Best Practices in a Child-Friendly Justice System and Child Rights

Best Practices in a Child-Friendly Justice System and Child Rights:

European and US Perspectives

Edited by

Levan Darbaidze

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INTRODUCTION

Based on the memorandum signed between the Caucasus University and UNICEF in Georgia, in 2023, The Child Rights Centre was established at the Law School of the Caucasus University, whose mission is to spread, popularize and develop knowledge about the rights of the child. The Child Rights Centre carries out educational and research activities in various directions through the scientific workers and practicing professionals united in it.

On November 20, 2023, in Tbilisi, The Child Rights Centre, in cooperation with the Council of Europe, the International Bureau of State Anti-Narcotics and Law Enforcement Relations of the Embassy of the United States of America (INL), and the UNICEF in Georgia, held the first international conference on the topic - "Child-friendly justice system and child rights - the best European and American experience".

Both Georgian and foreign professors and experts in the field, judges, prosecutors and lawyers, representatives of state and non-governmental organizations, practicing lawyers from various agencies, international organizations working on children's rights, students and schoolchildren participated in the conference. The conference brought together reports of multidisciplinary content, which dealt with issues of protection of children's rights in terms of both criminal, civil and administrative law.

The conference included five sessions on the legal status of adolescents in schools, challenges in the digital world, achievements and perspectives in the fight against sexual exploitation and sexual violence against children, the rights of children in conflict with the law, victims and witnesses in the criminal justice process, challenges and development trends in this regard, children’s rights in civil and administrative proceedings, international mechanisms and issues of access to them, the role of the state in the development of a child-friendly justice system, mechanisms for rapid financing of a child-friendly justice system.

The following book incorporates reports from conference participants. This collection is intended for practicing lawyers, social workers, psychologists and other readers interested in child rights.

We must always remember that children are full-fledged members of society, its most worthy and important part, who represent not only our future, but, first of all, our present! Therefore, raising public awareness about the rights of the child and a new understanding of the importance of the child will contribute to their better integration in both public life and legal relations.

Judge Levan Darbaidze,
The founder of The Child Rights Centre of Caucasus University,
Professor, Doctor of Law

1

ACCESS TO JUSTICE FOR CHILDREN DURING THE WAR EXPERIENCE OF UKRAINE

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I. Introduction

Children are a particularly vulnerable group in society, facing a high risk of poverty and social isolation. They are often the main target of systemic discrimination, which is further intensified in the conditions of armed conflicts. During armed conflict, children suffer completely disproportionately, and their sufferings are diverse. The Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts emphasises that the rights of children need special protection, taking into account the devastating and far-reaching impact of armed conflicts on them and their long-term consequences. States should strive to ensure continuous improvement of the situation for children, without any discrimination, and provide them with opportunities for development and education in conditions of peace and security[2].

[1] Judge of the Bakhmach district court of Chernihiv region, Ukraine, PhD, teacher of the Higher School of Advocacy of Ukraine, the National School of Judges of Ukraine, National expert of the Council of Europe.

[2] Turchenko O.G., Pylypyshyna I.I. Ensuring children's rights in the context of armed conflict in Ukraine
//http://journal-app.uzhnu.edu.ua/article/view/261617/258040

During times of war, the fundamental rights of children are violated and compromised. The right to life, the right to be with family and community, the right to health, the right to personal development, and the right to care and protection are all infringed upon.[3]

Legal regulation and protection from national and international institutions are required to prevent violations of children's rights.

The war that broke out in Ukraine resulted in many casualties, extensive damage, and gross violations of children's rights.

Evidence of this is the fact that the Parliamentary Assembly of the Council of Europe has officially recognised the deportation and forced displacement of Ukrainian children to Russia as genocide. Additionally, the International Criminal Court has issued arrest warrants for the President of Russia and the head of the Commission on Children's Rights due to their involvement in the deportation mentioned above of Ukrainian children to Russia.[4]

The state has a positive obligation to ensure proper judicial protection, including access to justice for children during the war, to realise their rights.

