

**FROM PUNISHMENT TO RECONCILIATION: A REFLECTION ON THE ROLE OF
THE RESTORATIVE JUSTICE IN BUILDING AN EQUITABLE SOCIETY**

*DA PUNIÇÃO À RECONCILIAÇÃO: UMA REFLEXÃO SOBRE O PAPEL DA JUSTIÇA RESTAURATIVA
NA CONSTRUÇÃO DE UMA SOCIEDADE EQUITATIVA*

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RESUMO

Este artigo se propõe a analisar como a aplicação dos princípios da Justiça Restaurativa pode contribuir para a construção de uma sociedade mais justa e equitativa, enfatizando seus impactos nas relações interpessoais, na comunidade e no sistema jurídico. A pesquisa adota uma abordagem dedutiva, explorando aspectos históricos, conceitos e princípios fundamentais da Justiça Restaurativa, além de suas implicações teóricas e normativas. Os resultados indicam que a Justiça Restaurativa não apenas promove a reparação de danos, mas também fomenta o diálogo e a reconciliação entre as partes envolvidas, contribuindo para a coesão social e a inclusão. Ao enfatizar a participação ativa dos indivíduos, essa abordagem revela-se eficaz na transformação de conflitos, especialmente em contextos de violência, como a doméstica. As implicações práticas sugerem que a Justiça Restaurativa pode ser integrada a programas sociais e educacionais, enquanto as implicações sociais destacam sua potencialidade para fortalecer laços comunitários e promover a equidade. Do ponto de vista teórico, a pesquisa contribui para o debate sobre a justiça como um processo de restauração, e não

apenas de punição, oferecendo uma visão inovadora sobre a aplicação de princípios restaurativos. A originalidade deste estudo reside em sua abordagem integrada, que conecta aspectos históricos e normativos a novas perspectivas de transformação social. Como sugestão para futuras pesquisas, postula-se a promoção de um debate que articule os conceitos de Justiça Restaurativa e direito ao desenvolvimento sustentável.

Palavras-Chave: Justiça Restaurativa. Justiça Social. Equidade Social. Participação Social. Direito ao Desenvolvimento Sustentável.

ABSTRACT

This article aims to analyze how the application of Restorative Justice principles can contribute to the construction of a more just and equitable society, emphasizing its impacts on interpersonal relationships, the community, and the legal system. The research adopts a deductive approach, exploring historical aspects, concepts, and fundamental principles of Restorative Justice, as well as its theoretical and normative implications. The results indicate that Restorative Justice not only promotes the repair of harm but also fosters dialogue and reconciliation between the parties involved, contributing to social cohesion and inclusion. By emphasizing the active participation of individuals, this approach proves effective in transforming conflicts, especially in contexts of violence, such as domestic violence. The practical implications suggest that Restorative Justice can be integrated into social and educational programs, while the social implications highlight its potential to strengthen community ties and promote equity. From a theoretical perspective, the research contributes to the debate on justice as a process of restoration rather than mere punishment, offering an innovative view on the application of restorative principles. The originality of this study lies in its integrated approach, which connects historical and normative aspects to new perspectives on social transformation. As a suggestion for future research, it proposes fostering a debate that articulates the concepts of Restorative Justice and the right to sustainable development.

KEYWORDS: Restorative Justice. Social Justice. Social Equity. Social Participation. Right to Sustainable Development.

INTRODUCTION

Restorative Justice stands out as an innovative approach in the contemporary legal context, emerging as an alternative to the traditional penal system. Its proposal goes beyond simple punishment, seeking to restore relationships affected by unlawful acts and promote reparation for the damage caused. This issue becomes even more relevant in societies marked by violence and inequality, and the need to re-establish social bonds is urgent.

In this context, this paper analyzes the principles, practices and norms of Restorative Justice, exploring its implications for building a fairer and equitable society. The central problem of this research lies in identifying how applying the principles of Restorative Justice can effectively contribute to transforming interpersonal relationships and the legal system. Despite its growing acceptance, there are still gaps in the understanding of how to integrate this approach effectively, especially in contexts of violence and crime. This reflection seeks to understand the obstacles and opportunities that arise with the implementation of Restorative Justice.

In order to analyze how applying the principles of Restorative Justice can contribute to building a more just and equitable society, the specific objectives of this paper are to identify existing restorative practices, examine their implications in the social and legal context and discuss the normative guidelines that guide their application.

Following this Introduction, the next section of the article presents the historical aspects, concepts and fundamental principles of Restorative Justice. This topic provides an essential theoretical basis, contextualizing the evolution of the concept over time and highlighting its cultural and social roots.

The next section discusses the theoretical and normative implications of Restorative Justice, with an emphasis on the guidelines established by international organizations and its adoption in national legal systems. The analysis is important for understanding the challenges and advances in the implementation of restorative programs.

The last part of the discussion addresses new perspectives on Restorative Justice, exploring the innovations and adaptations needed for its application in different contexts, including domestic violence and crimes of greater offensive potential. The discussion seeks to expand the debate on the scope and flexibility of the restorative approach, establishing its relationship with the principles of the right to sustainable development.



