

**RESTORATIVE JUSTICE AND THE PROTECTION OF GENDER-
BASED VIOLENCE VICTIMS IN THE INTER-AMERICAN COURT:
EVOLUTION AND PERSPECTIVES**

**JUSTICIA RESTAURATIVA Y LA PROTECCIÓN DE LAS VÍCTIMAS
DE VIOLENCIA DE GÉNERO EN LA CORTE INTERAMERICANA:
EVOLUCIÓN Y PERSPECTIVAS**

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Resumen: La justicia restaurativa está adquiriendo una relevancia creciente en el sistema interamericano de derechos humanos, emergiendo como un paradigma complementario y, en algunos casos, alternativo a la justicia retributiva tradicional.

Este trabajo explora el papel de la justicia restaurativa, en particular en la jurisprudencia de la Corte Interamericana de Derechos Humanos, con especial énfasis en el ámbito específico de la violencia de género. A través del análisis de doctrina especializada, instrumentos internacionales y casos emblemáticos (*Campo Algodonero*) se evidencia cómo las medidas reparadoras tanto materiales como simbólicas refuerzan la dignidad de las víctimas, promueven la memoria colectiva y contribuyen a la prevención de la reincidencia.

La participación de las víctimas y el reconocimiento público de la responsabilidad estatal emergen como elementos esenciales de eficacia en el derecho penal contemporáneo y, de manera más amplia, en los procesos de reconciliación postconflicto y reparación frente a violaciones graves de derechos humanos. Se sugiere, en efecto, la formalización de la justicia restaurativa como un derecho humano autónomo, por lo que se promueve la redacción de una convención internacional que garantice su aplicación sistémica e integrada, con especial atención a la dimensión de género.

Palabras Clave: Justicia restaurativa, Corte Interamericana, violencia de género, participación de las víctimas, derechos humanos.

Abstract: Restorative justice is gaining increasing relevance within the Inter-American human rights system, emerging as a complementary—and in some cases, alternative—paradigm to traditional retributive justice. This study explores the role of restorative justice, particularly in the case law of the Inter-American Court of Human Rights, with a specific focus on the context of gender-based violence. The analysis of relevant doctrine, international instruments, and landmark cases—such as *Campo Algodonero*—shows that both material and symbolic reparative measures strengthen the dignity of victims, fostering collective memory and contributing to the prevention of repetition. Victim participation and the public acknowledgment of state responsibility emerge as essential components for effectiveness in contemporary criminal justice and, more broadly, in post-conflict reconciliation and reparation processes for serious human rights violations.

Finally, the analysis suggests the formal recognition of restorative justice as an autonomous human right and for the desirable drafting of an international convention that could ensure its systemic and integrated implementation, with particular attention to the gender dimension.

Keywords: *Restorative justice, Inter-American Court of Human Rights, gender-based violence, victim participation, human rights*

Index: 1. Introduction; 2. Theoretical Framework of Restorative Justice; 2.1. Origins and Development of the Concept; 2.2 The Evolution of the Concept of Restorative Justice at the International level; 2.3 Contrasts and Complementarities between Retributive and Restorative Justice Models; 3. Restorative Justice and Gender-Based Violence; 4. Restorative Justice in the Jurisprudence of the Inter-American Court of Human Rights; 4.1 The Role of the Inter-American Court as a Guarantor of Restorative Justice; 4.2 An In-Depth Qualitative Analysis of Key Reparative Measures in IACHR case law with a Focus on Gender Perspectives; 5. Final Remarks

1. Introduction

In recent decades, restorative justice has progressively established itself within the international legal landscape, not merely as a parallel or alternative model to retributive justice (whose goal is to restore the balance disrupted by unlawful conduct), but as a paradigm capable of redefining the very concept of reparation and social responsibility. In contrast to—though often complementing—the retributive and general-preventive models that typify classical criminal law, restorative justice offers a distinct framework for responding to crime. This framework is based on the acknowledgment of harm, the active involvement of those affected, and the reconstruction of the social bonds affected and damaged by the offence³.

³ For a more comprehensive exploration of restorative justice in *Principled Sentencing. Readings on Theory and Policy*, Von Hirsch, Ashworth e Roberts, Oxford e Portland, 2009, 163 ss.; *Restorative justice: the views of victims and offenders. The third report from the evaluation of three schemes*, Ministry of Justice Research Series 3/07, London, 2007; Ashworth A., *Responsibilities, Rights and Restorative Justice*, in *British Journal of Criminology*, 2002, 42, 578 ss.; Gavrielides T, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, Monsey, 2007; Hoyle-Zedner, *Victims, Victimization, and Criminal Justice*, in *The Oxford Handbook of Criminology*, Maguire-Morgan-Reiner, Oxford, 2007, 481 ss.; Johnstone G., *Restorative Justice*.

Restorative justice, therefore, does not merely recalibrate the punitive coordinates of the legal order; it aspires to reframe case management in criminal proceedings in dialogic and transformative terms. The growing appeal of restorative justice is, in fact, closely linked to a widespread dissatisfaction with punitive logics rooted in *retributivism*—punishment that looks backward rather than forward⁴.

Considering the theoretical and practical distinctions between a conciliatory approach (focused on direct encounters between offenders and victims), and an institutional model of reparation designed to address serious violations of human rights⁵, restorative justice has found a particularly enabling context for development in the jurisprudence and normative framework of the Inter-American Court of Human Rights (IACtHR). The Court has made extensive use of restorative measures—both material and symbolic—within its broader system for the protection of fundamental rights. The Court’s rulings have served as key instruments for advancing a substantive conception of reparation: one that not only seeks to compensate victims for the harm suffered but also aims to address the institutional and

Ideas, Values, Debates, Cullompton, 2011. Among the extensive literature available in Italy, the following works are particularly noteworthy: *Giustizia riparativa. Ricostruire legami, ricostruire persone*, edited by G. Mannozi and G.A. Lodigiani, Bologna, 2015; Mannozi G. and Lodigiani G.A., *La giustizia riparativa. Formanti, parole e metodi*, Turin, 2017; Reggio F., *Giustizia Dialogica*, Milan, 2010; Mattevi E., *Una giustizia più riparativa*, Naples, 2017.

⁴ The growing interest in restorative justice must be understood within the broader context of the crisis affecting the traditional retributive model. See, in this regard, Roberts, *Restorative Justice, in Principled Sentencing: Readings on Theory and Policy*, edited by Von Hirsch, Ashworth, and Roberts, Portland, 2009, 165; Mazzucato, *La giustizia dell'incontro*, in *Il Libro dell'incontro. Vittime e responsabili della lotta armata a confronto*, edited by Bertagna, Ceretti, and Mazzucato, Milan 2015.

⁵ For the sake of “methodological” clarity, the focus of the present study is centered on the notion of restorative justice as a tool for institutional reparation in cases of serious human rights violations. Indeed, it is possible to distinguish an initial understanding of restorative justice as a voluntary and dialogic process aimed at fostering offender accountability and rebuilding the damaged social bonds in criminal proceedings through forms of recognition, apology, and compensation. The latter model typically finds application in victim-offender mediation and individual reintegration programs. A different model—central to the present analysis—has developed within the supranational legal sphere and has been codified, among others, in the case law of the Inter-American Court of Human Rights. In this regard, reparation assumes a collective and state-centered dimension, becoming a legal obligation of the state toward victims of particularly serious crimes (such as extrajudicial executions, torture, and enforced disappearances). In such contexts, restorative justice translates into symbolic measures (public apologies, the right to memory), material remedies (financial compensation), and structural reforms (institutional changes), all directed toward restoring the dignity of victims and ensuring guarantees of non-repetition.

cultural structures that enabled such harm. These rulings promote processes of recognition, truth-telling, and structural reform⁶.