Unfortunately, Ukraine has gained bitter experience from the war and is trying to build a child-friendly justice system despite the difficulties and challenges.

Below, we will provide examples from national practice on children's access to justice during wartime.

[3] Impact of armed conflict on children. report of the expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157 //https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/04/Machel-Report-Impact-Armed-Conflict-Children-EN.pdf

[4] The forcible transfer and "russification" of Ukrainian children shows evidence of genocide, says PACE // https://pace.coe.int/en/news/9075/the-forcible-transfer-and-russification-of-ukrainian-children-shows-evidence-of-genocide-says-pace

II. General problems during the war

Let us first consider the general problems that arose with the beginning of active hostilities throughout Ukraine's territory.

On February 24, 2022, Russia launched offences on Ukraine's territory. There have been battles near the capital city of Kyiv, and enemy troops have attempted to advance throughout the territory.

Many courts had to cease their operations, and as a result, the employees working there were compelled to evacuate the premises.

In addition, the national legislation requires that the court's powers cannot be suspended during the martial law period.[5].

To ensure access to justice, the Parliament rapidly, on March 3, 2022, amended the legislation on changing the territorial jurisdiction of courts in cases where the court cannot administer justice.[6]

The Supreme Court President was granted the opportunity to change the jurisdiction of the courts in the occupied territories by issuing orders. The Supreme Court's website periodically published interactive maps of these territories, which helped people identify which courts were not operational and how the territorial jurisdiction was changed.

Subsequently, the courts in the de-occupied territories gradually resumed their work based on the order of the Supreme Court President.

On March 2, 2022, the Council of Judges of Ukraine released recommendations on the operation of courts during periods of martial law.[7] The recommendations require that the heads of justice system bodies, institutions, and judges pay

[5] Article 10 of the Law of Ukraine "On the Legal Regime of Martial Law" dated May 12, 2015 No. 389-VIII //https://zakon.rada.gov.ua/laws/show/389-19#Text
[6] Law of Ukraine "On the Judiciary and the Status of Judges" dated June 2, 2016 No. 1402-VIII // https://zakon.rada.gov.ua/laws/show/1402-19#Text
[7] Recommendations of the Council of Judges of Ukraine regarding the work of courts under martial law dated March 2, 2022 //https://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opulikuvala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu

close attention to any air raid alerts or danger notifications issued by civil protection authorities and ensure they are not ignored under any circumstances.

The President of the Supreme Court issued recommendations[8] to the courts of first instances and the courts of appeal in case of capture or immediate threat of capture.

The Ukrainian judicial system began to adapt to operating during the war. Approaches to working during air alarms, conducting remote court proceedings, restoring lost court cases and more were developed.

The Supreme Court recently dealt with a case in which court proceedings had been lost due to the Volnovakha district court of the Donetsk region being located in Ukraine's temporarily occupied territory. The Court found that the administration of justice had not been resumed in this case, and postal correspondence was not being sent to Volnovakha. Therefore, the proceedings were considered lost and would need to be renewed.[9]

A problem has emerged in considering court cases involving parties located within the territory of Russia and Belarus. The Parliament denounced the Minsk Convention on Mutual Assistance in Civil Matters, and the post office stopped working on February 24, 2022. An idea was proposed to find an intermediary country, following the example of Georgia-Switzerland, but Russia refused to adopt such an approach.

