



RESTORATIVE JUSTICE AS A HUMAN RIGHT

EFRJ Working Paper

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1.

Introduction

For several years, the European Forum for Restorative Justice (EFRJ) has been interested in building stronger connections between restorative justice and human rights. Initial efforts were made at the 2016 EFRJ Conference held in Leiden (*"Realising Restorative Justice: Human Rights and Personal Realities"*)¹, which centred on this theme. In recent years, there has been a growing movement within the wider restorative justice field to link the values of restorative justice with international and regional human rights standards. As part of these ongoing efforts, the EFRJ invites colleagues from around the world to discuss this theme during an online meeting on the 10th of December 2024. The meeting will provide an opportunity to gather insights from members on existing academic and practical work and foster collaboration for potential campaigns in 2025 and beyond.

At its core, restorative justice embodies a holistic approach to justice by addressing the needs of victims, offenders, and communities, focusing on healing, accountability, and repairing harm rather than solely on punishment. This aligns closely with the concept of people-centred justice, as emphasised in the *OECD Framework on People-Centred Justice*². People-centred justice promotes accessible, inclusive, and responsive systems that prioritise the well-being and active participation of individuals.

This Working Paper represents an initial exploration of how access to restorative justice can be framed within international and regional (EU) human rights frameworks. It is intended not to exhaust the subject but to inspire further dialogue and support future advocacy work targeting major policy institutions such as the European Union (EU), the United Nations (UN) or the Council of Europe. Through these efforts, we hope to strengthen the relationship between restorative justice and human rights so that we can foster greater connections with the human rights field and relevant organisations, reach a wider audience to expand the relevance and importance of restorative justice, and, most importantly, strengthen indiscriminate access to restorative justice globally.

2.

Fundamental Rights

Fundamental rights are the basic, universal rights inherent to all human beings. They are enshrined in international frameworks such as the Universal Declaration of Human Rights (UDHR)³. Access to restorative

¹ For more information see: The European Forum for Restorative Justice, 'Leiden 2016', 2016, <https://www.eforumrj.org/leiden-2016>.

² OECD, 'OECD Framework and Good Practice Principles for People-Centred Justice' (Paris: OECD Publishing, 2021), <https://doi.org/10.1787/cdc3bde7-en>.

³ United Nations, 'Universal Declaration of Human Rights', 217 A (III) § (1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.





justice could be argued as a human right based on principles of human dignity, fairness, and the right to an effective remedy.

2.1 Right to dignity

The right to dignity is a cornerstone of all human rights, as emphasised in the preamble of the UDHR and Article 1, which declares that “all human beings are born free and equal in dignity and rights.” Traditional justice systems often fail to uphold this principle, focusing predominantly on punishment rather than addressing the harm caused by criminal acts. Restorative justice, by contrast, emphasises repairing harm, meeting the needs of victims, offenders, and communities, and fostering healing and accountability. This is reflected in the *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*⁴, which emphasises that “restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities.”

2.2 Freedom from torture and inhuman or degrading treatment

Article 5 of the UDHR states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This right is echoed in Article 7 of the International Covenant on Civil and Political Rights (ICCPR)⁵ Article 3 of the European Convention on Human Rights (ECHR)⁶ which prohibit not only torture but also any treatment that violates the inherent dignity of the individual. Restorative justice offers a rehabilitative alternative, reducing the reliance on excessive punitive measures and ensuring the dignity of individuals. This aligns with the *UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*⁷, which emphasise rehabilitation and reintegration as the primary objectives of imprisonment (Rule 4), respect for dignity and humanity (Rules 1 and 2), and the importance of fostering empathy to reduce recidivism (Rule 91). By equipping offenders with interpersonal and emotional skills (Rules 88 and 89), restorative justice operationalises these international standards, offering a justice framework that protects dignity and promotes reintegration into society. Additionally, restorative justice aligns with the right to liberty and dignity, with cases such as *Johansen v. Norway*⁸ and *Van Alphen v. Netherlands*⁹ highlighting the importance of personal autonomy and proportionality in the context of detention.