This study, following a conceptual overview of this criminal justice model and its pluralistic nature—capable of adapting to varying social and legal objectives—aims to critically analyze how restorative justice is conceptualized and operationalized as a legal-political category within the case law of the IACtHR, through a qualitative and critical approach. The research adopts a structured jurisprudential analysis, combining close examination of landmark IACtHR rulings with a comparative perspective against domestic and supranational normative frameworks. This methodological choice ensures traceability of arguments, allowing the identification of recurring legal patterns, transformative measures, and gender-sensitive approaches across cases. The objective is to highlight the restorative justice dual function: not only compensatory, as is typically emphasized in the European context, but also transformative. Particular emphasis is placed on its systemic potential to reshape the relationship between victims, offenders, and the state, as well as its capacity to prevent reoffending. In particular, its application in cases of gender-based violence emerges as a crucial tool for moving beyond the limits of punitive sanction and addressing the concrete needs of victims—needs that center on recognition, truth, dignity, and guarantees of non-repetition

2. Theoretical Framework of Restorative Justice

2.1. Origins and Development of the Concept

The concept of restorative justice is highly complex and semantically multifaceted. The notion encompasses a school of thought, a philosophical understanding of justice, and a set of practices and programs aimed at managing conflict through dialogue-based and inclusive

⁶ On the transformative and structural function of reparative measures in the case law of the Inter-American Court, see. Martín Beristain C., *Diálogos sobre la reparación: Experiencias en el sistema interamericano de derechos humanos*, Instituto Interamericano de Derechos Humanos, 2008, 113-114, which analyzes reparation as a tool for social transformation and the recognition of victims in post-violence contexts; Ron, X., *La Reparación Integral en la Corte Interamericana de Derechos Humanos*. *JUEES*, (2), 2022, 38-39; and Calderón Gamboa J., *La reparación integral en la jurisprudencia de la Corte Interamericana de Derechos Humanos: estándares aplicables al nuevo paradigma mexicano*, México: Instituto de Investigaciones Jurídicas, Suprema Corte de Justicia de la Nación, Fundación Konrad Adenauer, 2013, 150-152.

means. At its core, restorative justice can be described as a model that seeks to repair the harm, injury, and suffering arising from conflicts between offenders and victims⁷. The scholar Howard Zehr, widely regarded as the “father” of restorative justice, defines this model as a form of justice that actively involves the victim, the offender, and the community in a shared search for solutions aimed at fostering reconciliation and strengthening the collective sense of security.⁸ This “multi-faceted” nature has led to restorative justice being alternatively interpreted as a form of community-based justice aimed at rebuilding social bonds, as a mechanism focused on the offender’s accountability, or as a means of integrating the victim’s needs into the criminal justice proceedings. This plurality of interpretations has resulted in a proliferation of heterogeneous practices, ranging from criminal mediation to post-conflict reconciliation programs within transitional justice contexts⁹.

The divergent normative definitions provided by supranational sources (most notably, the concept of restorative justice as articulated in the *2002 United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, the *Recommendation R(2010)1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules*, and *Directive 2012/29/EU*) already reveal a tension between two distinct perspectives on restorative justice¹⁰.

⁷ For further reading on restorative justice from its origins, see: Zehr H., *Changing Lenses: A New Focus on Crime and Justice*, Scottdale, 1990; Zehr H., *The Little Book of Restorative Justice*, Intercourse, PA: Good Books, 2002; Braithwaite J., *Restorative Justice and Responsive Regulation*, Oxford: Oxford University Press, 2002; see also Mannozi G. and Lodigiani G.A., *Giustizia riparativa. Formanti, parole e metodi*, Turin: Giappichelli, 2019; Bouchard M. and Fiorentini F., *La giustizia riparativa*, Milan: Giuffrè, 2024.

⁸ On this topic, see also voce enciclopedia Mannozi G., “*Giustizia Riparativa*”, giuffrè, 2017, 469; ibid Zehr H., 181;

⁹ As Zehr noted in *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002, first edition), the absence of a single, clear definition renders restorative justice vulnerable to divergent interpretations, thus risking the erosion of its foundational principles.

¹⁰ See the definition contained in the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, adopted by the United Nations on 24 July 2002:

“‘Restorative process’ means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles”

In Recommendation R(2010)1 of the Committee of Ministers to Member States on the Council of Europe Probation Rules, restorative justice is defined in terms of its operational and functional content:

“Restorative justice includes approaches and programmes based on the following principles:

- a. the response to crime should seek to repair, as far as possible, the harm caused to the victim;
- b. offenders should be helped to understand that their acts are not acceptable and that they have real consequences for the victim and for society; offenders can and should take responsibility for their actions;

On the one hand, there is an interpretation that places the social bond disrupted by the criminal act at the center, emphasizing the value of dialogue between the differing perceptions and experiences of those involved. This perspective aims to rebuild that bond through the recognition of a plurality of subjective experiences, motivations, and needs, within the broader context of social relationships. On the other hand, a contrasting approach focuses primarily on the offender's guilt and responsibility, assigning to the perpetrator alone the burden of repairing the harm caused to the victim¹¹.

The growing interest in restorative justice is, in part, linked to increasing criticism of the assumption that punitive sanctions represent the most effective or appropriate response to the challenges of criminal justice¹². Whether it involves recognizing the central role of the victim and their needs within the criminal process, or identifying consensual forms of resolving proceedings through a dialogical approach between offender and victim, proponents of restorative justice challenge the assumptions and limitations of the traditional retributive justice model.

In its modern formulation, the spread of the idea of restorative justice—as we understand it today—can be traced in the literature to the early 1970s in North America, Australia, and New Zealand, and subsequently to Europe in the 1980s. This development is often linked to the so-called “*Kitchener experiment*” in a small town on the border between Canada and the United States. Following the conviction of two young men for acts of property damage and vandalism committed while intoxicated, local youth workers proposed an alternative to the traditional judicial response. Specifically, they presented the judge with a program offering

c. victims should have the opportunity to express their needs and to be involved in decisions about how the offender might repair the harm done;

d. the community has a role to play in this process.”

The definition provided in Directive 2012/29/EU similarly states: “Restorative justice” means any process which allows the victim and the offender to participate actively, if they freely consent, in the resolution of matters arising from the criminal offence through the help of an impartial third party.”

¹¹ According to this second conception, *ibid.*, “*Giustizia Riparativa*”, Giuffrè, 2017, 476, identifies five key terms that, “like pieces of a mosaic,” capture the meaning and foundational characteristics of restorative justice: *listening, empathy, recognition of the other, shame, and trust*.

¹² Among others, Fiandaca G., *Punizione*, Bologna, 2024; Parisi F., *Giustizia riparativa e sistema penale. Considerazioni a partire dalla “legge Cartabia”*, in *Foro.it.*, 2022, V, 142; Roberts, *Restorative, Restorative Justice*, in *Principled Sentencing. Readings on Theory and Policy*, Von Hirsch, Ashworth e Roberts, Portland, 2009, 165.

concrete means through which the offenders could effectively repair the harm and consequences resulting from their actions¹³.

Even prior to this well-known experiment, reparation had already begun to be recognized as a suitable alternative to criminal punishment in responding to unlawful conduct. Among the earliest scholars to advocate for a justice system based on restitution rather than punishment, particular mention should be made of the American legal theorist Randy Barnett. In his influential 1977 essay, “*Restitution: A New Paradigm of Criminal Justice*”¹⁴, Barnett challenged the State’s punitive monopoly rooted in retributive logic. Starting from the premise that crime should be understood as harm to a person—the victim—rather than as an abstract offense against the State, he argued for a justice system that prioritizes compensation over punishment. For Barnett, restitution was not only a more adequate means of protecting victims, but also a more effective strategy for addressing crime.

