



# Training trainers in mediation and restorative justice

The  
Toolkit  
of the



Erasmus+  project



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## Foreword

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## Foreword

### **'Just one loving word'**

#### *A few thoughts on what can facilitate a restorative process*

'To be true, our people, like perhaps all Russian people, are willing to forget long-lasting anguish for just one loving word.' Listening to Dostoevskij is always a rich and surprising experience. Nobody like him, perhaps, has entered deep into the hidden and uncomfortable labyrinth of the conscience and nobody gave us such a rich all-rounded view of the compromises with dark evil together with the eagerness for liberation and redemption that abide the heart of every person.

What can 'Just one loving word' do against 'long-last anguish?' What kind of relationship and, above all, what kind of effectiveness could we find? And yet, restorative justice runs and crosses exactly this suspended thread in between the paradoxical and disproportion, well aware that the instability and the abyss of distance dug by sorrow can be visited and endured only by faces, gestures and words.

So, one of the main and most important ways to pass through with a proposal and process of restorative justice is to give the sorrow back to words — to transform (transfigure) it into words. Maybe there is a sorrow that time has hardened and silence has frozen making it stiffer. Listening, then, gives the words the chance to be told again. It must be a particular kind of listening: free from every hint or sign of judgment, as long as possible, free from pre-comprehension, free from every personal goal and feeling. That doesn't mean all these things are not present but, being more and more aware of them will allow mediators not to be stranded, not to lose their freedom in listening and to remain equally close to both sides, victims and perpetrators.

Listening also gives the chance for the story to be told again. To say it with Paul Ricoeur, 'telling the story otherwise': the last word is not written yet, the ending is open. So, listening gives the chance to re-write. Of course, we cannot re-write the stories or the facts, but we can refigure the meaning of them, working on the meaning, comprehending the meaning of what has happened to (all of) us: the main materials to do that are words and listening. The restorative process really is a suspended thread on sorrow and victimisation; really it is a war that can be faced only with naked hands. There are no guarantees, no certainties but the incredible, paradoxical, strength of words and listening.

The experiences, narratives and reflections that follow are a rich and credible witness to a multilayered 'healing' job, extremely various and creative, a job that reaches our life in so many ways, searching for and finding a more suitable manner to open new possibilities and new horizons after every kind of painful passage...

**Guido Bertagna**

# Introduction

Dear readers,

You are holding the result of a collective effort of MEDIAREJ team members, who developed a concept and reviewed the first version of the articles, and their collaborators who wrote, edited and designed the final outcome. I want to express my warmest gratitude to the authors who responded eagerly to the questions and comments I kept sending them; to Ariele Morandin and Angela Cotoara who critically examined the articles; to Robert Shaw whose role went far beyond the original intent of polishing the style of non-native speakers; and finally to Enrique Sala and Israel Fuster who ascertained that the visual design and layout are in line with the purpose of this publication — to create a useful tool for the training seminars you will design and facilitate in the future. With such support, my tasks of structuring and steering our collaborative process were easier and less messy than one could assume was the case in a joint product being created people who had never met and who, to large extent, have very different interests and priorities.

The articles that follow point out some of the areas where mediation and restorative justice can be applied and reflect the various backgrounds of their authors. They are not recipes and rather than showing ‘how things should be done,’ they propose one possible way of doing them under specific circumstances. It was our intention to offer a wide range of themes and approaches as conversation starters and material for critical reflection.

The order in which the articles are arranged in this publication is by no means the order in which they should be read: whenever you need an illustration or food for thought on your training, you can just check the article most appropriate for the participants and the settings of the training you are preparing.

In the first part of the publication you will find three texts exploring the importance of policy and a restorative approach in the fields of child-friendly justice and environmental justice. The second part focuses on examples of mediation cases or the development of restorative approaches in a specific environment.

Last but not least, this little compilation of articles is by no means a comprehensive and complete collection bridging the gap between academic writings and trainers’ needs for teaching materials. We are aware that in an endeavour such as ours, with many practical limitations, it will not be possible to respond to the needs to all trainers in all circumstances. However, we hope that, once you realise that the text you need is missing from this toolkit, you and your colleagues will write your own article and share it across the borders so that the entire restorative community can benefit from them. And I hope that you will enjoy it as much as I enjoyed working on this toolkit.

**Branka Peurača**

# PART I

**Policy and  
some areas of application**

A dandelion seed head is the central focus, positioned slightly to the left of the center. The seed head is dark against the teal background, with its stem curving downwards. The background is a solid teal color with several other dandelion seed heads visible in a soft, out-of-focus state, creating a sense of depth and repetition.

# Laura Hein

## Policy work on Restorative Justice

The aim of this paper is to give some insights on why it is important to work at the policy level to support the development of restorative justice (RJ) as well as to give an overview of the main European and international documents related to RJ and their impact at the national level.

### Why is policy work important?

The development of RJ, and thus the accessibility to RJ services, varies significantly among European countries. Beside cultural differences, it mainly depends if the country has RJ regulated by the law and, for these cases, the level of development of such RJ legislations (i.e. if RJ is foreseen only for minor crimes or only for juvenile justice or only as a diversion etc.). As referred to also by the Council of Europe Recommendation on RJ (2018),

- legislation could be used to make RJ possible and to facilitate its use;
- it can help to encourage judicial authorities and criminal justice agencies to see RJ as a mainstream option;
- it can help in making an obligation to fund RJ services and to inform victims and offenders about RJ;
- it could support the creation of referral pathways for RJ by outlining referral procedures;
- it can help to define safeguarding measures.

Another obstacle for the availability and accessibility of RJ in Europe depends on the challenges encountered in the implementation in practice of the RJ provisions present in the law (national and EU). Thus, policy work is needed not only to promote the development of good RJ legislation but also to bridge the legal (and its improvement) and practice implementation of RJ. In this regard the policy work has an important role in connecting policy makers and RJ practitioners — the decision making of institutions with the expertise and the needs coming from the field.

What is furthermore essential is that policy makers (national and European) and others who draft and approve legal and policy documents become more and more aware about the benefits of RJ approaches. Thus, to raise their awareness on RJ is a key policy aim to pursue. Other essential actors for the implementation of RJ provisions are criminal justice authorities (including prisons, probation and police) and legal professionals (judges, prosecutors, lawyers etc.) that are very often those supposed to inform victims and offenders about available RJ services and to refer cases to RJ services. To raise their knowledge and awareness on RJ is, again, key in order to increase the accessibility to RJ.

Beside engaging in policy work at the national level it can be particularly important to work with the institutions of the European Union (EU) and to advocate for the inclusion of RJ in relevant (binding and non-binding) legal and policy acts of the EU. The scope of such policy work is manifold:

- to overcome the obstacles to access RJ for all cases (i.e. serious crimes, gender based violence etc.);
- to promote the introduction of RJ legal provisions in those EU Member States that are lacking;

- to harmonise among EU Member States the existing RJ legal provisions;
- to raise the awareness of EU policy makers concerning the benefits of RJ.

The EU is, indeed, a major actor that could promote increasing guarantees for access to RJ in Europe.

## International documents on RJ

International documents (both binding legislation and recommendations) are among the most effective instruments that shape how justice services, in general, and RJ ones, in particular, are provided across Europe.

In 2002, the UN adopted the *Basic principles on the use of restorative justice programmes in criminal matters* and in 2006 the *Handbook on Restorative justice programmes* was published. Since then, the field of RJ has gone through a significant development to enhance the rule of law and access of justice. In the last few years, in fact, significant progress has been made in the provision of RJ by international and European instruments. Hereinafter, a short presentation is given of the most relevant international instruments on RJ.

## European Union: Victims' Directive

*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 (2012)* is the first binding (for EU Member States) EU legislation on RJ as well as the first EU instrument mentioning RJ (instead of mediation). The Victims' Directive introduces RJ mainly through recital 46, article 2.1.d (definition), article 4j (*right to receive information on available RJ services from the first contact with a competent authority*), and article 12 (*right to safeguards in the context of restorative justice services*). Even if it cannot be considered as a comprehensive legal tool on RJ and it focuses on victims' rights (thus, it is not considering the offenders), the Victims' Directive provides an adequate definition of RJ services. It introduces an obligation for the Member States to inform victims as to the availability of RJ services and to facilitate referrals to these services, and provides safeguards for victims of crime in relation to RJ. The Victims' Directive recognises on the one hand the benefits of RJ for victims of crime and on the other hand focuses on important safeguards to prevent secondary and repeated victimisation. It is equally important to mention the training provisions of the Victim's Directive (article 25) that states that RJ practitioners should receive training tailored towards observing professional standards to ensure that RJ services are provided in an impartial, respectful and professional manner.

The main challenge related to the Victims' Directive — beside some obstacles encountered in the correct and full transposition into national legislations — is the implementation in practice of the RJ provisions. In this regard, the European Forum for Restorative Justice (EFRJ) submitted to the European Commission an evaluation of the Victims' Directive concerning RJ based on information collected from 18 European countries (European Forum for Restorative Justice, 2021).

What is moreover important to consider is that the Victim's Directive does not create any

obligation for Member States either to create RJ services where these are lacking or to establish a right of access to RJ for victims.

In June 2020, the European Commission (EC) adopted a new *EU Strategy on victims' rights (2020–2025)* that recognises the role of RJ to achieve the first objective of the Strategy itself, namely empowering victims of crime, for them to participate in criminal proceeding and to recover. It further states that 'RJ services provide victims with a safe environment to make their voice heard and support their healing process' and that

In practice, there is a lack of knowledge about restorative justice services among professionals and victims. It is therefore crucial that Member States ensure high quality standards in delivering restorative justice services and provide for training of restorative justice practitioners. The potential benefits of such services depend on the availability, accessibility and quality of restorative justice services in the Member States (European Commission, 2020, p. 7).

One of the key actions of the European Commission is to

Provide EU funding to national victim support organisations and relevant community-based organisations to provide information, support and protection for victims, and to promote restorative justice services (2020, p. 8).

This policy document has not to be confused with EU legal acts (such as the Victims' Directive) but it is nevertheless important because it reveals the main EU priorities and actions that the EU will implement in the context of victim's rights in the coming years. Some concrete results of the Strategy, so far, are the setting up of the EU Platform on Victim's Rights (of which the EFRJ is a member) and the evaluation of the Victim' Directive (started by the EC in the second half of 2021) that might result in a revision of the Directive.

### **Council of Europe: recommendation concerning restorative justice in criminal matters**

Based on the revision of the previous Recommendation on penal mediation, in October 2018, the Council of Europe (CoE) adopted the most advanced and innovative international legal instrument in the field of RJ. Recommendation 1 states:

This Recommendation aims to encourage member States to develop and use restorative justice with respect to their criminal justice systems. It promotes standards for the use of restorative justice in the context of the criminal procedure, and seeks to safeguard participants' rights and maximise the effectiveness of the process in meeting participants' needs. It also aims to encourage the development of innovative restorative approaches — which may fall outside of the criminal procedure — by judicial authorities, and by criminal justice and restorative justice agencies (Council of Europe, 2018, p. 3).

The CoE Recommendation on RJ outlines several ways in which governments and criminal justice agencies can employ RJ principles and practices to help maximise the effectiveness of their victim and offender interventions, meet international justice standards and change systemic and institutional cultures. The Recommendation

- advocates for the use of RJ in all stages of criminal procedures and in all types of crimes;
- it provides evidence-based standards for implementing and delivering RJ in practice;
- it argues for cultural change towards a more restorative approach to crime and criminal justice at all levels of policy and practice;
- it promotes innovative use of RJ outside the criminal procedure (probation, prison).

Unlike the EU Victims' Directive, the CoE Recommendation recognises a balanced approach towards the needs of the victim and the offender. The limitation of this document is its non-binding nature and, also in this case, it does not recognise a right to RJ. Beside this, the Recommendations are revealed to be extremely useful and inspiring in supporting national as well as European policy/advocacy initiatives. Indeed, it is a document to refer to in order to show policy makers the right pathway to develop RJ in law and in practice.

### **United Nations: Second Edition of the Handbook on Restorative Justice Programmes**

In May 2020, the United Nations Office on Drugs and Crime (UNODC) released Handbook on Restorative Justice Programmes Second edition (United Nations Office on Drugs and Crime, 2020). It integrates the developments in the field and in particular the potentials of RJ in dealing with serious crimes, while also strongly emphasising and encouraging the use of RJ with child victims. The revised handbook is the most up-to-date international guide developed by the expertise of practitioners, academics, and representatives of organisations that advocate for the implementation of RJ values and practices. The document covers a wide range of topics including

- good practice for programme design and implementation;
- mobilisation of community assets to support countries in advising restorative practices;
- improvement of victims' participation;
- programme monitoring mechanisms to oversee the operation of RJ services and training providers.

It provides valuable guidance on implementing fundamental procedural safeguards, while covering a range of different types of serious crime, such as: intimate relationship violence, sexual violence, violence against children and hate crimes.

The UN, under UNODC's Education for Justice (E4J) initiative, has an (online) module on Restorative Justice to support higher education on RJ. It forms part of the E4J University Module Series on Crime Prevention and Criminal Justice and is accompanied by a Teaching Guide. All E4J university modules provide suggestions for in-class exercises, student assessments, slides, and other teaching tools that lecturers can adapt to their contexts, and integrate into existing university courses and programmes.

### **Final tips for trainers**

- Be familiar with the main international documents on RJ (from the EU, CoE and UN) and with their relevance at the national level (binding or not binding nature etc).
- Be familiar with both the positive impact for the development of RJ and the challenges in the implementation of these documents at the national as well as at the European

and international level.

- Be aware of the different challenges concerning, on the one hand, the inclusion of RJ in (national) legal frames and, on the other hand, the implementation in practice of such legal frames.

### Questions for critical reflection

- What are the main obstacles (in practice or in the law) in your country or region that limit the access to RJ services to victims and offenders?
- What kind of impact have the international documents (binding and non-binding) on RJ in your country or region for the development of RJ?
- What are the main obstacles for the (legal/practice) development of RJ in your country or region that should be addressed through policy work?
- What else is needed at the international level (EU, CoE, UN) to further develop RJ in your country or region?

### Recommended sources

- Video of the Panel discussion on 'The role of international instruments for restorative justice' during the 10th international conference of the EFRJ in Tirana (2018).
- Information on EFRJ policy work and EFRJ policy papers can be found on the EFRJ website.

### On the EU Victims' Rights Directive

- Lauwaert (2013)
- Pali (2016)
- Biffi (2016)
- Biffi (2017)
- European Forum for Restorative Justice (2021)

### On the CoE Recommendation on RJ

- Pelikan and Aertsen (2018)
- Marder (2018)
- Marder and Chapman (2018)
- Chapman et al. (2020)
- Translations of the 2018 Council of Europe Recommendation

### On the UN Handbook on RJ

- (Ginella, 2020)

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## Silvia Randazzo & Annemieke Wolthuis

### Restorative justice with children and young people in relation to criminal behaviour

Restorative justice approaches and practices are spread worldwide and are more and more used as measures to divert children from formal proceedings, to offer alternative dispute resolutions and alternatives to detention and/or to enrich the educative and rehabilitative purpose of probation programmes. The application of restorative justice is in fact very versatile, as it can be used with diversion purposes, as well as applied within the criminal justice system and during detention — among other rehabilitative and reintegration interventions. Practice differs per country and context.

Restorative justice work with children has a solid basis in international and European human rights and children's rights standards and fits within a child friendly justice and the UN Convention on the Rights of the Child (Wolthuis et al., 2020; Berger and Wolthuis, 2021). At the same time there are risks that need to be addressed and taken care of when involving young people in restorative justice. In this practical toolkit we share information on their needs and rights, the advantages and challenges, a case example and useful documents.

Restorative justice looks at children as first and foremost children, whether they are victims, offenders or other parties involved in a crime, while in full compliance with procedural safeguards and the principles of a *child-friendly and child-centred justice* (Council of Europe, 2011).

A restorative child-friendly approach provides the child victim and the child accused or suspect of having committed the harm with a safe space, where creative communication processes and tools are used, tailored to the child's needs and strengths, with special attention to avoiding power imbalances and guaranteeing protection and support. The core principles that guide restorative justice are in fact perfectly consistent with a process that is required to be child-friendly: voluntary participation, inclusion and empowerment of the parties involved.

Meaningful *youth participation* plays a major role in child-friendly restorative justice and the importance of children's participation has been recognised in European and international human rights instruments.

#### Accessibility of restorative justice for children

Restorative justice can and should be available at all stages of the proceedings and children in contact with the law should be offered to access restorative justice services by the police, the prosecutor or the court (Laxminarayan, 2014). The most common forms are victim-offender mediation and (family group) conferencing. Sometimes restorative circles with a larger community are used.

