats friend

PAID CONTENT



House of Restoration: A virtual shelter for restoring (family) ties

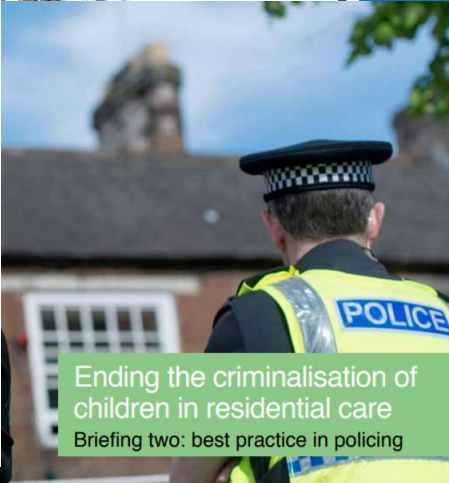
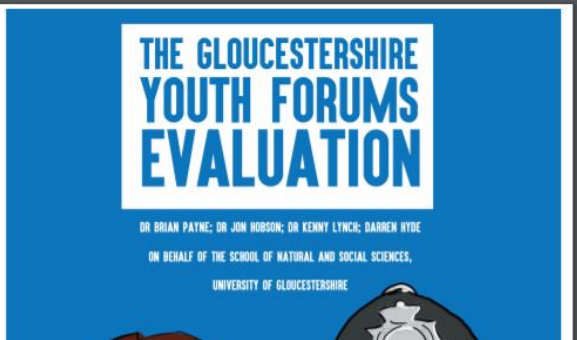
Gert Jan Slump Restorative Justice Nederland (RJN) Netherlands

Restorative Justice Nederland is a Dutch NGO and network organisation aiming to improve knowledge and stimulate innovation on restorative justice and restorative practices. The work is done on a project basis, one of which is called the "House of Restoration". Through a project spearheaded by Restorative Justice Nederland, twenty-eight organisations to work on a concept for the "House of Restoration". In five meetings, these organisations shared their experience and practices aiming to develop a framework for how to be restored during the period of detention. This article is a reflection on that journey and focuses on family ties during detention.

Restorative detention

their communities, and society as a whole. From these needs, we distinguished four layers of restoration:

- Restoration of prisoners themselves;
- Restoration between prisoners and their family members;



Ending the criminalisation of children in residential care Briefing two: best practice in policing



Howard League for Penal Reform



Survivors of terror attacks set to meet ex-militants in Indonesia

Marguerite Afra Sapiie | February 07, 2018



Indonesia & Italy: dialogue between victims & offenders of political violence (Sapiie, 2018; Bergatna, et al., 2015)

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Inspiring **innovation**

International legal instruments

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The international legal framework

- Council of Europe (1999) Recommendation No. R(99)19 on mediation in penal matters
- United Nations Economic and Social Council Resolution (UN ECOSOC) 2002/12, 'Basic principles on the use of restorative justice programmes in criminal matters'
- European Union (2012) Directive establishing minimum standards on the rights, support and protection of victims of crime
- New Council of Europe Recommendation and ECOSOC resolution in 2018; more work by the UNODC to develop its handbook and training