Interestingly, the term “*restorative justice*” was first coined by the American psychologist Albert Eglash, who is also credited with identifying three distinct models of criminal justice: retributive justice, based on punishment; distributive (or rehabilitative) justice, focused on treatment and re-education; and restorative justice, centered on restitution. Eglash’s restitutive approach goes beyond mere financial compensation, aiming instead to restore the social and relational balance disrupted by the offence.¹⁵ This idea is based on a free and conscious act by the offender, who, by voluntarily choosing to make amends, embarks on a

¹³ The town was the site of a pioneering experiment in restorative justice during the 1970s. Two youth workers, Mark Yantzi and Dean E. Peachey, proposed to the judge—who had convicted two adolescents responsible for vandalizing multiple homes along the town’s main street—an alternative probation program. Instead of traditional sanctions, the proposal included recreational activities and meetings with the affected families, culminating in a final commitment to restitution. See Dean Peachey, “The Kitchener Experiment,” in Wright M. and Galaway B. (eds.), *Mediation and Criminal Justice: Victims, Offenders and Community*, Sage, London, 1989; Mattevi, *Una giustizia più riparativa. Mediazione e riparazione in materia penale*, cit., 8; Zehr, *Changing Lenses. A new focus for crime and justice*, Pennsylvania and Ontario, 2005, 158 ss.

¹⁴ Barnett R.E., *Restitution: A new paradigm of criminal justice*, in C. Hoyle (ed.), *Restorative Justice. Critical Concepts in Criminology*, Routledge, New York 2010, 34-56, in Ethics, 87, 1977, 279-301.

¹⁵ Eglash A., *Beyond Restitution-Creative Restitution*, in *Restitution in Criminal Justice: A Critical Assessment of Sanctions*, Hudson & Galaway, Lexington Books 1977, 93-94.

transformative path capable of freeing them from the impulse to offend and restoring their full status as a responsible moral agent¹⁶.

It is generally held that the emergence of the restorative justice perspective was likely influenced by abolitionist philosophy and the broader crisis of criminal law¹⁷. Yet, a true shift in perspective through which crime is understood came with Howard Zehr, who defined it as a “*model that involves the victim, the offender, and the community in the search for a solution that promotes reparation, reconciliation, and a sense of collective security.*” Zehr advocates for a complementary—though by no means subordinate—justice system, one that focuses on repairing the harm caused by crime rather than punishing the offender¹⁸.

2.2 The Evolution of the Concept of Restorative Justice at the International Level

As previously noted, restorative justice has gained increasing prominence in supranational sources since the 1970s, eventually achieving broader normative recognition from the 1980s onward: a decade marked by a growing interest in the role of the victim within criminal proceedings¹⁹.

¹⁶ Braithwaite J., “*Principles of Restorative Justice*,” *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms* 1, 2003, 5-6; Zehr H., *Changing Lenses: Restorative Justice for Our Times* (Harrisburg: Herald Press, 2015).

¹⁷ Reggio F., *Giustizia dialogica. Luci e ombre della Restorative Justice*, Milano 2010, and Mannozi G.-Lodigiani G.A., *La giustizia riparativa*. cit., 61-63.

¹⁸ Zehr H., “*Changing Lenses. Restorative Justice for Our Times*, Herald Press”, New York, 1990, 180-181: *the Little Book of Restorative Justice: “What is required, I would argue, is a fundamental rethink of our values and assumptions not only about justice, but about life in general. We need a new “lens” – a cultural and moral vision, if you will - that can span some of our differences. This calls for an approach that favors compassion and collaboration above competition; emphasizes responsibility as well as rights; encourages respect and dignity instead of promoting shame and humiliation; promotes empathy and discourages “othering;” acknowledges the subtlety and power of trauma and the importance of trauma healing; and reminds us that we as human beings are not isolated individuals but are interconnected with one another”.*

¹⁹ The growing interest in the victim of crime lies at the heart of a long-standing process of legal and civil evolution within criminal and procedural law—and even earlier, at the international level. This shift emerges as a response to a long-dominant offender-centric model, which historically marginalized the victim within the dynamics of criminal justice. In contrast, over the past decade, there has been increasing recognition of the victim’s role, as a result of a development that originated in criminological thought and gradually extended into the political and legislative spheres. Moreover, as early as the late 1940s, criminological sciences—within which victimology first emerged—began to promote the emancipation of the victim by shifting the focus away from the traditional offender-centered approach. Attention was instead directed toward the dual nature of criminal interaction, involving both offender and victim, and toward the significance of the victim’s own biological, psychological, moral, social, and cultural characteristics, with the aim of reconstructing their relationship with the perpetrator of the criminal act. Ashworth, Andrew, “*Responsibilities, Rights and Restorative Justice*” *British Journal of Criminology* 42, no. 3 (2002): 582–583.

On the one hand, the normative production of the United Nations, followed by the *soft law* instruments of the Council of Europe²⁰ and subsequently by the European Union—particularly the *2001 Framework Decision on the standing of victims in criminal proceedings*, later incorporated into Directive 2012/29/EU—has shifted attention toward a new concept of justice capable of addressing diverse objectives²¹. Beginning with the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the idea gained traction that the response to crime cannot be limited to a purely retributive dimension, but must instead allow for the active involvement of victims and the pursuit of restorative pathways²². The development of such restorative practices was further advanced by the Vienna Declaration on Crime and Justice, which reiterated the need for more inclusive and community-oriented responses to crime, encouraging member states to adopt measures that promote victim participation, offender accountability, and the reintegration of all parties involved into society²³.

The true turning point came with ECOSOC Resolution 12/2002, which, for the first time, systematically outlined the general principles of restorative justice programmes in criminal matters. The resolution highlights the voluntary, dialogical, and participatory nature of such programmes as well as encourages the use of restorative practices—such as victim-offender mediation, restorative conferencing (family group conferencing), and sentencing circles—at any stage and level of criminal proceedings, provided that participation by both the victim and the offender is entirely voluntary.²⁴

²⁰ See, Council of Europe, Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters, adopted by the Committee of Ministers on 15 September 1999, at the 679th meeting of the Ministers' Deputies; Council of Europe, Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters, adopted by the Committee of Ministers on 3 October 2018, at the 1326th meeting of the Ministers' Deputies.

²¹ For an in-depth analysis of restorative justice in international sources, see Mattevi E., *La Giustizia Riparativa nelle fonti sovranazionali: uno sguardo d'insieme*, in Riv. Sistema Penale, November 2023; and Maggio P., *Lo sguardo alle fonti internazionali*, in *Processo Penale e Giustizia*, XIII (Special Issue), 13–31, 8 December 2023.

²² General Assembly Resolution 40/34 of 29 November 1985 (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power).

²³ Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century: resolution / adopted by the General Assembly, 2000, A/RES/55/59.

²⁴ UN Economic and Social Council Resolution 2002/12: Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. The resolution provides a definition of “*restorative justice*” as “any process in which the victim and the offender, and, where appropriate, any other individuals or community members

At the Regional level, the Council of Europe, through Recommendation R(99)19 and the more recent CM/Rec(2018)8, has progressively shifted its focus from penal mediation to a broader understanding of restorative justice as a relational paradigm applicable at all stages of criminal proceedings²⁵.

As for the European Union, Directive 2012/29/EU also represents a key point of reference, as it establishes minimum standards on the rights, support, and protection of victims of crime, and requires Member States of the European Union to ensure that victims have access to restorative justice services that are safe, informed and voluntary²⁶.

