

RESTORATIVE JUSTICE: UNDERSTANDING THE APPROACH

National Symposium on Restorative Justice
Bangkok, June 20, 2019

Yvon Dandurand

Fellow – International Centre for Criminal Law Reform
and Criminal Justice Policy (ICCLR)

Professor Emeritus, Criminology and Criminal Justice,
University of the Fraser Valley, BC, Canada



Restorative justice is based on the idea that parties to a conflict ought to participate actively in repairing the harm, alleviating the suffering that it caused, and taking steps to prevent the further occurrence of the harm.

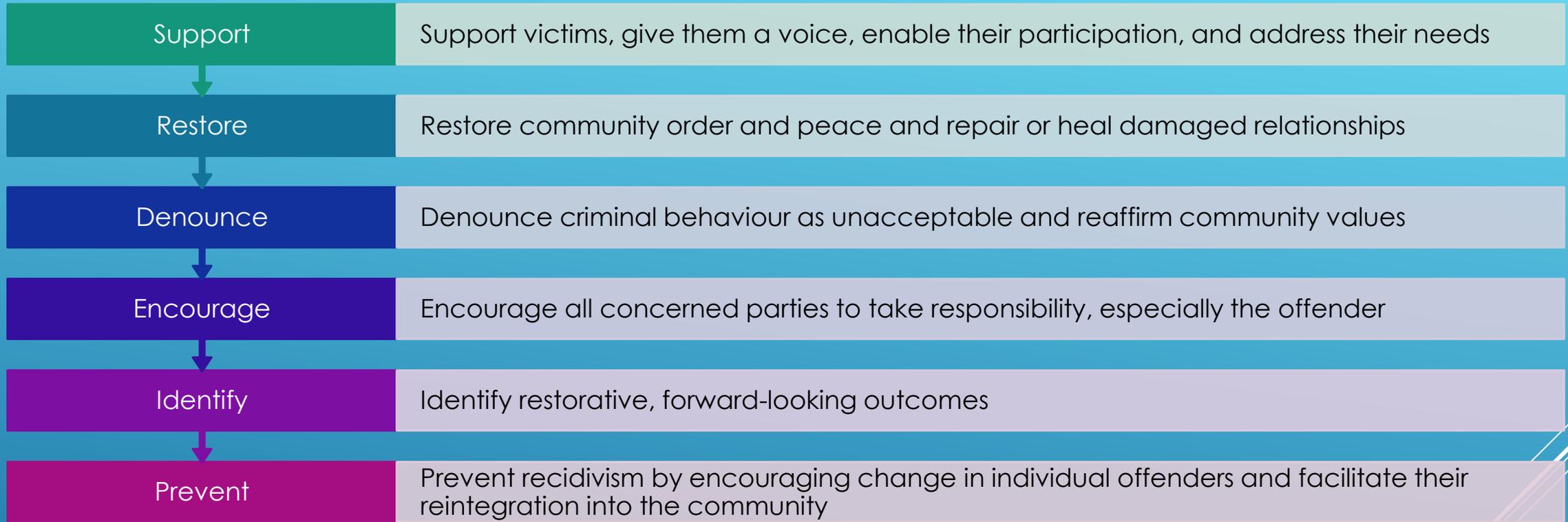
A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, located in the lower right quadrant of the slide.

VARIATIONS IN PROGRAMMES AND APPROACHES

- ▶ Various forms of victim-offender mediation
- ▶ More participatory, community-based approaches
- ▶ Focus on diversion and alternative to the justice system
- ▶ Focus on the reintegration of the offenders
- ▶ Focus on assistance to victims

COMMON CHARACTERISTICS OF RESTORATIVE JUSTICE PROGRAMMES

- ▶ A focus on the **harm** caused by crime
- ▶ **Voluntary participation** by those most affected by the harm, including the victim, the perpetrator and, in some processes, their supporters, members of the community, and appropriate professionals
- ▶ The process is prepared and facilitated by a **trained restorative practitioner**
- ▶ **Dialogue** between the parties to arrive at a mutual understanding of what happened and its consequences and an agreement on what should be done
- ▶ **Outcomes** of the restorative process vary and may include some reparative action for the victim or for the community
- ▶ An offer of **support to the victim** to aid recovery
- ▶ Support the **reintegration of the offender** and his or her **desistance from crime**



RESTORATIVE JUSTICE OBJECTIVES



- ▶ **wider access to justice**
- ▶ **more effective resolution of conflicts**
- ▶ **greater victim satisfaction**
- ▶ **a therapeutic impact on the victim**
- ▶ **greater likelihood of offenders' desistance from crime**
- ▶ **greater likelihood of successful social reintegration of offenders**
- ▶ **greater community engagement and confidence in the justice system.**

**THE MANY BENEFITS OF
RESTORATIVE JUSTICE
PROGRAMMES**

BASIC PRINCIPLES
ON THE USE OF
RESTORATIVE
JUSTICE
PROGRAMMES IN
CRIMINAL
MATTERS (2002)

“Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities” (para 20).