Many countries across the world are giving good examples of promising practices of child-friendly restorative justice. In New Zealand, South-Africa, Argentina and Northern Ireland, among others, more and more cases of children and young people are settled via restorative

justice and many also via the conferencing model. In Belgium, in addition to victim-offender mediation, restorative group consultation in youth cases (Hergo<sup>21</sup>) is used upon referral by the youth judge. It has also been given a structural place in youth legislation in countries such as Israel, Georgia and Albania, and hard work is being done on proper implementation. Restorative justice deserves a structural place in the many other countries' child criminal law, in all phases of the proceedings from arrest to prosecution and afterwards, from prevention to after detention.

### **A case study: the story of Dunya and Karin**

In order to get an idea of how restorative practice with young people can take place, we describe a case. It is the case of two girls in the Netherlands, who were referred to mediation by the public prosecutor, thus taking place within the criminal court procedure.

Dunya and Karin were best friends and classmates aged 13 and 14. They got into a fight in their high school, in a big city, and one kicked the other, resulting in causing her bruised ribs, pain, urinating blood and emotional damage.

How did it start? Dunya and Karin talked about it during the referrals and during the mediation. The fuss between the girlfriends started with an incident where they had agreed to buy the same pair of pants and where one dropped out while the other was already in the store and was very disappointed about it. Then they blocked each other on the 'phone. Dunya wanted to talk about what had happened later, but she could not. She felt that Karin was gossiping about her with others and that negative things had been said about Dunya's family. Her parents had not been separated for long and she was very upset about that. Furthermore, Karin did spend a lot of time with another friend. When Karin wanted to walk to her locker that day, Dunya thought she was following her. This led to so much anger in Dunya that she gave Karin that kick. Immediately after she just walked on and only later learned that her ex-girlfriend was crying and cringed. Teachers were called and Dunya was suspended for a few days. The pain and the physical consequences of that kick on Karin were such that she and her mother filed a report to the police.

Both girls brought parents and support figures to the mediation. First, the mediators spoke with Dunya, who came with her father. He was shocked by what had happened and wanted it to be resolved properly. He had already spoken to the mother and grandmother of the other girl about what happened.

Karin lives with her grandmother during the week, close to school. When she was good friends with Dunya, they often used to visit her grandma to drink tea and chat. The grandmother and mother accompanied her to the mediation. Grandma talked about how nice they always were together and that she therefore did not understand what had happened and thought it was important that things were shared. The mother, on the contrary, was quite fierce at first. She did not understand why the other girl lashed out so hard. Sleepless nights, difficulty breathing and pain in the kidneys resulted from the kick for Karin and she could not just let that happen, which is why they filed a report. However, she also wanted the girls to be able to go back to school and put the past behind them.

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21 <http://www.cjgb.be/cohesie/hergo/?lang=en>

## Interests

For Dunya, 13-year-old, and her parents, a primary interest was to prevent prosecution and conviction by the court, but also to discuss the incident and the emotions it aroused. Gaining insights into the consequences of the kick for Karin and the possible extent of the damage were a second point. For Karin and her parents, it was mainly about discussing the consequences of the incident and its effect on her and her family. The following were identified as joint interests: making the incident a topic for discussion and normalising their relations, also preventing new unpleasant confrontations in and around school.

## The mediation

The joint conversation first took place only between the two girls. Dunya heard for the first time the actual impact that what happened had had on Karin. She was visibly shocked. Karin was able to explain to Dunya how much it hurt her (physically and emotionally). Dunya did not know about the physical pain, and she thought it was bad. She apologised and Karin, knowing that Dunya was not so quick to do this, accepted the apologies as sincere. The girls agreed to leave each other alone, not to say nasty things about each other and not to be provoked by others. They were no longer mad at each other.

The parents, who were called in later, also thought it was good to leave it at that; they also thought that the girls were still young and they will learn from their mistakes. An exception was made with regard to compensation. If the medical consequences of the kick turn out differently, they can do something with it.

Dunya and Karin recorded the agreements in a settlement agreement that was signed by both them and their parents. It states, among other things:

- When we meet, we ignore each other (for now).
- We do not gossip about each other.
- We ignore what others say or would say about us.

This agreement was sent to the public prosecutor, who had the choice to take over the agreements and to dismiss the case under certain conditions, or not and continue to prosecute. In the case of Dunya and Karin, the case has led to a dismissal.

The duration from referral to completion in this case was three weeks and the individual preparatory interviews and the mediation itself took place on the same day in this case. More time can be needed in more complex cases (Wolthuis, 2020a).

## Benefits of restorative justice for children

Restorative justice practices have the benefit of avoiding the detrimental effects of formal proceedings — when diverting the child at police or prosecution level — and of detention — being used as an alternative measure in sentencing. The *focus on dialogue and on the restoration of the harm caused* is crucial, as well as the involvement of all the parties interested in and by the offence committed by a child, including the community.

That works for the child's rehabilitation and reintegration into the community, and to reduce/

eliminate the risk of victimisation and stigmatisation, without neglecting the victim's (often a child as well) needs and instead giving them an equally central role with the other main player, the offender.

Restorative justice approaches with children are applicable in various settings, besides the criminal justice system, which include family and schools. Restorative justice is in fact particularly valuable *to protect vulnerable children, empower children in identifying and managing emotions to prevent (and/or respond to) conflict and violence, provide them with a safe space to express themselves* and to be heard when dealing with matters relevant to them (European Forum for Restorative Justice and Terre des Hommes, 2020).

### **Risks and challenges when applying restorative practices with children**

Due to power imbalances and relationships of control and coercion, children are vulnerable to:

- intimidation
- silencing
- blame
- pressure to forgive
- conflicting loyalties
- re-victimisation or secondary victimisation

We need to recognise that risks can never be totally eliminated, but they can be mitigated and prevented through skilled and well-prepared mediators, the use of specific techniques according to the age of children and special attention to the specific needs of each and every child involved (Pali and Randazzo, 2018b; Wolthuis and Chapman, 2021).

### **Some key practical suggestions/recommendations on how to do restorative justice with children**

- Look at the file — do not ask the child to tell the story all over again, especially in the case of child victims of very serious offences.
- Usually the victim is contacted first, but in this case the offender is contacted first so as not to raise expectations in the child victim.
- Ensure predictability, control, support and safety.
- Ask the child about what she/he doesn't want to talk about or hear about (set boundaries).
- Check and filter the messages of the offender, but don't put too many filters, because children know.
- Provide available, accessible, safe and qualitative restorative services.
- Check if working with images and dolls with younger children is an option: in other words, adapt to each child's cognitive and emotional skills and learn from existing promising practices.
- The quality of the support person is very important: trustworthy, involved, present, capable of containing situations, accessible, addressable, open to the freedom of the child, but not necessarily one of the parents (in cases of intra-familial violence parents are not asked to be support figures).
- Consider the direct (present with a support person) or indirect (represented) involvement of children, or through letters.

- Keep always in mind the importance of making children's views known (meeting with the child, letter written by a child, support person, representative) and ask for children's opinions at every stage.
- Assess the needs and risks for victim and offender (suitability rather than eligibility), and be responsive to participants' needs.
- Invest in the preparation, careful briefing, expectation management.
- Stay vigilant to denial, victim blaming and minimisation, and be aware of negative dynamics (remember: small problems are perceived as big problems by people in distress!).
- Don't undermine and be always mindful and creative concerning technical and operational issues, like delays, temperature, greeting, seating arrangements, translation...
- Involve experts throughout the process and try as much as possible to collaborate with child protection and victims support services, especially in sexual violence cases.
- Provide counselling for both the child victim and the child offender when necessary.
- Monitor agreements and reporting (Pali and Randazzo, 2018a).

For the case above and in all cases involving children in a restorative process, *adequate preparation, support, process facilitation and follow-up are needed*. Restorative justice processes must always keep into account the different needs of each and every child, and facilitators should thus be trained to use creative child-friendly communication tools to encourage children to share their feelings and stories, to identify and tackle potential power imbalances in the process and to identify other dynamics that could lead to further victimisation, in order to avoid that. These are the reasons why *preparation* and joint work by *multi-disciplinary teams of professionals* when working with children are key: the needs and strengths of all children involved are then identified, their motivations and their level of development are assessed and so is their suitability to participate in a restorative justice process.

Restorative justice should not only be accessible to children at *any stage of the criminal proceedings* (for both child victims and child suspects and accused), but it should also be the preferred solution for conflicts in *any settings* where the child best interests are to be protected: school, family and society at large. Restorative justice is in fact valuable to prevent violence and harm and its practices can be learnt at an early age.

### **Ways forward for a child-friendly, inclusive restorative justice:**

- There must be available, accessible, safe and qualitative restorative services.
- Mediators must be properly trained and qualified in children's rights, needs and communication.
- Full, unbiased information and free consent must be ensured in the preparation of a restorative process and throughout the process.
- A child sensitive approach and the best interests of the child should prevail.
- Safety during the restorative process must be ensured.
- Children must be able to participate in restorative processes in multiple ways, and each process should be adapted to the child's needs and not *vice versa*.
- The techniques and arrangements used should always be child-friendly.

- Proportionality must always be ensured and the outcomes of the process are crucial.
- Promote a restorative culture, with language, attitudes, etc., in educational and family settings. Restorative justice should in fact be the preferred way to deal with peer violence or conflicts between children. Furthermore, a restorative culture is to be encouraged among professionals working with children; to ensure proper teamwork in the best interests of a child, professionals should be trained in working restoratively with each other (e.g. through practices for active listening, encouraging responsibility, feeling empathy, trust building) (Pali and Randazzo, 2018a).

### Questions for critical reflection

1. Should all children have access to restorative justice processes? And why or why not?
2. What are the main conditions needed for involving child victims and child suspects or those accused of an offence in restorative justice processes?
3. What are promising experiences of involving children in restorative processes in cases of sexual assault and in cases of domestic violence and/or child abuse?
4. How can the challenges and the risks related to a restorative process with children be mitigated and actually prevented?
5. How can children be more involved in the development of better restorative justice tools?

### Recommended sources

- Chapman (2015, 2021)
- Council of Europe (2011)
- Dünkel et al. (2015)
- European Commission (2021)
- EFRJ-Terre des hommes, Joint Position Paper EU Strategy on the rights of the child (2021-2024)
- E-learning tool on restorative justice with young people developed by EFRJ and RJN for the i-RESTORE project: See [European Forum for Restorative Justice](https://www.euforumrj.org/en/irestore-2019-2021)<sup>21</sup> and [ChildHub Academy](https://academy.childhub.org/course/index.php?categoryid=1)<sup>22</sup> (requires login).
- European Parliament and Council (2016)
- Gal (2011)
- Mohan (2020)
- United Nations Committee on the Rights of the Child (2019)
- Wolthuis (2020b)

<sup>21</sup> <https://www.euforumrj.org/en/irestore-2019-2021>

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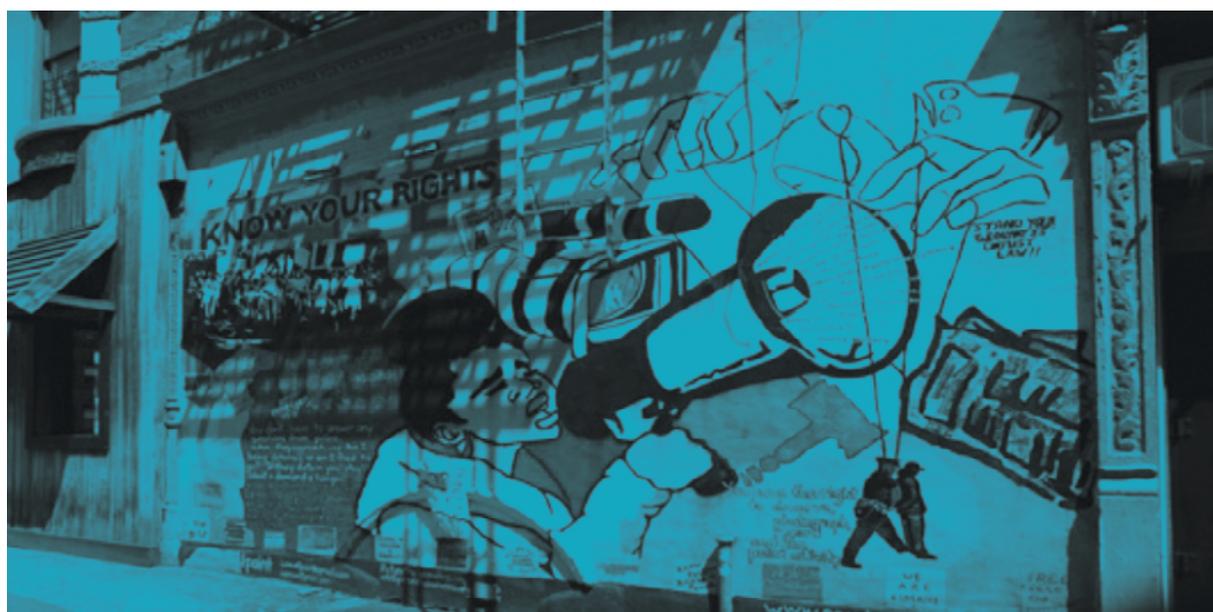
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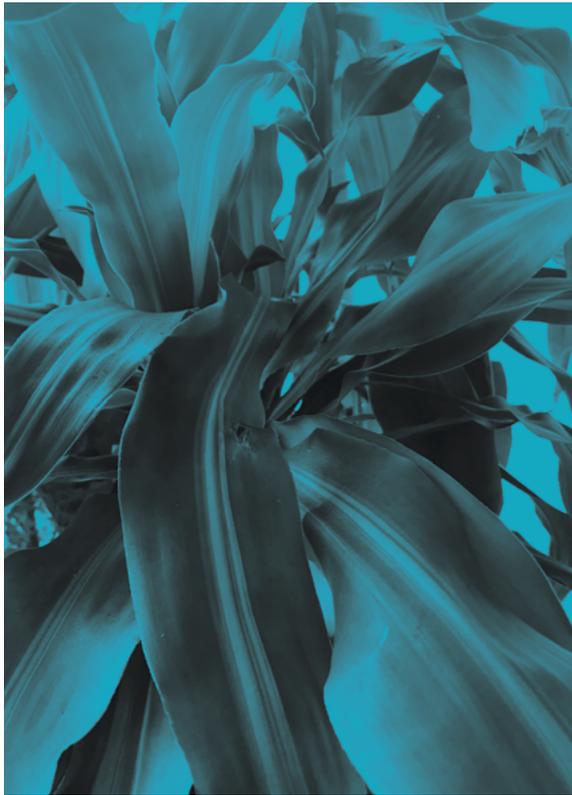
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### Restorative Justice Conferencing for Environmental Offending



#### Conferencing for environmental offending can repair harm, provide victims a voice and make offenders accountable

This article draws on both theory and practice to explore the use of restorative justice, in the form of conferencing, for environmental offending. Environmental offending encompasses pollution, harm to flora (plants) and fauna (animals), and harm to Aboriginal cultural heritage. This paper draws on conferencing in New South Wales (Australia), the Canterbury Region of New Zealand, and British Columbia (Canada) in the context of conferencing being a diversion from prosecution (so called 'front-end model' of conferencing) or embedded within the prosecution process (so called 'back-end model' of conferencing).

Environmental offending is unique in four particular ways which presents challenges for restorative justice processes. Firstly, the majority of environmental offenders are organisations (corporations and government entities) rather than individuals. Secondly, offending is generally (although not always) accidental or negligent rather than deliberate. Thirdly, victims are diverse and include humans (both currently living and future generations), communities (both Indigenous and non-Indigenous), and the environment (and its constituent parts – trees, plants, animals, ecosystems). Fourthly, the outcomes required to repair the harm occasioned by environmental offending can be quite technical and specific. Each of these factors are vitally important in any discussion of the potential application of restorative justice conferencing to environmental offending and therefore it is worth considering each of these in turn. Also important is the relationship of the restorative justice conference vis-à-vis prosecution. That is, a diversion from prosecution or embedded within the prosecution process. Therefore, this important aspect will be considered.

**The nature of offenders.** Where offenders are individuals, those individuals can be assessed for suitability for attending a restorative justice process. Where an offender is a corporation or government entity, such as a utilities supplier or local council, some attention must be paid as to who will attend restorative justice from that organisation and the suitability to attend. Contrition and remorse have been proffered as suitability criteria to attend restorative justice.<sup>21</sup> In terms of organisational offenders, the person(s) representing the

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<sup>21</sup> Hadeel Al-Alosi and Mark Hamilton, 'The Ingredients of Success for Effective Restorative Justice Conferencing in an Environmental Offending Context' (2019) 42(4) *University of New South Wales Law Journal* 1460.

organisation will need to embody the contrition and remorse of the offending organisation. The organisation's representative must have sufficient knowledge of the offending, of the organisation's operations, and be able to bind the organisation to the outcomes of the restorative justice conference.

