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Legislative Challenges of Application of Restorative Justice Practices in The Criminal Courts of Iraq

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Abstract

Restorative justice does not only aim to impose harsher punishment on criminals and defend the victims' justice, but rather it works in a balanced manner to distribute roles between the victim and the accused in order to restore the damage that befell the victim and those around him. It also works to hold the offender responsible for this according to the order of the Imam. Society. The Economic and Social Council in Vienna stipulated in 2002 that the criminal case should be transferred to restorative justice institutions before being considered by the criminal court. The question raised here are: What are the legal challenges that hinder the application of restorative justice in the Iraqi criminal courts? To answer this question, and through collecting opinions and decisions, it is noted that conciliation is the only form taken by the Iraqi criminal courts as an aspect of restorative justice. However, it faces many challenges that prevent the judge from expanding to cover a large number of crimes, the most important of which are the inflexibility of legal texts and the inflation in Punitive legislation and the failure of laws to keep pace with developments. Added to these challenges are existing laws that focus largely on custodial penalties and restrict the possibility of applying restorative justice. Also, social and cultural norms, such as tribal customs, play a role in out-of-court reconciliation, requiring updating laws to align with these norms and further strengthening the application of restorative justice within the Iraqi judicial system. In short, Iraqi laws are still insufficient to effectively implement restorative justice programs, and criminal mediation has not yet been provided for, despite its importance and actual practice by Iraqi society in resolving disputes.

Keywords: *Legal Challenges, Reconciliation, Restorative Justice, Iraqi Criminal Courts*

INTRODUCTION

In its Resolution No. 12 of 2000, the Economic and Social Council of the United Nations defined the concept of restorative justice as (any process that allows the victim, the accused, or any other persons affected by the crime to participate in settling and ending the problems resulting from the crime, often with the assistance of individual mediators.) The focus in these cases is on individual and collective requirements and needs and on how to reintegrate the perpetrator and the victim into society. In Iraq, there is a high capacity to implement restorative justice programs, but sometimes restorative justice mechanisms face challenges that conflict with the framework of criminal procedures because the laws It only supports the victim, and restorative justice aims to restore the balance between the victim and the offender and is used as a tool for the benefit of the offender in a way that is different from existing criminal justice. This also faces challenges, and in order to implement restorative justice programs, organizations and institutions must be formed to implement multiple restorative justice methods. In addition to the presence of guarantees for compensation for damages, and the provision of sufficient funds at their disposal, this is what makes restorative justice on a broader and better level that should be implemented. The legislator has mentioned restorative justice in Article 3 of the Criminal Procedure Law No. 23 adopted in 1971, and specified the crimes for which reconciliation is acceptable. But in a restricted and limited manner, as Iraqi laws are still insufficient to implement restorative justice programs, and criminal mediation has not been stipulated until this moment, despite its importance and despite the fact that it is actually practiced by Iraqi society in resolving disputes.

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By examining the Iraqi criminal texts, it is noted that the rigidity and inflexibility of the legal texts is one of the most important problems facing the application of modern restorative justice and its inclusion in the procedures of the Iraqi criminal courts, which stipulated that the application of conciliation as a means of closing the criminal case must occur before the judge or the court, and there is no judicial value for conciliation outside the court despite Most reconciliation cases are carried out outside the courts due to the tribal nature that characterizes Iraqi society and its special customs for reconciliation. Another limitation in this aspect is that despite the criminal courts accepting reconciliation in all stages of the case, whether it is in the investigation stage or the trial stage, and even After the issuance of a judicial decision on the case through forgiveness (reconciliation after the execution of the sentence), through texts specified by the Code of Criminal Procedure and the conditions that must be met to accept reconciliation in Articles 4 19-198, we find that some of these conditions are restrictions and obstacles to the criminal judge's expansion in including some crimes. With reconciliation. Therefore, restorative justice in Iraq requires radical legal reforms to facilitate its comprehensive and effective implementation. It is necessary to amend laws to become more flexible and allow more space for criminal mediation and reconciliation outside the courts. In addition, community awareness about the benefits of restorative justice should be enhanced and training programs should be developed for judges, police officers, and community members to enhance their understanding and familiarity with restorative justice methods and mechanisms, which contributes to achieving balanced and effective justice among all parties affected by the crime.

Formal Controls In Determining Crimes That Are Acceptable For Conciliation

In determining the crimes in which reconciliation is formally permissible (with written legal rules), criminal legislation has taken two main approaches: The first is to stipulate a general rule that includes the necessary controls to determine the crimes in which reconciliation is permissible, and the crimes in which reconciliation is not permissible. It is left to the judiciary to apply these controls to the crimes before it, giving judges broad flexibility to evaluate cases based on the circumstances of each crime. This method relies on confidence in the judiciary's ability to distinguish between cases that can benefit from reconciliation and those that should be subject to traditional penalties. This method is considered the most flexible because it allows adaptation to the changing circumstances of each case and crime. Second, the legislator undertakes to enumerate the crimes in which reconciliation is permissible in an accurate and specific manner, which is called the enumeration method. In this method, a clear and specific list of crimes that can be the subject of conciliation is drawn up, which limits the ability of the judiciary to evaluate each case individually. This approach provides legal clarity and prevents variation in judicial decisions, but it may be limited in its ability to respond to the individual circumstances of each crime. Some legal systems may combine the two methods, setting general controls and at the same time specifically specifying some crimes that can be subject to reconciliation. This approach provides a balance between legal flexibility and legislative clarity, enabling the judiciary to deal with crimes effectively and fairly. A balance between these two approaches is critical to achieving effective restorative justice. Strictness in applying the enumeration method may lead to unjustified restrictions, while excessive granting the judiciary wide flexibility may lead to heterogeneity in the application of justice. Therefore, legislators must consider achieving this balance to ensure that restorative justice effectively contributes to repairing harms and restoring social balance. The methods used to determine which crimes are subject to reconciliation have a significant impact on society. The general rule approach can encourage a culture of reconciliation and tolerance, while the enumeration approach can enhance the sense of safety and justice among victims. Hence, penal legislation must reflect a careful balance between the need to protect society and deliver restorative justice effectively and fairly. By developing penal legislation and adopting a balanced approach that combines general rules and enumeration, the ability of the legal system to deliver restorative justice more effectively can be strengthened, contributing to improving the social fabric and reintegrating offenders and victims into society.