The methodology used in the research is deductive, based on a comprehensive literature review. This method allows for an in-depth analysis of existing theories and implemented practices, providing a solid basis for discussing the implications of Restorative Justice.

The justification for this study is the need for approaches that promote reparation and social inclusion in a context of inequality. From this perspective, it broadens the understanding of Restorative Justice as a social movement and not just a judicial practice. Nevertheless, the work recognizes the diversity of social and cultural contexts, which can influence the implementation of Restorative Justice.

The results of the discussion suggest that Restorative Justice has significant potential to transform social relations and contribute to a more equitable legal system. The contributions of this study go beyond the academic sphere, providing practical insights for the implementation of restorative programs that promote inclusion, reparation and social justice. The research is therefore an important step towards building a fairer and more harmonious society.

1 HISTORICAL ASPECTS, CONCEPTS AND PRINCIPLES

Daly and Immargieon (1998) state that Restorative Justice has its origins in social movements of the 1960s, such as feminism and the struggle for civil rights. These movements highlighted the need to tackle issues such as racial discrimination and the treatment of victims in the justice system. As a result, new programs emerged, such as victim-offender mediation and sentencing circles, which offer alternatives to traditional punishment practices and promote a more inclusive and restorative approach (DALY; IMMARGIEON, 1998).

From the 1970s onwards, the concept of Restorative Justice began to consolidate, reflecting the diversity of social and theoretical influences that shaped its ongoing evolution. Social movements and civil rights contributed to reshaping the approach to conflicts and crimes, highlighting a significant change from the traditional punitive model (WALGRAVE, 2008; ANDRADE, 2018; HENING, 2024). Originating in countries such as Canada, New Zealand and the United States, this approach created spaces for victims and offenders to discuss the impacts of crime. The aim was to promote reparation and reconciliation, facilitating a dialog that goes beyond mere punishment (STRANG, 2002).

Van Ness and Strong (2010) point out that various innovations, such as victim assistance and community policing, incorporate elements of restorative thinking.

These mechanisms, which go beyond Restorative Justice, reflect a philosophy that seeks to transform the understanding of society and response to crime and problematic behavior. Johnstone and Van Ness (2007) state that the aim of these innovations is to reformulate the social response to crime, promoting reparation and reconciliation rather than mere punishment.

In the theoretical context, the concept of Restorative Justice came to the fore in the late 1960s and early 1970s, emerging as a critique of the shortcomings of retributive justice. Restorative Justice aims to promote harmony and reconciliation, rather than isolating and punishing the offender. Instead of adopting a punitive approach, it seeks to reach a consensus involving the family and community to resolve the conflict and restore social balance (MARTINS; MARQUES; GUIMARÃES, 2017).

From this context, Zehr (2012) bases Restorative Justice on three pillars: encounter, reparation and transformation. These pillars aim to facilitate self-composition between the parties involved, promoting peace and conflict resolution. Hening (2024) notes that these practices are expanding beyond the criminal justice system and they are being applied in various contexts, such as schools and workplaces. The restorative approach, which originated in Canadian indigenous community circles, stands out for its ability to transform conflicts in a comprehensive and inclusive way.

Zehr (2012) defines Restorative Justice as a process that involves all parties affected by an offense, seeking to collectively identify and address the damage and resulting responsibilities. The aim is to “put things right”, emphasizing reparation and the restoration of affected relationships, promoting a positive transformation that benefits all parties involved. This approach extends the application of Restorative Justice beyond the conventional judicial system.

Dias (2007) describes Restorative Justice as a collaborative process that involves the victim, the offender and the community in resolving an offense, promoting dialogue to identify and meet the needs and responsibilities arising from the violation. Although some critics claim that Restorative Justice can allow impunity, the model requires the offender to take responsibility, with the aim of repairing the damage and promoting their reintegration into the community. The Restorative Justice movement emerged as an attempt to reconsider the needs generated by crime and the roles of those involved in harmful acts. Its advocates identified that the conventional legal system did not meet all the needs emerging

from criminal cases, and that the prevailing view of who should participate or have an interest in the judicial process was limited (ZEHR, 2012).

The understanding and implementation of Restorative Justice offer a more comprehensive and inclusive perspective for dealing with offenses and conflicts, contrasting significantly with the traditional punitive model. By directly involving the victim – the offender and the community – Restorative Justice aims not only to resolve the conflict immediately, but also to promote a deeper and more sustained recovery for all involved. This approach allows for the creation of solutions tailored to the specific needs of each case, encouraging the offender to take responsibility while promoting mutual reconciliation and understanding.

The ability of the Restorative Justice to address the shortcomings of the conventional justice system by including all the interested ones in the process suggests that it can be a powerful tool for improving the effectiveness and fairness of the legal system. The inclusion of all parties involved allows for a broader approach, which considers not only punishment, but also reparation and the restoration of affected relationships.

In addition, Restorative Justice offers a model that can be more effective in promoting the social reintegration of the offender and meeting the needs of victims more satisfactorily. By prioritizing dialogue and cooperation, this approach can overcome the limitations of the traditional punitive system, providing a more constructive way to resolve conflicts and foster social justice.