In the Supreme Court decision “on immunity”, a notification mechanism was established through a website announcement.[10]

[8] Recommendations to the courts of the first instances and the courts of appeal in case the settlement and/or the court is captured or the immediate threat of capture thereof occurs, approved by the order of the President of the Supreme Court dated March 13, 2022 No. 6/0/9-22 // https://rsu.gov.ua /ua/news/rekomendacii-sudam-persoi-ta-apelacijnoi-instancii-na-vipadok-zahoplenna-naselenogo-punktu-taabo-sudu

[9] Decision of the Supreme Court of November 15, 2022 in case No. 221/7991/19

[10] Decision of the Supreme Court of April 14, 2022 in case No. 308/9708/19

Active military actions can have various consequences on the administration of justice. These may include the following factors:

- Departure of individuals abroad and their participation in court proceedings
- Termination of relations with Russia and Belarus that can impact the judiciary
- Participation of the party involved in the dispute that is located in a temporarily occupied territory (like AR Crimea, Donetsk and Luhansk regions)
- Remote court proceedings
- And other factors that may arise due to the situation.

I hope this version is more precise and more understandable. Please let me know if you have any other questions or need further assistance.

This is only one of the challenges that access to justice faced during the war, and all branches of government in Ukraine are working to respond to them. The Supreme Court, as the highest judicial instance, provides particular approaches.

III. Children's access to justice during war: judicial practice in Ukraine

Due to the war, there has been a rise in family disputes related to child custody and upbringing. The issue of international child abduction and the return of children to Ukraine has become a significant concern for judicial authorities. As a result, a relatively new practice is being formed in Ukraine to address this issue.

One of the crucial approaches that preceded the legislature and attempted to fill the legislative gap by forming a legal position in the court decision is the problem of applying preventive measures in the cases of international child abduction.

The Supreme Court has emphasised that in cases where there are no explicit provisions in the national legislation that would regulate the procedure of applying a temporary ban on a child leaving Ukraine and subsequently

cancelling it, the requirements of the Convention on Jurisdiction, the applicable law, recognition, implementation and cooperation regarding parental responsibility and measures to protect children, and the Convention on the Civil Legal Aspects of International Child Abduction will apply. According to Article 5 of the Civil Procedure Code of Ukraine, temporary measures can be used if there is a proven risk of abduction (illegal displacement) of a child whose habitual place of residence is in Ukraine.[11]

The concept of preventing the illegal displacement of a child whose habitual place of residence is in Ukraine is relatively new. However, the highest judicial authority must take notice of this approach. In case of a risk of abduction (illegal displacement), the courts can impose a ban on the transfer of the child to ensure their safety and prevent any unlawful act.

Article 12 of the UN Convention on the Rights of the Child guarantees the right of children to express their views, which is another vital aspect to consider.

One of the interesting examples is the problem of finding out the child's opinion through video conference.[12] During a session of the Court of Appeal, a child was questioned via video conference to determine his opinion on a particular matter. The child had been living with his mother since the end of February 2022, after the plaintiff handed the child over to the defendant's parents, who then took the boy to Romania. The Supreme Court acknowledged that the Court of Appeal created favourable conditions for the child's right to be heard. This was done in a manner that was deemed appropriate during the ongoing large-scale armed aggression of the Russian Federation against Ukraine. Furthermore, the child was residing within the territory of another state that had provided shelter to Ukrainian citizens.

The described approach is highly relevant, considering safety measures for children, inability to attend a court session, residing outside of Ukraine, etc.

The presence of a child in a foreign country may be necessary to ensure the child's safety. Thus, the Supreme Court emphasised that in cases of military

[11] Decision of the Supreme Court of June 12, 2023 in case No. 748/1575/22
[12] Decision of the Supreme Court of February 9, 2023 in case No. 753/572/20

conflict or martial law in a country, the state's primary task is to protect the safety and right to life of children. In this particular case, due to the threat of rocket attacks, the plaintiff and her son had to flee Ukraine and seek temporary protection in France. Therefore, staying with his mother in France in a stable and secure environment is safer for the child.[13]

There are discussions about the possibility of returning the child to Ukraine during the war amidst ongoing conflicts between the parents. However, an essential factor to consider is the issue of security, which, when combined with other circumstances of a specific case, may result in the child being left abroad.