Finally, within the context of the Inter-American human rights system—as will be discussed in the central part of this article—the case law of the Inter-American Court of Human Rights has repeatedly ordered symbolic, material, and institutional reparative measures in cases of serious violations, thereby contributing to the construction of a model of integral reparation, yet still firmly rooted in the state's duty to punish. This fragmented yet convergent development of legal sources, despite the absence of an unified codification, reflects the international community's growing intention and effort to a form of justice that, while not abandoning the principle of legality, is also capable of addressing the human and relational dimensions negatively affected by criminal wrongdoing.

2.3 Contrasts and Complementarities between Retributive and Restorative Justice Models

As already discussed, restorative justice emerged in context of crisis within the criminal justice system, marked by growing dissatisfaction with the traditional punitive paradigm. It

affected by the crime, actively participate together in the resolution of matters arising from the crime, generally with the help of a facilitator”.

²⁵ Rec(99)19; The resolution formally introduced criminal mediation as a tool to promote offender accountability, victim recognition, and harm reparation. Its implementation was reinforced by the 2007 European Commission for the Efficiency of Justice (CEPEJ) Guidelines, emphasizing the availability, accessibility, and ethical quality of restorative programmes at all stages of proceedings. The more recent Recommendation CM/Rec(2018)8 calls on member states to integrate restorative justice throughout the criminal process—even in serious cases—while ensuring informed consent, confidentiality, and legal recognition of restorative outcomes as part of a complementary, not subordinate, justice model.

²⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

arose as part of a broader shift away from the retributionist logic, according to which punishment is conceived as the just and necessary consequence of crime—where the severity of the sentence must correspond proportionally to the seriousness of the offence. This model is based on the idea of a strict correlation between guilt and punishment, with the penalty serving as retribution for the harm caused. Within this framework, the victim plays only a marginal role. Once the desire for vengeance is neutralized, the State steps in as the sole agent of justice, restoring external order by inflicting punishment on the offender²⁷. It thus becomes evident that the restorative model starts from a fundamentally different perspective on how to achieve reparation²⁸. It conceives of crime as the source of an obligation on the part of the offender to remedy the harmful consequences of their conduct, placing the needs of the victim at the center of the reparative process. This model highlights the importance of acknowledging the interpersonal dimension of crime, by focusing on the needs and expectations of the victim, the offender, and the broader community²⁹. Similarly, it must be recognized that understanding the influence of restorative justice on the criminal justice system requires an inquiry into the multiple “currents” or “strands” that coexist within the broader restorative paradigm³⁰.

Restorative justice is not merely about reconciliation or mediation, nor is it simply an alternative to the retributive model. Rather, it represents the emergence of a conflict resolution approach grounded in relational dynamics, but it is also more than that: *“Restorative justice is not primarily about forgiveness or reconciliation. ... is not mediation ... is not primarily designed to reduce Recidivism ... is not a particular program or a*

²⁷ On the marginalization of the victim within the dynamics of criminal justice and the progressive paradigm shift (from the “forgotten man” to a central figure endowed with both powers of initiative and instruments of protection) see the formulation by Allegrezza S., Belluta H., Gialuz M., and Luparia L., who describe the victim as equipped with “a sword and a shield.” A sword that allows them to exercise powers of initiative, access to information, and procedural safeguards ensuring their effective participation in the criminal process; and a shield that protects them from the suffering and trauma that may be reawakened by the crimes they have endured. In this regard, Venturoli M., *La vittima nel sistema penale. Dall'oblio al protagonismo?*, Jovene Editore, Napoli, 2015; Giuliani L., *La vittima nel processo penale: dal silenzio al protagonismo?*, in *Sistema penale*, 2020; Belluta H e Bargis M., *Vittime di reato e sistema penale. La ricerca di nuovi equilibri*, G. Giappichelli, Torino, 2017, Allegrezza S., Belluta H., Gialuz M., Luparia L., *Lo scudo e la spada: esigenze di protezione e poteri delle vittime nel processo penale tra Europa e Italia*, G. Giappichelli, Torino, 2012.

²⁸ Braithwaite J., “Principles of Restorative Justice,” *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms* 1 (2003), 7-8.

²⁹ Rossner M., *Restorative Justice, Anger, and the Transformative Energy of Forgiveness*, in *The International Journal of Restorative Justice*. 2019 ; Vol. 2, No. 3. 370-371.

³⁰ Parisi F., *Giustizia riparativa e sistema penale*, Giappichelli, 2025, 100.

blueprint ... is not primarily intended for “minor” offenses or first-time offenders ... is neither a panacea nor necessarily a replacement for the legal system ... is not necessarily the opposite of retribution”³¹.

Depending on the various interpretations, each reflecting different views regarding its purpose, operational modalities, and transformative potential—restorative justice has given rise to three distinct conceptions: the encounter conception, the reparative conception, and the transformative conception. The encounter conception, whose primary goal is to restore communication, places direct dialogue between the victim and the offender at the center of the process, enabling the parties to meet outside the formal justice system and “decide together how to respond to the crime.” The reparative conception, by contrast, emphasizes the concrete reparation of harm—both material and symbolic—through restorative actions that address the specific needs expressed by the victim. Finally, the transformative conception goes beyond the individual dimension and views restorative justice as a practice of social justice. Its aim is not only to heal the rupture caused by the offence, but also to transform the relationships, contexts, and social structures that contribute to the production of conflict³².

The complexity of this framework makes it impossible to reconstruct a single, universally agreed-upon definition. However, from the above-mentioned supranational sources, certain common elements and features can be identified: crime is no longer seen merely as the violation of a criminal norm, but rather as an offence that causes a rupture (a breach) that requires, in place of traditional punishment, a form of reparative response based on *satisfactive* techniques. These approaches aim to address the harm caused by taking into account its consequences, while also expanding the focus to include the real needs of victims and the communities to which they belong³³.

³¹ Zehr H., *The Little Book of Restorative Justice*, Intercourse, PA: Good Books, 2002.

³² Reggio F., *Giustizia Dialogica. Luci e ombre della Restorative Justice*, Milano 2010; Mattevi E., *una giustizia una giustizia più riparativa, mediazione e riparazione in materia penale*, cit., 84 e ss ; sul punto tra gli altri, sulla Restorative transformation Clamp K., Paterson C., *Restorative Policing. Concepts, theory and practice*, London & New York, Routledge, 2017. In the reasoning dedicated to restorative justice within the case law of the Inter-American Court of Human Rights, reference should be made to this understanding of restorative justice (namely, the transformative conception) as a practice of social justice.

³³ Ward T., J Fox K., and Garber M., “*Restorative Justice, Offender Rehabilitation and Desistance*” *Restorative Justice* 2, no. 1 (2014), 39-40.

Moving the analysis on the challenges and opportunities of victims' participation, restorative justice aims, first and foremost, to “heal” the harm caused by the offender’s conduct to the victim, by offering a space in which the harm suffered can be acknowledged, understood, and—where possible—repaired. However, its value is even more profoundly expressed in its capacity to counteract the process of depersonalization to which victims are often subjected within the traditional criminal justice system. This depersonalization manifests both in their exclusion from the punitive process and in the risk of institutional re-victimization, caused by procedural dynamics that are impersonal, inquisitorial, or incapable of accommodating the victim’s subjective experience of harm³⁴. The prominence accorded to the victim, both in their individual capacity and in their collective dimension, within processes aimed at healing societies affected by mass violence appears to have a limiting effect on the use of criminal prosecution, which is often deemed inadequate to meet the expectations of victims.³⁵

This raises the question of whether conciliatory restorative justice can serve as a modern instrument for the protection of crime victims. In a victim-centered social context marked by ideological tensions and contradictions, the risk emerges that restorative justice pathways may at times be misused to channel victims’ desires for retribution—thus diverging from the true aims of the discipline. As has been noted, “*the hearts of victims are crossed by contradictory reactions and partially obscure feelings, including a general desire for revenge mixed with an equally general need for solidarity*”³⁶.