A- General Rule Method

Many legislations have taken this method in determining the crimes that can be reconciled, and have taken a number of methods. Either link the scope of application of reconciliation to the type and quantity of

punishment stipulated for the crime, as the Iraqi legislator did, as he stipulated in Article 195 of the Code of Criminal Procedure that: The following: (If the crime is punishable by imprisonment of not more than one year or a fine, the settlement shall be accepted without the approval of the judge)().

Or it may stipulate a general principle that permits conciliation in all crimes, but subject to some restrictions or exceptions, such as what the Sudanese legislator did in the Criminal Procedure Code of 1984 in Article 270, which stipulates (with the exception of crimes against the state or crimes related to public rights, conciliation may be permissible in All crimes prosecuted under this law unless it conflicts with the provisions of Islamic Sharia.

Or to permit conciliation as a general principle if some conditions are met, such as what the French legislator did with regard to criminal mediation, where he stated in the seventh paragraph of Article 1-14 that (the Public Prosecutor can, before making a decision regarding the criminal case and with the consent of the parties, decide to resort to mediation if it appears to him that Its action will ensure that the damage caused to the victim is repaired and will put an end to the disturbance resulting from the crime, or it will be proven that this action will lead to the offender's reintegration into society.

It is noteworthy that this method, despite the different ways in which it is applied in written laws, is characterized by flexibility, which allows the criminal judge to accommodate all crimes without the need to amend the laws, but it is disadvantageous that it leads to differences in the application of the law between the different judicial authorities and conflicts in their rulings ( ).

In addition to the above, the difference in interpretation of legal texts from one judge to another can lead to differences in decisions related to accepting settlement in different crimes. This can create a sense of inequality between those accused of similar crimes, as some may be given the opportunity to reconcile while others are denied it based on individual judicial discretion. Therefore, it may be necessary to develop more detailed guidelines and directives to reduce this variation and achieve a greater degree of uniformity in the application of restorative justice.

There should also be mechanisms to review decisions related to reconciliation to ensure that they are not misused and to ensure that the desired goals are achieved, which are to repair the damage and reintegrate the offender into society. Strengthening oversight and follow-up can contribute to improving the application of the general rule approach and making it more effective in achieving restorative justice.

Ultimately, the success of this approach depends on a careful balance between the flexibility required to achieve justice in individual cases and the guidance needed to ensure consistency in the application of the law across the entire judicial system. Strengthening training and awareness of judges and prosecutors on applying restorative justice principles can effectively contribute to achieving this balance.

B- Exclusive Enumeration Method

In contrast to the first method, it is based on detail and clarification, where the legislator explicitly states whether the crime is subject to the conciliation system or not. This is done either by enumerating all the crimes in which settlement is permissible in a specific article, as the Egyptian legislator did, or a table, like what the Sudanese legislator did, or stipulating them in a specific article, like what the Iraqi criminal legislator did ().

This method is characterized by ease of application, as the rule of law is clear and does not require assessment. However, this type is criticized for being rigid and unable to accommodate new crimes that are suitable for the application of conciliation. On this basis, the law must be amended whenever another crime arises and the legislator wants to include it within the scope of reconciliation. The Kuwaiti and Emirati legislators have adopted this method (). This method allows the judiciary to work within a clear and specific legal framework, which reduces personal judgment and increases the unification of judicial decisions. . But the negative side lies in its lack of flexibility necessary to deal with changing circumstances and new crimes, which imposes on the legislator the necessity of constantly reviewing and updating laws to ensure their comprehensiveness and suitability to the new reality.

Also, this approach may lead some individuals to feel unfair if the list does not include crimes that they consider eligible for reconciliation, highlighting the need for effective mechanisms to regularly review and update these lists to ensure comprehensive and sustainable justice.

THEORETICAL FRAMEWORK

In this section, the researcher summarizes the legal obstacles facing the application of restorative justice in the Iraqi criminal courts as follows:

First: The Inflexibility of Legal Texts, Including

The Iraqi criminal legislator stipulates that the settlement be for one of the crimes in which a complaint may not be filed except by a complaint from the victim or his legal representative. These crimes are mentioned in Article 3/A of the Code of Criminal Procedure No. 23 of 1971, and these crimes are mentioned exclusively. Not for example, as reconciliation is not accepted if the crime in question is not one of the crimes mentioned in the fundamentalist Article 3. In addition, it is noted that this approach reflects the legislator's orientation towards protecting the rights of the victim and ensuring that criminal proceedings are not initiated except based on his will, which enhances the role of the victim in the judicial process. However, this requirement places restrictions on the scope of application of conciliation and reduces the flexibility of the legal system in dealing with other crimes that may be suitable for conciliation but are not mentioned in the original Article 3.

This condition makes it necessary for legislators to regularly review and update the list of crimes covered by the reconciliation mechanism to ensure the comprehensiveness of the system and its suitability to new developments in society and the type of crimes. It can also lead to challenges in effectively applying restorative justice in cases that judges deem worthy of reconciliation but not included in the specified list.

It is also important to provide legal mechanisms that enable victims to submit requests to include new crimes within the scope of reconcilable crimes, thus allowing the judicial system greater flexibility in dealing with individual cases and achieving restorative justice more broadly.

The type of crime specified by the law: The Iraqi legislator does not permit the court to accept conciliation in felonies, and it is only accepted in misdemeanor crimes and violations. Accordingly, the Court of Cassation decided in one of its decisions to (...therefore it decided to consider the act attributed to the accused as applicable to Article 13). / Penalties: Since this crime is one of the crimes for which reconciliation is permissible because it is a misdemeanor and not a felony, as indicated in Article 195 of the Code of Procedure, it was therefore decided to accept the reconciliation between the two parties in terms of the result and ratify the other decisions in this case due to their agreement with the law, and the decision was issued by agreement on the 23rd/ 2/1974 (), and because Article 159 of the Code of Criminal Procedure specifies those crimes punishable by imprisonment and a fine only, and a judicial example of this is the decision of the Court of Cassation that included (the court found that the charge assigned to the defendants (A) and (H.A.) and (AH) Penalties are in accordance with Article 43, which is a death threat, which is one of the crimes for which reconciliation is not acceptable.) (). In addition, this approach indicates that the Iraqi legislator seeks to achieve a balance between achieving justice and protecting society from serious crimes that cannot be tolerated. Criminal offenses usually have a significant impact on society and require strict judicial intervention to prevent their recurrence and ensure effective deterrence. Therefore, reconciliation remains limited to the scope of less serious crimes that society can tolerate if the damage is repaired and the victim is compensated.