IV. The Barnahus model and its significance for the protection of children's rights during wartime

The introduction of the Barnahus model in Ukraine is a new institution that lacks precise approaches to its organisation and proper legal regulation. We do not have special legislation regulating the functioning of the specified model.

However, the described model became relevant during the war, especially in protecting the rights of children who suffered from war crimes and armed aggression by Russia.

In the absence of specific legislative norms governing the organisation and functioning of the Barnahus model, international standards became the basis for its introduction.

The principles of the Barnahus model can be traced back to various international guidelines and recommendations. These include the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Violence (2010), Guidelines for Actions in the Interests of Children in the Criminal Justice System (2010), and Recommendations for Social Services Acting in the Interests of Children (2011), etc.

[13] Decision of the Supreme Court of June 14, 2023 in case No. 760/31518/21

When no clear legal framework is in place, having international experience becomes the primary legal basis at the national level. It is helpful for pilot projects and developing a new national legal framework, as it shows that similar methodologies and algorithms can be applied to create interagency and interdisciplinary services.

Initial difficulties and misunderstandings surrounding the implementation of the Barnahus model in Ukraine hindered its use among child welfare professionals.

In the past, judges used to reject the proposed model, which was intended to serve the child's best interests. However, after conducting several training sessions for specialists and piloting its implementation in various regions, the practice has improved, and the focus has shifted towards achieving the best outcomes for the child.

V. Conclusions

The conducted analysis revealed gross violations of children's rights and numerous obstacles to their access to justice during the war in Ukraine.

Since the full-scale invasion, Ukraine has immediately adapted its judicial system to work under martial law and respond to obstacles in citizens' access to justice.

Due to Russia's aggressive behaviour, new categories of legal disputes have arisen, particularly concerning children and their upbringing. As a consequence, the number of cases of international child abduction has increased. To address this, the state is taking preventive measures by applying injunctions.

Resolving disputes with parties staying in temporarily occupied territories in Ukraine, Russia, and Belarus is challenging. The current mechanism for notifying the parties of a dispute needs improvement. The only possible approach is to announce the dispute on the Internet.

The national practice strongly draws on the international experience of questioning children using the Green Room methods and the Barnahus model.

The development of online questioning and participation of children in court sessions in video conference mode aims to ensure the child's best interests.

Unfortunately, the issues we have presented reflect Ukraine's bitter experience regarding children's access to justice during wartime. This highlights the need for increased attention from the international community to the events in Ukraine, for discussion of new challenges, and for joint development of approaches to protect children's rights in martial law conditions, which may be helpful for other countries.

2

HEARING OF CHILD VICTIMS OR WITNESSES IN A CHILD-FRIENDLY MANNER

ODINK REIN H.G.
SENIOR JUDGE OF THE DISTRICT COURT OF AMSTERDAM

The Georgian Legislation

As I understand it correctly, the Criminal Procedure Code of Georgia stipulates that a witness should be interrogated in the courtroom during a court hearing, with all the participants present. The defence lawyer and accused have the right to cross-examine the witness, even by asking leading questions.

Now, according to me, this is something to avoid when child victims or witnesses are involved. Not only because of the stress and anxiety the child will feel entering the judicial world of adults or the risk of re-victimisation but also because children are far more than adults susceptible to suggestive questions.

A long time ago, research showed that children can be as good witnesses as adults, but they should be interviewed correctly. And correctly means that a) the child feels at ease, b) trusts the interviewer, and c) the interviewer is well-trained in using appropriate methods,[1] certainly not using leading or

[1] McCough *Child Witnesses; fragile voices in the American legal system* (1994, p. 223)

suggestive questions. Research also shows that an atmosphere of intimidation negatively influences the fact-finding process.[2]

In other words, hearing a child in your courtroom under stressful situations with the probable use of leading or otherwise suggestive questions will likely not help the child tell the truth. However, any witness, also a child, must tell the truth, as stipulated in Article 48 of the Criminal Procedure Code of Georgia.