3. Restorative Justice and Gender-Based Violence

The application of restorative justice-related considerations in the particularly sensitive context of gender-based violence is undoubtedly a complex issue and the subject of intense debate³⁷.

³⁴ Agnella C, *Riparare o trasformare? Modelli di giustizia relazionale nel campo della penality*, L’Ircocervo, 23 n. 2, 2024; Mannozi G., *La giustizia senza spada*, Giuffrè, Milano, 2003; Mannozi G., Lodigiani G.A., *La giustizia riparativa. Formanti, parole e metodi*, Giappichelli, Torino; Dignan J., *Understanding Victims and Restorative Justice*, McGraw-Hill, Maidenhead, 2005.

³⁵ Beven J. P. et al., “*Restoration or Renovation? Evaluating Restorative Justice Outcomes*,” *Psychiatry, Psychology and Law* 12, no. 1 (2005), 196-197.

³⁶ Ibid. Fiandaca G., *Punizione*, il Mulino, 2024;

³⁷ On the complexity of the relationship between restorative justice and gender-based violence, see Gavrielides T., *Is restorative justice appropriate for domestic violence cases?*, in *Revista de asistenta sociala* 2015, 105.;

It is important to preliminarily note that, in international terminology, there has been a shift from the predominance of the expression “violence against women” to the broader concept of “gender-based violence”³⁸. The terms *gender violence* and *gender-based violence* are often used interchangeably, though they carry distinct nuances: the former emphasizes the link between violence and the social roles of men and women, while the latter is found in various international instruments, such as the Istanbul Convention on preventing and combating violence against women and domestic violence³⁹.

A turning point in the development of international institutional frameworks on gender-based violence was marked by Recommendation No. 19 of 1992⁴⁰, which established the obligation for States to exercise “due diligence” and held them accountable for acts committed by non-state actors in cases of inadequate responses to violence⁴¹.

The following year, in 1993, the Declaration on the Elimination of Violence against Women (DEVAW) was adopted by the United Nations General Assembly through Resolution 48/104⁴². This declaration encompasses many of the key elements later incorporated into

Hayden A., Gelsthorpe L., Kingi V., Morris A. (edited by), *A restorative approach to family violence. Changing tack*, London, Routledge, 2014; Lamanuzzi M., *Restorative justice in cases of gender-based violence against women: perspectives on shame, symbolic interactionism and agency*, in *International journal of restorative justice* 2024, 226.; Hudson B., *Restorative justice and gendered violence: diversion or effective justice?*, in *British Journal of Criminology* 2002, 616-618.

³⁸ Felicioni P. e Sanna A. (edited by), *Contrasto a violenza e discriminazione di genere*, Giuffrè, 2019; Michelagnoli S., *Giustizia riparativa e violenza di genere. indicazioni sovranazionali e prospettive domestiche* in *Contrasto a violenza e discriminazione di genere*, ibid; Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, establishing minimum standards on the rights, support and protection of victims of crime. Recital n. 17 states “*a person because of that person's gender, gender identity or gender expression*” or “*that affects persons of a particular gender disproportionately, is understood as gender-based violence*”. “*Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust*”.

As a result, gender-based violence is not limited to violence perpetrated against women, but includes any form of violence in which gender constitutes a determining factor.

³⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, adopted on 11 May 2011, entered into force on 1 August 2014).

⁴⁰ CEDAW, General Recommendation No. 19: Violence against Women Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women, in 1992 (Contained in Document A/47/38)

⁴¹ CEDAW, General recommendation No. 35 (2017) on gender-based violence against women, par. 6.

⁴² Declaration on the Elimination of Violence against Women proclaimed by General Assembly Resolution 48/104 of 20 December 1993. The declaration, for the first time, provides a comprehensive definition of violence against women, defined as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life « *any act of gender-based violence that*

regional conventions, such as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women⁴³. The issue of violence against women was further elaborated at the United Nations World Conference on Women held in Beijing in 1995, which is regarded as a milestone in the international recognition of the so-called “women’s human rights”. At the international level, combating violence against women is situated within the broader framework of human rights protection. However, historically, this framework has been formally neutral, largely omitting recognition of the gender-specific aspects involved. Only more recently, at both international and regional levels, has there been a progressive inclusion of the gender dimension as an essential element for effective and differentiated protection of women’s fundamental rights.

The application of restorative justice to gender-based violence represents a complex issue requiring profound theoretical, legal, and ethical reflection. Unlike other crimes, gender-based violence is rooted in structural vulnerability stemming from asymmetric power relations grounded in long-standing cultural, historical, and social dynamics. Victims of such violence—whether women or individuals who do not conform to traditional gender roles—suffer, not only individual harm, but also an affront that affects their identity, dignity, and personal autonomy, rendering the possibility of a restorative response particularly delicate.

Within this framework, restorative justice measures, when properly designed, can play a significant role in rebuilding the dignity and agency of victims. Unlike traditional criminal proceedings, often characterized by formalistic and inquisitorial logics, restorative justice offers a space where the injured party can narrate their experience, express their needs, and reclaim an active role⁴⁴. However, for this process to be authentic and safe, it is essential that restorative pathways be voluntary, guided by expert facilitators, and respectful of the victim’s psycho-emotional conditions.

results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life
»

⁴³ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”), adopted June 9, 1994, entered into force March 5, 1995, Organization of American States.

⁴⁴ Bonini V., Mattevi E., Biaggioni E., Lorenzetti A., in *Giustizia riparativa e violenza di genere: una relazione pericolosa?*, in Riv. Sistema penale, 2024.

A central aspect is the potential of restorative justice to overcome secondary victimization, a phenomenon unfortunately common in cases of gender-based violence, where the victim suffers further harm due to inadequate blaming, or detached institutional responses. Indeed, it is often overlooked that the victim endures not only the direct physical, psychological, economic, and social consequences of the crime suffered, but also additional emotional-relational harms resulting from interactions with the judicial system. This occurs when authorities, despite being tasked with addressing violent phenomena, fail to recognize or underestimate them, ultimately neglecting to provide the necessary protections to shield the victim. Particularly vulnerable victims—such as minors, persons with physical or mental disabilities, and victims of sexual offenses—are at a clearly higher risk of secondary victimization, experiencing new trauma as a result of judicial proceedings and the re-experiencing of the initial harm, thus becoming “victims twice”⁴⁵. In this regard, the restorative approach can serve as an ethical and relational corrective, restoring the victim’s centrality and reducing the risk that the process itself becomes a new source of trauma.

With specific reference to the Americas, as it will be examined in the following sections, gender-based violence represents one of the most pervasive and systemic human rights violations. Women, in particular, face multiple forms of discrimination and violence, including domestic violence, sexual violence, trafficking, and femicide, turning gender-based violence not only into a violation of individual rights but also into a structural attack on women’s equality and dignity. As this work suggests, restorative justice is particularly well-suited to address the needs of victims of gender-based violence because it allows for the

⁴⁵ See Di Chiara, G., *L'offeso. Tutela del dichiarante vulnerabile, sequenze dibattimentali, vittimizzazione secondaria, stress da processo: l'orizzonte parametro del danno da attività giudiziaria penale tra oneri organizzativi e prevenzione dell'incommensurabile*, in Spangher, G. (eds), *La vittima del processo. I danni da attività processuale*, G. Giappichelli, Torino, 2017; Bouchard M., *La vittimizzazione secondaria all'esame della Corte europea dei diritti dell'uomo*, in *Diritto penale e uomo*, 2021; Pagliaro T., *Il protagonismo senza poteri della vittima nel sistema penale italiano*, in *Osservatorio nazionale sul diritto di famiglia* Anno IV, n. 2 - maggio-agosto 2020; At the European level, paragraph 53 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA—transposed into Italian law by Legislative Decree No. 212 of 15 December 2015—states that it is appropriate to “limit the risk of secondary and repeated victimisation, of intimidation and of retaliation—by the offender or as a result of participation in criminal proceedings—by conducting the proceedings in a coordinated and respectful manner, enabling victims to establish a climate of trust with the authorities.”

repair, not only of individual harm, but also of collective harm, tackling the cultural and structural roots of discrimination⁴⁶.