This approach enhances the role of the courts in separating between crimes that can be the subject of reconciliation and those that cannot be tolerated in any way. In addition, this identification can be an effective tool in improving the efficiency of the judicial system by focusing efforts on serious crimes and reducing the burden on the courts in less serious cases.

In addition to the above, specifying the type of crimes for which settlement can be accepted enhances transparency and clarity in the judicial system, which helps build public confidence in justice. Victims and perpetrators alike will be more aware of their rights and duties, contributing to more effective restorative justice.

It is worth noting that this approach may require amending laws periodically to update the list of crimes that can be reconciled, in line with changes in the pattern of crimes and social and legal developments. Achieving this delicate balance between rigor and flexibility requires constant monitoring by legislators to ensure that the desired goals of the restorative justice system are achieved.

The court or judge is not allowed to accept a reconciliation request that is contingent on a condition, as the courts stipulate that it be complete in order to accept it. During an interview with Judge (), he mentioned that he does not accept reconciliation if the victim says that I reconciled with the accused on the condition that he pays such and such amount, and he also does not accept it if the victim says that I reconcile with the accused if he pays me such and such amount..... ...This is stated in Article 196 of the Iraqi Code of Criminal Procedure, which stipulates: "A settlement is not accepted if it is based on a condition."

From the opinions of the judges, it is understood that the victim sometimes delays accepting reconciliation because he requires prior compensation, because he fears that the perpetrator will not fulfill the compensation, because Article 198 of the Code of Procedure considers the decision issued for reconciliation to be a ruling of acquittal. Therefore, the victim cannot demand the perpetrator again or appeal the reconciliation decision. In addition, this condition shows the extent of the Iraqi legislator's keenness to ensure the seriousness and binding of reconciliation agreements. Conditioning reconciliation on conditions may lead to legal complications and difficulties in implementation, so the reconciliation must be final and unconditional to guarantee the rights of both parties and provide a clear legal end to the dispute. On the other hand, this requirement may lead to a delay in resolving disputes as the victim needs to ensure compensation before agreeing to reconciliation. Therefore, it may be necessary to consider additional means to ensure the effective implementation of compensation without conditionalizing the settlement on conditions, such as establishing financial guarantees or oversight mechanisms to ensure the implementation of compensation.

- The problem of public right, as the request for conciliation must be based on a simple crime that occurred between members of society and affected their money and persons. However, if it was committed against state funds or departments affiliated with the state, then conciliation is not accepted for it, for example, the accused destroying funds belonging to the state, or a more serious crime. Assaulting an employee during his job, and because it is a crime involving a public right, it is not possible to apply conciliation, but it does not prevent the punishment from being reduced, the punishment being suspended, or a fine. Example (The misdemeanor court decided to sentence the accused (S) to 6 months imprisonment for assaulting the employee (A) while performing his job. Given that the accused was not convicted of a criminal record or that a reconciliation had taken place with the victim, the court decided to stop the implementation of the penalty and the decision was issued on 3/2/ 2012). From the above decision, it is noted that the court did not render an acquittal despite the fact that the settlement took place due to the public right, which is considered an obstacle to dropping the penalty.

From the point of view of most Iraqi judges, the public right is a major obstacle to halting criminal lawsuit procedures. It is unfortunate that this confronts the court even in non-serious crimes, which most judges agree are not serious, and the accused must be included in the final suspension of lawsuit procedures, such as manslaughter. In This crime is not usually disputed, but what is established through judicial applications is that the court orders imprisonment for the accused. Most judges believe in the necessity of legislating a text that allows the case to be closed, given that reconciliation and concessions have occurred between the parties, as well as the perpetrator paying blood money to the heirs of the murdered person. From the point of view of Judge No. (9), there is a conflict with Sharia law in the issue of blood money, as the heirs of the murdered person demand it, and the killer is not relinquished, and here it is presented with poetic texts, since taking the ransom must negate the retaliation, but the reality in the criminal courts is different, which is what calls for it. The Iraqi legislator must address this problem. In addition, it is worth noting that there is an urgent need to develop a broader understanding of public rights and how to apply them in a manner consistent with restorative justice. The legislator could consider developing a legal framework that balances the requirements of the public right with the rights of reconciling individuals, so that judges are empowered to apply restorative solutions even in crimes involving the public right, while ensuring that the necessary deterrence is achieved and the public interest is protected.

Also, it is important to strengthen the role of criminal mediation in cases involving public rights, so that consensual solutions can be reached that meet the needs of society and victims, and contribute to the rehabilitation of offenders. This approach can reduce societal tensions and enhance the effectiveness of the judicial system in achieving justice in unconventional ways.

The judge or court's approval of the request for conciliation: It is noted that even in crimes in which conciliation is permissible, the legislator has stipulated for the acceptance of conciliation the approval of the judge or court despite the victim's acceptance of conciliation, which is what is stated in Article (195 of the Principles of Trials). The lesson in this is to make the court responsible for To preserve the security and safety of society, it must ensure the extent of the possibility of reforming the accused in the event of failure to agree, if the accused has been convicted of another criminal record, or it has been proven to society that accepting conciliation and acquitting him is harmful to society due to the danger of the accused, and that placing him in correctional and rehabilitation centers is better than releasing him. The judge or court's approval of the conciliation request enhances the community's confidence in the judicial system, as the community feels that there is judicial oversight that ensures that the conciliation system is not exploited to escape punishment in cases that call for more stringent measures. This procedure also ensures a balance between the interest of the accused individual and the community's right to security and stability.

This condition reflects the legislator's keenness to ensure that reconciliation is not used as a means to avoid justice in cases that require deterrent penalties. Despite the great benefits of reconciliation in resolving disputes, there are cases in which keeping the offender in correctional and rehabilitation centers may be more appropriate to protect society and prevent the recurrence of the crime.

This approach requires judges to comprehensively evaluate each case, taking into account all factors associated with the crime, the offender and the victim. This evaluation includes studying the offender's criminal history, ensuring that he does not pose a danger to society if he is released, and the extent of the offender's commitment to reforming his behavior.

Judges must be equipped with adequate tools and resources to conduct accurate, scientifically based assessments, such as psychological and social expert reports, to determine an offender's seriousness and potential for reform. These tools could include specialized training programs for judges in restorative justice and risk management.