In the past, representatives of organisational offenders have included chief executive officers, upper management, directors, mayors, councillors, and employees. Often a combination of these representatives will attend. The immediate and long-term success of the restorative justice process will depend on the knowledge and commitment of these representatives, along with their ability to influence cultural change within the organisation, if culture is seen as a contributing factor to the offending.

**The nature of the offending.** The fact that a subsection of environmental offending is accidental or negligent may influence an offender's motivation for attending restorative justice. For example, an offender may reason that because the offending was not deliberate that they have nothing to be contrite and remorseful about, have nothing to contribute to the process, or see nothing to be gained from the process. There are a couple of ways this can be rebutted. Firstly, even if the offending was not deliberate, victims could derive some benefit in understanding that fact. Secondly, accidents and negligence may have derived from deficiencies in individual and organisational behaviour. This aspect can be explored through restorative justice and could lead to behavioural change in the future. Additionally, the fact that offending was accidental or negligent does not necessarily mean that the offender is neither contrite nor remorseful, with expression and exploration of contrition and remorse being of potential benefit to both offender and victim alike. Thirdly, even accidental, and negligent offending causes harm which needs to be repaired. Therefore, restorative justice in this context could explore ways to repair such harm.

**The nature of victims.** The fact that victims of environmental offending are diverse means the opportunity for including human guardians as representatives of victims, particularly those victims who do not speak with a human tongue. Human guardians can be drawn from governmental agencies/departments tasked with environmental protection, from non-government organisations tasked with environmental protection, members of the citizenry directly victimised by the offending or who have an interest in the harmed environment, community leaders (both Indigenous and non-Indigenous), and experts such as ecologists and biologists.

Victim representation should be guided by inclusion and manageability. Simply, as many victim and victim representatives should be permitted to attend restorative justice as is manageable. Just what is manageable would change from scenario to scenario but there may be reason to limit victim attendance when an unmanageable number seek to attend. For example, a river pollution incident may impact on the leisure pursuits of 100 individuals, yet it may prove difficult to hear from those individuals should they all want to attend restorative justice. In that situation, it may be useful to have one individual represent leisure activity victims. Difficulty will arise when victims feel that they have unique victimhood and therefore cannot be sufficiently represented by someone else. The management

and resolution of such issues will be the domain of pre-conference preparation including interviews conducted between facilitator and victims.

Community, both Indigenous and non-Indigenous, representation at restorative justice must be meaningful and not tokenistic. Hence, the community representatives must be representing communities with an interest in the harmed environment, and have the relevant authority given by the community to represent the community. Representatives of the environment (and its constituent parts) and future generations of humans may or may not be by the same human guardian. This will depend on the situation. An important consideration is that representation is genuine, and inclusive and not simply a tick-a-box exercise. That is, representation must be meaningful.

The diversity of individual voices, both personally and through representatives, means the potential for conflict. Resolution of this conflict takes effective pre-conference preparation where victims and their representatives are appraised of what to expect from conferencing and have their expectations managed. Conflict resolution is also a function of effective conference facilitation, underpinned by restorative justice values such as giving everyone a voice without one voice dominating another (non-domination).

*The nature of outcomes following environmental offending.* Environmental victimisation is different to 'mainstream' victimisation (for want of better phrasing) because such victimisation may be geographically wider and longer in a temporal sense. Hence, wider impacts which last longer. This calls for quite technical and specific outcomes to repair the harm that has been occasioned. This suggests that some expertise is required at the restorative justice process. Such expertise may present itself through ecologists and biologists as human guardians representing victims. However, it must also be acknowledged that a lot of technical knowledge resides in prosecutorial authorities (such as the Environmental Protection Authority, Office/Department of Environment, and local council) and defence lawyers. Whilst prosecutors and defence lawyers are generally excluded from restorative justice processes, for fear they will get in the way and dominate the process, their expertise is needed to help craft outcomes which will repair the harm occasioned by environmental offending and which are legal. Perhaps prosecutorial authorities and lawyers should be included in the restorative justice process on that limited basis.

Management of those roles would fall to the facilitator to explain to prosecutorial authorities and defence lawyers at pre-conference meetings that they will be permitted to attend restorative justice but in a technical capacity and not the usual role of prosecutor and lawyer. Their roles would be limited to advice on the technical and legal aspects of proposed outcomes to repair the harm occasioned to the environment. Depending on where restorative justice processes are situated vis-à-vis court proceedings, such outcomes may form court orders to ensure enforceability of the outcomes. The prosecutorial authority and lawyers can comment on the possibility of such outcomes being crafted into court orders. The technical nature of environmental offending and outcomes to repair the harm occasioned by such offending suggests that the facilitator have some technical expertise in such matters beyond that of usual restorative justice conference facilitation. Notwithstanding the desirability of

that additional knowledge, the key consideration is to ensure that the process does not lose its restorative justice underpinnings and does not become akin to mediation as a form of alternate dispute resolution. First and foremost, this is a restorative justice process.

**The relationship of the restorative justice conference vis-à-vis prosecution.** Broadly speaking there are two intervention points for a restorative justice conference in an environmental offending context, with the intervention point determined by what is being sought by the prosecutor by engaging the court system and the restorative justice conference. The intervention points are alternates and hence each case of offending could involve either intervention point but not both.

The first intervention point is after a prosecution has been filed with the court (but not heard by the court) and the court has adjourned proceedings to allow a conference to proceed. This is referred to as the front-end model and is a diversion from prosecution because if the conference is successful the prosecutor will withdraw the prosecution and therefore the offender will not be subject to court proceedings and possible conviction. The front-end model is prosecution driven where schemes are set up where it is not in the public interest to prosecute the offender, considering the severity of the offending, the costs associated with prosecution (in terms of time, money and effort), and implications of conviction, but importantly the offender should not be left unanswerable for the offending. Hence, the restorative justice process is a half-way house sitting between being unanswerable for the offending and being prosecuted for the offending. The offender is said to be held answerable for the offending through the attendance at conferencing and the undertaking of an outcome agreement reached at conferencing. An example of a front-end model is Environment Canterbury's (New Zealand) *Alternative Environmental Justice*<sup>22</sup>, and British Columbia's (Canada) *Community Environmental Justice Forums*<sup>23</sup>.

The back-end model of conferencing differs from the front-end model in that it is not a diversion from prosecution but rather is embedded within the prosecution itself. The conference will be held following the hearing component of a prosecution but before the court sentences the offender. The fact of, and outcomes from, the conference can be considered by the judge when sentencing the offender. The back-end model of conferencing can be used where the public interest supports a prosecution but where dialogue between offender, victim and other stakeholders can repair some of the harm occasioned by the offending. Hence, conferencing provides a vehicle for victim voice but also a way of making offenders accountable. The back-end model was utilised by the Land and Environment Court of New South Wales (Australia) for offending involving Aboriginal cultural heritage, and by the New Zealand District Court following water pollution (examples as case studies are presented below). Figure 1 below highlights the key features of, and thereby differences

<sup>22</sup> Environment Canterbury Regional Council Resource Management Act Monitoring and Compliance Section (2012), *Guidelines for implementing Alternative Environmental Justice*.

<sup>23</sup> British Columbia Ministry of Environment (2012), *Community Environmental Justice Forums Policy*; British Columbia Ministry of Environment (2012), *Community Environmental Justice Forums*; British Columbia Ministry of Environment and Climate Change Strategy (n.d.), *Community Environmental Justice Forums: Questions and Answers*.

between, the front-end and back-end models of conferencing; the front-end model depicted by the broken line, with the back-end model depicted by the solid line.



Figure 1: Front-end and Back-end Models of Restorative Justice Conferencing

Preliminary work before a conference is held is extensive and focusses on three key components. Firstly, a consideration of who the relevant stakeholders are. This is not straight forward in terms of environmental offending because of those uniqueness factors considered above. So, consideration will need to be given to who the appropriate representative of the offender is, who the victims are and how they shall be represented, and what expertise is needed to assist in explaining the crime and solutions to repair the harm that has been occasioned and where that expertise resides. Secondly, an assessment of the suitability of attending conferencing must be undertaken. Each scheme may have its own suitability criteria, but they would generally encompass voluntariness, non-coercion, and expressions of contrition and remorse from an offender. Thirdly, the facilitator will need to undertake pre-conference interviews to ensure that each of the stakeholders understand the purpose of conferencing, their role in such conferencing, and have their expectations managed.

In a front-end model of conferencing, it will generally be the prosecutorial authority that will approach an offender with a view of attending restorative justice, as a way of diverting a matter from prosecution before the court. In terms of the back-end model of conferencing, the prosecutorial authority, offender, victim, or even the judicial officer may propose the restorative justice intervention. This may be in situations where victim voice or offender accountability are better achieved through conferencing. In these situations, the court will adjourn proceedings to allow the conference to proceed and will later sentence the offender in light of the conference having been held and outcomes agreed.

Successful conferences facilitate an exchange of information between offender, victim, and other stakeholders present. Dialogue allows victims to be heard and seen, offenders to be held accountable and specific and technical solutions to be devised to repair the harm that has been occasioned. Such outcomes should be crafted so that they can form court orders which ensures that they are enforceable. These outcomes have greater ability to repair the harm occasioned than the unilateral punishment generally imposed by a court.

Whilst there are instances of successful restorative justice interventions in an environmental offending context, it is correct to characterise that use as limited and sporadic, rather than extensive and systematic<sup>24</sup>. There may be a plethora of reasons for this including adversarial mindsets, and offender, victim and judicial hesitancy which is compounded in some jurisdictions because of the lack of a legislative basis for restorative justice. Notwithstanding,

<sup>24</sup> For an overview, see Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021) Chapters 5 and 6.

there is growing evidence that conferencing in an environmental offending context is giving victims a voice, making offenders accountable, and leading to effective solutions to repair the harm occasioned. Such benefits derive from suitable selection criteria, through pre-conference preparation and interviews, and effective facilitation, all of which is undertaken in light of the uniqueness of environmental offending canvassed in this paper.

### Some relevant case studies

In my monograph<sup>25</sup> I use three case studies to highlight the use of restorative justice conferencing embedded within court proceedings. That is, a back-end model. Two of those cases were prosecutions for offending against Aboriginal cultural heritage before the Land and Environment Court of New South Wales (Australia) and the third was a prosecution for water pollution held before the District Court in New Zealand. What each of the case studies highlight is the uniqueness of environmental offending which I hope has been coming through this article.

*Garrett v Williams*<sup>26</sup> involved the prosecution of Craig Williams following the destruction of Aboriginal artefacts and an Aboriginal place during mining operations. At some stage during the hearing, Justice Preston asked the parties if they thought there would be some utility in holding a restorative justice conference. The parties agreed and the conference was held. As the conference was held during live proceedings, and taken into consideration during sentencing, this is an example of the back-end model of conferencing. Mr Williams showed sufficient contrition and remorse indicating his acceptance of responsibility for offending, thereby deeming him suitable for attending the conference;<sup>27</sup> this is notwithstanding some deliberateness in the offending. The victims of the offences were the local Aboriginal community, and they were represented by an Aboriginal Elder at the conference. Various outcomes were agreed at the conference including a commitment to closer relationships between the mine and the local Aboriginal community, the seeking of solutions to prevent further offending, and donations of various items to the victims.<sup>28</sup>

<sup>25</sup> Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021).

<sup>26</sup> [2007] NSWLEC 96; (2007) 151 LGERA 92.

<sup>27</sup> On this aspect of contrition and remorse and the need for an offender to accept responsibility for offending see, Hadeel Al-Alosi and Mark Hamilton, 'The Ingredients of Success for Effective Restorative Justice Conferencing in an Environmental Offending Context' (2019) 42(4) *University of New South Wales Law Journal* 1460; Hadeel Al-Alosi and Mark Hamilton, 'The Potential of Restorative Justice in Promoting Environmental Offender' Acceptance of Responsibility' (2021) 44(2) *University of New South Wales Law Journal* 487.

<sup>28</sup> For a deeper analysis of this case, see Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021) 141-148; Mark Hamilton, 'Restorative Justice Intervention in an Environmental Law Context: Garrett v Williams, Prosecutions under the Resource Management Act 1991 (NZ), and Beyond' (2008) 25(4) *Environmental and Planning Law Journal* 263; John McDonald, 'Restorative Justice Process in Case Law' (2008) 33(1) *Alternative Law Journal* 41.

Drawing similarities to *Garrett v Williams, Clarence Valley Council*<sup>29</sup> involved negligent destruction of an Aboriginal object (the lopping and removal of a scar tree) affecting local Aboriginal people. Justice Preston enquired as to the potential utility in holding a restorative justice conference, and a back-end conference was facilitated. The offending council, through various officers and employees, attended the conference along with local Aboriginal people, the victims of the offending. Following a council apology, various outcomes were agreed at the conference including increasing both council and community awareness of Aboriginal people, improved council consultation with the Aboriginal community, employment and youth initiatives for the local area, a Tree Restoration and Interpretation Project directly related to the scar tree, and a donation to the Local Aboriginal Land Council for activities to raise awareness of Aboriginal Cultural Heritage.<sup>30</sup>

*Interflow*<sup>31</sup> is a prosecution following the accidental but negligent discharge of contaminants into Walnut Stream, Akoroa, New Zealand. The discharge resulted in injury and death to fish and eel, and harmed Māori (the Indigenous people of New Zealand) spiritual connection to the water body. The offending company requested a restorative justice conference, which it attended through its upper management, and which was attended by local Māori people as victim and victim representative. The outcome of the conference was a \$80,000 donation to the Banks Peninsular Conservation Trust to undertake work to repair/enhance the stream.<sup>32</sup>

As the front-end model of conferencing operates as a diversion from prosecution, where the process is successful there will be no court judgment. Therefore, to obtain insight into the conference itself one must rely on published material from the prosecutor, or someone otherwise involved in the conferencing. Outcomes from the Alternative Environmental Justice scheme include a training programme for others in the industry run by a road contractor who had mishandled soil that was contaminated, donations to stream care groups and a wetland planting project, farmer presentation to Federation Farmers of New Zealand groups relating to his offending, remedies and how to avoid such offending, and ads placed in a newspaper following a water theft offence.<sup>33</sup>

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29 *Chief Executive, Office of Environment and Heritage v Clarence Valley Council* [2018] NSWLEC 105; (2018) 236 LGERA 291.

30 For a deeper analysis of this case, see Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021) 148-152; Mark Hamilton, 'Restorative Justice Intervention in an Aboriginal Cultural Heritage Protection Context: Chief Executive, Office of Environment and Heritage v Clarence Valley Council' (2019) 36(3) *Environmental and Planning Law Journal* 197.

31 *Canterbury Regional Council v Interflow (NZ)* [2015] NZDC 3323.

32 For a deeper analysis of this case, see Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021) 137-141; Vanessa Sugrue, 'What Happens when Values are put to Work? A Reflection in One Outcome from a Restorative Justice Conference in the Criminal Division of the District Court: Environment Warranted Judge Jurisdiction' (2015) *Resource Management Journal* 19; Chris Fowler, 'Environmental Prosecution and Restorative Justice' (Adderley Head 2016).

33 Margaret McLachlan, 'Environmental justice in Canterbury' (2014) 37(4) *Public Sector* 22, 23.

Many different types of offences have resulted in a Community Environmental Justice Forum, being the front-end model of conference utilised by British Columbia (Canada). The offending, which was committed by corporations or government entities, included air pollution, water pollution, killing of wildlife and grizzly bear, disturbance of soils and vegetation, and cutting and milling of trees. Outcomes included commitments of money to fund various activities, restoration, public apology, company improvements, and community/agency engagement.<sup>34</sup>

### Key take-home messages

- Facilitators must not only be skilled in restorative justice processes but also understand the uniqueness of environmental offending:
  - The nature of offenders
  - The nature of offending
  - The nature of victims
  - The nature of outcomes
  - The relationship of restorative justice conferencing vis-à-vis prosecution
- As with all restorative justice processes, preparation is essential along with the use of effective selection criteria for participation in the process.
- In an environmental offending context, conferencing can be used as a diversion from prosecution (front-end model) or embedded within the prosecution itself (back-end model).
- Environmental offending differs from mainstream offending in the ways outlined in this article. This means that those training restorative justice facilitators should be cognisant of those differences and be capable of equipping facilitators with the skills necessary to accommodate those differences in practice. Hence, facilitators, and therefore their trainers, need to appreciate the nature of offenders, offending, victims, outcomes, and the relationship of restorative justice conferencing vis-à-vis prosecution.