- ▶ Participation of an offender in a restorative justice process should not be used as evidence of admission of guilt in subsequent legal proceedings.
- ▶ Agreements arising out of a restorative process should be arrived at voluntarily and should contain only reasonable and proportionate obligations.
- ▶ The confidentiality of proceedings must be protected.
- ▶ Failure to reach an agreement should not be used against the offender in subsequent criminal justice proceedings.

RECOMMENDED SAFEGUARDS

The right of the victim and the offender to consult with legal counsel concerning the restorative justice process.

The right of minors participating in a restorative justice process to the assistance of a parent or guardian.

The right of parties to be fully informed about their rights, the nature of the restorative justice process, and the possible consequences of their participation in the process.

The right not to participate. The consent of both the victim and the offender is required. Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.

RIGHTS OF PARTICIPANTS (OFFENDERS AND VICTIMS)

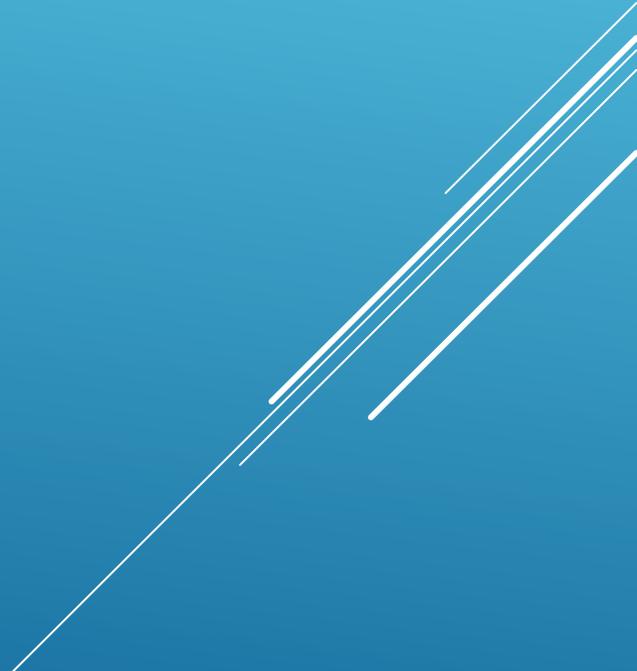
THE BASIC
PRINCIPLES
RECOMMEND
THE ADOPTION
OF NATIONAL
GUIDELINES TO
COVER:

- ▶ The conditions for the referral of cases to restorative justice programmes;
- ▶ The handling of cases following a restorative justice process;
- ▶ The qualifications, training, and assessment of facilitators;
- ▶ The administration of restorative justice programmes; and,
- ▶ Standards of competence and rules of conduct governing the operation of restorative justice programmes.

- ▶ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1989)*
- ▶ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, 2015)*
- ▶ *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules, 2010)*
- ▶ *The Convention of the Rights of the Child (CRC) (1989)*
- ▶ *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014)*
- ▶ *Council of Europe's Recommendation (2018) 8 concerning restorative justice in criminal matters*
- ▶ *European Union's Victims' Rights Directive (2012)*

OTHER RELEVANT STANDARDS

USE OF RESTORATIVE JUSTICE

- ▶ Outside of the justice system
 - ▶ At any stage within the criminal justice process, either instead of or in addition to criminal sanctions
 - ▶ With most types of offences, including serious offences, provided that certain important precautions are taken (reservations are often expressed about the use of RJ in cases involving child victims or victims of violent offences)
- 

WHY WE NEED TO PROCEED CAUTIOUSLY WITH PROGRAMMES FOR SERIOUS VIOLENT CRIMES

- ▶ Concerns for the victim's safety
- ▶ The frequent power imbalance between the offender and the victim
- ▶ The traumatic impact of the offence on the victim and the concern that the restorative justice process may compound the trauma
- ▶ The fear of re-victimization
- ▶ The need to assess victims and ensure that they are psychologically ready to participate in a restorative justice process
- ▶ The lack of victim assistance services for follow-up support
- ▶ The need for special training for facilitators

Yvon.Dandurand@ufv.ca

THANK YOU

The bottom right corner of the slide features several white, parallel diagonal lines of varying lengths and thicknesses, creating a modern, abstract graphic element.