Consideration may be given to developing follow-up and support mechanisms for perpetrators whose reconciliation has been accepted, to ensure that they adhere to the terms of the reconciliation and do not return to crime. Such mechanisms could include community-based rehabilitation programs and continuous follow-up by relevant authorities.

Second: Judges' inclination towards punishment arising from legal texts: The seriousness of the crime affects the choice of the appropriate punishment, and due to the importance of the seriousness, some, including the German judge (Butch), believe that determining the punishment is an art that cannot be taught or monitored. Therefore, some laws have tried to facilitate the judge's task in determining For criminal punishment, some rules were established for it to be used in determining the seriousness of the criminal and estimating the appropriate punishment. This has led to the judge possessing, in addition to the normal authority to estimate the punishment within the quantitative and qualitative scope of the original punishment for the crime, he has exceptional authority in this field. It allows him to reduce or tighten according to the established laws, and the laws have approved this matter, considering that the judge is best placed to know the circumstances and circumstances surrounding each case presented before him. Although this authority is exceptional, it is not absolute, but is restricted by limits and controls that the judge uses when it exceeds the minimum. Or the highest penalty. However, the question that arises here is what are the controls that the judge follows in determining the penalty and the reasons for that? In addition to the general rules, the controls that the judge follows in determining the punishment include factors such as the degree of criminal seriousness of the crime, the social and psychological effects on the offender and the victim, the offender's criminal record, and the extent of his cooperation with the authorities during the investigation and trial. The laws also provide guidance on mitigating and aggravating circumstances that can influence the determination of punishment, such

as admission of guilt, voluntary restitution to the victim, and the case of self-defense. Some legal systems also include guidelines that specify the range of recommended penalties for different crimes, providing a frame of reference for judges and contributing to a balance between flexibility in sentencing and ensuring uniformity of justice. These principles may include recommendations about minimum and maximum penalties, and circumstances that warrant the application of alternative or restorative sanctions. On the other hand, judges should take into account the deterrent effect of punishment on the offender and society, as punishment is a means not only to punish the offender but also to prevent similar crimes from occurring in the future. Achieving this balance requires the judge to consider the crime from all its aspects and ensure that the punishment is proportional to the criminal act and its impact on the victim and society.

This is achieved, as some see, in two ways:

The first; It determines the factors and circumstances that contribute to the formation of a criminal personality, and the judge shows evidence that reveals the extent of its seriousness. Some believe that this definition is flawed, as criminal risk is not present in some people, such as those who suffer from mental illnesses.

Second: The legislator should take into account the aspect of general deterrence and recommend severity when imposing punishment on the perpetrators of crimes that he deems to have an impact on public feeling.

However, despite these objections, it is necessary to pave the way for the judge when using his discretionary power, as there is no doubt that the texts prepared to guide the judge when using his discretionary power are consistent with the principle of the legality of punishments, which requires some kind of determination of the punishment prescribed for the crime, and there is no fear that this will change. The guidelines are reduced to mere formalities if the judge's use of his discretionary power is tightly controlled, and he must give reasons for choosing the criminal penalty. The reality of the matter is that the imposition of the penalty and precautionary measures must depend on the controls established by the law, so that he does not exercise his discretionary power in an arbitrary manner. It is noted that Pre-judgment research is the procedure that the judge must follow to arrive at a sound estimate of the extent of the person's criminal danger in order to base it in estimating the criminal penalty. The discretionary power of the judge, when imposing a criminal penalty in proportion to the criminal seriousness, lies in increasing this penalty if the judge finds that the degree of criminal seriousness is so severe that it necessitates tightening or reducing the penalty if the degree of criminal seriousness that the judge arrives at through controls and constants is absent or reduced. .... In order for the criminal judge to be able to exercise his discretionary power, the legislator created a system of mitigating and aggravating circumstances for him, so that the punishment is appropriate to the criminal's condition and in light of his circumstances.

Extenuating circumstances are reasons that call for clemency for the criminal and allow him to reduce the sentence according to the limits set by the law. The judge relies on them when reducing the sentence, and their existence depends on the circumstances of the criminal and the crime he committed. Either aggravating circumstances are grounds for increasing the penalty. stipulated in the Penal Code in exchange for mitigating legal excuses. Aggravating circumstances are of two types: one type obliges the court to impose a punishment of a more severe type than that prescribed by law for the crime or to impose a sentence more than the maximum limit prescribed for the crime, and the other type allows the court to impose the aforementioned aggravation (and aggravation in In both cases, it must be within the range specified by the law. However, if the court rules a penalty within the upper, minimum, and maximum limits, and even if it rules the maximum penalty, it is an exercise of its discretionary power, and therefore it is not obligated to state in the reasons for the ruling the reasoning that led it to rule the maximum. However, the judge's authority to impose and assess the penalty does not stop at the circumstances and excuses given by the legislator. Rather, it sometimes extends to the point of stopping the execution of the penalty, if the conditions required for stopping the execution are met, in proportion to the criminal's seriousness.

By researching the texts of the Iraqi Penal Code, we find that the law in most of its legal articles focuses on short-term custodial punishments, and the legal texts stipulate maximum and minimum punishments as well, even in crimes that can be reconciled. This makes the judge obligated to follow the legal rule and is not entitled to He has a contravention of it, otherwise he is accused of not implementing the law. In addition, Iraqi law

emphasizes the principle of innocence before judgment and its emphasis on non-punishment in a group of resources such as legitimate defense and non-punishment in the case of coercion or information before the crime occurs. It also focuses on specific cases in which the judge may The sentence may be suspended if the court is sufficiently confident that he does not pose a danger to society, that his record is free of criminal records, and that he is of good conduct and behavior.

Here we must distinguish between two cases in the Iraqi criminal courts: the difference between acquittal and release in applications of Iraqi law:

1- Acquittal: It is stated in Paragraph A of Article 130 of Criminal Procedure No. 23 of 1971: (If the investigating judge finds that the act is not punishable by law, or that the complainant waived his complaint and the crime is one that may be reconciled without the approval of the judge, or that the accused is not responsible Legally, due to his young age, the governor issues a decision to reject the complaint and close the case permanently.

2- Release: It is the release of the accused from arrest and the closure of the case against him if the court does not find sufficient evidence to convict him of the charge against him.

Article 130/B of the aforementioned law stipulates: (If the evidence is not sufficient to refer him, the judge shall issue a decision to release him and close the case temporarily, stating the reasons for that). Because there is evidence available, but it does not rise to the level of conviction or arrest.