3.

Access to Justice

⁴ UNODC, ‘Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters’, 13 April 2000, <https://digitallibrary.un.org/record/423369>.

⁵ UN General Assembly, ‘International Covenant on Civil and Political Rights’, GA/2200A/XXI § (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁶ Council of Europe, ‘European Convention on Human Rights’, 4.XI.1950 § (2021), https://www.echr.coe.int/documents/d/echr/convention_ENG.

⁷ UN General Assembly, ‘United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)’, 2016.

⁸ *Johansen v. Norway* (dec.), No. 22752/03 (ECtHR 10 October 2002).

⁹ *Van Alphen v. the Netherlands* (Communication No. 305/1988), No. CCPR/C/39/D/305/1988 (UN Human Rights Committee (HRC) 23 July 1990).





Civil and political rights are a category of human rights that protect individuals' freedoms and ensure their ability to participate in the political and civic life of society without discrimination or repression. While access to justice is not explicitly defined as a standalone right, it serves as an umbrella concept that encompasses and facilitates the realisation of civil and political rights, including fair trial, effective remedy, and liberty and security. Restorative justice aligns with and strengthens access to justice by addressing systemic barriers and promoting justice processes that are inclusive, fair, and accessible to all.

3.1 Right to a fair trial and right to an effective remedy

The right to a fair trial, guaranteed by Article 10 of the UDHR and Article 14 of the ICCPR, ensures justice is accessible, impartial and transparent. Traditionally, fairness has focused on due process protections, but fairness could also encompass the ability of justice systems to meet the specific needs of victims, offenders, and communities. Additionally, The UDHR and the ICCPR both establish that everyone has the right to an effective remedy when their rights have been violated. The UN Human Rights Committee emphasises that access to justice must be effectively guaranteed and that, where appropriate, alternatives such as mediation, victim-offender dialogue, or educational programs should be considered¹⁰. Recognising restorative justice as a complementary right strengthens fair trial protections by offering a more flexible and individualised approach to justice, ensuring proportionate outcomes tailored to the context of each case. Additionally, restorative justice provides a pathway to address systemic challenges such as court delays and backlogs, alleviating pressure on formal systems while promoting timely and effective justice.

4.

Child Rights

Access to restorative justice should be considered a human right, particularly for children, as it aligns with the principles of rehabilitation and reintegration emphasised in the Convention on the Rights of the Child (CRC)¹¹ and Article 14 of the ICCPR. Restorative justice is widely recognised as a more effective approach for juvenile offenders than retributive systems, as it focuses on repairing harm and involving all stakeholders—victims, families, and communities—in the process. The CRC General Comment No. 10¹² underscores that procedures promoting rehabilitation and restorative justice serve the best interests of the child.

While restorative justice is already established as a right for juvenile offenders, it could be argued that this same approach should be extended to adults, as the principles of dignity, rehabilitation, and reintegration are non-delineable and equally essential for all offenders. The UN has even stated that there is no “duality between human rights and juvenile justice.”¹³ Recognising access to restorative justice as a human right for children not only safeguards their dignity but also reinforces broader commitments to justice and societal well-being and this right should be extended to all.

¹⁰ UN Human Rights Committee, 'General Comment No. 32: Article 14, Right to Equality before Courts and Tribunals and to Fair Trial', 23 August 2007, <https://digitallibrary.un.org/record/606075>.

¹¹ UN General Assembly, 'Convention on the Rights of the Child', 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹² UN Committee on the Rights of the Child, 'General Comment No. 10 (2007): Children's Rights in Juvenile Justice', Refworld, 2007, <https://www.refworld.org/legal/general/crc/2007/en/43085>.

¹³ UN Commission on Human Rights, 'Detention or Imprisonment – Expert Group Meeting on Children and Juveniles in Detention (E/CN.4/1995/100 Dec 94)', 1994, para. 31, <http://hrlibrary.umn.edu/commission/thematic51/100.htm>.





5.