Now, apart from the international legal regulations and legal framework that can be of great help in deciding that you do not accept that a child victim is interrogated in your courtroom, you also have the Juvenile Justice Code. In my view, the JJC gives you enough legal ammunition to decide that interrogations of child victims or child witnesses will not take place in your courtroom.

I'm referring to Chapter IV on "Minor Witnesses and Victims." Article 23 stipulates the danger of secondary victimisation and re-victimisation, which should be prevented according to Article 1, section 2 of the JJC. The threat of re-victimisation when a child has to testify in your courtroom with all the parties present is eminent.

And then Article 24 states that the judge can decide, on request but also their own initiative, to:

- have a *remote* interrogation

Now, this seems like a handy and legal escape to have a remote hearing of the child victim in a child-friendly manner by trained professionals.

Here, I would like to introduce you for a brief moment to the Dutch practice of hearing child victims in sexual abuse cases or other offences that have a significant impact on the child.

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[2] K. Bussey et al. *Lies and secrets: implications for children's reporting of sexual abuse*, in Goodman & Bottoms *Child victims, child witnesses: understanding and improving testimony* (1993, p. 159)

In the Netherlands, a child victim of sexual abuse is first of all being heard in a child-friendly way by specially trained police investigators. In a child-friendly environment, use a specially designed room with toys, etc. If the defence lawyer wants to interrogate the child victim and if the judge thinks that serves a good purpose, then the judge decides that the child victim is once again heard. *But* this should be done in the same child-friendly studio by preferably the same police officer. The defence lawyer has the right to be in an adjacent room, sitting behind a glass window, so he or she can watch the interrogation. The other side of the glass is just a mirror, so the child can't see the defence lawyer. The child is explained, in a child-friendly manner, that people are watching behind the mirror. The defence lawyer's questions for the child are asked by a trained police investigator and translated in a child-friendly way by the police investigator. After the interrogation, the police investigator takes a break, leaves the room and asks the defence lawyer whether they have some more questions. The whole interrogation is written down *ad verbum* and videotaped and audio-recorded and can be argued upon by the defence lawyer in the courtroom during the trial.

In this way, we make sure that the child is heard in a child-friendly manner by trained professionals.

In this way, we also try to avoid re-victimisation as much as possible.

In this way, we maximise the chance that the child's testimony is their own story because we refrain from suggestive questions that can only interfere with correct fact-finding.

In my opinion, the latter is also a duty of the judge… to ensure that a witness isn't hindered in his or her duty to tell the truth, as stipulated in Article 48 of the Criminal Procedure Code. Article 52, section 5 of the JJC might also help you with this because this article clearly states that interrogations of child victims of sexual abuse shall be determined by the need to achieve the goals of criminal proceedings… and one of the main goals of criminal proceedings is to find the truth.

But, I can imagine that the route towards a standard practice of remote interrogation of a child victim or witness by trained professionals is a

difficult one in Georgia that faces many challenges. A significant and fundamental challenge will surely come from the defence lawyer who wants to cross-examine the child in your courtroom. He or she will point out the relevant articles in the Criminal Procedure Code of Georgia and argue that if the defence is not given this opportunity, then the trial as a whole will not be fair and, therefore, in breach of Article 6 of the European Convention on Human Rights.

Which brings me to the second part of my speech.

The European Court of Human Rights

The European Court of Human Rights has given some exciting judgments in cases involving minor victims. I want to discuss two of them.

The first is the case of S.N. v. Sweden (2002, nr. 34209/96). A ten-year-old boy claimed that S.N. had sexually abused him. He was interviewed twice during the preliminary investigation, and the request of the defence lawyer to interrogate the child during a court hearing was denied by our Swedish colleagues.