The question raised here is whether the Iraqi criminal judge has a choice in assessing the penalty or is he restricted, and when can he propose reconciliation to the parties to the case as a solution to the dispute?

Through the interviews we conducted with judges, we find that they are limited by the evidence before them, but reality indicates otherwise. Through judicial applications, we find that the accused is referred to a legal article that is considered an irreconcilable crime. When reconciling with the accused, the judge can change the legal description to a lesser article. Penalty or closure of the case is included in the phrase insufficient evidence. An example of this is that the legal article can be changed as a result of mutual consent between the two parties, even though the crime is not subject to reconciliation. However, this rarely happens for several reasons, including:

a. The judge is not confident that one of the parties will challenge the court's procedures.

B. This condition can only be applied in the investigation stage, but in the trial stage it is difficult to achieve because the evidence is complete.

C. This was not stated by the judges, but it can be observed through judicial applications.

Third: The laws do not keep pace with modern developments related to restorative justice

It is noted that the laws in most developed countries include ways and means to amend and delete legislation that is outdated or unjust or that is not in line with the legal, political and social development taking place. These means ensure everyone's participation in enacting and amending laws, and thus good partnership grows among the individuals of one nation in its desire to Amending the legal texts that regulate his daily life, protect his rights, and regulate their internal and external affairs. Based on what we have mentioned, the lack of development of penal laws can be considered as one of the obstacles to the development of restorative justice in Iraq, as follows:

The Iraqi Code of Criminal Procedure No. 23 of 1971 was approved more than 50 years ago, when criminal justice prevailed. Also, the Iraqi Penal Code No. 111 of 1969, most of whose legal articles emphasize the approval and implementation of punishment, with severity in some cases, and mitigation included exclusively, the law has not been amended so far except in some articles, which did not greatly affect the change in the punishment approach. He also focused on a section of minor crimes that can be included in conciliation, as he is one of the advocates of restorative justice, according to which the criminal case ends.

The Iraqi Penal Code No. 111 was approved in the year 1969, meaning approximately 55 years have passed. It is natural that the past period was limited to the application of the criminal policy based on punishment for the

crime, and after the emergence of modern approaches in criminal policy aimed at addressing the crisis of custodial penalties and The shortage of prisons and their failure to deter crime emerged. Alternatives to criminal proceedings emerged, and with them new laws regulating them emerged. At the forefront of these were restorative justice programs of an administrative nature aimed at ending the conflict and ensuring compensation for the victims. Whereas the Iraqi Penal Code allowed the judge to award financial compensation to the victim, the policy The law used by the criminal courts does not apply according to the opinion of the judge (), and there is no law to directly compensate the victim, as it is called in Iran (the blood money law) No. ...., and the victim's claim for material or in-kind compensation requires him to file a civil lawsuit in accordance with the provisions of the Civil Code. Article 205: Since filing a civil lawsuit drains the financial and temporal capabilities of the victim, it has become necessary to adopt a modern policy to address this problem, which is the restorative justice approach to resolving and ending conflicts.

What was mentioned above makes the criminal judge believe that the goal of punishment is not only to cause pain to the person sentenced to it, but rather that pain is a means to achieve other goals, the most important of which is that it contributes to reforming and rehabilitating the criminal, which is called achieving general deterrence for society. And the special deterrence of the individual who commits the crime. It should be noted that this belief of the judge stems from the abundance of punitive legislation that he relies on in the Iraqi criminal courts, as well as the curricula that he studied at the Iraqi Judicial Institute, which still follows traditional curricula that are by nature based on theories of general and specific deterrence.

The Code of Criminal Procedure in force in criminal trials, which was approved since 1971, is influenced by traditional criminal policy, as it placed restrictions on the authority of the criminal judge when issuing a ruling and assessing the penalty, for example restricting filing a criminal complaint by complaint or permission (Article 3/A of Principles) and restricting approval. The right of the victim to reconcile with the perpetrator in specific cases (Article 3/B of Fundamentalism). In addition to these restrictions, the law also includes other articles that limit the judge's flexibility in making decisions that suit the circumstances of each individual case. For example, restrictions are imposed on the use of alternative procedures such as criminal mediation and settlement, making it difficult to implement restorative justice programs effectively. Failure to update this legislation to include developments in restorative justice hampers criminal reform efforts and increases the complexity of the judicial system. This traditional approach promotes custodial sentences without offering victims real opportunities for rehabilitation or fair compensation. Therefore, there is an urgent need to review and update the Code of Criminal Procedure to reflect modern concepts in criminal justice, including the introduction of restorative mechanisms that allow disputes to be resolved in more effective and humane ways.

- The departure of the Iraqi judicial institution and criminal legislator from modern restorative justice systems and the principles approved by the Vienna Conference from April 10-17, 2000, which stipulated the following: (It was decided to develop, when necessary, national and regional action plans to prevent crime, such as mediation and restorative justice mechanisms, and it was decided that The year 2002 should be the target date for states to review their practices in this regard. We encourage the formulation of restorative justice policies, procedures and programs that respect human rights and the needs and interests of victims, perpetrators, local communities and all other parties. It should be noted that Iraq in that period was under the rule of Saddam Hussein's regime, which was considered one of the most dictatorial regimes in the region, so there was no room for introducing restorative justice programs in the judicial institutions of that period. In addition, the judicial system of that era was characterized by strictness and reliance on traditional punishments as a primary means of deterrence, which made it difficult to adopt any reforms aimed at promoting restorative justice. This historical influence is still reflected in the current situation, as the country needs a major effort to modernize its legal system to keep pace with modern developments in the field of criminal justice. Iraq was also internationally isolated during that period due to the economic and political sanctions imposed on it, which prevented it from benefiting from global developments in the field of restorative justice. This isolation led to a decline in the level of knowledge and training exchange with countries that have achieved progress in this field, which increased the gap between the Iraqi judicial system and modern practices.

It should be noted that Iraq was under the rule of the Baath Party for 30 years, and during this period despite the enactment of many laws, many of which are still in force, including the Penal Code and Criminal Trials,

implementing the United Nations recommendations in the field of restorative justice, which were issued in 2000, is difficult. Under dictatorial regimes, this is what made Iraq late so far in adopting restorative justice programs such as criminal mediation and others..

Judge Saleh Al-Khalidi () believes in the necessity of updating Iraqi laws in line with contemporary developments and for the legislator to expand to include new cases through reconciliation other than the cases mentioned in Article 3 of the Code of Criminal Procedure. He stressed the need to amend the texts of the Penal Code and the Code of Criminal Procedure.