Indigenous and Cultural Rights

Access to restorative justice should be considered a human right for Indigenous communities, as it aligns with the principles of cultural integrity, self-determination, and respect for traditional practices. Many Indigenous cultures have long relied on restorative justice as a means of resolving conflict, emphasising healing, reconciliation, and the restoration of relationships over punitive measures. Recognising the right to restorative justice within Indigenous contexts affirms their right to cultural autonomy and supports the preservation of their unique values and traditions, as enshrined in international human rights frameworks such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁴. Articles 5 and 34 of UNDRIP explicitly protect the right of Indigenous peoples to maintain and strengthen their institutions and to uphold their cultural practices, including traditional justice mechanisms.

Restorative justice offers a culturally sensitive approach that respects diversity and avoids imposing dominant legal frameworks on Indigenous communities. As Morris (2002) highlights, restorative justice inherently values cultural relativity, allowing for justice processes to adapt to the customs and norms of specific communities¹⁵. Recognising access to restorative justice as a human right within Indigenous contexts affirms these principles and promotes greater equity in global justice systems.

6.

Conclusion

This Working Paper has explored how access to restorative justice aligns with key human rights principles. By embedding restorative justice within the frameworks of fundamental, civil, political, child, and cultural rights, it can strengthen its integration into global and regional legal systems but also ensure that justice processes are inclusive, equitable, and responsive to the diverse needs of individuals and communities worldwide. The EFRJ hopes this paper will inspire further dialogue and collaboration to advance restorative justice as a human right.

¹⁴ UN General Assembly, 'United Nations Declaration on the Rights of Indigenous Peoples', 2007, <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>.

¹⁵ Allison Morris, 'Critiquing the Critics: A Brief Response to Critics of Restorative Justice', *The British Journal of Criminology* 42, no. 3 (1 June 2002): 596–615, <https://doi.org/10.1093/bjc/42.3.596>.





ANNEX: Key Human Rights Frameworks

The “International Bill of Human Rights”:

- **The Universal Declaration of Human Rights (UDHR)** – the first international document to explicitly determine basic civil, political, economic, social and cultural rights that all human beings should enjoy. Adopted by the United Nations General Assembly on 10 December 1948. While not legally binding, it forms the basis of customary international human rights law (laws that aren’t usually codified but widely accepted as law).
- **International Covenant on Civil and Political Rights (ICCPR)** – a multilateral treaty that creates responsibilities and obligations for parties to the treaty (states who have ratified) to respect civil and political rights (e.g., freedom of speech, freedom of assembly). As of November 2024, the ICCPR has 114 parties, and 74 signatories (notably People’s Republic of China and Cuba). This treaty is legally binding for states that have ratified it and is monitored by the UN Human Rights Committee (CCPR). Many states have integrated articles of this treaty into their national constitutions and legislation.
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)** – a multilateral treaty that creates responsibilities and obligations for parties to the treaty (states who have ratified) to respect economic, social and cultural rights (e.g., right to health, right to education). As of November 2024, The ICESCR has 113 parties and 71 signatories. Notably, the United States has signed but not ratified the ICESCR. This treaty is legally binding for states that have ratified it and is monitored by the UN Committee on Economic, Social and Cultural Rights (CESCR).

You can find more about the status of treaties, including a list of countries that have ratified them, [here](#).

Key regional human rights instruments:

- **European Convention on Human Rights** – the Council of Europe is responsible for both the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR). These institutions are binding to the council’s members and are based on the “International Bill of Rights”. The ECtHR is the only international court with jurisdiction to deal with cases of human rights brought by individuals (rather than states).
- **African Charter on Human and Peoples’ Rights** – established by the Organisation of African Unity, now the African Union (AU). The monitoring body is the African Commission on Human and Peoples’ Rights (ACHPR), a quasi-judicial body. Strongly inspired by the “International Bill of Rights” but includes specific rights for the region. The charter also has a judicial body, the African Court on Human and Peoples’ Rights.
- **American Convention on Human Rights** (*Convención Americana sobre Derechos Humanos*) – adopted by many included in the Organisation of American States. The oversight bodies are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