### Questions for critical reflection

1. Environmental offending differs from mainstream offending in a number of key ways. How important is to appreciate those differences when facilitating a conference following environmental offending?
2. Victims of environmental offending may not be able to voice their victimhood and therefore will need to be represented by human guardians. What, if any, difficulties will this present for a restorative justice conference?
3. Outcomes following restorative justice conferencing for environmental offending can be quite technical and can be crafted into court orders. Can lawyers and experts assist in the formulation of such outcomes and orders?

<sup>34</sup> Mark Hamilton, *Restorative Justice Conferencing in Response to Pollution Offending: A Vehicle for the Achievement of Justice as Meaningful Involvement* (2019; PhD Dissertation (UNSW)) Appendix 2; Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021) 106-109.

4. What role do you think emotion would play in a restorative justice conference following environmental offending and would that be different than following mainstream offending?
5. If environmental offending is accidental or negligent, is there a role for restorative justice conferencing?

### Recommended sources

1. Environment Canterbury Regional Council Resource Management Act Monitoring and Compliance Section (2012), Guidelines for implementing Alternative Environmental Justice.

This document provides an overview and impetus for the development and use of Alternative Environmental Justice (a front-end model of conferencing) by Environment Canterbury (New Zealand).

2. *Garrett v Williams* [2007] NSWLEC 96; (2007) 151 LGERA 92.

This judgment of Justice Preston, Chief Judge of the Land and Environment Court of New South Wales (Australia), outlines the conferencing process in this prosecution and how this back-end model fit within the prosecution process.

3. Hadeel Al-Alosi and Mark Hamilton, 'The Ingredients of Success for Effective Restorative Justice Conferencing in an Environmental Offending Context' (2019) 42(4) University of New South Wales Law Journal 1460.

See explanation for next source.

4. Hadeel Al-Alosi and Mark Hamilton, 'The Potential of Restorative Justice in Promoting Environmental Offenders' Acceptance of Responsibility' (2021) 44(2) University of New South Wales Law Journal 487.

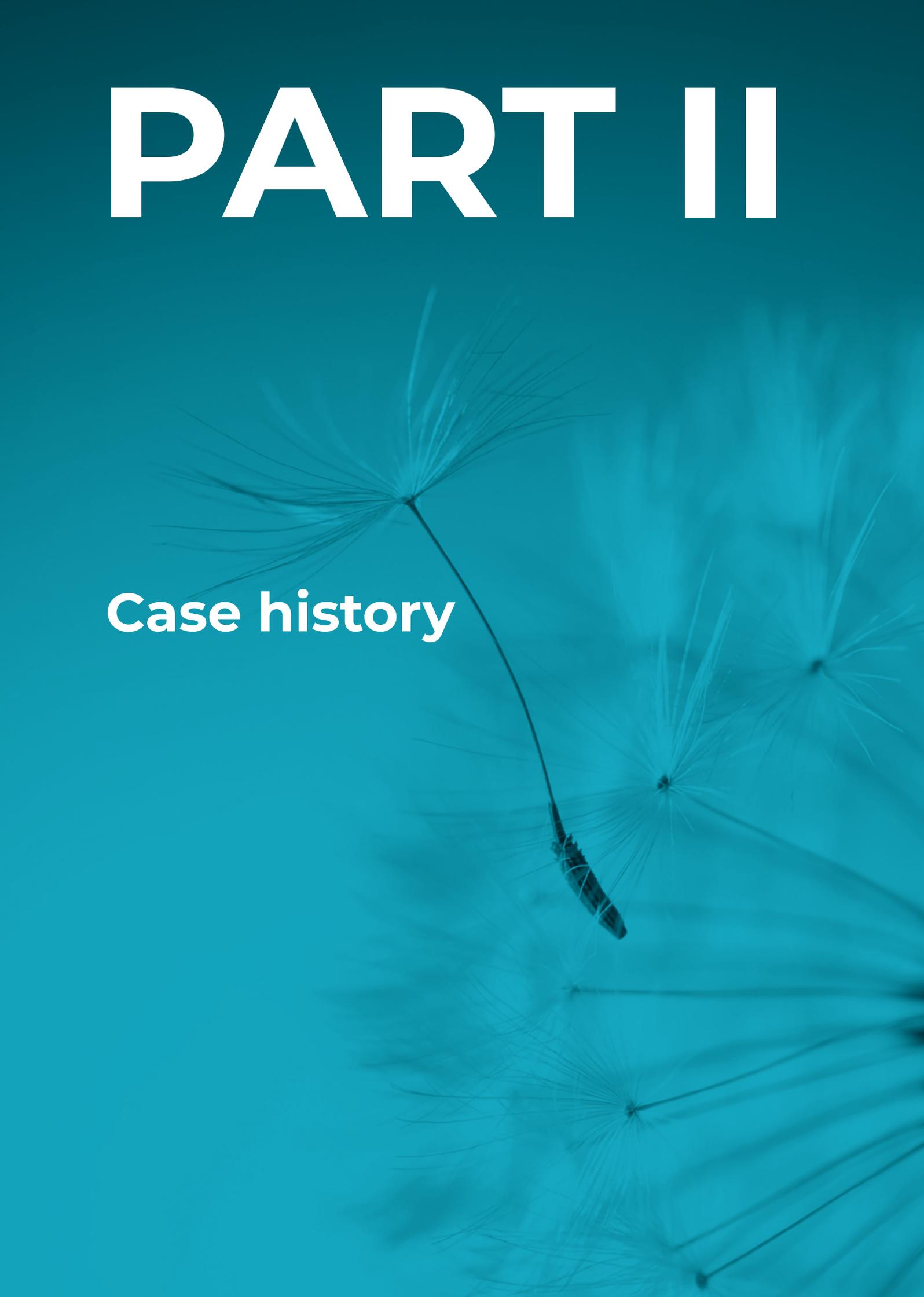
The Al-Alosi and Hamilton articles explore the generally held view that before an offender enters a restorative justice conference they accept responsibility for their offending. The articles explore what that means in an environmental offending context.

5. Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021).

This book contains a wealth of information pertaining to the use of restorative justice for environmental offending and provides many case study examples.

# PART II

**Case history**

A close-up photograph of a dandelion seed head, showing the intricate structure of the seeds and the stem. The image is set against a solid teal background, which is also the color of the text. The dandelion is positioned on the right side of the frame, with its stem curving downwards and to the left. The seeds are fine and radiate outwards from the center of the head.

# Filippo Vanoncini

## Making a Community Restorative

How can we intervene when an entire community is hit by an event that hurts it? Which approach can help its members regain cohesion and strength to face the consequences? What we want to describe is how the restorative justice workers of the City of Bergamo tried to operate during the period of the Corona virus pandemic (Covid-19).

During the summer of 2020, Bergamo and its community were traumatised by the pandemic that in the months of March and April had placed it at the centre of the attention of the world. The rows of military trucks that transported elsewhere the bodies of people who died from COVID-19 was only the tip of the iceberg that had overwhelmed Bergamo's community. More than the lock down, the citizens were struck by the black down of the Lombard Health System which made it difficult to provide basic services and forced them to experience a distressing isolation and precariousness.

There was immediately a need to build places where this distress could be expressed and above all shared in a community way, places in which to welcome the desire for truth and justice. So that the compensation paradigm would not prevail over any other perspective, efforts were made to put the world of healthcare professionals in contact with the relatives of the victims. At the same time, the desire and the sense of injustice led to the establishment of initiatives such as 'We will denounce' whose Facebook page reached over 70,000 subscribers in just a few months. The cases of intolerance towards health workers considered as 'disease spreaders' and the complaints to the nursing homes for elderly people, highlighted how the fear and the sense of loss led to social fractures within the community.

Since the pandemic was an experience in which the mediators were involved, I would say immersed, the preparatory work was quite short. The confrontation was initially very limited between the promoters of the Summer School, which takes place every year in Bergamo, and then between the Centre for Restorative Justice and Anna Lorenzetti, Professor of Constitutional Law (University of Bergamo). After a quick sharing, the most suitable partner was identified in the Modern and Contemporary Art Gallery (GAMEC<sup>21</sup>), on one hand, to give institutional relevance to the intervention and, on the other hand, to be able immediately to propose a work on generative memory that was linked to artistic gesture.

In fact, every summer, the Restorative Justice Centre of Caritas Bergamo and the University of Bergamo promote a summer School on Restorative Justice that has as its topic 'The justice of the encounter.' This fruitful collaboration began in 2016, when the need was felt critically to reflect and study the restorative practices implemented by the workers of the Centre.

Having already planned a collaboration with GAMEC on the theme of Memory for the 2020 edition, it was a natural and consequential choice to discuss and build with the Manager of the educational projects a proposal that could respond to the sense of bewilderment that ran through the city at that time.

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<sup>21</sup> <https://www.gamec.it/>

The Municipality of Bergamo or other Local Bodies were not involved because at that moment the decisions of the Mayors and the Institutions were the subjects of the complaints made by the citizens and by television news organisations such as 'Report' (see episode dated 6th April 2020 'Grey Zone').

The initiative was planned as a restorative circle divided into two periods lasting three hours each. The first, more attentive to listening to what had happened inside and outside the health centres, listening to the relatives who had lost their loved ones and listening to health workers who had taken care of them in a situation of emergency. This first period of empathic listening allowed the participants to have a community space where they could celebrate the mourning of the loss, of the injustice suffered and of the feeling of their exposure to mortal danger.

In the centre of the space, a blue cloth representing the sea was placed and objects collected from the sea were put on it: pieces of wood, shells, but also garbage such as pieces of glass, plastic bottles, pieces of rope and net, surgical masks, broken dishes, etc.

The pandemic was compared to a tsunami that had hit the lives of everyone and those present were invited to identify themselves with one of the objects and to tell, but only if they wanted to, their own experience. At the same time, two other people present, in turn, were asked to feedback to the person who had spoken focusing on emotions rather than on the reported facts. The facilitator had the task of summarising their exchange and making sure that everyone could feel fully welcomed and understood.

One of the doctors present, in describing her experience, wrote:

then at the first meeting we were offered a space of deep listening, to tell our experience and after my first sentence, I was already unable to hold back my tears. And I realised that I had not really gotten over it. And that I needed to give voice to that tangle of emotions, (...) it was incredible to completely open in front of strangers feeling welcomed and preserved, and above all feeling deeply ourselves — not heroes, not victims, not necessarily hard and determined good people from Bergamo, but also fragile and exposed.

If we consider that in the nursing home where she worked more than 40% of the residents had died and that the institution had been subject to several investigations, we can understand the need for a reserved space in which to be able to tell each other without fear that their words be used against one or the other.

The second period, on the other hand, was marked by sharing how this experience placed everyone in facing the future: the need to encourage the attitude of 'looking towards the future.'

Through a collective drawing, the people, stroke by stroke, colour after colour, tried to create the city they would have liked to see again and contribute to rebuild after the traumatic experience of Covid-19. The workshop ended with an auspicious sentence, built word after word by each person. Very simple sentences emerged, written in a poetic and evocative form, which spoke of looking towards the future.

Remembering dreams in order to share the beauty of the journey with our heart.  
The desire to peacefully go, together, where they await us.  
The desired future is the infinite bond and if we try, we can make it come true by dreaming now.

Finally, the third meeting was led by an artist who guided the group in a creative process in producing a Memory object with an artistic gesture. The works produced by the participants under the skilled guidance of the artist Camilla Marinoni, were made with materials that symbolically recalled care, such as: wine, oil, gauze, needle and thread, and transformed a deposited Christ in a risen Christ.

The artist describes her experience as follows:

This path started like this: with empathic listening that helps to get out of loneliness. The oil used to paint has modified the paper so that the light gets through it: possibility of transformation. The wine that changes with the passing of the days and the oil were the tools used during the workshops. A means to talk about time capable not of healing but of alleviating and modelling the gaps and lacerations afflicted in that period ... My invitation is to embrace, to welcome, to cross, because they will always remain as a scar that will need to be taken care of.

The path was promoted and presented through articles in local newspapers and through the mailing-lists of health worker and stakeholders in contact with mediators and with GAMeC.

The decision not to involve local authorities freed the proposal from bureaucratic hindrances, without damaging its diffusion or authoritativeness. Furthermore, offering a creative artistic path, as well as listening, was crucial for people understanding they were called to be subjects of that path and not an object.

These paths, of which there were eight, involved people from different territories and communities of Bergamo. Some of them then requested that the same path be repeated in their work or life communities. So, in two districts of Bergamo and in two health facilities, other laboratories of generative memory have been set up. In this way people have been able to experience a path of personal pacification but, starting from that, they can carry these experiences as a possibility also for inhabited community spaces.

In one of the health structures involved, the experience of these encounters made it possible to express one's suffering and to welcome that of the others, and to mend the rift between the management staff and the care staff.

The intervention made by the Centre for Restorative Justice was not the only one; the community responded in many ways. For example, a telephone psychological listening service was launched in the Bergamo area to support people traumatised by the events and many of those who took part in the courses were engaged in an individual psychological path. But what made the intervention special and unique was the ability to interpret a

need that was not only individual but was above all community. The need to bring one's suffering back to a collective space in which to try together to re-read what happened and to overcome the great sense of isolation it had caused. Community paths are experiences that build authentic relationships which are necessary to be able to look to the future.

This project highlighted some fundamental aspects for the formation of a group of mediators or of a Restorative Justice Centre, such as the need to work from the beginning on the community dimension. When selecting a group of mediators, it is important to evaluate the type of community relationships they have, their commitment in this area. The same when starting a Restorative Justice Center, it is important that it relates to its community from the beginning. This is because in emergency situations these type of relationships allow people to have a rapid intervention capacity without letting the space be occupied only by instances of claims.

What we learned was that listening to your territory, to what inhabits it, helps to understand what is necessary and important to do at that moment. In this case it was no longer important to maintain a tradition of a cultural event like the Summer school 'The justice of the encounter', perhaps by transferring it on-line, but it was necessary to transform that knowledge into a new and creative action. Restorative justice then came about as the ability to leave one's projects in order not to lose contact with the people who are beside you. A restorative justice worker listens in a non-directive way not only when he is in an office and meets an offended person and an offender, but always, even when with his city he is overwhelmed by events that exceed him such as the Covid-19 pandemic. But is this not always the case when one encounters the suffering and evil that afflicts people who ask for justice capable of being restorative?

This path produced a small book, made by the Modern and Contemporary Art Gallery, of the series: 'GAMeC e COLLETTIVITA" from which the testimonies reported in the article are taken. The Summer School 'The justice of the encounter' 2021 was an opportunity to share the path made with participants from all over Italy by distributing the book and raising awareness among the participants of a restorative approach with community value.

### Questions for critical reflection

1. Which are the community contexts in which I operate? (Schools, neighbourhoods, etc.)
2. Do I have a network of stakeholders with whom to listen and to understand what is happening around me?
3. How do I network a restorative community intervention with the other skills and presences of social, political and educational workers?
4. Art is a wonderful tool to help build common visions; do you have artists in the network of your contacts, sensitised to a restorative approach?
5. How many restorative justice workers work with me, and do I form community with them?

# Filippo Vanoncini

## School as Restorative Community

In the school of Almenno San Bartolomeo, a town in the province of Bergamo, the 'Angelo Custode' foundation, has been, for years, giving psychological and educational support and training for teachers and parents. During the realisation of a project called 'close distances' there was a thought to help teachers and parents build educational alliances between them. The fragmentation of community relations typical of our western context and the social devaluation of the teachers and of the state school had created a conflictual environment that made it difficult to create spaces of mutual trust between parents and teachers, spaces that on the other hand were perceived as increasingly urgent. In fact, an African proverb says: 'it takes a village to educate a child.'

On that occasion, some teachers were made aware of restorative justice through some workshops conducted by some mediators. During the pandemic, lower secondary school children had to carry out several distance teaching lessons, finding themselves in a virtual classroom. This made it possible for students to photograph the teachers faces by taking screenshots. These photos were then edited with special applications and exchanged in class chats with vulgar comments. Sometimes the chats were also seen by parents, some of whom had invited their child to stop, without however reporting it to the school, and not realising that what was being committed was not a simple joke. Since they were using the photo of a person on a public social network without his consent, both the rules of the civil code on image abuse and that of the criminal code on privacy were being violated.

When the teachers realised what was happening, thanks to the report of a pupil, they realised that it was difficult to help the children understand the seriousness of what they had committed, but even more difficult for the parents who had the responsibility in front of a Judge. It is clear that no one wanted to make a complaint, but at the same time they did not want to underestimate the episode either. It was an opportunity for everyone to reflect on the world of social media and on the behaviours to be kept in the virtual world as well.

