

Restorative Justice as a Modern Approach to Protecting the Rights of Delinquent Children العدالة التصالحية كنهج حديث لحماية حقوق الأطفال الجانحين

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Abstract

This study examines restorative justice as a contemporary approach to protecting the rights of juvenile offenders within the context of the globalization of criminal policy. It highlights the limitations of traditional punitive justice systems, which often fail to meet the rehabilitative needs of juveniles or the restorative needs of victims. By adopting a consensual and participatory model, restorative justice emphasizes dialogue, accountability, and harm reparation, thereby contributing to the humanization of criminal justice.

The paper employs a descriptive–analytical method to explore the normative foundations of restorative justice, its role in humanizing juvenile justice, and the most relevant international legal instruments supporting its application. It also analyzes the procedural conditions for implementing restorative justice under Algerian Law No. 15-12. The study concludes that restorative justice represents an effective mechanism for promoting the best interests of juvenile offenders while strengthening social cohesion and reducing recidivism

Keywords:

Restorative Justice; Juvenile Delinquency; Globalization of Criminal policy; Penal Mediation; Consensual Justice

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ملخص

تتناول هذه الدراسة العدالة التصالحية كنموذج حديث لحماية حقوق الأطفال الجانحين في سياق عولمة السياسة الجنائية. وتبرز الدراسة القيود المرتبطة بالأنظمة التقليدية للعدالة العقابية، والتي غالباً ما تفشل في تلبية الاحتياجات التأهيلية للأطفال الجانحين أو الاحتياجات التعويضية للضحايا. من خلال اعتماد نموذج يعتمد على الرضائية والمشاركة، تؤكد العدالة التصالحية على الحوار والمساءلة وإصلاح الضرر، مما يساهم في أنسنة النظام الجنائي.

تستخدم الدراسة المنهج الوصفي التحليلي لاستكشاف الأسس المعيارية للعدالة التصالحية، ودورها في أنسنة قضاء الأحداث، وأهم الأدوات القانونية الدولية الداعمة لتطبيقها. كما تحلل الدراسة الشروط الإجرائية اللازمة لتنفيذ العدالة التصالحية بموجب القانون الجزائري رقم 15-12. وتخلص الدراسة إلى أن العدالة التصالحية تمثل آلية فعّالة لتعزيز مصالح الأطفال الجانحين الفضلى، مع تعزيز التماسك الاجتماعي وتقليل معدلات العودة للجريمة.

الكلمات المفتاحية:

العدالة التصالحية؛ جنوح الأحداث؛ عولمة السياسة الجنائية؛ الوساطة الجزائرية؛ العدالة الرضائية.

Introduction

Juvenile delinquency is considered one of the most prominent social phenomena that has preoccupied societies, as it represents a form of human potential that has deviated at an early age, thereby placing both the lives of these children and the lives of others at risk. Moreover, this phenomenon renders human energy—or human capital, which constitutes the tool, foundation, and objective of development—ineffective, costly, and a source of depletion for state and societal resources. This occurs through the risk of draining public funds, depriving the state and society of the productive contribution of their youth, and violating legally protected rights and entitlements. Even more concerning is the image of a state that is portrayed as incapable of ensuring care for its children and providing protection for its citizens.

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Accordingly, juvenile delinquency has become one of the most complex issues open to debate, both in the past and at present, not only from a social, psychological, and behavioral perspective, but also because it essentially constitutes a legal and judicial problem par excellence.

This reality requires the adaptation of criminal policy toward achieving criminal justice by reducing punitive legislative inflation¹ through adopting approaches aimed at limiting criminalization and punishment, in accordance with the framework of restorative criminal justice. Such an approach emphasizes the human and social dimensions of penal treatment, within what is now known in modern criminal thought as consensual justice.