4. Restorative Justice in the Jurisprudence of the Inter-American Court of Human Rights

4.1 The Role of the Inter-American Court as a Guarantor of Restorative Justice

As noted, restorative justice originated as an alternative or complementary model within domestic criminal justice systems (primarily aimed at fostering dialogue, accountability, and reparation between offenders and victims). On the contrary, the international human rights legal framework has taken on a distinct form and approach to restorative justice, especially in light of the ontological features that define this sub-area of the broader Public International Law regime. Accordingly, restorative justice tends to operate on a collective and institutional level, particularly in response to serious and systemic violations. Here, the emphasis shifts toward state accountability, symbolic and material reparations, and structural reforms intended to acknowledge harm, restore dignity, and prevent recurrence⁴⁷. Differently stated, the intent is to go beyond mere financial compensation, embracing a holistic dimension aimed at reconstructing social bonds, affirming the dignity of victims, and promoting guarantees of non-repetition⁴⁸.

Given these premises, the Inter-American Court of Human Rights (IACtHR) has progressively assumed a leading role in integrating the principles of restorative justice into its decisions, particularly in cases involving systemic human rights violations. In fact, the Judges of San José have progressively articulated a substantive concept of reparation grounded in principles of truth, memory, justice, and participation (extending well beyond

⁴⁶ Rees, Madeleine and Christine M. Chinkin, “*Exposing the Gendered Myth of Post Conflict Transition: The Transformative Power of Economic and Social Rights*”, New York University Journal of International Law and Politics 48, no. 4 (2016): 1224-1225.

⁴⁷ Antkowiak, Thomas M, “*Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*”, Columbia Journal of Transnational Law 46, 2008, 353-354; Donoso G., “*Inter-American Court of Human Rights’ Reparation Judgments: Strengths and Challenges for a Comprehensive Approach*”, Revista IIDH 49, 2009, 49.

⁴⁸ Pinacho Espinosa, Jacqueline Sinay, *El derecho a la reparación del daño en el Sistema Interamericano*, Ciudad de México: Comisión Nacional de los Derechos Humanos, junio 2019, 22.

pecuniary remedies)⁴⁹. By examining several of its major rulings, it becomes evident that the Court has helped shape a regional paradigm of restorative justice.

For instance, in one of its most emblematic cases, namely *González et al. (“Campo Algodonero”) v. Mexico*, concerning the femicides in Ciudad Juárez, the Court ordered, not only financial compensation, but also the construction of a commemorative monument and the organization of public ceremonies of official apology—recognizing the transformative and communal value of restorative justice⁵⁰.

The Court consolidated case law includes a wide range of restorative instruments⁵¹. These include public acknowledgements of international responsibility⁵², considered essential for restoring victims’ dignity⁵³; memorials, commemorative plaques, and the symbolic naming of public spaces, which contribute to the construction of a shared and lasting collective memory; training and awareness programs for public officials⁵⁴, aimed at preventing recurrence and promoting structural change; and the pursuit of historical truth and the search for the disappeared⁵⁵, viewed as key components of comprehensive reparation, as highlighted in *Velásquez Rodríguez v. Honduras* (1988)—one of the Court’s earliest rulings to include non-pecuniary forms of reparation⁵⁶. These measures reflect the criteria identified for an effective application of restorative justice: truth, reparation, institutional reform, and guarantees of non-repetition⁵⁷.

⁴⁹ Pasqualucci, Jo M. *The Practice and Procedure of the Inter-American Court of Human Rights*, 2nd ed. Cambridge: Cambridge University Press, 2012, 20-21.

⁵⁰ IACHR, *González et al. (“Campo Algodonero”) v. Mexico*, Inter-American Court of Human Rights, Judgment of November 16, 2009, Series C No. 205, paras. 450–451.

⁵¹ *La Oroya v. Perú*, Inter-American Court of Human Rights, Judgment of November 27, 2023, paras. 340–342; *Flores Bedregal v. Bolivia*, Inter-American Court of Human Rights, Judgment of January 20, 2023, paras. 200–201; *Moya Chacón y otro v. Costa Rica*, Inter-American Court of Human Rights, Judgment of May 23, 2022, paras. 111–114.

⁵² *Ibid.*, *Cruz Sánchez et al. v. Peru* (2001), Caso No. 95, par. 293

⁵³ Southey, Safia, *Beyond Enforcement: How the Inter-American System of Human Rights Shapes Reparations*, COLUM. HUM. RTS. L. REV.: 10-11.

⁵⁴ IACHR, *Velásquez Rodríguez v. Honduras* (1988), Caso No. 4, paras. 187–190

⁵⁵ IACHR, *González et al. (“Campo Algodonero”) v. Mexico* (2009), Caso No. 205, paras. 480–485

⁵⁶ IACHR, *Velásquez Rodríguez v. Honduras* (1988), Caso No. 4, paras. 188–190.

⁵⁷ Mira González, Clara María, and Santiago Valenzuela Tamayo, “*La justicia restaurativa en las sentencias de la Corte Interamericana frente a los casos colombianos: ¿son aplicables las reparaciones simbólicas?*” *Revista de la Facultad de Derecho y Ciencias Políticas* 54, no. 140 (enero-junio 2024): 23-24.

As an additional remark, it would be inadequate to discuss the Inter-American human rights system without, at least briefly, addressing the doctrine of conventionality, a foundational mechanism through which the Inter-American Court of Human Rights (IACtHR) ensures that domestic laws and practices are consistent with international human rights standards. The holistic vision related to restorative justice aligns closely with the Court's doctrine of conventionality control, which obliges national authorities, particularly judges and other public officials, to ensure that domestic laws and practices comply with the American Convention on Human Rights and the Court's interpretive case law. This control is not merely a judicial review but an active, *ex officio* duty across all levels of government to harmonize internal legislation and practice with international human rights standards, thus creating an enabling environment for effective restorative justice measures⁵⁸. The practical integration of restorative justice into the conventionality control framework presents both profound opportunities and notable challenges. It requires states to transcend traditional punitive responses, embracing reparative actions such as public acknowledgments, memorials, and community-based reconciliation programs, all recognized by the Court as essential to comprehensive reparation and non-repetition guarantees. However, this paradigm shift demands robust institutional capacity, continuous training of justice operators, and the establishment of procedural mechanisms that reflect the Convention's standards. The Court emphasizes that this control is not confined to courts alone but extends to all public authorities, who must proactively ensure conformity with international obligations⁵⁹. This broad application reinforces the transformative potential of restorative justice within the Inter-American human rights system and, more importantly, at the domestic level, making the voices of the Judges in San José effective while fostering a culture of accountability, recognition, and healing that transcends the limitations of conventional legal remedies⁶⁰.

⁵⁸ Corte Interamericana de Derechos Humanos, *Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos N° 7: Control de Convencionalidad*, actualizado a 2019, ed. Claudio Nash (San José, Costa Rica: Corte IDH, 2019): 8-9.

⁵⁹ Contesse, Jorge, "The International Authority of the Inter-American Court of Human Rights: A Critique of the Conventionality Control Doctrine", *The International Journal of Human Rights*, 22 (9), 2017, 1168-1191.; Orunesu, Claudina, *Conventionality Control and International Judicial Supremacy*, *Revus* 40, 2020, 46-47.