The mediators were already known in the school because the previous year they had proposed a path of sensitisation to mediation for parents and teachers, following which they had included in the family-school co-responsibility agreement the possibility of using restorative justice. The teachers immediately understood that being able to make an intervention with the mediators would have allowed everyone to understand the seriousness of what had happened without reducing everything to a punishment that probably would not have even been understood.

First, preliminary talks were started with the two boys who had reworked the images and spread them on the chat and their parents, asking for their availability to participate in a mediation with the teacher involved. The children and the teacher, following the mediation, agreed to bring this experience of encounter to the whole class, because everyone was involved even if with different responsibilities.

Then a class council was held in which the parents were informed about the idea of involving the children in a restorative circle; restorative justice was presented at a theoretical level and their written consent was requested to proceed with the action. In the same

meeting it was proposed that parents undertake a path together with teachers, similar and contemporary to that of the children, in order to better understand what their children would have experienced and to be able to share the experience, developing a more intense and authentic relationship also amongst the adults. The proposal received the approval of almost all the parents and, due to the pandemic, took place online.

It was not easy to do the work online; yet the experience was still intense. Parents and teachers were offered a first meeting in which to experience empathic listening: starting with the viewing of a video installation by the artist Charlie Nijenshohn, 'Dead Forest,' everyone was invited to share their experience of the pandemic, their own experience, receiving empathic feedback from the other participants. The goal was to allow them to experience non-judgmental listening and to understand not only the theoretical basis, but the impact this has on people.

The second meeting had the aim of experiencing 'confrontation.' The group was first divided into pairs through virtual rooms: here the participants could tell each other what they wanted the school to be for them. Later, always asking them to practice empathic listening among themselves, groups of four people were formed by putting two pairs together. The group thus formed had jointly to choose three values that, for them, were cornerstones with respect to school. This work of synthesis was accompanied by the mediator who encouraged them to find words that would satisfy everyone.

In the last meeting, collaboration proposals for the rest of the year were shared. One of these was to keep a free space in the school-family co-responsibility agreement, where a personal resolution of the parent, teacher and child could be added. Now the agreement could be signed starting from an experience of sharing and not only after a quick glance through the sheets in search of the space where to sign without stopping on anything.

In the meantime, a parallel path had been structured with the children, built up of three stages. The first was a presentation on restorative justice, through some slides that used the image of the *kintsugi*. This was used to introduce the theme and then explain the three key principles of the proposal: they were free to adhere to it or not; what was said in these meetings was confidential and no one judged anyone. The second meeting, instead, took place in the gym, sitting in a large circle, where for about two hours everyone shared — if they wanted to — something about themselves by choosing an object from the ones positioned on a central sheet. After one child spoke, two others had loudly to mirror an emotion they had captured in him, and he could then tell if he had recognised himself in those emotions. The two mediators present, summarised each intervention through empathetic listening, taking care of each member of the circle. Those who did not want to say anything had that freedom, but everyone was required to listen and then mirror with emotions at least two classmates in the circle.

The children, despite having to be silent and sitting on the floor most of the time, were very attentive to the words that each one said: they were all very silent and paid attention.

This work allowed the pupils to understand the kind of involvement that a circle could require from them, making them aware and free to refuse to take part in the last meeting. Consent was obtained through a written note. Only one child did not want to participate while one asked to participate but asked to be free not to speak for the whole time.

The respect for the choice not to participate was expressed very carefully by the mediators to the child, thanking him for having participated with commitment until then and asking the teachers not to place a negative interpretation on this choice. After all he was just exercising freedom, which is a fundamental and necessary condition for every path to restorative justice.

The work designed was a double circle in an aquarium style where the innermost space was the place for confrontation between the parties, and the outermost one for listening. Some chairs were then placed halfway between the two circles to give the children the opportunity to move from one circle to another, signalling their desire to change the type of participation simply by sitting on these chairs. Unfortunately, it was necessary to carry out the work in the classroom where, due to the limited space, it was not possible to be all in a circle. Each pupil was seated at his desk and was given a book as the only object to keep.

The rules were the following:

- Whoever wanted to speak had to keep the book open on the desk.
- Whoever wanted to make an empathic reference had to hold the book vertically on the desk.
- Those who only wanted to listen kept the book closed.
- The first to speak would have been the teacher and the children involved in the mediation.
- Whoever wanted to speak must first have made at least one empathic reference to those who had intervened before him.

The work went very smoothly. Three hours went by very quickly and everyone spoke, especially the child who just wanted to listen. The space for listening and for non-judgement allowed him to overcome his reluctance.

People opened up, and the teachers were very impressed with how the kids were able to feel their emotions and feel each other's emotions.

The agreements made by the pupils and their teachers regarding the use of chats were very creative — giving each other some rules, so that it was clear what was allowed and what was not — led to everyone accepting responsibility.

What was fundamental in this intervention was the preparation of the teachers who, knowing and appreciating the restorative approach, were the first to get involved, dragging pupils and parents with them.

Moreover, the co-construction of an educational alliance between parents and teachers has allowed everyone to feel an active subject of the path, with everybody feeling on the same

level as the others with their own desires and needs. Creating the conditions for everyone to have the necessary awareness to be able to adhere to the proposal or not made the adherence of both parents and students very intense and fruitful.

What had been broken was trust. The children, being protected by the screen, had given themselves the permission to offend their teachers and that same screen made the teachers helpless. The path carried out allowed them to re-build a climate of trust necessary to resume teaching with enthusiasm.

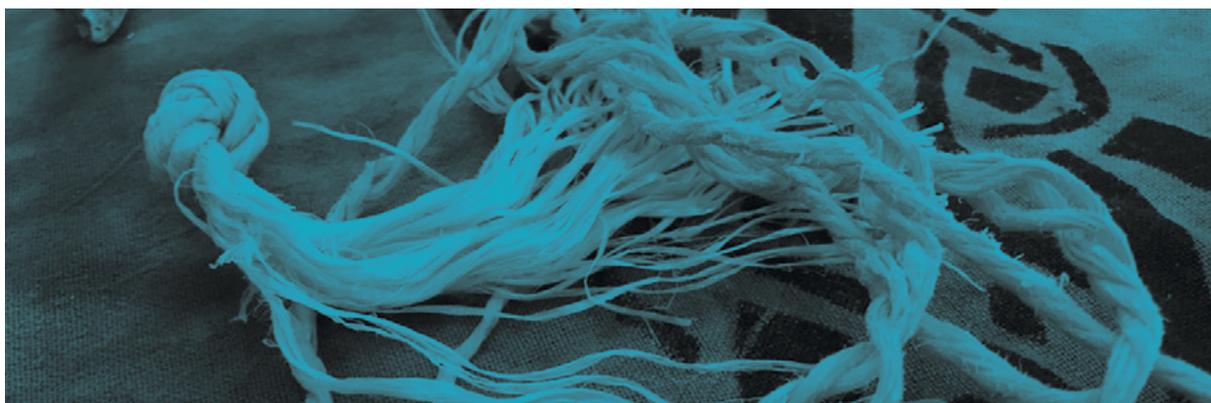
To be able to express their disappointment and indicate their displeasure was an unexpected possibility for the teachers to overcome the discouragement resulting from the betrayal they suffered.

The work with the adults that preceded and accompanied the one done in class with the children was clearly the prerequisite for success. The school cannot be separated; it must work to know how to involve teachers, parents and students, so that the experience can truly leave its mark. This takes time and the humility of not having the prefabricated solution. As artisans, you work by building the intervention step by step, in order to create the necessary conditions of freedom and awareness, which are as necessary as air for any reparative approach.

Following this work, this type of path has been proposed to other lower secondary schools in Bergamo and in the surrounding area of Bergamo; among these is an upper secondary school, the ITC Majorana, which, starting from this intervention, has signed a broader agreement with the Restorative Justice Centre.

### Questions for critical reflection

1. When you intervene in a school have you spent time listening to the teachers in order to have a clear mandate?
2. Do you always try to involve parents?
3. Do schools have codes of behaviour that involve students, parents and teachers? Look at them because there may already be some important ideas there for your intervention.
4. When you have completed your intervention, how do you intend to monitor it?
5. When you work with youngsters, how do you let their feedback change your plans, staying focused on them and not on your own projects?



# Valentina Martinez with Sonia Gruben Burmeister

## Restorative justice and intercultural mediation

Since the last decade of the past century, the issue of how to peacefully and democratically approach cultural diversification in our societies has become a challenge at both local and global levels.

In this regard, intercultural mediation is an ethical and socio-political bet for all multicultural societies, as it represents, amongst other things:

- A safe, peaceful, civic and democratic way to channel tensions and clashes through a civic culture of conflict.
- A mechanism of institutional adaptation that helps local corporations, schools, health centres, local law enforcement, etc. when it comes to adapting to the new demands of a multicultural citizenship.

This article presents a case of intercultural mediation between two grandmothers, the relatives of three minor children of a family of Ecuadorian origins, and the centre responsible for the custody of the three little girls, located in Spain. The intercultural mediation and restorative process is carried out by a mediator and social worker, who works freelance and who has previous experience mediating for an NGO specialising in child protection.

### The case of the three siblings

In January 2019, three siblings of Ecuadorian-Spanish origin enter the juvenile centre 'Nuestra Señora de la Caridad'.

They are Lucía (9 years old), Daniela (6) and María (3). The three of them are deemed as abandoned children and put under local authority care. The eldest one suffered physical abuse inflicted by her mother and her partner, both of them of Ecuadorian origins. Both adults were condemned to 10 years imprisonment plus 15 years suspension of parental authority.

According to the medical report, the eldest of the three children was burnt with an iron and with cigarette butts, and suffered numerous cuts throughout her body, including the tongue. In addition, she also suffered mental abuse and was forced to clean the house and do chores, due to which she frequently missed school.

In July 2020 they had been in the centre for a year and a half. An important task of stabilisation and normalisation has been carried out. However, now it is time to create a personal project for each one of them according to their age and characteristics.

Since their arrival at the centre, their extended family both in Spain and Ecuador has mobilised to take them in despite the recommendation that they should be taken in by a non biological family. The recommendation also states that the eldest and the other two should be taken in by different families. The reason for this recommendation is that the extended family in Madrid has shown behaviours that are contrary to the safety and well-being of the siblings.

The maternal grandfather, who lived with her daughter, her partner and the siblings, declares that he had never noticed the situation. The girls also mentioned that her great aunt used make up to cover Lucía's scars and bruises. Both relatives are therefore ruled out for concealing the abuses and contributing to the vulnerability of the siblings.

Every now and then the siblings are visited by their uncle Pedro and their aunt Vero, who have no children of their own. The girls love them very much and spend several weekends at their place. These stays constitute an element of normalcy in their lives.

A few months after the siblings arrive at the centre, this couple request the custody of the three of them. All the procedure is carried out between the family and the child services and the authorisation is granted. However, just a few weeks before the summer holidays and when the siblings are ready to leave the centre, the couple 'back off' invoking economic difficulties: he has lost his job and they cannot take that responsibility any more. They never show up again in the centre and never call to talk to the girls.

The staff of the centre feel shocked, appalled and frustrated. They cannot believe what has just happened. They feel guilty for not been able to foresee it, and the situation inflicts an additional damage to the siblings that the couple has not calculated properly. This fact makes the staff reflect carefully about future actions.

This leads to a feeling of mistrust towards the family (both in Spain and Ecuador) that takes the form of prejudices against Latin American culture in general and Ecuadorian in particular. Apparently, there is a certain cultural incapability to raise children that affects families from Ecuador and even from the greater Latin American continent. Ultimately, the staff fear that that they cannot help the girls properly.

At the same time, in parallel with the disappearance of the uncles, the paternal and maternal grandmothers, who are aware of the situation, start to call frequently from Guayaquil to request shared custody of the siblings.

This represents a new alternative not contemplated before, but it also generates resistance amongst the professionals.

The director of the centre, the social worker, the psychologist and the social educators do not know what would be best for the siblings, and none of them is aware of their own prejudices towards the grandmothers. There is a couple who stand out as a candidate to take in the two younger siblings, Daniela and María, and an organisation is looking for a foster family for Lucía (the eldest).

The grandmothers' calls become more frequent and insistent, and the reluctance to answer them also increases. The staff is avoiding both the relatives and the conflict. They barely answer the phone and the professionals are frequently 'on a meeting' or 'have already left.' Several well-intentioned remarks are heard pointing to the possibility that the girls might not fit in an environment with low resources. Poverty is to blame, since, apparently, those who

suffer from it are less suited to raise their children and provide for their families. Of course, some responsibility is cast upon the grandmothers for their sons' behaviour (mistreating the siblings). The institution wants what's best for the girls and is reluctant to trust in extended family who are requesting re-unification in Ecuador.

### **Key aspects that justify the restorative process**

- There is a non-verbalised conflict between the biological family and the institution that should ensure the well-being of the siblings.
- Prejudices, beliefs and stereotypes that the professionals in Spain have towards the grandmothers, Ecuador and their culture. There is a clear ethno-cultural difference (Carlos Giménez Romero<sup>21</sup>) that is hampering communication and relationship between both parties.
- The institution has cultural prejudices and an ethnocentric-paternalistic attitude that leads to mistrust and to underestimate the grandmothers' ability to take care of the siblings in Ecuador.
- Lack of communication, leading to misunderstanding and fear from both sides.
- The power asymmetry between the institution and the family is notorious and clear.
- Both parties want to reach an agreement and have the capacity to reach it.

Thanks to the restorative process, the parties will be able to eliminate the prejudices and to solve the conflict in the best interest of the girls. Communication is the key element to work upon in this relation. The centre professionals suggest a mediation between both parties: the institution (system institution) and the Ecuadorian family of the girls (system family).

### **The mediation process**

The process is initiated, and once the principles of mediation are clear (the protagonism of the two parties, voluntariness, equality, confidentiality, impartiality), the first step is to legitimate the needs of both parties and to guarantee their mutual knowledge.

Taking into account that the narrative is colonised by the institution (due to the previous ordeal), it is important that we hear about that fear and the institution's reticence. This way the grandmothers can understand the institution's position and reservations. Then it will be time to break the current narrative and to build a new one constructed by both parties. It is also essential to legitimise the grandmothers' position, making the institution understand that, a priori, they are not accountable for the situation and can in fact be a good alternative for the siblings.

Once mutual recognition is achieved, and once both parties also recognise the role of the mediator, it is now time to re-define the problem keeping in mind that both parties want the same for the girls: their psycho-affective well-being.

Now the communication has improved. The mutual perception has also improved; despite the distance, the grandparents slowly start to become empowered.

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<sup>21</sup> See <https://dialnet.unirioja.es/servlet/autor?codigo=80706> for a list of his publications.

During the video conferences, some information about mutual cultural keys and values of Spanish, Latin American and Caribbean culture is added.

Little by little the communication on the grandmothers' side is improving. We now see that their request is sincere and that they are fully committed: they really want to repair the injuries that their offspring have inflicted upon the girls.

After carefully listening to them it becomes clear that, as mothers, they feel ashamed. However, their modesty — and this is common to any culture — prevents them from openly blaming their son and daughter in front of someone they do not know and who's at the other side of the world. In turn, they also need reparation, since the institution has not trusted them.

After five open sessions both parties agree on initiating the procedure to assess the possibility requested by the grandmothers: the return of the girls to Ecuador.

At this point several tasks are assigned to both parties, the family in Ecuador and the institution in Madrid.

After the process is complete, an evaluation of the final months is carried out by looking at the tasks performed and at the efforts done by a family of low income to gather all the documentation and meet all the requirements requested by Madrid. They even consider building a new floor in their house to accommodate the girls.

The result is more than favourable: the tensions have been considerably reduced and the relations have improved; phone conversations are now fluid and both parties now share hopes and plans for the future.

## Results

- Both positions are legitimised and common needs are found.
- Active listening is performed: the worries of both parts are sincere.
- Narratives are positively re-formulated.
- Beliefs and stereotypes are revised and modified.
- After the negotiations, the Spanish authorities allow the girls to visit Ecuador

## Follow up

The follow up process is carried out by the Children's Ombudsman in Guayaquil, by a local NGO and by a local parish. They assess the girls' progress and how they are adapting to their new environment.

Initially, the two younger girls missed their life in Spain as well as their friends, and they needed additional support to accustom themselves to their new life and to their paternal grandmother, for they have met her only once before. The impressions of the workers are positive, and the girls show them pictures with their cousins, aunts and grandmothers where they look happy.

The girls also receive calls from the centre in Spain, for instance, on their birthdays. These calls gradually become less frequent.

### Questions for reflection

1. What kind of competences should a mediator have in order to mediate a case like this?
2. Which biases might make mediation more difficult?
3. Which obstacles might stand in a way of family mediation in which custody of children and their wellbeing are on stake?