In its judgment, the European Court reiterates that as a general rule, paragraphs 1 and 3 (d) of Article 6 cannot be interpreted as requiring in all cases that questions be put directly by the accused or his lawyer, whether using cross-examination or by any other means, but rather that the accused must be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statements or at a later stage.

So, Article 6 does not grant the accused an unlimited right to secure the appearance of witnesses in court.

Then, and this is very important, the European Court stipulates that criminal proceedings concerning sexual offences are

> *"often conceived of as an ordeal by the victim, particularly when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse, certain measures may be*

> *taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence. And in securing the rights of the defence, the judicial authorities may be required to take measures which counterbalance the handicaps under which the defence labours"* (par. 47).

So, a judge has to make sure that there is a proper balance between the protection of the child victim or witness on the one hand and the opportunity for the accused to put questions to the child and/or to challenge the credibility of the testimony of the child on the other hand.

According to the European Court, this was the case in the criminal proceedings of S.N. There were enough *counterbalancing factors* that made the procedure, as a whole, in line with Article 6, section 3 sub d of the European Convention. Crucial for this was that

a) The defence lawyer was allowed to participate in the second interview at the police station. The defence lawyer requested this second interview so he could have been present in an adjacent room, followed the interview via technical devices, and, therefore, asked his questions to the child through the police officer conducting the interview (par. 49).
b) The videotape of the first interview was shown at the trial, and the audiotape of the second interview was read out during the trial (par. 52).

According to the European Court, these measures must be sufficient to enable the accused to challenge the child's statements and credibility during the criminal proceedings (par. 52).

The second judgment is the case of Rosin v. Estonia (2013, nr. 26540/08). In the case of Rosin, the Estonian judges refused to have the 11-year victim of sexual abuse be interrogated in the courtroom. Now, the victim, in this case, had only been interrogated once by the police, with the help of a psychologist, but not with the possibility for the defence lawyer to be present.

Now, the European Court ruled that not enough counterbalances had been created. The court ruled that in the early stage of the proceedings, the defence council could and, therefore, should have been allowed to put questions to the child victim (par. 59 and 60). In paragraph 62, the court said that

> "*what is at issue in a case like the present one is whether it was possible to put questions to the witness, for example through the defendant's lawyer, police investigator or psychologist, in an environment under the control of the investigating authorities and in a manner that would not need to substantially differ from the interview which was in any event carried out by those authorities".*

So, if the child had been interrogated in this child-friendly manner, Article 6 of the European Convention would not have been breached.

This brings me to the following conclusion.

Translated to the situation in Georgia, if the defence lawyer or prosecutor wants to interrogate the child victim and you do not like this to happen in your courtroom, you can refer to Articles 23 and 24 of the JJC and decide that the interrogation will be done remote, in a child-friendly place and child-friendly way, by trained investigators, with the defence lawyer in an adjacent room. If you also decide that a video of this interview will be displayed in your courtroom afterwards, you will most likely have created enough counterbalancing factors. Therefore, the trial as a whole will most likely follow the requirements of Article 6, section 3 sub d of the European Convention on Human Rights.

You will also have ensured that the child's testimony will most likely be his or her own story, thus corresponding with the aim of Article 48 CPC and Article 52, section 5 of the JJC.

I thank you for your attention and wish you an enjoyable and informative continuation of the conference.

3

The Restorative Action Planning Process©: The Intersection of CBT & RJ

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Introduction

Restorative practices definitively place the victim of criminal acts and the communities where they occur at the forefront of a criminal justice system where those most directly impacted by crime are most often forgotten. Often, the resources provided to offenders are more significant in secure care and the communities they return to. This methodology can typically see victims either re-traumatized by their unnoticed physical, mental, and emotional harm or placatingly given cursory attention that does not fully address the internal thoughts and feelings they suffered in the actions or inactions of the offender. Cognitive-behavioural approaches are empirically proven interventions that improve positive outcomes for offenders but generally focus on their thoughts, feelings, and beliefs to influence their future prosocial actions.