Thus, embracing the principle of consent and moving away from a purely punitive model, while adopting alternatives to public prosecution in order to implement restorative justice—through mechanisms such as reconciliation and criminal mediation—has become one of the most important strategies adopted by modern criminal legislations, including that of Algeria. This reflects an effort to ensure that this vulnerable group—juvenile offenders, who are considered among the most at risk in society due to their physical weakness, lack of experience, and exposure to adverse social environments—is treated in a manner that prioritizes rehabilitation and reform over punishment and blame, within the framework of what is commonly referred to as the juvenile justice system.

- The Research Problem

In light of the growing legislative and institutional awareness of the need to promote and develop the criminal treatment accorded to juvenile offenders within the framework of the universality of human and child rights, this paper seeks to address a central research question:

What are the newly introduced foundations offered by the restorative justice system, within the context of the globalization of criminal policy, to achieve the best interests of juvenile offenders?

- Significance of the Study

The importance of this study lies in the fact that it addresses one of the most vulnerable situations affecting children, namely juvenile delinquency, by focusing on the rights and needs of the parties to the conflict, away from the public prosecution system that is originally based on the State's right to impose punishment in accordance with the principle of legality.

This approach, which is fundamentally based on the humanization of criminal justice, rests on the principles of consent and participation. It involves the inclusion of community members, juvenile offenders, their legal guardians, and victims in the justice process in order to ensure harm reparation and the fulfillment of rights.

- Research Methodology

The descriptive–analytical method was employed to examine all aspects of the subject, particularly the concept of consensual criminal justice and the shift toward the humanization of juvenile justice through the restorative justice approach. The study also examines the most significant international provisions supporting restorative justice as a means of protecting the rights of juvenile offenders, in order to identify the procedural conditions required for applying restorative justice under Law No. 15-12.

- Structure of the Study

To address the research problem and the related questions, the study is organized into four main sections, in addition to a conclusion:

1. The shift toward consensual criminal justice
2. The humanization of juvenile justice through the restorative justice approach
3. International provisions supporting the consolidation of restorative justice in the protection of juvenile offenders' rights
4. Procedural conditions for the application of restorative justice under Law No. 15-12
5. Conclusion (main findings and recommendations)

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1 The Shift Toward Consensual Criminal Justice

Traditional criminal justice has faced strong criticism due to its limited effectiveness, as it is based on the principle of criminal legality, which defines criminal conduct and the punishment imposed by the State, in the absence of an ethical framework within the justice process. It often encourages offenders to justify or deny their behavior, evade responsibility, and avoid harsher penalties. Moreover, it fails to adequately meet the needs of victims, whose role remains largely passive, as they are not effectively involved in decision-making during the response to crimes committed against them. This led criminal legal thought to strive to develop modern criminal policies based on diversifying remedies and expanding the range of judicial solutions, drawing on the latest ideas of modern criminal theory, which has changed its view of crime by considering it an assault on human relationships and societal values rather than an assault on the state's coercive order (Bahria, 2022, p. 32).

This reality has necessitated a shift toward a new approach based on the participation of the parties and the activation of their role in addressing crime, grounded in the idea of consent and the attempt to repair the harm caused by the offense. This represents a transition from text-based justice to party-based justice, known as restorative justice.

1-1 .– Concept of Restorative Justice

Restorative justice is a flexible, participatory and problem-solving response to criminal behavior, which can provide a complementary or an alternative path to justice. It can improve access to justice, particularly for victims of crime and vulnerable and marginalized populations, including in transitional justice contexts. Restorative justice has a great potential to contribute to the achievement of Sustainable Development Goal (SDG) 16 on providing access to justice for all and building effective, accountable and inclusive institutions at all levels (UNODC, 2020).

However, The concept of restorative justice is still addressed mainly within the framework of procedural applications and systems

that have not yet developed into a comprehensive general theory. Accordingly, restorative justice may be understood as a set of procedural practices and systems that replace criminal proceedings, which are traditionally monopolized by the public prosecution to impose punishment on behalf of society once criminal liability is established (Belkasem, 2019, p. 20).