## Valentina Martinez with Sonia Gruben Burmeister

### Criminal mediation and canonical mediation

The restorative process described here is an intervention carried out after a report of sexual assault. The victim was a candidate priest at the time of the assault and the perpetrator was another priest. The facts happened 35 years ago, when the victim was 15 and the perpetrator was 35.

After the report, since the penal proceedings were statute-barred, there was a canonical procedure and the victim also requested a meeting with the perpetrator within the framework of a restorative process. The mediator who works in this process has experience working as a mediator in restorative processes between terrorists and their victims. He is also a professor of penal law and is a strong advocate of restorative justice.

#### The restorative intervention

The restorative intervention was carried out throughout several individual work sessions. These were designed to learn the victim's needs on the one hand and, on the other, to learn the perpetrator's perception of his own accountability.

These interventions were carried out in places where the victim and the perpetrator, separately, felt comfortable and secure, sometimes in a park in the neighbourhood, others in a private room or in the church, depending on what was needed for each session.

Likewise, work was done regarding the perpetrator's capacity to listen to the facts suffered by the victim and the physical and emotional consequences that the victim had suffered throughout the years. The capacity of the perpetrator transparently to collaborate in the pursuit of truth and his restorative attitude were also explored.

#### Grounds for the intervention

The grounds for the intervention lay in the report done by a priest of sexual abuses perpetrated by another priest. Victims often report by themselves, since it is helpful for them to describe the consequences of the abuse, therefore making it visible and tangible; in this way they bring back something that was hidden.

#### Preliminary work before the restorative intervention was requested

This restorative work has a preliminary phase: several individual one-to-one sessions in each of which one of the persons, victim and perpetrator, was involved. With the victim, the work focused on exploring his life story and on locating the chronological moment and the emotional and social/family context when things happened. The capacity of the victim to relate the facts and their consequences upon his life at social, family, emotional and professional levels is addressed, amongst other issues. Work is also done to find the data he needs to know; data that only the perpetrator knows and that the victim needs to know. This is done by questioning.

With the perpetrator we also work on listening skills, so that he can listen to the things he committed, on his skills in collaborating towards the truth and on his level of willingness to

accept accountability so that he can emotionally recognise the nature of his aggression.

### **Proposal and process development**

The restorative intervention was suggested by the victim at the moment of reporting the aggression before the religious institution to which the perpetrator belonged. This institution summoned the perpetrator and, parallel to the canonical procedure, he was informed about the desire of the victim to meet him in person in the framework of a restorative process.

At this point it is important to mention the decision of the victim, the intervention of the religious institution and the free decision of the perpetrator to enter into the process.

Once the religious institution contacted a team of facilitators, these got in touch with the victim. First, they held two working sessions with him aimed at welcoming him, informing him about the procedure and identifying the restorative needs that the victim might have. After that, the team of facilitators contacted the perpetrator. The interview then was aimed at welcoming him, informing him about the procedure and assessing his sense of accountability with regard to the facts.

After that, several appointments for individual work were set. In the end, a total amount of thirteen interviews were held with the victim and twelve with the perpetrator. Each one of them lasted for about two hours.

Once the perpetrator is aware of the damage he has inflicted, he becomes ready to listen and then is the right time for an encounter between perpetrator and victim. Before that, it is important to coordinate with the psychologists and decide which the best moment for that is. Once this is decided, the first encounter where victim and perpetrator will physically meet is scheduled.

In this case, the first one-to-one meeting was scheduled after the final individual session. We presented them with the informed consent document; we also explained to them the role of the facilitator and the principles that govern the restorative process (respect, voluntariness and confidentiality). Then we answered all the doubts they had. Finally we double-checked whether they understood all the information and gave them some time to decide about their participation in the process.

During the encounter, the victim could describe the damage he had suffered, as well as the effect that the aggression had had over all the aspects of his life, articulating an emotional account of how he had lived with the situation. He could also ask the perpetrator about facts, experiences, data and emotions. He looked for a psycho-psychiatric explanation from the perpetrator concerning the acts he had committed. The perpetrator, in turn, collaborated with the truth in a transparent and honest manner.

At the end of the encounter, the link that tied them together at a subconscious level was finally liberated and both felt free to continue with their life journeys.

## Key decisions that determined the restorative process

The most important milestones of the process came from the decision and voluntariness of the victim, the religious institution and, in turn, of the perpetrator.

Other key moments present themselves in the initial individual working sessions, since these allow building and nurturing a healthy bond of trust between facilitators and victim/perpetrator.

Once the bond is set, it is time to build, almost in a hand-crafted manner, an itinerary or roadmap that allows one to reach the face to face encounter with the right disposition and openness towards profound emotional communication.

These meetings effected an emotional change in both the victim and the perpetrator. Both were able to reassess what had happened between them. The victim felt freed from the traumatic event and could reassess it as another experience within his life story. In the same way, the perpetrator could express and reassess what had happened, connecting it with a revelation that he made for the first time in his life: he too had suffered abuse as a teenager inflicted by another priest.

## Lessons learnt

The lessons learnt are several. First, traumatic events that take the form of an aggression need to be looked at by both the person who suffered them and the person who perpetrated them. Otherwise, those events are likely to happen again in the future. It is useless to hide what has been suffered as it is equally useless to hide what has been inflicted.

Only honest and transparent dialogue, together with a quest for justice (be it a criminal or canonical procedure) can break the subconscious link that ties victim and perpetrator.

## Questions for reflection

1. In case of serious crimes such as this one, what kind of safeguards do you see are necessary in order to avoid secondary victimization during the mediation process?
2. Imagine yourself ten years older and more experienced than today, getting a similar case to mediate. What would you take into consideration before accepting or rejecting to be mediator?

## Valentina Martinez

### Restorative justice and parental responsibility

Normally, when there is a conflict between parents, minors suffer the greatest harm from that family conflict. The situation between the parents generates in the children a climate of hostility where they are forced to take sides, something which hampers their life development and the relationship with their own parents.

The case of mediation that we are discussing now is an example of a restorative process with a family facing a conflict. Stress is put on mediation actions that help to tackle the conflict in a conciliatory and positive manner. The professional managing this process is a mediator with a degree in Law and an MA in Family Mediation, and has extensive experience mediating at a Family Meeting Point.

Family Meeting Point (PEF) is a social service aimed at normalising family relations, especially those between minors (under 18) and family members who do not live with them.

#### Diana and Cristian

This case concerns a young couple, Diana and Cristian, who have a four-year-old son. So far, the relationship between Diana and Cristian has been brief and riddled with problems. Cristian has several drug addictions and, after having undergone treatment several times (during the first two years of the life of the child), the repeated relapses finally put the relationship to an end. The couple broke up when their son was two and since then the mother has had the custody by court decision.

The court sets a phased visiting arrangement that depends on the father's progress with regard to his drug addiction. Meetings take place at the Family Meeting Point.

The first meetings are arranged to take place at the Family Meeting Point under supervision. Then the plan is to use the Meeting Point as a delivery and pick up point but the visits will not take place overnight. According to the court ruling, overnight visits will be allowed only after a year and under the condition that the progress of the father is positive.

Visits under supervision do not start until several months after the ruling, since the father is staying at a rehabilitation facility. During the first visit the father shows fear and is afraid of the child's reaction. He fears that his son will not recognise him because he hasn't seen him since he began the last stage of his rehabilitation.

However, during the time the father is in rehabilitation, the mother does take the child to the Family Meeting Point. The aim of these visits is that Cristian can keep a link with his son. Diana talks to her son about his father and, during the visits to the rehabilitation facility, also tells Cristian about his son. These visits pay off and, during the first encounter, the child is enthusiastic and affectionate towards his father.

Although the mother has always supported the relationship between Cristian and her son she is still afraid of the father's potential relapses and of the fact that these could affect the

child. Because of this she also shows reluctance about the visits.

The parents request a mediation with the goal of improving their relationship and better organising future visits.

The Meeting Point arranges this mediation, where several goals are set with the objective of normalising the father-son relationship and guaranteeing positive progress. The conditions put forward are:

- The father shall comply with the schedule agreed.
- The mother shall continue her attitude (that facilitates the strengthening of the father-son link).
- Both parties shall show their intention to facilitate the process and to make it possible.

Taking into account the reaction of the child when meeting his father, it can be said that the starting point of the process is a positive one. This fact helps the intervention, by acknowledging the role of the mother in maintaining the father's figure. It is also important to mention that, at the time, the father had just found a job as a janitor which, although it wouldn't be enough to be fully independent, provided a motivation that allowed him to look at the future with a positive attitude. Thanks to this new income a new maintenance arrangement could be arranged and the father then showed the intention of taking care of the child's needs.

During the mediation sessions (both joint and individual) the mother's fears about the possible relapses of the father are legitimised and common meetings are encouraged (meeting where the mother is present during the first part of the father-son encounter). Interviews or meetings between mother and father are also encouraged. Here, both can express and relate in the first person their respective views of the father-son relationship, their opinions about their son, the problems related to his relationship with them, etc. During these interviews they can see that both of them have a good relationship with their son and mediators also collaborate in the task of tempering their respective opinions so that arrangements and agreements can be reached. This also helps them to take into consideration certain points of view of the other party that were not taken into account before.

The mediators also put forward new alternatives that support a positive evolution regarding the relationship between the parents, always thinking about the best interest of the child (communication on the telephone, agreements, common meetings, interviews to address questions related to their son, etc.). Mediators also try to encourage the couple to reach agreements without external intervention or mediation.

With regard to the concerns of the mother about Cristian's addiction, she will be in contact with the social services that supervise his progress.

Empathy of both parties is reinforced as well as mutual recognition of the positive aspect of the other party. This way both can value the efforts and the position of the other, as well as

the positive importance that each parent has for their son. A very positive aspect in this case is the fact that each one of the parents value and cherish the role of the other, establishing a mutual trust and a common accountability for the problem. This way both assume an active role in solving the problem. Cristian is grateful because the mediator has allowed him to reinforce a healthy relationship with his son and his ex-partner. Despite the separation they manage to restructure a family system that is positive for the child.

He values the fact that he is given a new opportunity; he is thankful and feels supported in the process of overcoming his addiction. He no longer feels guilty for breaking the family system, which also helps in his rehabilitation. She, on the other hand, who was worried for her son growing up with no father figure, also values Cristian's efforts to recover and to keep the relationship with his son. Both had the chance of overcoming their fears and acquiring an active role in the child's upbringing.

### **Lessons learned**

Willingness of the parties to solve the conflict is essential in this kind of process, which can be very traumatic for the child especially when there is drug use by one of the parents. No party should hide his/her suffering. The mother is collaborative but at the same time she is afraid that Cristina might fail and that could affect her son. This pain will only heal if honest dialogue exists between the parties. In addition to the restorative process at family level, each party is burdened with his/her own individual process.

### **Results**

The mediation techniques used in this case allow both parties to be legitimised and to act with the mutual recognition of the other, something that facilitates and makes the process more flexible.

- Both parents align their positions allowing for a positive evolution of the father-son relationship throughout the process. They also achieve a good level of autonomy and are capable of reaching agreements without the intervention of the mediators.
- They are capable of reaching agreements and manage visits outside the Family Meeting Point. They also have 'phone conversations and reach a visiting schedule that goes beyond what was stated in the court ruling.
- They regain their relationship, which was grossly impaired by the previous events.

During the next few months, the PEF carries a follow up of the situation via telephone calls. The child is experiencing an adequate development and a healthy relationship with his parents.

### **Questions for reflection**

1. In cases where wellbeing of a child is at stake, what kind of background information should, in your opinion, be provided in order to determine whether mediation is appropriate for the specific case?
2. What kind of competences, besides mediation skills, should one possess to successfully mediate cases like this one?

## Andrea Haarlander

### Restorative Justice in cases of domestic violence

I work as a facilitator in a German NGO that provides Victim-Offender-Mediation (VOM) in cooperation with the courts and public prosecution. VOM is embedded within the criminal proceedings and the results of the mediation will be considered by prosecutors or judges when they decide about sanctions or dismissal. Most cases are transferred to our agency during preliminary proceedings and positive results of the VOM can therefore have a considerable impact on the outcome of the proceedings for the offender. Besides referrals from a judicial body, offenders or victims themselves may also apply for our service.

In the German criminal law system, the procedure is as follows: a case is reported to the police, investigated and then given on to the prosecutor for further decision. Decisions concerning the implementation of VOM may be:

- the prosecutor authorising VOM during preliminary proceedings, or
- victims or offenders choosing VOM themselves, or
- VOM being applied as legal action as a result of the court hearing (only with the approval of offender and victim).

The case then is transferred to a VOM agency. In Germany VOM is provided both by public agencies and by NGOs. Facilitators need to be social workers or have a similar university degree and have completed a special training course concerning VOM.

In this paper I will discuss two examples of victim-offender-mediation in cases of domestic violence. Example 1 shows a case where the victim is separated from the offender and wants to get a divorce. The victim in example 2 however wants to stay in the relationship.

#### Case example 1: Sara and Ken

In this case the former couple had lived together for 20 years. They have three children, a grown-up son and daughter and a five year old girl. The woman (I will call her Sara) and the small girl moved out of the mutual flat; the husband (I will call him Ken) and the grown-up children stayed in the family flat. Sara filed for divorce. The little daughter visited her father and her siblings twice a week.

In cases of domestic violence between couples with small children and a de facto separation we have to deal with intersections of civil matters and criminal matters.

The criminal matter conflict was a severe stalking situation against Sara. Her husband was using contact issues relating to the five year old daughter in order to contact his partner frequently and at any time. Simultaneously he was manipulating the grown-up children in order to prohibit contact with their mother. Ken was insulting and threatening Sara via phone and messenger. Every meeting — when the daughter was handed over to the other parent — was accompanied by harassment. He was even blackmailing her with a secretly conducted video-recording of an intimate situation. Almost all aspects of power and control (figure 1) were being actively exercised by Ken.

Although Sara took the first steps, moved out of the mutual flat and filed for divorce, she still stayed within the control of Ken because of the conditions of the procedure for contacting their daughter. This is where the civil matters conflict manifested itself in the bigger picture. Many parents cannot agree about the arrangements for contact. There are many possible frictions about time, length, place and modality of transfer of the child. Furthermore, there are the discussions about the right way of upbringing. Altogether there are numerous possibilities for one partner to bring him/herself into the game and try to exercise control over his or her former partner.

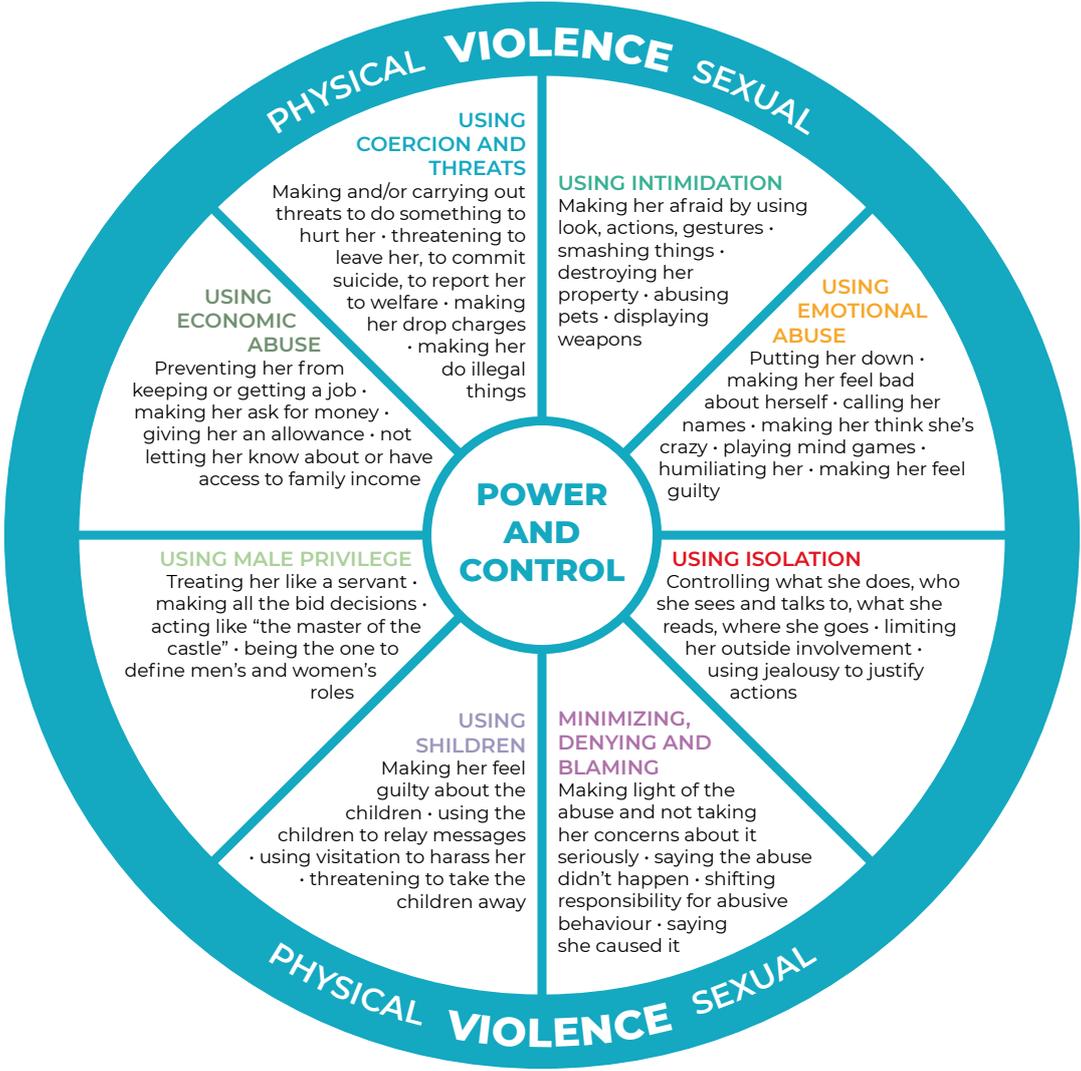


Figure 1: Power and control wheel

When a family court is asked for a decision in these matters, they usually want the parents to find a mutual agreement. Parents may find help at the youth welfare service or at the family counselling service.