As for the Public Prosecutor (), he believes in this regard (that criminal laws do not keep pace with modern developments in restorative justice, such as working through criminal mediation and other alternatives to criminal proceedings. Through our knowledge of this regard, there are many attempts that have appeared in some countries to reconcile restorative justice and criminal justice, including the Justice Project. Restorative justice in Canada in 1998, which aims to resolve conflicts differently from traditional criminal justice, considering that restorative justice is a path parallel to traditional criminal justice, and is based on basic pillars and principles, including reparation and acceptance of the victim or those affected by the crime to the restorative justice program, and the payment of compensation by The accused or perpetrator and the satisfaction of the person harmed by the crime, and if the crime is one of the crimes punishable by imprisonment, it is possible to benefit from such attempts and legislate laws that address the issue of restorative justice in a way that is consistent with the social, economic, political and cultural development that the country has witnessed. In addition, the Attorney General notes that Canada's experience with restorative justice has contributed to reducing crime rates and effectively rehabilitating offenders. Such experiences underscore the importance of adopting a comprehensive approach that includes providing psychological and social support to perpetrators and victims alike, which enhances the effectiveness of restorative justice programs.

Also, the Attorney General points out that the adoption of restorative justice programs requires radical changes in the education and training system for judges and prosecutors. These educational programs should include topics such as forensic mediation, conflict management, and effective communication techniques, to ensure that those working in the judicial system are adequately qualified to implement these programs effectively.

We suggest, through the above, that the Iraqi legislator introduce restorative justice programs based on granting judges the "power of convenience" granted by some legislation, which enables the judge to accept reconciliation. This principle falls within the framework of the principle of the judge's freedom of conviction. Through this principle, we can see the emergence New systems in criminal policy that are in line with the requirements of the prevailing situation.

Fourth: In the event of multiple defendants and victims in crimes that are subject to Reconciliation

The general rule, according to the provisions of Article 196 of the Code of Criminal Procedure, is that a request for reconciliation with one accused does not apply to another accused. But what is the ruling if there are multiple victims? The Code of Criminal Procedure did not address this issue, but since the crimes for which Iraqi law permitted conciliation are complaint crimes (), and the law regulated the issue of waiver of the complaint in the event of multiple victims and ruled that the waiver of one of the victims of his complaint does not apply in The right of others ().

Thus, it can be said that reconciliation of one of the victims with the accused does not mean that all of them are reconciled with the accused. However, this ruling contradicts the intended purpose of approving the conciliation system in criminal law, and it also conflicts with the goals of the restorative criminal policy, which works to simplify and shorten the formality of judicial procedures. Therefore, we find that in such a case, the court can approve the conciliation conducted by one of the victims of the crime. The accused is obligated to pay the agreed upon compensation or compensation to the rest of the victims.

This ruling was adopted by the Kuwaiti criminal legislator in Article 242 of the Code of Criminal Procedure, where the article indicated: "If a pardon or reconciliation is issued by some of the victims and the rest reject it, the court has the right to accept it if it is proven to it that the others' opposition is arbitrary."

They note the wisdom of this trend is to contribute to solving part of the criminal justice crisis and reducing the number of lawsuits. It also contributes to achieving the goals of modern criminal policy in compensating the victim and reintegrating the offender into society. In addition, the Iraqi legislator can benefit from successful international experiences in this field by developing similar legislation that gives the court the authority to assess the extent of the arbitrariness of victims who refuse reconciliation, which contributes to simplifying judicial procedures and achieving restorative justice more effectively.

This mechanism can also be strengthened by establishing a legal framework that allows for comprehensive reconciliation negotiations that include all victims, where the court can intervene as a mediator to ensure justice for all parties. This would enhance confidence in the justice system and encourage more victims and accused to resort to reconciliation as an effective means of resolving disputes.

Moreover, these amendments must be accompanied by awareness campaigns for victims about the benefits of conciliation and the compensation procedures available to them, which may increase their acceptance of the idea of conciliation and reduce their opposition to it, and thus contribute to reducing the burden on the judicial system and enhancing the effectiveness of restorative justice.

Fifth - Inflation in the Legislation of Penal Laws

- Inflation in the legislation of penal laws: Through the events that accompanied the American occupation of Iraq in 2003 and the resulting turmoil in the security and economic conditions and the emergence of a number of terrorist crimes, the penal law in force was not sufficient to address them, which led to the enactment of the effective Terrorism Law No. 10 of 2005. Since the country has not witnessed complete political and security stability until this moment, the criminal legislator has not yet been able to find a suitable basis for implementing restorative justice programs such as criminal mediation, although they are applied practically in resolving disputes but are only reliable in conducting reconciliation. In criminal courts.

- Legislative inflation in the Penal Code: The Iraqi Penal Code No. 111 of 1969 includes a large number of crimes, including economic or natural crimes and organizational or legal crimes. Resorting to this type of criminalization in Iraq generates or creates legislative inflation in the field of penal law, especially in the field of criminalization, which leads to a large number of criminal acts in the country and, as a result, to an increase in the annual crime rate. For example, we see that Iraq has recently resorted to introducing regulatory crimes into many of the special legislation issued by Parliament. Natural crimes are those that violate the values of society, such as attacks on people and property, while legal crimes are actions that violate legal texts, such as traffic crimes and political and economic crimes. Terrorist crimes later appeared, prompting the legislator to legislate laws with severe penalties, such as Terrorism Law No. 13 of 2005. This law included the harshest penal penalties, which were life imprisonment and death.

- Judicial opinions on legislative inflation: Some judges, including Judge ([3]), believe that criminalization inflation, despite the presence of security, economic and political reasons calling for it, actually constitutes a major obstacle to achieving restorative justice in Iraq. On the other hand, short-term custodial punishment is the prescribed punishment for the vast majority of these crimes. Even more than that, the Iraqi legislator has permitted the judge to issue a prison sentence instead of a fine in the event that the fine amount is not paid, such as if the convict is insolvent or for any other reason ([4]). This is another flaw in the organization of criminal justice in the Iraqi criminal courts, because these punishments have an ineffective role in combating crime and have negative effects and multiple harms agreed upon by most criminal law jurists ([5]). As it is unable to achieve the goals of punishment in deterrence and reform, it also breaks the psychological barrier among criminals of fear of custodial punishments. More than that, one lawyer pointed out that these punishments create other opportunities for criminality by learning crime methods from penal institutions or being used by other criminals to carry out new criminal projects after their prison term has expired.