Nevertheless, most scholarly views converge on the definition proposed by the British criminologist Tony Marshall, who considers restorative justice to be:

“A process whereby all the stakeholders in a specific offense come together to collectively decide how to deal with the aftermath of the offense and its implications for the future. (Bahria, 2022, p. 15) ”

In the same context, restorative justice has also been described as a “justice mechanism,” meaning that it is not so much a type of justice as it is a judicial response, measure, or practice. It is therefore a contemporary justice mechanism for addressing crime and community-related conflicts.

The mechanism in question involves one or more meetings between the affected parties, facilitated by a neutral person or persons.

Thus, restorative justice is a non-judicial method for managing criminal proceedings by resorting to the community to deal with crime and deviance, settling disputes arising from crime in a way that restores normalcy and reconciles all affected parties (Amara, 2026).

This meaning is further explained by Zvi D. Gabbay, who says, the restorative justice paradigm shifts the traditional view of crime from the violated norm to the harm caused to the individuals most affected by the crime. In *CHANGING LENSES*, Zehr provides a short but thorough description of what he calls “the restorative lens.” Zehr describes the restorative lens as the view that “crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation and reassurance, (Gabbay.2005, p357)

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1.2- Normative Foundations of Restorative Justice

The essence of restorative justice is based on several standards that distinguish it from traditional criminal justice:

a. Principle of Consent:

In traditional criminal justice, public prosecution is considered a matter of public order and cannot be waived. However, restorative justice views crime as a violation of individuals and their relationships, which requires repairing the harm through consensual or negotiated reconciliation between the victim and the offender, or between the offender and the State (Meki, 2017).

Accordingly, restorative justice is a voluntary system based on explicit or implicit consent to reconciliation among the disputing parties, including the neutral authority.

b. Principle of Dialogue

Restorative justice relies on dialogue and negotiation in both formal and informal contexts, usually centered on three key questions:

- What happened?
- Who was harmed?
- How can the situation be restored?

that restorative justice has the potential to reduce recidivism rates, In restorative practices, the offenders are active participants in the process. They are expected to tell their stories, answer questions, explain their motives, and most of all listen to the victim and community members and agree on a way they will help repair the harm they caused. Through offenders' active participation, restorative processes are given meaning. It is this unique meaning that raises the hope that participating offenders might be less likely to commit further crimes in the future. (Gabbay.2005, p368).

c. Principle of Reciprocity

Restorative justice is based on compensation, which may be financial, moral, or in the form of the offender's acceptance of rehabilitative measures or programs (Bahria, 2022, p. 46). Such compensation must not contradict the public interest. The ultimate aim is to repair harm, reintegrate the offender into society, prevent reoffending, restore relationships, and strengthen the social fabric. Therefore, we find that the victims play a crucial role in restorative justice processes. In contrast to traditional justice systems, which often leave victims feeling sidelined and without a say in the outcomes of their cases, restorative justice aims to empower them.

This approach gives victims a voice and a platform to share their experiences and express their needs. Through facilitated dialogues, they can convey the impact of the offense, seek answers, and actively participate in determining appropriate reparations. This not only aids in the healing process for victims but also encourages empathy and understanding from the offender. By fostering a connection between victims and offenders, restorative justice opens doors for reconciliation and mutual growth elements that are frequently overlooked in conventional justice systems, (Sitti Aisyah - Muhammad Husni Fahrudin, 2024, p193)

d. An Exceptional Procedural Path

As a rule, interference with personal liberty or property occurs only through the judiciary, which is monopolized by public authority. Restorative justice therefore remains an exceptional method recognized by legislation, allowing disputing parties to manage their conflict and bring it to an end in a manner that satisfies all parties.

1-3-. Justifications for Restorative Justice

Global social, economic, and political conditions have contributed to increasing insecurity and a rapid rise in crimes against persons and

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property, especially with the expansion of the digital sphere. This has overburdened judicial systems, making it necessary to resort to voluntary, negotiated practices. The main justifications include:

- The declining deterrent value of custodial sentences
- Legislative inflation
- The emergence of complex criminal patterns

2 . The Humanization of Juvenile Justice through Restorative Justice

This approach focuses on the rights and needs of the parties to the dispute, rather than on public prosecution. It is grounded in the humanization of criminal justice.