In this case the special child supporter who was assigned by the family court in order to supervise the proceedings in the interest of the child suggested mediation at our agency. We were able to offer VOM, because the actions of Ken against Sara can be described as offences according to criminal law.

## Description of the VOM-process

I started with separate talks with Sara in order to plan the process with her safety in mind. We were assessing her daily life and the violent actions of Ken together and discussed which individual precautions she'd be able to take. At this very early stage I was also suggesting she involve other supporting partners to improve her network: special counselling by a women's helpdesk and the youth welfare service. We went to a support meeting at the youth welfare service together. The result was the assignment of a social family assistant who would go into the family in order to support Sara and her daughter and facilitate the transfers of the child between Ken and Sara. The assistant also for a start accompanied the contacts of Ken with his daughter as a safety precaution.

Sara was very anxious and had difficulties in coping with the many new requirements of her situation. She felt insecure and feared decision making. Sara also had psychological problems, but fortunately was having therapy already.

Her aim was to find a solution so that Ken could have contact with their child but without threatening her. She wanted to gain her autonomy.

In preparation for the mutual meetings we were talking about the conditions that she needed in order to engage in the VOM process. She stated that she will only be willing to meet Ken if he stops his insulting calls and messages at once.

At this point I invited Ken to a meeting with me at the agency. Ken was showing very little compliance. He was minimising his own actions and was pushing the responsibility onto Sara. He was blaming her for being an unstable person and accusing her of promiscuous behaviour. He alternated between degrading Sara as a person and accusing her of destroying the family.

In the following days it was obvious that he wasn't stopping his insulting behaviour against Sara. Thus we conducted an indirect mediation and tried to find a solution on the conditions of child contact and terms of transfer of the child. Both parents could be engaged in thinking about suitable possibilities not only for their own sake but also in the interest of their daughter. In the end they managed to agree on certain days and a holiday solution. Especially Sara benefited from talking through all the conceivable possibilities in order to find out which one would be most suitable in her situation. All in all I had five meetings with Sara, two of them together with institutional supporters, and three meetings with Ken.

Potential of VOM:

- Parties may speak out needs and fears.
- Parties may find out their own position within societal and familial expectations.
- Sara was encouraged to speak out and thus strengthened her self-confidence for the task ahead.
- Ken was supported in reflecting on his motivations (welfare of daughter versus controlling Sara).
- Ken was mirrored the consequences of his attitude for his children.

- Parties got an explanation of further possibilities of support (networking).
- Parties got information on the penal law and civil law framework.

Lessons to be learned:

- VOM is a short term intervention and can support or spark change.
- In cases of domestic violence with strong threats and power imbalances it is necessary to show clients where to get reliable long-term support. Sometimes it is helpful to accompany clients to the initial meeting at another support agency (transfer).
- Active networking and knowing partner organisations of your region is very important. Raise consciousness about the specific partner organisations in the field by doing a mind map or using other illustrative methods. Consider the position of your restorative activity within the given network: identify and address gaps in collaboration and seek to improve connections.

## Cooperation and intervention concept: KIK – Network

Aim: overcome schedule of responsibilities

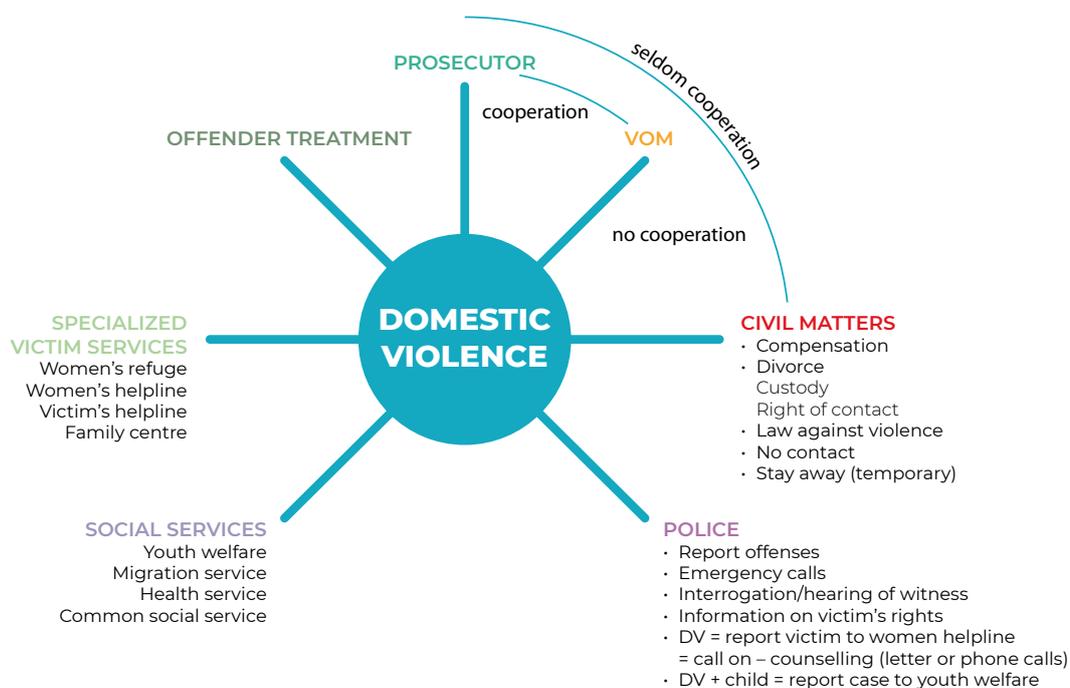


Figure 2: Example of domestic violence intervention network

The mindmap (figure 2) shows partners of a regional cooperation and intervention network dealing with issues of domestic violence and violence against women. The network partners meet districtwise three to four times per year. The goal is to improve cooperation between the partners, to detect blind spots and to improve support for victims of domestic violence. We are subject to certain schedules of responsibilities in the working field, which makes it hard for victims to find their way through the criminal and the civil matters system (including family law), the welfare and social service system and the social services provided by NGOs. As you see in figure 2, the police play an important role, because mostly they are the first contact of victims with the criminal system. The amount of information about victim's rights

given at that stage often overwhelms people. Having been to the police and having made the complaint, there then may be a long period of waiting without getting any information about the state of affairs.

Specialised victim services may be called upon, but this needs to be done by themselves. In cases of domestic violence however the police inform the local women's hotline and they write or call the victim once and offer counselling. The police also inform the child welfare service, if the harmed woman/man has children.

It is important to be aware of the effectiveness of the restorative activity within the law system of your country in order to identify at which point of the criminal procedure you can offer to support victims. In Germany for example, VOM is embedded within criminal procedures. VOM is not used within civil law. But questions of financial compensations caused by offences or agreements on mutual behaviour or contact regulations may be dealt with during VOM, even if victims also can sue them by a civil law procedure. In cases of domestic violence victims very often are interested in finding solutions for future procedures on matters concerning the contact between father and child and educational issues, because, even if divorced or separated, having children together links the ex-partners for long years to come. This is a difficult task, particularly if ex-partners — by claiming their right of contact — try to use it as means to put pressure on the former partner (reason for contact, threaten to take children away, manifold conflicting points of view on educational issues, ...). In cases like this a restorative approach may be helpful to reach a mutual understanding, but nevertheless needs to be adjusted to the whole law system.

### Case example 2: Sonia and Hans

This case was referred by the prosecutor. Hans (55) and Sonia (59) are not married, but have lived together for many years. Sonia is staying at home and doing domestic work. Hans is working at a factory and earning the bare minimum. He is a sceptical and unhappy person. Hans is complaining about his work, his partner, his income situation and life in general. When his feelings grow too strong he stops at the kiosk on his way back home and gets some beers. It happens that Hans comes from work in a quite drunken state. Sonia then takes care of him and gets him to bed. But one time he was mad with her; he insulted and threatened her and gripped her by the neck. She had to hit him in order to free herself; she called the police and hid in the bathroom. Hans was banned from the flat by the police for ten days, but Sonia took pity on him after one day and Hans moved back in. She asked for mediation and the prosecutor referred the case to VOM.

### Description of the VOM-process

I contacted Sonia first and arranged a meeting with her. We talked about the offence, her life with Hans and her expectations of the mediation. Sonia explained to me why her partner is behaving like this. She reflected about their relationship, the good times and the problems. Sonia was ambivalent. On the one hand she minimised his violent action and his drinking problem. On the other hand she made it clear that she has big fears when thinking of separating from Hans and living alone. She wished that her partner underwent special offender training. This offender training deals with mostly male offenders who have used

violence against women. The training consists of several single and group meetings and addresses topics like the origin of violent behaviour, acceptance of one's responsibility and development of specific emergency plans in order to prevent further violent actions.

Sonja wanted me to explain to her partner, that violence is not OK: 'Can you tell him that? Maybe he understands if somebody official tells him that.'

Sonia and I then agreed on the next steps.

I made one appointment with Hans and after that I got in touch with her again in order to decide on further steps.

Hans introduced himself with the statement, that he didn't want to come. Talking about himself and his private matters would be a worst case scenario for him. He was very much trying to downgrade his partner. She has psychological problems, she lives on his expenses and anyway, life has been a hardship to him recently. His very bad working situation is to blame, his ungrateful employer, his incompetent colleagues and so on. He was trying to deny accountability for his actions.

We then had a mutual meeting. When confronted with the requirement of taking part in the offender training Hans got very emotional and offered a variety of arguments against it. But Sonia insisted and so Hans got the task of arranging one initial meeting with the offender training service to get to know the facilitators and the conditions. We decided on a time frame and at the next meeting Hans was expected to report about his experience at the offender training agency.

Hans didn't fulfil his task. The enterprise failed with Hans' attempt to arrange a date via phone. When talking to the facilitator he felt so humiliated that he couldn't go on.

I then arranged a single meeting with Hans to discuss other amends from his side. He said he would do anything but he would not go to this group or talk with anybody about himself. Then I had a single talk with Sonia. We reflected upon the obvious fact that Hans in no way will fulfil Sonia's wish to work on his aggression and alcohol problem. She decided to withdraw her condition. Alternatively she shaped an agreement that restricted his consumption of alcohol quite strictly.

During the next mutual meeting he agreed to her conditions. We made a written statement and I told Sonia and Hans that they may contact me if there are problems with the compliance within the following six month (this is a time period according to dismissal deadlines in German penal law). And after this six month period I offered an evaluation meeting which Sonia gladly accepted. This last meeting was very useful to find a closure; both partners reflected on the last months, talked about difficult or successful situations and left in a quite positive spirit.

Potential of VOM:

- Sonia could find confirmation that violence is not OK.
- Support of parties when reflecting on their situation and deciding on next steps.
- Providing clear and transparent arrangements in complex situations.
- Mutual agreement before stepping on.
- Pondering on individual resources.
- Trying out of solutions and readjusting of arrangements.
- Evaluation of arrangements.

Lessons to be learned:

- In cases of domestic violence we are dealing with processes that need to be accompanied for some time after the restorative intervention.
- Readjustment during the VOM process may be helpful.
- Non-compliance of one party may need to be mirrored to the other party or to be reflected upon together.

### Questions for critical reflection

Thinking about the limits of Restorative Justice:

- Did I reflect on the gap between intentions, needs and wishes of victims and what the restorative programme that I provide can actually offer in each individual case?
- Did I inform the victim comprehensively about possible limits and drawbacks and also about alternative (maybe non-restorative) forms to reach their aims?

Thinking about safety:

- Did I match the safety needs of the participants with the single steps of the restorative process?

Thinking about the position and motivation of the facilitators:

- What is my own perspective when dealing with issues of violence between partners or within families.
- What is my ideal picture of a successful and thriving relationship?
- How do I regard gender roles?
- In what way do the narrations and perspectives of my clients challenge my own attitudes?
- How does this affect my interactions?

Recommendations and reading suggestions: did the mediator

- create a safe space within their team or working environment in order to implement cooperative exchange and possibilities of reflection with colleagues;
- get to know and network with other players from official institutions as well as NGO's in their working field?

Domestic violence is embedded in societal structures that are interconnected with manifold dimensions of suppression and power imbalances. Every member of society is involved in these practices of power. I think that it is important to not only deal with the individual agendas and responsibilities of the participants of our RJ programmes. As facilitators we

also need to see the bigger picture. For a start I therefore recommend reading hooks (2014).

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## Alessandra Gaetani

### A project of restorative circles in an intercultural key in an Italian prison

Normally, when there is a conflict between parents, minors are those who suffer the greatest harm arising from that family conflict. The situation between the parents generates in the children a climate of hostility where they are forced to take sides, something which hampers their life development and the relationship with their own parents.

The article is centred on a project entitled 'Rights, Duties, Solidarity' (Diritti, doveri, solidarietà<sup>21</sup>) conceived and realised with a restorative style and not with an experience of restorative justice in a traditional key, i.e. offender-victim mediation had not been foreseen in this context, but through restorative circles a process of mending very conflicting cohabitation relations within the prison and of critical revision of some ideological positioning tending to radicalisation towards dangerous extremist tendencies.

The project envisaged a certain number of carefully constructed meetings, having chosen to offer a protected space for speech and dialogue for an open confrontation between the cultures and spiritualities that characterise the Islamic world, under the pretext of the purpose of reflecting on the post-Arab Spring Constitutions.

In this sense, circles were promoted to allow the development of processes elaborating on various levels that have led to the mending of relational, interpersonal, inter- and intra-confessional, complex and conflictual wounds.

The circles set up made it possible, through dialogue processes accompanied by the presence of two facilitators, to re-elaborate very painful and ideologically entrenched emotional dynamics so that from the level of discomfort and inner rage, in which emotions, rigid rules, oppositions and stereotypes prevail, gradually and with respect for freedom of conscience, thought and expression, it was possible to prepare for a frank confrontation on the level of the values that each of them in their humanity recognised as fundamental. From here it was then possible to share the ideal principles that were the subject of the drafting of a utopian new Constitution that could ideally represent the generation of a third reality based on a shared rule, representative of the agreement reached on the theme of a sense of justice, a sense of responsibility and the value of truth — and not in abstract terms, but starting from their own suffering, conflict, listening and mutual recognition.

#### The context

Data from most Western countries have shown how prisons can become breeding grounds for radicalisation processes at risk of contamination with jihadist ideology (Erickson, 2018). Even if it is clear to everyone that radicalisation processes do not only concern religious drifts and that it is equally fundamental to explain that the practice of Islam is not synonymous with radicalisation aimed at violence, it is necessary to stress that fundamentalism, and this is true for Islam but also for any other religion, is a lawful way of living religion and is

<sup>21</sup> <https://www.assemblea.emr.it/garante-detenuiti/iniziative/progetti/diritti-doveri-solidarieta/diritti-doveri-solidarieta>

protected by Constitutions, falling within a declaration of the right to religious freedom. However, fundamentalism can sometimes become the antechamber to violence.