The discussion on the effectiveness of Restorative Justice reveals that this model does not have a fixed concept, but rather a constant evolution since its first studies and practices (Pallamolla, 2009). The restorative model differs from the conventional justice system in that it incorporates a variety of values and principles. It focuses on taking into account the harm suffered by the victim, the needs arising from that harm and the responsibility of the offender to contribute on rebuilding broken ties. It also seeks to restore the relationships affected by the crime whenever possible (Pallamolla).

Howard Zehr (2008), in his book “Changing Lenses”, highlights a different approach to understanding Restorative Justice by questioning the traditional dynamics of the justice system. Instead of focusing on breaking the law and protecting the offender, Zehr suggests refocusing on questions such as: Who has been harmed, what are their needs and who should meet those needs. He argues that Restorative Justice is based on the strength of community and human relationships, promoting a sense of belonging that is essential for community

coexistence (Zehr, 2008). This perspective emphasizes the importance of addressing the causes of harm and involving all the details in the process, rather than limiting itself to the application of the conventional justice model.

Furthermore, Zehr points out that modern Restorative Justice is not merely a recreation of ancient practices, but represents an adaptation of traditional values and principles to contemporary realities, with an enhanced sensitivity to human rights. He argues that this restorative model is a response to the limitations of the conventional justice system and offers a more inclusive and effective approach to resolving conflicts and promoting justice.

The restorative approach seeks to align itself with constitutional principles, promoting values such as well-being, security and social justice. Thus, Restorative Justice is positioned as a tool not only for resolving conflicts, but also for strengthening social bonds and equitable development, reflecting a commitment to the integrity and dignity of all parties involved. Pallamolla (2016) points out that this process aims not only to repair the damage caused by the offense, but also to prevent the offender from reoffending through self-awareness. The central idea is that by involving everyone in the justice process, it is possible to restore the social and emotional balance of the affected parties, ensuring that everyone has the opportunity to participate in resolving the conflict.

Furthermore, Pallamolla points out that Restorative Justice does not just promote healing, but also re-examines the roles and responsibilities of the community and the agencies involved in the justice process. The fundamental principles of this approach include the need for everyone involved – victims, offenders and the community – to have the chance to engage in the process. This reflects a more comprehensive vision of justice, which considers the participation of all those involved in the conflict.

Resolution 12 of the Economic and Social Council of the UN, of July 24th, 2002, establishes fundamental guidelines for the application of Restorative Justice. It provides a theoretical basis for the development of restorative principles, which aim to promote a more inclusive and restorative approach to conflict resolution. The Resolution clearly defines what constitutes a “Restorative Justice Program” and establishes guidelines for its implementation.

According to the item I – Terminology – principle no. 1 states that a Restorative Justice program is any initiative that uses restorative processes to achieve restorative results. This implies that the essence of these programs is to

promote the restoration of the relationships affected by the parties involved. In addition, the Resolution details the concept of a “restorative process” as any procedure in which the victim and the offender, together with other individuals or members of the community affected by the crime, participate in resolving the issues arising from the violence.

These processes can involve various forms of interaction, such as mediation, conciliation, family or community meetings and decision-making circles. The presence of a facilitator is generally necessary to guide and support collaborative conflict resolution (UN, 2002).

Principles 3, 4 and 5 detail the terminology associated with the restorative process, defining the results that can be obtained, the parties involved and the facilitator. In the item II, which deals with the use of Restorative Justice programs, the Resolution incorporates the principle of voluntariness in the principles 6 and 7, allowing such programs to be applied at any stage of the criminal process, as long as local legislation is respected. Principle 7 stipulates that the restorative process can only be carried out with the consensus of the parties and with sufficient evidence to charge the perpetrator. In addition, the text states that the parties can withdraw from the restorative process at any time and return to the ordinary criminal procedure, and that the restorative process must not generate negative effects for the offender.

Principle no. 8, set out in the item II of the Resolution of the UN, establishes confidentiality in the restorative process, ensuring that the participation of the offender cannot be used as evidence of an admission of guilt in a subsequent court case. This protects the offender, ensuring that their actions or statements during the restorative process are not interpreted as an admission of guilt in possible future trials. It is worth noting that even if the restorative process does not result in an agreement and it is referred back to the traditional criminal justice system, this does not automatically imply that the offender will be convicted for having accepted responsibility for the charge. There is a clear distinction between the acknowledgment of basic facts and legal guilt, so the acknowledgement of responsibility of the offender does not constitute a confession or evidence that can be used in criminal proceedings (ACHUTTI, 2016).

In the section III of the Resolution, which deals with the operation of restorative programs, fundamental principles are defined to guarantee fair and equitable treatment. Principle 13, for example, establishes that all parties

involved must have equal access and adequate legal assistance, as well as being fully informed about their rights and the possible consequences of their participation. This ensures that, in both the traditional criminal justice system and the Restorative Justice system, the parties can make informed and voluntary decisions, without coercion or undue inducement. Fairness is therefore an essential pillar to ensure that everyone involved is treated fairly and has the opportunity to participate autonomously.