The Power of Empathy

While victims of crime generally provide a considerable amount of *sympathy* for what has occurred to them, can it be said that we are always ***empathic*** to their predicaments? When leaving the courthouse, and after the

formalities of the criminal justice system have dissipated, the victim remains to dwell upon how they have been affected. Sometimes, with minimal positive and supportive outlets to do so. Outside of the usual financial implications of crime, wherein mechanisms like restitution and community service may address the ability to effectively place yourself into the individual minds of those who have been harmed, it provides a new and unique way to affect cognitive change on the part of offenders as well as affect the traumatisation of those who have been victimised. It is posited here that if an established criminal justice entity provides an evidence-informed, empathic learning process in which offenders and victims can actively take part:

- Victims can be directly heard and provide direct feedback to those who have harmed them,
- Offenders, after addressing their thoughts and behaviour patterns in proven CBT programs, can entirely focus on the victim and community impacts of their actions/inactions and,
- Criminal Justice entities can create another solid avenue for alternatives to incarceration while simultaneously building bridges to more effective re-entry into the community for offenders participating.

Safety First

The criminal justice agencies that intervene for victims and offenders must always walk the line and support each of them. It can often be a “tightrope walk” between offender rehabilitation and public safety, and these agencies must do their best to remain balanced and objective in all aspects of their support of Restorative Justice (RJ). Before establishing any process in which the victim engages directly with the offender who harmed them, stringent measures must be taken by all those who participate to ensure no one, neither the victim nor the offender who devotes themselves to the process, is harmed. Suppose privacy issues, ongoing legal proceedings, witness protection, or others that can rebound negatively are not addressed, and appropriate safeguards are not implemented. In that case, the engagement between the two cannot occur. However, that does not necessarily negate the impact of the process, as it can still be conducted with

both parties separately.

Community Action Teams (CATs)

The communities where crime takes place serve in dual roles, not only as subsidiary victims but also as a defender against re-victimisation, a reintegration advocate, an employer, a treatment service provider, an educational resource, spiritual assistance, and informal system of community supervision in support of criminal justice agencies. Establishing an influential, integrated network of community leaders in these areas provides a comprehensive safety net upon which both the victims and offenders participating in this process can rely. Without this network established and prepared to support this process, there can be no determinant efficacy.

The Restorative Action Planning Process (RAP)©

The steps above lay the framework for introducing and delivering this concept. The Restorative Action Planning Process (RAP)© is a cognitive-behaviourally based, victim-centred resolution process that focuses the offender on the victims and the community impact of their actions. Then, through peer, staff, and stakeholder support, the offender develops and enacts realistic and achievable plans that work to repair the harm they've caused. Participants in this process will gain a deep understanding of the effects of their actions or inactions on those they have victimised. They will then be able to enact a pro-social "script" and initiate positive actions with their victim(s). In doing so, the participant will more effectively be able to restore the damaged ties to their victim(s) and community. This concept falls within the intersection of CBT and RJ, with the conduit being empathetic learning and skill building. It's not just about apologising to the victim about what the offender did. It is about genuinely immersing the offender in how their actions affected ALL those they have victimised to change their high-risk and potentially harmful thinking and behaviours in the long term.

Once participants commit to process participation, they will detail all the impacts of their actions or inactions on those they have victimised through an established "branching" process. Then, after doing so, they will be able

to present detailed, empathetic victim impact "scripts" to peer groups and the victims themselves. Once these scripts are finalised and approved, the presenters will create and complete an attainable "restorative action project" for the victim in an effort to make the victim whole again.

Passionate People Enable a Passionate Process

As with any humanistic process, all participants must be passionate to see the process through. Whether it is the victim who wishes validation and true justice to be served, the offender who wishes to repair the harm they have caused and return to their communities in the most amiable way possible, community stakeholders who want to improve the safety of all its citizens, or the criminal justice agencies who wish to create a balanced approach in which all participants have fair access to resolution and reintegration. Ensuring that those participating in this RAP© process are passionate about seeing its successful completion is the foundation for this process to be built.