Foundations

- Crime is a violation of rights and relationships: Therefore, restorative justice represents that procedural system which aims to simplify the mechanisms of social reaction towards the perpetrator of the crime and reduce its stages to reach a solution that satisfies the parties without issuing a conviction. Thus, it emphasizes the need for both the perpetrator and the victim to be involved in the penal procedures to find a settlement that satisfies all individuals. It is concerned with the values of respect, reintegration, equality, listening, understanding, dialogue, and others
- Violations create obligations
- Participation of the community, juveniles, guardians, and victims ensures harm repair and rights fulfillment: In other words, resorting to society in dealing with crime and deviance means that humanizing justice in this regard is the process of responding to crime in a way that promotes restoring normalcy and reconciling all parties affected by the crime. (Belkacem, 2019, p24).

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Manifestations

- Redefining crime: According to the principle of humanizing justice, the view of justice regarding crime has changed from describing it as an attack on the state to a new view that sees it as an attack on individuals and relationships. This has led to the necessity of adapting penal procedures and punitive treatment in accordance with the principle of human dignity, which is the essence of the International Bill of Human Rights.
- Changing the guiding questions
- Restoring social relationships: Adopting the principle of humanizing justice is sufficient to some extent to achieve social peace. Restorative justice, based on the principles of consent, dialogue, and the existence of reciprocity, works to remove hatred and resentment between the parties to the crime, and to restore peace to social relations with the aim of absorbing the social reaction to the crime by redressing the harm, compensating the victim, and rebuilding trust between the parties of society as a whole.
- Meeting the needs of offenders and victims: Restorative justice gives the accused the opportunity to avoid conviction and the stigma of society, as well as the effects of temporary detention. Moreover, it can involve community service to repair the damage, if applicable, and of course, compensating the victim in proportion to the extent of the harm suffered.
- Using third-party justice mechanisms: This is embodied on two levels. The first is that society is given the opportunity to actively participate in the justice process as soon as possible and in a complete manner. The second relates to official bodies, meaning a tripartite contract, whereby the perpetrator and the victim are bound by a contractual and consensual relationship, while the accused and the public prosecutor are bound by the latter's legal authority. This

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tripartite structure is confirmed by the criminal mediation agreement in which all three parties participate. Thus, the public prosecutor, as the third party in the contract, makes the criminal treatment of the case contingent upon the success of the agreement related to civil compensation. (Bahria, 2022.p. 94).

3. International Provisions Supporting the Institutionalization of Restorative Justice for the Protection of Juvenile Offenders' Rights

3-1-The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Held in Havana, Cuba, in September 1990 (Congress, 1990) this Congress led to the adoption of the UN Rules for the Protection of Juveniles Deprived of their Liberty by the United Nations General Assembly on 14 December 1990. These rules stipulate that juveniles should only be deprived of their liberty in accordance with the procedures and general principles set forth in these rules and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. Detention of juvenile offenders should be a measure of last resort, for the shortest appropriate period, limited to exceptional cases. Judicial authorities must determine the duration of detention, and no administrative or other authority may release a juvenile prematurely without judicial authorization.

International attention to restorative justice has continued to grow, with further enrichment and recommendations presented at the Bangkok Congress in Thailand (18–25 April 2005) and reaffirmed at the Thirteenth Congress in Doha, Qatar (12–19 April 2015), which recommended the adoption of restorative justice systems for juvenile offenses and the engagement of the public in restorative programs. This includes the resolution

adopted by the United Nations General Assembly on 17 December 2024, on the basis of the report of the Third Committee (A/79/459/Add.1, para. 37), namely resolution 79/188 entitled 'Prevention and combating of violence by organized criminal groups and terrorist groups against children in the field of crime prevention and criminal justice (A/C.3/80/L.3/Rev., 2024)'

3-2-Convention on the Rights of the Child (CRC, 1989)

Adopted by the UN General Assembly through Resolution 44/25 on 20 November 1989 and entering into force on 2 September 1990, the Convention was ratified by Algeria under Presidential Decree No. 92/46 on 19 December 1990. The CRC establishes a set of principles concerning juvenile justice, including non-discrimination and the best interests of the child. Article 40(3)(b) emphasizes that children alleged or recognized to have infringed the penal law should be treated in a manner that promotes their sense of dignity and worth, respects their rights and freedoms, considers their age, and encourages reintegration and constructive participation in society. Measures should prioritize diversion from formal judicial proceedings while fully respecting human rights and legal safeguards.