Principle 14 deals with the confidentiality of procedures and documents in the restorative process. Unlike the criminal justice system, which is generally based on the publicity of procedural acts, confidentiality in Restorative Justice aims to protect the privacy of information exchanged during the process. This contributes to a safer and more favorable environment for honest dialogue between the parties, increasing the chances of a successful meeting. Confidentiality is guaranteed, except when specified by law or agreed between the parties for specific disclosure (ACHUTTI, 2016).

Principle 15 deals with procedural speed and proportionality, establishing that agreements during restorative processes must be submitted to the criminal justice system for review by the judge in charge. These agreements, once consolidated and incorporated into judicial decisions, acquire legal validity and effects for the parties involved. As highlighted by Achutti (2016), when restorative agreements are formally accepted and integrated by the judicial system, they have the same force as a traditional judicial decision, preventing the parties from being prosecuted again in criminal justice for the same facts, in accordance with the prohibition of the “bis in idem”.

In this way, the Economic and Social Council Resolution of the UN establishes a framework for the application of Restorative Justice, based on principles that promote an inclusive and restorative approach to conflict resolution. The principles outlined in this resolution ensure that Restorative Justice programs are implemented in a way that respects fairness, voluntariness and confidentiality, guaranteeing fair and informative treatment for all parties involved. Procedural speed and proportionality ensure that restorative agreements are integrated into the criminal justice system, giving them legal validity and avoiding duplicate trials for the same facts. These principles form the basis for a system that not only seeks to repair relationships affected by violence, but also to protect the rights of individuals and guarantee a participatory and equitable process.



2 THEORETICAL AND NORMATIVE IMPLICATIONS

The theoretical and normative implications surrounding the definition of Restorative Justice throughout its evolution have generated various interpretations and myths, which makes it essential to analyze its principles and practices (HENING, 2024). According to Zehr (2002), one of the main misconceptions related to Restorative Justice is the belief that it aims to achieve reconciliation or forgiveness between the victim and the offender. The author clarifies that this distorted conception alienates many parties from the restorative process, who fear being forced into reconciliation. However, Zehr points out that, although reconciliation can occur, it is not the main objective, but a possible outcome, but always subject to the free choice of the parties involved in the conflict.

Another point addressed by Zehr is the distinction between Restorative Justice and mediation. Although both practices share characteristics such as the search for consensual solutions, Restorative Justice goes beyond traditional procedural procedures, such as mediation and conciliation, which retain vestiges of the Judiciary. Restorative Justice is not limited to these procedures, as it focuses on repairing the damage and rebuilding social relations, prioritizing the active participation of the community and the parties involved. When approaching Restorative Justice, it is important to recognize its capacity to offer an alternative to the conventional justice model.

Focused on repairing the damage and restoring social balance, Restorative Justice proposes a more inclusive way of dealing with conflicts, allowing the parties directly affected to participate in the resolution. Thus, Restorative Justice represents an evolution in conflict resolution mechanisms, promoting not only justice, but also social reconciliation.

According to Kelner, Pereira and Hening (2023), Restorative Justice represents a new form of substantial access to justice, aligned with the values of citizenship defended by the democratic rule of law. In this context, Restorative Justice promotes a dialog between the parties involved in conflicts, including the community, with the aim of discussing the causes of these conflicts and seeking solutions that meet the needs of all those affected. This approach aims to repair the social fabric broken by illegal acts, offering an alternative to the adversarial and formalistic model of conventional justice, which is often incapable of achieving true social peace.

The authors also point out that although the principles of Restorative Justice have their roots in ancient and pre-legal wisdom; it was the collapse of the judicial system, caused by the increase in litigation that boosted the development of restorative programs from the 1970s onwards, in countries such as New Zealand, the United States and Canada. This crisis in the provision of justice resulted in a recommendation of the UN, through the Resolution 1999/02, for the signatory countries to implement Restorative Justice programs, with the aim of overcoming the limits of a bureaucratic and dehumanized legal system (KELNER; PEREIRA; HENING, 2023).

Restorative Justice, according to Zehr (2018), represents a paradigmatic transformation in relation to traditional retributive justice. By incorporating practices such as peace circles and mediation between victim, offender and community, this approach is based on anthropological elements, such as the use of the talking stick and the central table. The speech acts of victims, offenders and the community are fundamental to building mutual understanding and reparation. The restorative circle allows, through human connections and language, the causes of the conflict and the needs of those involved to be identified, promoting a restorative agreement. In this process, the aim is to restore the broken social fabric, rather than simply imposing a punishment, although in some cases this may be necessary (HENING, 2024).

Marshall (1996) defines Restorative Justice as a process in which all the parties involved in a conflict come together to resolve it collectively, addressing both the immediate consequences and the future implications. This approach seeks to create a space for dialog and cooperation between the parties, providing a resolution that goes beyond simple punishment, focusing on mutual understanding and repairing the damage caused. In addition, Morrison (2005) points out that this process aims to develop fundamental skills, such as active listening, creating empathy and understanding the different perspectives involved in the conflict. These skills promote negotiation and the perception of diversity as ways of achieving more humane and effective solutions.