COUNCIL OF EUROPE



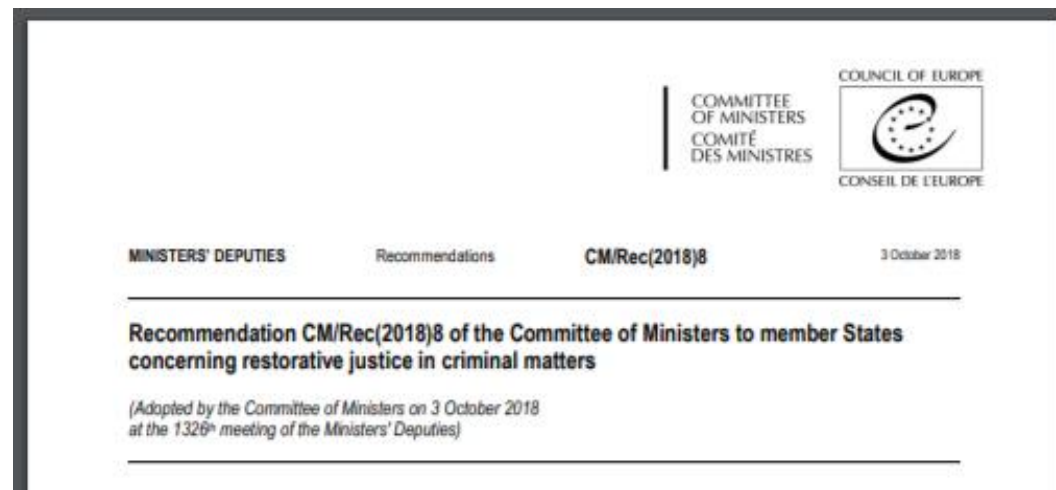
CONSEIL DE L'EUROPE



ECOSOC
United Nations



Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters



Recommendation

<https://rm.coe.int/cm-rec-2018-8-concerning-restorative-justice-in-criminal-matters-03-10/16808e3b08>

Commentary

<https://rm.coe.int/commentary-to-recommendation-cm-rec-2018-8-concerning-restorative-just/16808e3b0b>

‘[The new Recommendation has] four key aims:

- firstly, to **enhance the awareness, development and use** of restorative justice in relation to member States’ criminal justice systems;
- secondly, **to elaborate on standards** for its use, thereby encouraging safe, effective and evidence-based practice, and a more balanced approach to the conceptualisation and development of restorative justice than is implied by the Victims’ Directive;
- thirdly, to integrate **a broader understanding of restorative justice and its principles** into the (comparatively narrow) 1999 Recommendation;
- and, fourthly, to elaborate on the use of restorative justice by **prison and probation services**, the traditional remit of the PC-CP.

This Recommendation goes further than the 1999 Recommendation in calling for a broader shift in criminal justice across Europe towards a **more restorative culture and approach within criminal justice systems.**’

Commentary to CM/Rec(2018)8 (p.2)

Key elements of the Recommendation

- Restorative justice should be a '**generally available service**' (Rule 18), meaning that it is accessible '**at all stages** of the criminal justice process' (Rules 6 & 19).
- Safe and effective practice requires **adherence to standards**: voluntariness (16), confidentiality (17), neutrality (15), autonomy (20) and training (42-45), *inter alia*.
- **Other interventions** can be informed by restorative principles, e.g. 'innovative approaches to reparation, victim recovery and offender reintegration' (Rule 59).
- Restorative skills and principles can be applied outside of the criminal procedure, both **reactively** (Rule 60) and **proactively** (Rule 61 – i.e. restorative *practices*).
- A consistent and comprehensive approach requires can be enabled through **law and policy** (Rules 21 & 22), **human resources** (Rule 50), **practitioner and public education** (Rules 57 & 65) and **coordination by multi-agency partnerships** (Rule 62) and by **individuals within agencies** (Rule 63).

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Implications for Ireland

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Relevance to An Garda Síochána

- 667/10,532 (6.33%) 'restorative cautions' in 2016, but 'it is expected that this figure may decrease in 2017 due to the impact of the [Victims' Act]' (Garda Bureau of Community Engagement, 2018: 20) – how often is RJ offered and what exactly does it look like when it is used?
- Restorative justice with adult cautions? 'Before the offence and the offender are considered for the application of a caution, the views of any victims must, if reasonably possible, be sought.' ([Adult Cautioning Policy](#): 3)
- 'Restorative peacekeeping' – restorative skills and processes can be used with anti-social behaviour and neighbourhood conflicts (Marder, 2018).
- RJ for public complaints against the police (Young, et al., 2005; Rule 60)?
- What about the police's (statutory) role in informing victims about RJ?

Relevance to the Courts

- Courts can order family group conferences (Children Act 2001, s.78), delivered by probation officers – 20 referrals in 2016 (Kennedy, 2018)
- In some counties, courts can refer cases to probation-funded NGOs which deliver victim-offender mediation, reparation panels, etc., e.g. RJS (2017: 281 referrals, 34 mediations and 67 letters of apology) – see also Le Chéile in Limerick, RJC in Tipperary.
- Some countries have RJ fully integrated at the court adjournment stage – perhaps most famously, New Zealand.
- Possibilities with other court disposals e.g. the ‘poor box’?