The Convention requires that the best interests of the child guide all stages of the judicial process, and that decisions and measures conform to the child's individual circumstances (General Assembly resolution 44/25 of 20 November, 1989). Prioritizing the child's best interests over traditional punitive objectives aligns with rehabilitative and restorative approaches in handling juvenile offenders.

3-3-Council of Europe Guidelines (2018/8) (Council of Europe Committee of Ministers Guidelines)

These guidelines promote restorative justice in criminal matters and emphasize the concept of child-friendly justice, which ensures respect for and effective realization of children's

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rights at the highest possible level. The guidelines are based on comprehensive principles and policies for juvenile justice, including:

- Fundamental principles outlined in the Convention on the Rights of the Child.
- Measures to prevent juvenile delinquency in accordance with the Riyadh Guidelines.
- Setting a minimum age of criminal responsibility, as indicated in the CRC, beginning at 12 years.
- Resorting to detention only as a last measure and for the shortest possible time.
- Providing free legal aid to children in conflict with the law.
- Ensuring fair and impartial trial guarantees in line with Article 40 of the CRC.
- Establishing specialized juvenile justice systems, including courts, police, and public prosecution, staffed with professionals experienced in handling juvenile cases, and conducting proceedings confidentially to protect the child's privacy.
- Encouraging diversion from formal judicial proceedings whenever appropriate, while fully respecting human rights and legal safeguards, and utilizing restorative justice mechanisms to balance the child's best interests with community safety.

4- Procedural Conditions for the Implementation of Restorative Justice within the Framework of Protecting the Rights of Delinquent Children under Law No. 15-12"

"In fulfillment of its international obligations, Algeria has incorporated into its domestic legislation provisions consistent with these commitments. It has sought to introduce several amendments on multiple occasions to its national legal texts aimed at protecting children, beginning with the Penal Code and the Code of Criminal Procedure, followed by Ordinance No. 72-03 on the protection of childhood and adolescence, and finally the Child Protection Act under Law No. 15-12 issued on 15/07/2015 (Official Gazette No. 39, issued on 19 July 2015) This law, for the first time, included specific provisions concerning delinquent children, relating to special procedures for their prosecution, trial, and the execution of their sentences. Through these measures, the legislator's intention to adopt new methods for resolving criminal disputes and to move toward a more restorative approach to justice became evident.

Criminal mediation is among the most significant innovations introduced by the aforementioned law, specifically in Articles 110 to 115. It provides a mechanism for resolving disputes arising from offenses committed by delinquent children through an amicable and negotiated process between the child offender and the victim. This represents a practical application of restorative justice within the juvenile justice system.

In this context, Amara believes that this mediation in juvenile delinquency aims to Permanently remove the juvenile from the cycle of crime, even symbolically, and adapt their behavior to societal norms while mitigating the harsh perception of them as criminals. Instead, they are treated as individuals who made an unintentional mistake, as active members of society who need correction and rehabilitation. This is achieved by avoiding the judicial prosecution process and the legal burden on their

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guardians, all to protect their interests, rehabilitate them, and reintegrate them into society, taking into account their age and mental capacity. This approach fosters a healthy societal nucleus by reforming their behavior and aligning it with principles, values, and legal justice. (Amara, 2026)