In this context, Pallamolla (2009) makes an important distinction between retributive justice and Restorative Justice. According to the author, while retributive justice seeks to vindicate the victim by imposing a penalty on the offender, often causing more suffering without resolving the core issues, Restorative Justice is concerned with recognizing the needs of the victim and encouraging the offender to take responsibility for their actions. This model not

only encourages reparation for the damage caused, but also promotes reflection on the motivations behind the behavior of the offender, offering a more complete and restorative solution for all involved.

Following the same line of thought, Hening (2024) highlights the importance of a restorative process that offers the parties involved in a conflict a different kind of autonomy from the traditional criminal process. In this context, the author emphasizes that the restorative process must ensure that the parties have the opportunity to conduct the stages of the procedure, with adequate space to express their perspectives and understandings of the facts that led to the conflict. The restorative approach, unlike the criminal justice system, provides a more inclusive environment, in which the parties involved, whether victims or offenders, have the possibility of expressing their feelings and needs.

This autonomy is essential if the restorative process is to achieve its main objective: repairing the damage and restoring the social relationships damaged by the illegal act. When the parties are effectively included in the process and have an active voice, the likelihood of reaching a solution that meets the specific needs of all those involved increases, promoting social pacification in a deeper and more meaningful way. Thus, the restorative process differs from the traditional criminal justice system by offering a space where the parties are not just decision-makers, but active subjects in the search for justice and reconciliation.

In this sense, Resolution 225 of the National Council of Justice (CNJ) of 2016, as noted by Penido, Mumme and Rocha (2016), introduced an innovative approach by legitimizing interdisciplinary and inter-institutional actions in dealing with conflicts and violence. By expanding the practice of Restorative Justice beyond forensic limits, the Resolution recognizes the need for a broader and more integrated approach that considers the multiple causes of violence in different social contexts. This normative advance aims to break with the traditional and strictly punitive vision of the justice system, allowing for the creation of spaces that address the complexities involved in conflicts.

In addition, the Resolution offers guidelines for the careful implementation of Restorative Justice, adapting it to the institutional and social realities where it will be applied. By providing for this flexibility, the Resolution recognizes that restorative solutions cannot be standardized, but need to be adjusted according to the specific contexts of the parties involved and the community. In this way, Brazil is advancing in the institutionalization of restorative practices that promote

a more humanized and effective response to conflict, creating an environment conducive to build dialogues among victims, offenders and society, with a view to repair damage and social reconciliation.

Hening (2024) points out that the Resolution 225 of 2016 represents a milestone in the implementation of the National Restorative Justice Policy within the Brazilian judiciary. This regulation opens up new possibilities for the application of restorative programs in various contexts, including infractions committed by minors, domestic crimes, events at soccer stadiums and crimes of lesser offensive potential. By not restricting itself to these cases, the Resolution reflects a paradigmatic shift, proposing awareness of the relational, institutional and social factors that influence violence and transgression. By providing for this diversity of contexts, the Resolution of the CNJ seeks to counter the traditional punitive model, offering an alternative approach that favors reparation and the reconstruction of broken social ties. In this way, Restorative Justice asserts itself as a more appropriate response in certain cases, broadening the range of instruments available to deal with social conflicts in a fair and inclusive way.

According to Andrade (2018), Resolution 225 seeks to standardize the concept of Restorative Justice, avoiding discrepancies in orientation and action. The aim is to ensure that the public policy of Restorative Justice is implemented according to regional and institutional specificities, respecting local particularities and promoting a coherent and effective approach throughout the national territory. In addition, the regulation comes after the implementation of Permanent Centers for Consensual Methods of Conflict Resolution and Judicial Centers for Conflict Resolution and Citizenship in Courts of Justice throughout Brazil. This progress was complemented by the national campaign: "Restorative Justice in Brazil: Peace asks for the word", launched in May of 2015 by the Association of Brazilian Magistrates (AMB) and the CNJ. The campaign and the resolutions highlight the importance of integrating restorative practices into the judicial system, reflecting a coordinated effort to promote conflict resolution in a more humanized and inclusive manner.

Porto (2016) stresses that the success of restorative meetings depends not only on the participation of the parties, but also on an integrated and carefully planned involvement. Restorative Justice seeks not only to meet the needs of victims, but also to promote the responsibility of offenders by facilitating a process of healing and reconciliation. Therefore, the effective implementation of these principles requires a systematic and reflective approach, ensuring that all

aspects of the process are meticulously considered and adjusted to the specifics of each situation. Thus, it is clear that Restorative Justice is not just an alternative to the punitive model, but a path towards the profound transformation of personal and social relationships and of the conventional justice system, aligning itself with the needs and expectations of the community.

3 NEW PERSPECTIVES AND CHALLENGES

Restorative Justice, which is based on ancient practices from various cultures around the world, has gained prominence and expanded significantly in recent decades. This phenomenon highlights the urgent need for a normative framework to regulate and guide its practices on a global scale.