Relevance to the Probation Service

- Many European countries (e.g. Latvia, Czechia, Slovakia, Lithuania), incorporate RJ into **probation legislation**, sometimes creating ‘Probation and Mediation’ services.
- Current models delivered or funded by probation in Ireland include: ‘family/restorative conference; offender reparation panel; victim-offender mediation; bespoke restorative justice.’ (Probation Service, 2018: 2)
- RJ and Victim Services Unit set up to ‘provide leadership and support for the consistent and integrated provision’ of RJ across Ireland and ‘a central point of contact to ensure an effective response to requests and queries from victims’ (Probation Service, 2018: 2).
- Systematic integration of RJ into probation operations = stakeholder participation in sentence planning as the *default position* (Rule 58) (e.g. integrated CSOs?).
- ‘Innovative approaches to reparation, victim recovery and offender reintegration’, underpinned by restorative principles and enhanced by restorative skills (Rule 59).

Where a victim first contacts or is contacted by the Garda Síochána or the Ombudsman Commission in relation to an alleged offence, the Garda Síochána or the Ombudsman Commission, as the case may be, shall offer the victim information relating to the following:

[...] (m) restorative justice schemes, where available; [...]

Criminal Justice (Victims of Crime) Act 2017, s.7



Number 28 of 2017

Relevance to the Irish Prison Service



- Prisons can use RJ: for victims-offender dialogue (Rule 6); to build relationships and address harm between offenders and families (Rule 61; van Hoek and Slump, 2016); to respond to conflict and enhance prison adjudication (Rule 60); and to build relationships, a sense of community and dynamic security within prisons (Rule 61; Kimmnett, 2018).
- Pilots in the Dóchas Centre and Wheatfield, and research evidence from other jurisdictions, provide a basis for learning about how to implement RJ in prisons going forward.
- Children in Oberstown are receiving RP training.
- Community Return – a pre-release offer?



Criminal justice as a workplace

Workplaces often have:

- Conflicts between staff
- Conflicts between staff and clients
- Limited opportunities for staff participation in decision-making
- Limited opportunities to reflect on practices and build relationships between staff

Staff can be trained in conflict resolution skills (Rule 57), while restorative practices can enable more participatory decision-making (Rule 61).





AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS
DEPARTMENT OF JUSTICE AND EQUALITY

Relevance to the Department

- Restorative justice can help achieve broader goals: support for victims to cope and recover; evidence-based approach to desistance; information sharing and multi-agency collaboration; cultural change in the police; etc.
- Growing public consciousness of restorative justice following *The Meeting* earlier this autumn – and a growing demand from courts and victims?
- Legislation (e.g. Criminal Justice (Community Sanctions) Bill?), strategy and policy can support and legitimise the development of restorative justice.
- The Department can support a variety of resourced and non-resourced options by, for example, expanding the capacity of existing services and supporting local multi-agency work in counties without delivery capacity, respectively.
- A need to ensure the safety and effectiveness of restorative justice...

The gap between theory and practice



- The influence of institutional rationales may mean that practices deviate from the principles and safeguards which make restorative justice safe and effective (Daly, 2003; Blad, 2006; Crawford, 2006; Barnes, 2015; Marder, 2018).
- The question is how to make restorative justice accessible to all, while ensuring that we maximise the benefits and minimise the risks of its use in practice.

Why let the Nordic have all the fun?



- Everyone agrees that this is a good idea! Irish Prison Service ([2012](#), [2014](#)) Probation Service ([2013](#), [2018](#)), Irish Youth Justice Service ([2014](#), [2016](#)), Joint Committee on Justice and Equality ([2014](#), [2018](#)), Irish Prison Service and Probation Service ([2015](#), [2018](#)), Strategic Review of Penal Policy ([2014](#)), Department of Justice and Equality ([2016](#)), An Garda Síochána ([2017](#), [2017b](#)).
- Not a silver bullet, but part of a journey – on which Ireland has embarked – towards a more participatory, victim-sensitive criminal justice process.
- Study visits are an effective tool to gain insight into how restorative justice is used elsewhere (Kenney, 2008; Lummer, et al., 2012: 174; Gavin and Joyce, 2013: 18).
- A need for pilot projects and for ongoing evaluation and scrutiny.
- Much of the groundwork has been done and many of the right conditions exist – the recommendation provides us with an opportunity to stimulate work in this area.

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