⁶⁰ Carnota, W., *La Corte Interamericana de Derechos Humanos y el control de convencionalidad: ¿Diálogo o dominio?*, *Revista Internacional De Derechos Humanos*, 14(1), 2024, 11-12.

4.2 An In-Depth Qualitative Analysis of Key Reparative Measures in IACHR case law with a Focus on Gender Perspectives

Once the basic features of restorative justice and gender-based considerations have been outlined, the study shifts its focus to the ways these concepts have been applied in practice within the Inter-American system, particularly by its Court. As a preliminary remark, despite their significant transformative potential, the effectiveness of reparative measures ordered by the Court is often conditioned by the political will of States and their administrative capacity for implementation. The absence of strong enforcement mechanisms, coupled with the fragmentation of socio-political contexts in Latin America, limits the actual impact of the Court's rulings. Furthermore, there is a risk that restorative measures may remain as merely symbolic or a facade, without achieving real efficacy or meaningful change⁶¹. Accordingly, the risk of a “ritualization” of symbolic reparations—emptied of their emancipatory content—represents a concrete challenge. However, the Court's pedagogical function, understood as the production of normative and discursive standards, contributes to consolidating a legal culture sensitive to victims' rights and the recognition of their subjectivity, extending beyond the procedural sphere⁶².

For this reason, at this point of the analysis, it is crucial to examine how the Court has operated in practice by analyzing an array of different emblematic cases in which the gender perspective was central, shedding light on the real-world application and challenges of restorative justice within the Inter-American human rights system⁶³.

⁶¹ Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff, A/HRC/27/56, 2014, 20.

⁶² Juana I. Acosta López, *The Cotton Field case: gender perspective and feminist theories in the Inter-American Court of Human Rights jurisprudence*, 21 International Law, Revista Colombiana de Derecho Internacional, 2012. Also see, Sandoval-Villalba C., *Two steps forward, one step back: reflections on the jurisprudential turn of the Inter-American Court of Human Rights on domestic reparation programmes*, Routledge, 2019.

⁶³ Although the cases within the scope of this analysis are not recent, they remain pivotal for understanding the reasoning and evolution of the Court, since a common thread in terms of legal reasoning and types of reparations can be identified across them.

In the case of *González et al.* (“Campo Algodonero”), the Inter-American Court of Human Rights directly addressed the issue of femicides in Ciudad Juárez, emphasizing the systemic nature of gender-based violence and discrimination. The reparations ordered by the Court go beyond mere financial compensation to include symbolic and structural measures such as the construction of a public memorial, educational programs aimed at promoting gender equality, and the reopening of criminal investigations. The Court stresses that reparative measures must acknowledge the broader structural context of violence and discrimination faced by women and serve a transformative function. This approach aligns with the intersectional perspective adopted in the judgment, recognizing how overlapping social identities influence the experience and impact of such violence ⁶⁴.

Some scholars have noted that this ruling represents a significant evolution in the Court’s jurisprudence, where reparations are conceived not only as compensation but as tools for societal transformation and the dismantling of structural inequalities⁶⁵. The holistic gender-sensitive approach embodied in *Campo Algodonero* requires reparations that address both material and symbolic harms while aiming to restore dignity and ensure non-repetition of violations. This perspective also reflects the Court’s growing sensitivity to gender justice, moving from an earlier phase of limited recognition of gender-specific harms to a more comprehensive framework that considers the social, cultural, and institutional dimensions of violence against women⁶⁶.

Similarly, the case of *Fernández Ortega and others vs. Mexico* addressed the sexual violence committed against indigenous women by members of the Mexican army in Guerrero. The Inter-American Court of Human Rights condemned Mexico for multiple human rights

⁶⁴ Inter-American Court of Human Rights. *González et al. (“Campo Algodonero”) v. Mexico*. Judgment of November 16, 2009, Series C No. 205, paras. 292-294.

⁶⁵ Rubio-Marín R., *The Gender of Reparations in Transitional Societies*, in Rubio-Marín R, ed. *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*. Cambridge University Press; 2009, 76.

⁶⁶ *Ibid.*, 78-79.

violations and ordered a comprehensive set of reparations, emphasizing the need for culturally appropriate measures that respect the victims' indigenous identity⁶⁷.

The Court further highlighted the importance of an intercultural perspective within reparative justice, recognizing that indigenous women face compounded vulnerabilities due to their ethnicity and gender. This intersectional approach requires that reparative actions address not only the immediate harms but also the systemic discrimination embedded in social and institutional structures⁶⁸. The judgment underscored the military context of the violence, calling for specific standards to be applied regarding gender-based violence within armed forces and the necessity for thorough investigations free of gender bias or cultural insensitivity⁶⁹.

Moreover, the Court condemned the lack of adequate legal support for the victims, including the absence of linguistic interpretation, which aggravated their vulnerability during judicial proceedings. As for restorative justice considerations, the decision also called for mandatory training programs for military and judicial personnel on gender violence and indigenous rights, to foster due diligence and prevent recurrence of such violations⁷⁰. This case ultimately sets an important precedent within the Inter-American system by explicitly integrating gender and intercultural perspectives in reparations, thus broadening the scope of restorative justice beyond economic compensation to include social and cultural rehabilitation⁷¹.

In the *Atala Riffo* case, which deals with discrimination based on sexual orientation in the context of parental custody, the Court introduced a restorative approach grounded in the public reaffirmation of individual dignity. Among the reparative measures ordered were the

⁶⁷ These measures include effective access to justice, psychological and medical assistance, and institutional reforms aimed at preventing future abuses Inter-American Court of Human Rights. *Fernández Ortega and others v. Mexico*. Judgment of August 30, 2010. Series C No. 215., paras. 227–233.

⁶⁸ *Ibid.*, paras. 238–242;

⁶⁹ Pensado Casanova, Alejandra, “*Estándares de violencia de género en la jurisprudencia interamericana: el caso Fernández Ortega y otros vs. México*”, *Revista Iberoamericana de Derecho y Justicia* 17, no. 2 (2024): 158–162.

⁷⁰ *Ibid.* 161

⁷¹ Guillermo E. Estrada Adán and Patricia Cruz Marín, “*Reparation without Access to Justice: The Incomplete Compliance with the Judgments of the Inter-American Court of Human Rights in Mexico*” in *Research Handbook on Compliance in International Human Rights Law*, ed. Lisa J. Laplante (Cheltenham, UK: Edward Elgar Publishing, 2021), 342–345,

publication of the judgment and the training of judicial operators on the rights of LGBTIQ+ persons⁷². The pedagogical function of these reparative measures is clearly evident, aimed at transforming stigmatizing social representations through the authority of international law. This case exemplifies restorative justice in practice within the Inter-American system, where reparations go beyond compensation to foster social healing and cultural change, highlighting the Court's role in promoting inclusion and combating discrimination⁷³.

Ultimately, the analysis of Inter-American jurisprudence confirms a conceptual and operational evolution of the notion of reparation, moving beyond a compensatory logic to embrace a regenerative and transformative function⁷⁴. While the IACtHR does not systematically employ the term “restorative justice” in a technical sense, it consistently operates according to its foundational principles: victim participation, recognition of moral and collective harm, transformation of the conditions that enabled the violation, and strengthening of the rule of law. In this way, the Inter-American system stands as one of the most advanced laboratories in the field of international restorative justice⁷⁵.

At the same time, gender-based analyses emphasize that restorative justice must be attentive to the specific social, cultural, and political realities that shape victims' experiences, especially those of women and marginalized gender identities. Incorporating an intersectional approach ensures that reparative measures address not only individual harm but also systemic inequalities and discrimination, promoting genuine transformation rather than mere formal

⁷² Inter-American Court of Human Rights. *Atala Riffo and daughters v. Chile*. Judgment of February 24, 2012. Series C No. 239., paras. 153-157.