The reality of legal systems suggests that the creation of a specific law to regulate Restorative Justice could facilitate its adoption and operation in the country. The presence of a clear legal framework could boost the progress of this model, promoting a more effective organization of restorative practices. This regulation would not only strengthen international guidelines, but would also adapt the principles of Restorative Justice to the particularities of each context, contributing to greater integration and acceptance of this approach.

Hening (2024) notes that the Resolution 2002 of the CNJ of 2012 outlines guidelines for the development of Restorative Justice, promoting a clearer understanding of restorative procedures and the expected results of these processes. This comprehensive approach not only strengthens the practice of Restorative Justice, but also ensures that its implementation complies with the legal and ethical principles that govern each country's legal system. In this way, it reflects a commitment to equitable justice and social reparation.

When considering the international normative framework and its influence on national normative frameworks, it can be seen that the Federal Constitution of 1988 makes room for an exception to the principle of compulsory criminal prosecution, as established in the Article 129. This article mentions the possibility of conciliation and settlement in criminal offenses of lesser offensive potential. This approach reflects the principle of opportunity, allowing more flexibility in the application of justice in less serious cases, by prioritizing solutions that avoid formal punishment.

As far as substantive law is concerned, decriminalization can be achieved by repealing incriminating rules or excluding bagatelle crimes from the application of penalties. In the procedural sphere, the reforms would expand the principle of

the timeliness of criminal prosecution, offering the accused various alternatives, such as plea bargains and conditional suspension of proceedings, especially in crimes of lesser offensive potential.

In fact, Brazilian legislation offers several opportunities for the implementation of Restorative Justice programs. These initiatives range from the application in the case of minors in conflict with the law to domestic crimes, occurrences in soccer stadiums and crimes of lesser offensive potential. The central aim of these actions is to promote the transformation of the current punitive model into a restorative one. Thus, Restorative Justice would not be limited to be just a practice, but a real social movement that seeks to reconfigure the socio-ethical and political agenda, transforming the criminal justice system.

Under the Statute of the Child and Adolescent (Eca), the law establishes the possibility of applying Restorative Justice through socio-educational measures. The legislation specifies options such as a warning, an obligation to repair the damage, community service, probation, semi-liberty and internment in an educational establishment, as well as other measures. These guidelines show the intention to integrate Restorative Justice into the socio-educational system, reinforcing its relevance in promoting solutions that prioritize reparation and social reintegration.

Hening (2024) notes that the Standard Minimum Rules of the UN for the Administration of Juvenile Justice, known as the Beijing Rules, establish fundamental guidelines for the treatment of young offenders. According to the Resolution 40/33 of the General Assembly of the UN of November 29th, 1985, the justice system must prioritize the welfare of young people. This priority ensures that any decision relating to them is always proportionate to the circumstances of the offender and the offense. These guidelines reinforce the need for a more humane and adaptive approach in interventions with young people in conflict with the law.

The Maria da Penha Law establishes several measures aimed at preventing and assisting victims of domestic violence. It includes public policies and more severe punishments for the aggressors, seeking a pedagogical approach in cases of family violence. The legislation designates multidisciplinary teams to develop guidance and referral actions, which serve both victims and perpetrators and their families, with special attention to children and adolescents. The structure of the Protection Programs must guarantee multidisciplinary care and safety, since victims are often at risk. Thus, the application of restorative justice practices



could be integrated into these measures, offering an alternative that aims at reparation and transformation of relationships, rather than focusing only on punishment. This reinforces the need for more humane and restorative treatment of domestic violence crimes.

Therefore, it is evident that restorative justice covers different types of violence. The goal is to build a safe space for victims and aggressors to engage in a process of dialogue and reflection on their actions. This approach protects the rights of the parties involved, focusing on repairing the damage caused and promoting a deeper understanding of the consequences of the actions of each party.

In this context, restorative justice aligns itself with the right to development, since both approaches emphasize the importance of active participation by individuals in building a fairer and balanced environment. By promoting reparation and dialogue, restorative justice not only benefits the parties directly involved, but also contributes to collective well-being and social inclusion, which are central elements in the principle of human development.

Reis (2023) notes that the right to development is a fundamental principle that highlights the importance of the active participation of people in various spheres, such as economic, social, cultural and political, with the aim of promoting the well-being of the population. This right is considered inalienable and essential for the realization of basic freedoms, ensuring that everyone has the opportunity to engage in the development process and reap its benefits.

Since the 1990s, the concept of the right to development has recognized the importance of meeting the needs of future generations. This paradigm shift highlights the need for sustainable development that balances economic growth with social justice and environmental preservation. Thus, it is ensured that current demands do not compromise the resources and opportunities available to future generations. This perspective is aligned with Restorative Justice, which seeks not only the repair of relationships affected by violence, but also a commitment to collective welfare and harmonious development of communities.

This relationship not only reinforces the importance of a more humane and inclusive justice system, but also aligns with the need for sustainable development that respects both individual freedoms and social protection. By integrating these concepts, one can envision a future in which reparation and social inclusion are central pillars in building more just and equitable communities.

REFERENCES

ACHUTTI, Daniel Silva. **Justiça Restaurativa e abolicionismo penal: contribuições para um novo modelo de administração de conflitos no Brasil**. São Paulo: Saraiva, 2016.