Introspection

After introducing the concept to the victim and offender, both must spend revelatory time examining the thoughts, feelings, physical effects, and emotional and financial impacts of the offenders' criminal actions. Throughout this process, both participants mirror the work so that they can compare their work when appropriate to determine accuracy. Depending on the offence and all who may have been affected by it, the offender may have even more opportunities to address how their actions (or inactions) affected others, as everyone who falls in their "branching" process must be addressed and noted in written "script" form.

The repetition of this process presents the ability to cement empathetic solid learning skills.

Peer and Staff Support & Practice

After drafting their impact scripts, the offender can now share their work outside of themselves for feedback and revisions. First, the process asks that the offender find someone they believe will provide direct, no-nonsense

counsel that the offender will accept because of their established relationship. Whether this is a family member, friend, clergy, or teammate, this "sounding board" is the first to guide the offender to hone their scripts in preparation for others to review.

Next, program staff, who act as both support for the offender and a proxy for the victim, will review the work and continue to assist the offender in drafting the most accurate script to present to the victim eventually. Simultaneously, victim advocates or peers should support the victim through the same process. This dual approach warrants that justice systems invest better in providing victim service mechanisms within their agencies. Extensive knowledge of criminal thinking errors[1] is essential for facilitating these portions of this process.

The final step in this portion of the process would have the offender transition into a "presenter" role, focusing them on confidently delivering their revised script(s) to a peer group who would be simulating the roles of those who have been victimised, or those who are stakeholders in the successful completion of the RAP© process. These roleplaying activities, done multiple times for multiple presenters, each practising empathetic learning in a communal, safe environment, will solidify the skills needed to deliver their impact scripts effectively and respectfully to the victim directly.

From Simulated Practice to Actual Delivery

After numerous practice groups with peers and staff, the presenter and the victim will share their mutual scripts in a safe and secure group. This gives both a chance to make final revisions to both scripts and allows the victim the occasion to be forthcoming with all the effects the criminal act(s) had upon them. The presenter must come prepared to "be uncomfortable" as they may face hard truths they may not have been aware of. Once the group has completed the impact script and all agree on its completion, the victim and presenter will work together to devise and implement a suitable plan to

[1] Yochelson, S., & Samenow, S. E. (1976). The Criminal Personality (Vol. 1): A Profile for Change. New York: Jason Aronson.

repair the harm caused.

Putting the Plan into Action

Many of us are familiar with what is commonly known as “victim impact” letters. These letters are typically read to the victim in court during proceedings or elsewhere but may not entirely capture the offender's effects on the victim. In some cases, this process becomes a written apology that only serves to alleviate the victim versus truly showing an empathetic understanding of the victim, and the victim does not have the chance to fully determine if the words written reflect the offender’s dedication to repairing harm. To counter that outcome and physically manifest a presenter’s commitment to repairing the damage they have done, the victim and presenter now design a collaborative action plan that follows known SMART (Specific, Measurable, Achievable, Relevant, and Time-Bound) principles that they can enact as a project that can act as an alternative to incarceration, or early release process. This will also assist community stakeholders in ensuring the presenter has committed to returning to the community and acting as a law-abiding citizen.

Summary

In theory and practice, the RAP process operationalises the best cognitive-behavioural, empathetic learning, and skill-building techniques within an easily transferable, cost-effective, restorative justice process. The framework is entirely focused on victim-centred, community-based approaches. With proper support, this process can be easily replicable and attached to any effective cognitive-behavioural programs used today. Yet, unlike other cognitive-behavioural programs, this concept focuses on the **victim's** thoughts, feelings, and the impact the offender had on them, then develops an actionable plan to address that impact.