Supporters of alternatives to criminal proceedings: Supporters of alternatives to criminal proceedings believe that the causes of the criminal phenomenon are governed by cultural, social, political, economic and legal circumstances and variables. Therefore, it is noted that continuous changes in criminal policy followed by some legislation may help in finding solutions to the criminal justice problem. Among these solutions is resorting to procedural transformation, which means abandoning or leaving the normal criminal procedures and subjecting the accused who confesses to the crime to non-penal programs. Or reducing criminalization or limiting punishment, which means removing the criminal character from some acts or maintaining the criminal character but passing non-penal sentences on the accused ([1]).

- Laws keeping pace with the requirements of restorative justice: In order for laws to keep pace with the requirements of restorative justice, it must be noted that economic, political and social developments in any country impose a complete review of the legal system in the state's legislative policy. Because the penal legislation currently in effect does not fit with the new phase in Iraq after 2003, many developments occurred after the fall of the previous regime, the most important of which is the building of a democratic system of governance. One of the most important components of this system is simplifying formality in all procedures, especially judicial procedures, in order to achieve political stability. Since restorative justice is one of the most important factors that contribute to the stability of societies through dialogue and ending conflicts, adopting its programs has become necessary.

Legislative challenges and tasks: Here the Iraqi legislator finds himself facing a major task, which is to review all legislation that may conflict with the situation that occurred after 2003, and in doing so he follows constitutional methods that allow him to amend the old laws in force or repeal them in a way that is consistent with the modern criminal policy followed. In most Western countries and even the countries neighboring Iraq, which has proven successful. It takes an administrative rather than a judicial form, such as criminal mediation, criminal settlement, and other restorative justice programs.

- Lessons learned from international experiences: Iraq must benefit from successful international experiences in the field of restorative justice, such as those in Western countries and neighboring countries that have relied on alternative mechanisms to resolve criminal disputes in peaceful and effective ways. Adopting such mechanisms can contribute significantly to reducing the burden on the traditional judicial system and achieving better results in the field of rehabilitation of offenders and their integration into society.

- Developing a supportive legal infrastructure: To achieve restorative justice effectively, a legal infrastructure must be developed that supports this trend, including amending current laws and developing new legislation that supports criminal mediation and legal settlement. This infrastructure must include oversight mechanisms to ensure the implementation of restorative agreements and monitor the extent to which the reconciling parties adhere to the conditions of reconciliation, to ensure that the desired goals of restorative justice are achieved.

RESEARCH METHODOLOGY

The researcher adopted the descriptive analytical method, conducting interviews with judges and analyzing the answers to reach accurate results, as well as using literature and articles related to the research variables.

Results

The Research Reached the Following Results

The inflexibility of legal texts prompts the criminal judge to lean towards the idea of punishment without adopting other alternatives to the criminal case, which are called legal obstacles.

- The lack of separation between restorative justice institutions, such as criminal mediation, and the work of the judicial institution, and the poor knowledge of criminal judges about restorative justice programs, constitute the most important judicial obstacles facing the application of restorative justice in Iraq.

- Although most of the disputes brought before the judiciary are resolved in reconciliation sessions supervised by tribal sheikhs, in practice, the courts do not rely on tribal reconciliation as a means of resolving disputes until this moment, even though it has been practiced consistently since ancient times.

The application of restorative justice in the Iraqi criminal courts has not yet become an alternative to traditional criminal justice, because it is limited and applicable only to low-risk crimes mentioned in Article 3/A/3ADK, and therefore it can be said that it is a system complementary to classical criminal justice.

- The Iraqi penal system is criticized for not adopting criminal mediation as a form of restorative justice, even though it provides great benefits to justice enforcement agencies and the judicial institution, and also ensures that the victim receives fair compensation.

- The criminal courts apply the forgiveness system in the Code of Criminal Procedure, which is considered reconciliation after the issuance of the ruling, but it does not bring anything new, but rather its application is limited to crimes that accept reconciliation only, which are mentioned in Article 3 of the Code of Criminal Procedure No. 23 of 1971.

The study proved that traditional criminal justice, which is based on the idea of deterrence and punishment, has failed greatly in combating the criminal phenomenon, especially the terrorist phenomenon, which has begun to expand in recent years and which Iraq has faced with the most severe repressive methods. However, what is proven is that this phenomenon, despite the severity of the penal laws, was not sufficient to address it. After the Iraqi Parliament issued amnesty No. 27 of 2016, many members of terrorist organizations were released after it was proven to the criminal courts that their actions did not result in the killing of Iraqi individuals.

- The need to enhance community awareness of restorative justice programs: The Iraqi judicial system is criticized for the lack of community awareness of restorative justice programs and their benefits. Limited awareness among citizens about these programs hinders their activation and full benefit from them. Therefore, awareness campaigns and educational programs are required to educate the public about the importance of restorative justice and how to utilize it to resolve conflicts in peaceful and just ways. This step would enhance society's acceptance of these alternatives and enhance the success of their application in the judicial system.

- Strengthening cooperation between government institutions and civil society organizations: To ensure effective implementation of restorative justice, it is necessary to have close cooperation between government institutions and civil society organizations. This cooperation can help provide the necessary support to victims and perpetrators alike, and ensure that reconciliation programs are implemented more efficiently and effectively.

CONCLUSIONS

The necessity of legislating and proposing laws in line with developments in criminal policy and the guidance of the United Nations regarding the necessity of adopting restorative justice programs as alternatives. The desire to implement restorative justice programs in the Iraqi criminal courts came from the strong response to address the effects left by traditional criminal justice through its rigid procedures. And the sterile and incapable of confronting the criminal phenomenon that began to emerge in various forms as a result of the rapid growth in societies, hence restorative justice emerged as a more effective method than traditional criminal justice.

Restorative justice gives the victim an important role in the criminal case. His role was not limited to submitting the complaint and waiting for the court's decision, but he also played a major role in changing the course of the criminal case so that he could declare reconciliation with the accused and agree on appropriate compensation or repair the damage and restore the situation. To what it was before the crime occurred.

Restorative justice seeks to find amicable solutions that are satisfactory to the parties to the criminal dispute. Here, it works to improve and strengthen social relations between members of society and combat the criminal phenomenon, while giving the victim the right to resort to the judiciary if it is not possible to reach an agreement that satisfies everyone.