AMANCIO, Mila Loureiro de Castro. **Justiça Restaurativa: um novo modelo de justiça**. Revista Jus Navigandi, ISSN 1518-4862, Teresina, ano 16, n. 2939, 19 jul. 2011. Disponível em: <https://jus.com.br/artigos/19579>. Acesso em: 21 jul. 2022.

ANDRADE, Vera Regina Pereira de. **Sistema penal máximo x cidadania mínima: códigos da violência na era da globalização**. Porto Alegre: Livraria do Advogado Editora, 2018.

BRASIL. Constituição (1988). **Constituição Federal do Brasil de 1988**. Brasília, DF: Presidência da República, [2022]. Disponível em: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em: 9 set. 2024.

BRASIL. Lei nº 11.340, de 7 de agosto de 2006. **Cria mecanismos para coibir a violência doméstica e familiar contra a mulher, nos termos do § 8º do art. 226 da Constituição Federal, da Convenção sobre a Eliminação de Todas as Formas de Discriminação contra as Mulheres e da Convenção Interamericana para Prevenir, Punir e Erradicar a Violência contra a Mulher; dispõe sobre a criação dos Juizados de Violência Doméstica e Familiar contra a Mulher; altera o Código de Processo Penal, o Código Penal e a Lei de Execução Penal; e dá outras providências**. Brasília, DF. Disponível em: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm. Acesso em: 8 set. 2024.

BRASIL. Lei nº 8.069, de 13 de julho de 1990. **Dispõe sobre o Estatuto da Criança e do Adolescente e dá outras providências**. Brasília, DF. Disponível em: https://www.planalto.gov.br/ccivil_03/leis/l8069.htm. Acesso em: 9 set. 2024.

BRASIL. Resolução nº 225, de 31 de maio de 2016. **Dispõe sobre a Política Nacional de Justiça Restaurativa no âmbito do Poder Judiciário e dá outras**



providências. Disponível em: <https://atos.cnj.jus.br/atos/detalhar/2289>. Acesso em: 17 set. 2024.

CONSELHO NACIONAL DE JUSTIÇA (CNJ). **Resolução nº 225, de 31 de maio de 2016. Dispõe sobre a Política Nacional de Justiça Restaurativa no âmbito do Poder Judiciário e dá outras providências.** Disponível em: <https://atos.cnj.jus.br/atos/detalhar/2289>. Acesso em: 17 set. 2024.

CONSELHO NACIONAL DE JUSTIÇA. **Dispõe sobre a Política Judiciária Nacional de tratamento adequado dos conflitos de interesses no âmbito do Poder Judiciário e dá outras providências.** Resolução n. 125, de 29 de novembro de 2010. Disponível em: https://www.cnj.jus.br/wpcontent/uploads/2011/02/Resolucao_n_125-GP.pdf . Acesso em: 10 set. 2024.

CONSELHO NACIONAL DE JUSTIÇA. **Resolução n. 2002 de 24 de julho de 2002. Dispõe sobre princípios básicos para utilização de programas de Justiça Restaurativa em matéria criminal.**

DALY, Kathleen; IMMARIGEON, Russ. **The Past, Present, and Future of Restorative Justice: some critical reflections.** Contemporary Justice Review, v. 1, n. 1, 1998.

DIAS, Maria Berenice. **A lei Maria da Penha na justiça: a efetividade da Lei 11.340/2006 de combate à violência doméstica e familiar contra a mulher.** São Paulo: Revista dos Tribunais, 2007.

HENING, Anderson. **SISTEMA DE JUSTIÇA CRIMINAL E JUSTIÇA RESTAURATIVA EM SANTA CATARINA: possibilidades para garantir a dignidade da pessoa humana nos casos de violências contra mulher.** Belo Horizonte– MG. RTM, 2024.

JOHNSTONE, Gerry; VAN NESS, Daniel W. **The meaning of restorative justice. Handbook of restorative justice.** Cullompton e Portland: Willan Publishing, 2007.

KELNER, Lenice; HENING, Anderson; PEREIRA, Giordani Alexandre Colvara. **POLÍTICA NACIONAL DE JUSTIÇA RESTAURATIVA: PERSPECTIVAS PARA INSTITUCIONALIZAÇÃO DA CRÍTICA À DOGMÁTICA JURÍDICA E PARA A TRANSFORMAÇÃO DOS CONFLITOS SOCIAIS ...** In: Anais do II Congresso internacional "Dignidade humana em tempos de (pós) pandemia: direito e democracia no Brasil contemporâneo. Anais...Blumenau(SC) FURB, 2023. Disponível em: <https://www.even3.com.br/anais/ii-congresso-internacional-dignidade-humana-em-tempos-de-pandemia-direito-e-democracia-no-brasil->



contemporaneo-316015/631501-POLITICA-NACIONAL-DE-JUSTICA-
RESTAURATIVA--PERSPECTIVAS-PARA-INSTITUCIONALIZACAO-DA-CRITICA-A-
DOGMATICA-JURIDICA-. Acesso em: 12/9/2024.