4-1- Regarding the Parties to the Criminal Dispute

The Algerian legislator defined mediation² in Article 2 of the Child Protection Law No. 15-12 as follows: “Mediation is a legal mechanism aimed at concluding an agreement between the delinquent child and their legal representative on the one hand, and the victim or those holding rights on their behalf on the other hand. It aims to terminate prosecutions, compensate the harm suffered by the victim, put an end to the effects of the crime, and contribute to the reintegration of the child. «From the text of the article, it is understood that the legitimacy of this form of justice—mediation—requires certain conditions that constitute procedural guarantees ensuring the rights of both the delinquent child and the victim. These include,

- Legal Supervision: Mediation is covered by a legal framework and is supervised by the judiciary.
- Voluntary Participation: Neither the victim nor the delinquent child may be forced to participate in mediation, accept the outcome of the restorative process, or be coerced through abusive means. While mediation agreements cannot be challenged through the appeals provided under the Code of Criminal Procedure, the parties, their lawyers, or legal representatives may file a complaint with the Public Prosecutor in case of lack of consent due to defects in volition.
- Legal Counsel: Both the victim and the delinquent child have the right to consult a legal advisor (Article 67)

regarding the restorative process, inform the child's parents or guardians about the procedures to be followed, and obtain their consent.

- Compensatory Relief: Achieving a consensual compensation ensures the victim's reassurance.
- Social Reintegration: The delinquent child can be socially reintegrated without facing punishment or social stigma.
- Termination of Criminal Proceedings: The public prosecution is terminated upon the implementation of the mediation agreement.

4-2-Regarding the Type of Crimes

Article 110 of Law N° 15-12 on the Rights of the Child, in the section on juveniles, stipulates that the substantive scope of criminal mediation includes both minor offenses (contraventions) and misdemeanors (delicts) without exception. This is because minor offenses are considered low-risk crimes, for which it is easier to address the disturbances they cause and to compensate the resulting harm to their perpetrators.

In this regard, we find that Article 110 of the child protection law permits penal mediation for all violations, given their minor severity and limited impact on the victim, especially when committed by a juvenile whose actions may not be inherently harmful or disruptive to society. Penalties for violations are light compared to other crime classifications.

Regarding misdemeanors, the legislator allows the Public Prosecutor to conduct mediation in any misdemeanor that a child may commit, as the law on child protection does not specify which misdemeanors are eligible for mediation concerning juveniles.

However, crimes classified as felonies are excluded from mediation.

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CONCLUSION

In conclusion, it can be stated that both the international and national legislative frameworks for children's rights have found a vital domain under what has come to be known as child-friendly justice.

Restorative criminal justice, fundamentally based on the principles of voluntariness, negotiation, and the involvement of all parties in the justice process, has contributed to:

1. Empowering children: Enabling delinquent children to exercise their internationally recognized rights within the framework of national implementation.
2. Humanizing law and justice: Encouraging governments, courts, and officials to humanize criminal law and justice by adopting policies that address the vulnerable conditions of children within procedural and trial systems.
3. Mitigating challenges and risks: Allowing the legislator to anticipate and reduce the challenges and risks faced by delinquent children at every stage and in every aspect of legal proceedings.

While commending the Algerian legislator for adopting the restorative justice system in criminal matters through the mediation mechanism under the Child Protection Law, we hereby offer some recommendations in this regard:

1. Extending Mediation Across All Stages of Public Prosecution: Efforts should be made to make the mediation mechanism available at all stages of public proceedings concerning disputes involving delinquent children, in order to ensure more effective protection for this vulnerable group.

2. Involving Civil Society: It is essential to actively engage civil society actors, particularly those specialized in and committed to children's issues, in the restorative justice process, thus strengthening mediation as a robust support mechanism for this group.
3. Enhancing Public Awareness and Expanding Mediation: State institutions should intensify efforts to convince the public of the effectiveness of the restorative justice system, develop the mediation mechanism by limiting the prosecutor's control over its management, and expand its scope within the community framework. This would contribute to fostering reconciliation, social harmony, and the restoration of relationships, as restorative justice is, at its core, a justice that transcends the law itself rather than merely being punitive or text-based.

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