The essence of restorative justice is the satisfaction of the parties to the criminal dispute and their desire to end the criminal prosecution without resorting to the judiciary and resorting to procedures of an administrative nature, based on compensating the victim and ensuring that the crime is not repeated.

Restorative justice is characterized by the fact that it came as a result of many experiences and practices known to ancient societies in conducting reconciliation and mediation between parties to conflict. It is based on the

active participation of members of society in resolving disputes between individuals by peaceful means. Therefore, it can be said that restorative justice was not born from legislative texts, but rather Based on the experiences of previous societies.

Recommendations

1- The Iraqi criminal judge is restricted to the crimes specified by the Iraqi Code of Criminal Procedure in Article 3 thereof, crimes in which reconciliation is permissible and whose penalties are explained in the Penal Code, but the truth is that they do not fit with the new reality of the country and we suggest that the legislator expand the inclusion of new crimes. By reconciliation, the judge is not bound by legal texts.

2- Amending the text of Article 130 of the Code of Criminal Procedure as follows (If the act is punishable and the judge finds that the evidence is sufficient to try the accused, he shall issue his decision to refer him to the competent court or refer him to restorative justice applications).

3- The public right is one of the obstacles facing restorative justice in Iraq, as the judge is unable to close the case in crimes that are not amenable to reconciliation in the event that evidence is available. We find the need to legislate legal texts that allow the court to proceed to applying restorative justice on behalf of the accused in crimes in which A general right, with the exception of serious crimes such as drugs, incest, kidnapping, rape, and premeditated murder in some cases.

4- Amending the text of Article 194 of the Code of Criminal Procedure as follows (The investigating judge may offer reconciliation or criminal mediation to the offender if he finds there is an interest for the victim, the offender, or society, or to accept the existing reconciliation between the offender and the victim in all cases).

5- Amending Article 195 of the Code of Criminal Procedure to be as follows (A) (Reconciliation and mediation sessions are prepared in the presence of both the victim and the offender and members of their families or any other person invited to the reconciliation session. Members of society may also attend and contribute. In which).

6- In crimes of theft between ascendants and descendants, Article (3/A/3) of the Code of Procedure limited reconciliation between spouses, ascendants, and descendants and did not include the rest of the family members, such as a brother, a brother, and their children, or an uncle or paternal uncle. We propose expanding the scope of the text to include the article's right to reconciliation. Up to the fourth degree of relatives.

7- If the law allows reconciliation between spouses, ascendants, or descendants in crimes of theft, fraud, and breach of trust, then it is more appropriate to include the partner with whom he contributed to the reconciliation, because the original perpetrator is the relative by marriage or lineage.

8- Developing legal texts that allow the heirs to waive the offender in the event of paying blood money or reconciling with the heirs and granting them the right to waive the private right without this applying to the public right. Its discretion is left to the court to ensure that the accused does not pose a danger to society if he is released.

9- In order to eliminate the characteristic that the criminal judge is inclined towards punishment, legal texts must be legislated to help the criminal judge implement restorative justice programs. We suggest that the criminal case be presented to the mediator, and in the event that interests are not achieved, one will move towards the criminal case.

10- Strengthen training and awareness programmes. Continuing training programs must be provided to judges and prosecutors on the benefits and principles of restorative justice, including criminal mediation and conflict management. These programs can include the exchange of experiences with other judicial systems.

11- Establishing centers for restorative justice, establishing centers specialized in restorative justice that include experts in criminology, psychology, and sociology. These centers can provide support and guidance to judges and lawyers and contribute to the effective implementation of restorative justice programs.

12- Cooperation with civil society: Strengthening cooperation between the judicial system and civil society organizations to enhance the role of restorative justice. These organizations can play an important role in providing necessary support to victims and perpetrators and implementing rehabilitation programmes.

REFERENCES

The Tenth United Nations Congress on Crime Prevention and Criminal Justice, held for the period from 10/17/4 of the year 2000

Laila Qayed, Conciliation in Crimes of Assault on Individuals, Its Philosophy, and Forms of Its Application in the Coordinated Criminal Law, Master's thesis, Alexandria, New University House 2011, p. 95.

Explanation of the Iraqi Code of Criminal Procedure No. 23 of 1971.

Iraqi Penal Code No. 111 of 1969.

Iraqi Civil Law No. 1951.

Kuwaiti Criminal Procedures and Trials Law No. 17 of 1960.

Law No. 35 of 2006 to the UAE Criminal Procedure Code.

Sudanese Criminal Procedure Code of 1984

Mahmoud Naguib Hosni, Science of Punishment, pp. 434-534

Vienna Declaration on Crime in 2000.

Watheba Al-Saadi, Alternatives to the Deprivation of Liberty Punishment and the Opportunities Available to the Criminal Judge for Judicial Discrimination, Journal of Social Research, No. 1, p. 13, 1986.

Amin Mustafa Muhammad, The General Theory of Penal Law, published research at the Alexandria Faculty of Law, in doctoral dissertations, p. 15.

Penal Reform International, Restorative Justice Guide, 2005.

Jeffrey Kaye, "Restorative Justice: Theory and Practice," Journal of Criminal Justice, Volume 12, Issue 4, 2008.

United Nations Model Law on Restorative Justice, 2002.

John Braithwaite, "Crime and Restorative Justice," Oxford University Press, 2002.

Dr. Salim Al-Hassani, "Restorative Justice in Iraqi Legislation: Evaluation and Criticism," Journal of Law and Political Science, No. 23, 2015.

"Council of Europe Report on Restorative Justice", 2010.

Dr. Ahmed Al-Shafi'i, "Criminal Mediation and its Effects on Egyptian Law," Journal of Legal Studies, No. 10, 2014.

"Canada's Restorative Justice Program," Canadian Department of Justice, 1998.

United Nations Charter on Human Rights, 1948.

Model Law of Restorative Justice, International Law Society, 2004.

Court of Cassation Decision No. 2358 published in the Judicial Bulletin, First Issue, Fifth Year, 1874, Ministry of Justice, p. 392, from the research of Judge Qasim Abd Zaid Hamza Al-Ardi, Conciliation and the Court's Discretionary Power in Accepting and Rejecting It, Baghdad, Judicial Institute, p. 24.

Court of Cassation Decision No. 2524 / Criminals / 1972 on 12/20/1972 Judicial Bulletin - Fourth Issue - Third Year 1964, p. 240.