⁷³ Zúñiga Urbina, Francisco, “Comentario a la Sentencia de la Corte Interamericana de Derechos Humanos, caso ‘Atala Riffo y niñas vs. Chile’, de 24 de febrero de 2012”, *Estudios Constitucionales* 10, n. 1 (2012): 433–434.

⁷⁴ See also Inter-American Court of Human Rights, *Rosendo Cantú and another v. Mexico*, Judgment of August 31, 2010, Series C No. 216. The Court condemned Mexico for failing to protect indigenous communities from paramilitary violence, ordering reparations that included land restitution, protective measures, and culturally appropriate programs aimed at restoring the social fabric and respecting indigenous autonomy (paras. 124–130, 150–165). For more recent cases, see Inter-American Court of Human Rights, *Beatriz et al. v. El Salvador*, Judgment of November 29, 2023. Inter-American Court of Human Rights, *Vicky Hernández et al. v. Honduras*, Judgment of March 26, 2021. Inter-American Court of Human Rights, *Paola Guzmán Albarracín et al. v. Ecuador*, Judgment of June 24, 2020. Inter-American Court of Human Rights, *Angulo Losada v. Plurinational State of Bolivia*, Judgment of November 18, 2022.

⁷⁵ Peacock R., “Critical Reflections on the Global North-South Divide in Restorative Justice”, *International Journal of Restorative Justice* 11, no. 2, 2023, 192-193.

compliance. This gender-sensitive lens is essential for restorative justice to achieve its full transformative potential within diverse social contexts.

5. Final Remarks

Restorative justice stands as a fundamental pillar for the evolution of international human rights law, especially in addressing the complexities of gender-based violence. The jurisprudence of the Inter-American Court of Human Rights demonstrates that reparative measures, beyond mere economic compensation, hold profound transformative value. Public memorials, official acknowledgments of responsibility, educational programs, and the direct participation of victims not only heal individual wounds but also contribute to the reconstruction of the social fabric shattered by structural violence.

Symbolic reparations play a central role in restoring the dignity of victims. Such measures enable the recognition of victims' suffering and their symbolic reintegration into society, strengthening collective memory. Public acts of state acknowledgment, commemorative monuments, and mandatory training for security forces, as exemplified in landmark rulings, are crucial tools for societal sensitization and cultural change. These reparative actions are vital for challenging and transforming the social and cultural norms that perpetuate gender-based violence; yet do not always suffice.

Despite these advances, the application of restorative justice in cases of gender-based violence faces significant challenges. Concerns about victims' safety, risks of secondary victimization, and the potential misuse of restorative processes by offenders to evade accountability are persistent. Nonetheless, restorative justice should be viewed as a complementary mechanism alongside traditional criminal justice systems, capable of better addressing the real needs of gender violence victims.

This understanding of transformative gender justice—one that tackles the root causes of violence—has gained widespread recognition. As noted, integrating gender perspectives throughout all phases of reparative processes, from fact-finding to the implementation of

preventive measures, is essential⁷⁶. Additionally, restorative justice must be paired with broader public policies aimed at combating discrimination and promoting equality, ensuring that reparations do not merely remedy past harms but help prevent future violations⁷⁷. The Inter-American Court's evolving jurisprudence reflects these imperatives, offering an innovative and dynamic model to confront gender violence through structured restorative justice mechanisms oriented toward social transformation.

Nevertheless, the full realization of restorative justice faces critical obstacles, notably political will deficits and structural limitations within states. The gap between Court rulings and their practical implementation remains one of the most serious barriers to effective reparation rights. Notably, and desirably, restorative justice has been proposed as an autonomous human right, playing an essential role in securing rights to truth, justice, and comprehensive reparation⁷⁸.

Perhaps, the prospect of codifying restorative justice as a new-generation human right through a dedicated international convention would elevate it from a best practice to a binding international obligation, promoting uniform application across national systems. Such an instrument would be capable of establishing a set of universal principles and minimum standards, while defining clear obligations for States to create institutional frameworks, training programmes, and monitoring mechanisms to ensure effective implementation⁷⁹. By embedding restorative justice within the *corpus iuris* of binding human rights law, the international community would not only reaffirm its normative value but also secure its enforceability through treaty bodies, periodic reporting, and individual or collective complaint procedures⁸⁰.

⁷⁶ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, UN Doc. CEDAW/C/GC/30, October 1, 2013.

⁷⁷ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19*, UN Doc. CEDAW/C/GC/35, July 14, 2017.

⁷⁸ Gómez Barrera, Andrés Mauricio, “La justicia restaurativa como derecho humano, en la justicia juvenil”, *Derecho Global, Estudios sobre Derecho y Justicia* 10, no. 28, 2024

⁷⁹ Ibidem; De Greiff, Pablo, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, New York: United Nations, 2013.

⁸⁰ Antkowiak, Thomas M. “*Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*”, *Columbia Journal of Transnational Law* 46, 2008; Pasqualucci Jo M., *The Practice*

Integrating gender-sensitive approaches within reparative mechanisms is critical to addressing structural discrimination and empowering women through enhanced social and political participation. A tailored Treaty framework could mainstream gender considerations at all stages of the restorative process, ensuring that reparations respond to the specific needs of women and other marginalized groups, tackle root causes of inequality, and prevent secondary victimization. This would align with existing obligations under instruments such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Belém do Pará Convention, while filling normative and operational gaps in the field of restorative justice⁸¹.

Comparative experiences within the UN⁸², European, and Inter-American systems have already demonstrated restorative justice's capacity as a lever for social transformation, reshaping relationships between the State, society and individuals. Soft-law instruments such as the ECOSOC Resolution 2002/12 have outlined principles but lack binding force; in the Council of Europe and EU frameworks, initiatives like recommendation CM/REC(2018)8 and Directive 2012/29/EU have promoted victim participation and access to restorative services yet remain regionally confined. A global Treaty would consolidate these advances into a coherent, enforceable framework, fostering a community-rooted culture of human rights⁸³ and ensuring that restorative justice operates not as a discretionary policy choice, but as a universal prerogative and a structural pillar of contemporary human rights protection⁸⁴.

and Procedure of the Inter-American Court of Human Rights. 2nd ed. Cambridge: Cambridge University Press, 2012.

⁸¹ Rubio-Marín R., *The Gender of Reparations in Transitional Societies*, in Rubio-Marín R, ed. *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, Cambridge University Press; 2009; Hudson B., *Restorative justice and gendered violence: diversion or effective justice?*, in *British Journal of Criminology*, 2002.

⁸² Among others, United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. A/RES/60/147, March 21, 2006.

⁸³ Daly K., *What is Restorative Justice? Fresh Answers to a Vexed Question*, Victims & Offenders, 2016, 16.

⁸⁴ Gómez Barrera, Andrés Mauricio. "La justicia restaurativa como derecho humano, en la justicia juvenil." *Derecho Global. Estudios sobre Derecho y Justicia* 10, no. 28, 2024; De Greiff, Pablo. *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*. New York: United Nations, 2013.

Within this analytical context, the Inter-American system, as a living setting of legal and social innovation, offers a model for other regional and international jurisdictions⁸⁵. Supported by political commitment, civic engagement, and structural reforms, restorative justice can become a cornerstone for the protection and promotion of human rights in the current century. Restorative justice thus emerges not only as a response to past injustices but as a profound mode of reimagining relational balance, rebuilding more inclusive communities, affirming victims' dignity, and consolidating a human rights culture for the years to come.

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⁸⁵ Comisión Interamericana de Derechos Humanos. *Compendium on Integral Reparations with a Gender Perspective in Transitional Justice Contexts*. Washington, D.C.: OAS, diciembre 2023.

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