MARSHALL, Sandra. **The evolution of restorative justice in Britain**. European Journal on Criminal Policy Research, Heidelberg: Springer, v. 4, n. 4. p. , 1996.

MARTINS, P. F. de M.; MARQUES, J. F.; GUIMARÃES, H. M. **EDUCAÇÃO E JUSTIÇA RESTAURATIVA: OS DESAFIOS NA RESOLUÇÃO DE CONFLITOS NO AMBIENTE ESCOLAR**. REVISTA ESMAT, [S. l.], v. 8, n. 11, p. 11-28, 2017. DOI: 10.34060/reesmat.v8i11.129. Disponível em: http://esmat.tjto.jus.br/publicacoes/index.php/revista_esmat/article/view/129. Acesso em: 12 set. 2024.

MORRISON, Brenda. **Justiça Restaurativa nas escolas**. Justiça Restaurativa, Brasília: Ministério da Justiça e PNUD, 2005.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS (ONU). **Declaração nº 40/34, de 29 de novembro de 1985. Declaração dos Princípios Fundamentais de Justiça Relativos às Vítimas da Criminalidade e de Abuso de Poder**. Disponível em: <http://www.dhnet.org.br/direitos/sip/onu/ajus/prev29.htm>. Acesso em: 20 set. 2024.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Resolução 1999/26. Diretrizes para o desenvolvimento e implementação de medidas de mediação e Justiça Restaurativa no contexto da Justiça Criminal**. Nova Iorque, 1999.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Resolução nº 2000/12, de 24 de julho de 2002. Princípios Básicos Para Utilização de Programas de Justiça Restaurativa em Matéria Criminal**. Disponível em: https://juridica.mppr.mp.br/arquivos/File/MPRestaurativoEACulturadePaz/Material_de_Apoio/Resolucao_UNU_2002.pdf. Acesso em: 20 set. 2024.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Declaração Universal dos Direitos Humanos**, 1948. Disponível em: <<https://www.unicef.org/brazil/declaracao-universal-dos-direitos-humanos>>. Acesso em: 22 fev. 2022.



PALLAMOLLA, Raffaella da Porciuncula. **A Justiça Restaurativa da teoria à prática – relações com o sistema de justiça criminal e implementação no Brasil.** Orientador: Dr. Rodrigo Ghiringhelli de Azevedo. 2008. 159 f. Dissertação (Mestrado em Ciências Criminais) – Pontifícia Universidade Católica do Rio Grande do Sul, Porto Alegre, 2008.

PALLAMOLLA, Raffaella da Porciuncula. **Justiça Restaurativa: da teoria à prática.** São Paulo: IBCCRIM, 2009. (Monografias, 52).

PALLAMOLLA, Raffaella da Porciuncula; ACHUTTI, Daniel. **Justiça criminal e Justiça Restaurativa: possibilidades de ruptura com a lógica burocrático-retribucionista.** Sistema Penal & Violência, Porto Alegre, v. 6, n. 1, p. 75–87, jan/jun. 2014. Disponível em: <https://goo.gl/t1FhGn>. Acesso em: 17 out. 2016. p. 82.

PASOLD, Cezar Luiz. **Metodologia da pesquisa jurídica: teoria e prática.** 12. ed. São Paulo: Conceito Editorial, 2011.

PENIDO, Egberto de Almeida; MUMME, Monica Maria Ribeiro; ROCHA, Vanessa Aufiero da. **Justiça Restaurativa e sua humanidade profunda: diálogos com a resolução 225/2016 do CNJ.** In: CRUZ, Fabricio Bittencourt da (coord.). Brasília: CNJ, 2016.

PORTO, Pedro Rui da Fontoura. **Violência doméstica e familiar contra a mulher: análise crítica e sistêmica.** Porto Alegre: Livraria do Advogado, 2009.

PORTO, Rosane Teresinha Carvalho. **A implementação das práticas restaurativas na prevenção ao feminicídio enquanto política pública para os homens autores de violência de gênero no Brasil.** Derecho y Cambio Social. 2016. Disponível em: https://www.derechoycambiosocial.com/revista045/A_IMPLEMENTACAO_DAS_PRATICAS_RESTAURATIVAS.pdf. Acesso em: 23 set. 2024.

REIS, C. **Direito ao desenvolvimento sustentável: reflexões a partir de Ignacy Sachs.** Direito UNIFACS, v. 1, p. 1–14, 2023.

STRANG, Heather. **Repair or revenge: victims and restorative justice.** Oxford: Oxford University Press, 2002.

VAN NESS, Daniel W.; STRONG, Karen. **Heetderks. Restoring justice: an introduction to restorative justice.** New Providence: Anderson Publishing, 2010.

WALGRAVE, Lode. **Restorative Justice, Self-interest and Responsible Citizenship.** Cullompton (Reino Unido) e Portland (EUA): Willan Publishing, 2008.

ZEHR, Howard. **Justiça Restaurativa.** Tradução de Tônia Van Acker. São Paulo: Palas Athena, 2012.

ZEHR, Howard. **Trocando as lentes: um novo foco sobre o crime e a justiça.** São Paulo: Palas Athena, 2008.