Prison is a place of deprivation of personal freedom. Prisoners are emotionally vulnerable due to environmental circumstances. The process of radicalisation is propitiated by the feeling of living in a hostile world and this can trigger feelings of anger against everything and everyone. That the prison dimension, as a total institution, can induce involitional processes is articulated by Goffman (1961). Approximately one third (34%) of the attackers have been in prison at some point in their lives; the period spent in prison varies from a minimum of a few days to a maximum of over a decade; some individuals have also been arrested several times before carrying out a terrorist attack (Vidino et al., 2017). The vast majority of terrorists in Europe and North America, however, have not been imprisoned for terrorism-related offences — but for drug offences, weapons possession and physical violence, including attempted murder, robbery and assault (Commissione di studio su fenomeno della radicalizzazione e dell'estremismo jihadista, 2017). Some of the most recent counter-terrorism operations in Italy have involved individuals whose radicalisation took place entirely or largely in a prison environment. The factors that make prison a particularly propitious place for the spread of jihadist ideology are different, none of them triggering it in itself, but they interact in various ways.

First of all, it is facilitated by the cramped space of the prison — the overcrowding rate is at 113.2% and in some prisons it is back below the minimum space requirement of three square metres per prisoner (Antigone, 2017) — and therefore by the suffering caused by the deprivation of the inmate's personal freedom. Situations of overcrowding, lack of staff, poor hygienic conditions and the impossibility, in most cases, of working — 28.3% of prisoners are employed by the prison administration, 1.4% by other subjects; 6.2% are involved in vocational training courses, 24.2% in school courses<sup>1</sup> — school and recreational activities increase the risk of radicalisation and not least the discomfort produced by the failure of one's own migration project.

Sometimes there is also a desire for redemption that finds its ultimate meaning in religion. Prison inmates discover or rediscover their religion, which comes back into their lives as the only means of redemption, restoring order and meaning to existence and responding to a strong need for identity and belonging. The condition of exasperation that some inmates experience during their period of imprisonment is helped by a rapprochement with Islam (Rhazzali, 2010).

In this context, however, the risk is the degeneration of a misleading interpretation of the religion that leads to violent opposition to the West — in fact, seen from the point of view of Jihadist extremism as secularised and unbelieving. This premise is useful to understand the reasons behind the restorative project of prevention in relation to terrorism which leverages the instrumentalisation of religious discourse connected to Islam.

### **The mediators and the facilitators**

The idea for the project, which has been named 'Rights, Duties, Solidarity,' came from two

people who worked all the time as volunteers. One of them is Ignazio de Francesco, of the Piccola famiglia dell'Annunziata (Little Family of the Annunciation)<sup>2</sup> of Montesole in Italy, a Catholic friar, graduate in Islamic studies, who lived for decades in Arabic-speaking countries, learning their dialects, anthropology and religious approaches. Once back in Italy, he became a volunteer at the prison of Bologna, named 'Dozza,' the other was a professor at the University of Bologna, Pier Cesare Bori, a jurist expert in human rights and the history of religions (De Francesco, 2015), and a third important component of the board was Yassine Lafram, cultural mediator, coordinator of the Islamic Community of Bologna and recently also president of the Union of Islamic Communities of Italy.

### **The reason for the project**

Just in 2015, the implementation of the project represented an attempt to respond to the distrustful and securitarian reactions induced by the fear of Islam. In fact, in November of that same year, exactly on the 13th, Paris was scourged by a series of Islamic terrorist attacks, claimed by ISIS: 90 people were murdered. France went into a state of emergency and the borders were closed. The whole of Europe suffered a state of shock.

Following the French carnage, regrettably, in several prisons in Italy, and also at Bologna prison, there were Islamic prisoners who cheered for the death of infidels belonging to the corrupt western world. Realising that this sense of animosity and contempt was very concrete and an occasion of deep division aroused the will to try to mend the laceration between people belonging to cultural, social and religious worlds that are very different but not incompatible.

### **The restorative process involves the victims — but who are they?**

In this project there was no direct contact between offenders and specific victims. At the same time, the prisoners with whom the project was tested were in prison for a variety of non-terrorist related crimes. And there were no specific victims to refer to.

Western people, stereotyped as non-Muslims by some Islamic prisoners with fundamentalist views, could have been considered potentially worthy of violent attacks. The restorative process that we wanted to experiment precisely as a mending was implemented by referring to the concept of

reparation [which] can only be conceived as an overall rebalancing, at the various levels, of the damage in its global dimension, also with a view to preventing future damage (Hulsman, Baratta, De Leo, Faget) (Mannozi, 2016, p. 2).

If we are in the restorative field there is damage, a perpetrator of the damage and there are victims, but who is then the victim in a circumstance like this? And if there is, who is this victim? And what position do they have with respect to a restorative process?

On one hand the victim is whoever is liable to feel fear, whoever lives in a climate of fear due to a latent, perceived, unprocessed social conflict. Think of the fear that swept through the European metropolises immediately after the fateful, shocking 11 September 2011; in Milan, the underground was deserted for months. And the situation was repeated after the attacks

in London. The victims are those who, in the run-up to Christmas, instead of wandering around the traditional markets, experience anxiety, as a resonance of the massacre in Berlin in December 2016, or the phobia of stations caused by the massacre of 3 July 2017 in London.

One of the terrorists in London was an Italian boy, Youssef Zaghba, the son of a Moroccan man and an Italian woman. One of the terrorists in Berlin was a Tunisian boy, Anis Amri, who, after serving a five-year sentence in Italian prisons, carried out the attack in Germany; it was in prison that the radicalisation of this young man took place after he left his country. Italy was therefore also involved in the problem. Even if there were no terrorist attacks in Italy, the reaction of shock and fear was not lacking. Neither has there been a lack of populist exploitation by certain political parties who have done their best to stigmatise Muslim foreigners in the country, without making any distinction between decent, honest people and violent ones, causing further polarisation.

Thus, the victim on the one hand is the ordinary citizen whose freedom of movement is limited by fear. But irrational and unprocessed fear can also lead to prejudices and stereotypes, which as such tend to intensify and lose sight of the fact that criminal responsibility is personal and not extensible to a category, in this case to the category of 'Muslims' as if they were a homogeneous group, guilty by definition. In this sense, even honest Muslims find themselves on the side of the victims; all too often they are labelled as accomplices of terrorists and bearers of anti-Western sentiments and considered obliged to apologise, distance themselves and justify their de facto or ideological non-belonging to the world of suicide terrorism.

A third level of victimisation is the intra-community and intra-religious level, which is the one that gave rise to the project described in this article. Specifically in the Bologna prison project the reparative process was activated between Muslims who interpret Islam, considering it the only true Islam, in very different and sometimes incompatible ways. As well as for religious reasons, there is also a lot of enmity, discrimination and exclusion between many Muslim prisoners in the prison for ethnic reasons and of nationalisms. Moreover, some of the participating Muslims, although they have not directly committed or supported terrorist acts (in which case they would have been placed in A2 security circuits), harbour a not hidden hostility towards the society of the country of arrival. In the light of this, the restorative practices of this project have operated continuous processes of conflict mediation, creating opportunities for listening, dialogue and confrontation, before arriving at a kind of mutual recognition and respect for the visions and sensitivities of others within the common framework of fundamental rights and therefore of values that tell of the sharing of what is right for all.

So this has led to a renewed sense of community among prisoners and a significant reduction in typical prison abuses and bullying. The Constitutions, and the opportunity to explore the value aspects affecting the ideals that are also important to the lives of individuals, provided a kind of shared motivation to move forward together despite initial conflicting visions. Gradually, irreconcilable disagreements and enmities have been transformed and a sense of greater responsibility to promote respect and dignity of others has grown, as has the urge

to make formal mutual apologies where necessary and declarations of responsibility.

### **The role and significance of multiple mediators and facilitators**

In the meetings, the mediators were represented by two people who were constantly present at all the meetings and who, in addition to being subject matter experts on the topics discussed, were also expert mediators in the intercultural, inter-religious and intra-religious spheres (one of the two mediators is a Italian citizen from Morocco, Muslim, with a degree in Literature and Philosophy from an Italian university, and was the leader of an Islamic Community in Bologna). The presence of a little plurality and not only one person to lead the circles is important because the plurality represents the listening community as the (ideal) community outside the prison, in need of a re-established and re-stitched relational dimension. And the plural number allows mutual supervision of the outcome of the circles in order to operate in an increasingly smooth and harmonised way.

Each meeting was also attended, on a rotating basis, by facilitators, people from civil society and also experts in sociology, law, history, philosophy, history of religion and Islamic theology, etc., which in parallel solicit different points of view, feedback and put more thematic depth into the exchanges. This took place to help the circles to deepen the sense of mutual responsibility to which the Constitutions refer in the construction of a solid civil society in the construction of the shared sense of citizenship and humanity of the other.

### **The answer of the institutions**

The implementation of 'Rights, Duties, Solidarity,' in fact, was made possible thanks to the local institutional response, responding to the urgent need to prevent radicalisation in prisons.

There was a shared vision of the prison management, the representatives of the Emilia-Romagna Region and the Regional Office of the Guarantor and the educational institutions.

### **The proposal to the target audience**

The second level was the presentation of the proposal to the inmates, who were free to choose whether or not to join the project. Interested persons were then invited to a preliminary interview to check their motivation and to inform them of the high level of interaction, including at an emotional and autobiographical level, involved in the project. At the same time, it was explained that the contents of the meetings would be confidential, and that the mediators and facilitators would operate in a third-party position as volunteers. The preliminary interview was not merely an act of obtaining formal consent, but an introductory act to the mediation process and the beginning of building a climate of trust and confidentiality.

### **The text**

The article, so far, has identified 'reason' and 'context'. The method introduces the process. The time, the place, being present with a predisposition of openness, are the essential ingredients of the transformative process, which leads towards the generation of a third reality: the 'text.'

## Circles

The project envisaged speech circles: dialogue, interrelationships, comparison, in order to meet 'the different from oneself' and therefore to meet oneself, and from this new or renewed awareness, first to imagine and perhaps then to create that network of coexistence (which the Constitution tells us about) that accompanies our civil life. Listening and recognition have been the focal elements and have been experienced at various levels.

As is well known, Islam is multifaceted and contains within itself even very different cultural worlds that find it difficult to recognise each other and dialogue. The majority of Muslims in this project come from the Maghreb and, although they share a common geography and a similar culture, each national affiliation is characterised by specific peculiarities that are often marked by forms of ethnic intolerance.

In this sense, the holding of the meetings achieved a process of intra- and inter-cultural mediation, leading to a sense of rediscovery, equity and a desire for generative solidarity, beyond national affiliations of origin.

The circle methodology is a versatile restorative practice that allowed us to experiment with a proactive dimension, useful to develop relationships and build community, and allowed us to experiment also with the reactive dimension, useful to respond to discomforts, disagreements, conflicts. The work done in the circle offered people the opportunity to talk and listen to each other in an atmosphere of safety, respect and equality. It allowed people to tell and reflect on their personal stories, their culture, tradition, religious values and sense of belonging or non-belonging to the new Italian context, and to offer their perspectives in an environment of nurturing speech and listening and protection from being judged — an alternative to ways that rely instead on hierarchy or polarisation of opinions, honing the competitive power of the dialectical rather than dialogical approach to defeat the opinion of others.

As a first step, the circles at Bologna Prison have promoted an awareness of the distinction between what is punishment and what is revenge, of the rediscovery of the value of giving oneself rules, of respecting the rules, and therefore the importance of knowing the laws and the underlying principles.

The migratory push due to reasons of poverty determines, more and more often, the fact that the detention context ends up representing the first real contact that the foreign person has with the institutional level in Italy, with the application of its laws. Very often it happens that these same people not only do not know the rules of the host country, but not even those of the country they come from, and consequently do not even know that they can exercise rights.

The next step was to open a less pessimistic view of the imagined future scenarios dreaded with anguish, once emancipated from punishment.

How was it possible to trigger this gradual reparative process through the project? Every

single step was built with the intention of leveraging the linguistic, religious and cultural heritage of Muslims. The starting premise took note of the fact that re-educating a man who has broken the law also passes through the highest values of his traditions, which have an incomparably greater hold and attraction for him than the messages of other cultures.

Addressing hot topics with great sensitivity and depth was facilitated by the accompaniment in rotation of other volunteer guests, experts in specific subjects: constitutional law, philosophy, sociology, history of religions, Islamic theology. Another guest speaker was an ex-inmate of Moroccan origin who testified to how the mediation interventions in prison had triggered a transformative process that led him to study law at the University of Bologna.

After a preliminary meeting, 24 men of all ages and nationalities attended on a regular basis; but over the two years of the experiment, up to 80 men attended with partial attendance, most of whom shared the Islamic faith. As already pointed out, this faith is very multifaceted and often marked by contradictory interpretations.

Methodologically, the circle, as used, was non-sequential but structured around themes or questions posed by the circle facilitator; one person at a time spoke and the opportunity to speak moved around the circle so that the conversation could proceed from one person to another without a fixed order. Each person waited to speak until their turn without being interrupted. Optionally, a talking piece could be used to facilitate this process to emphasise that only the person holding it had the right, at that moment, to speak and to be heard.

One or more people in the circle would take notes of the ideas that emerged in the group to avoid back and forth discussions on aspects already discussed. The mediators not only facilitated the comparisons, and were the guardians of the dialectical processes and the acceptance of the contradictory aspects, but also took care at intervals to reformulate what had emerged and to make summaries.

### **The symbolic value of the choice of location**

These people gathered in the library of the prison around a table, for the duration of two school years, to play a sort of game of the mediating object (i.e. object's game), which, in this case, was the Italian Constitution in comparison with the Constitutions of the Maghreb area after the Arab Springs, and that of Morocco. And in the library, the restorative project sought to offer a quiet and protected space where individuals could freely and voluntarily push themselves to find within themselves the way to look beyond the walls, not only the external ones, but also those of the adjoining room, of the different country, of the forced neighbour, of the culture they belong to.

The library became a symbolic space of freedom where one could develop one's own potential in a process of individual and collective transformation, where one could confront oneself with the values, experiences and ideas that constitute the reality outside prison, but also a meeting place of multicultural dimensions, as well as a potential integration and exchange of ideas (even only through the pages of books, when this is the only possibility) for an important group of people in a condition of marginality. It played an important

and significant role as a place of possible cultural promotion, an incentive to creativity, a challenge to introspection and reflection on one's own life choices, through knowledge and comparison with alternative visions and readings of the world, capable of offering a multifaceted picture of reality. The choice of location can become a significant mirror of the steps of the design process.

### **The game of the mediating object**

The game of the mediating object allows people gathered in circles to break the ice by facilitating talking about themselves within a group. It is often difficult to say something about ourselves. Often we are not able to do it in a spontaneous and simple way; sometimes it's a matter of lack of habit to talk about ourselves; other times it can depend on delicate moments of life that make it difficult to open our inner self.

For this reason, it can often be helpful to have a support, an object or an image that helps expression, that in some way knows how to mediate between what a person is, how he or she feels, what he or she believes, what values he or she holds in that moment and how to share them with others.

Objects have the advantage, being silent, of offering plenty of time to look for and say what is there and thus become catalysts in the process of self-understanding and listening to others who share the object's game.

This exercise is an unusual and special threshold for accessing intimacy, both personal and group intimacy (it also helps gradually to form the group spirit) with which one begins to work in the circle (and this is also true within the training stages). It is a sort of warming up that leads to another way of being together, another way of feeling, another scanning of time.

In short, it is a simple intermediary towards the table of mediation, as towards a deeper knowledge of oneself, whatever the tool used.

In this context, the mediating object was represented by the Constitutions, which also became a mirror of the deepest values assumed culturally and religiously as ideal foundations adhering to their traditions of origin.

### **Generating a third reality: the shared rule**

In this specific case, as well as acting as a mirror, the mediating object Constitution(s) acts as a further symbol that acts as an intermediary between subject and mediating object in the re-construction/understanding of the knowledge of one's own cultural and religious tradition and aspects of critical self-revision, and also in the relationship with the other.

The articles of the Constitutions were read in order to reflect on the fundamental principles but above all to verify the corresponding values in a personal way; so personal stories and ways of feeling, visions, dreams, disappointments, discomforts, inner conflicts, hopes, ideals and practices were made to resonate with them.

The prison, in its being a laboratory, often ahead of its time, of forced cohabitation of thousands and thousands of diversities, can precisely through restorative practices propose to achieve the objective of experimenting with experiences to try if nothing else to build a good neighbourhood, to propose a shared concept of cohabitation and mutual respect. A good restorative practice can imply, as in the case of this project, the setting up of a shared rule on the basis of which to behave accordingly. The group rewriting of an ideal Constitution, made up of articles resulting from a shared drafting process, represented the conclusion of the course with the inmates, each of whom was called upon to put in writing and read to the others the rules around the library table — the result of much work in the circles. It is interesting to note that, in this case, the working group focused on the right to education, the fundamental article, from which everything else derives and not, for example, the right to work. Knowledge and culture help us to be freer and, as was the case with the circles, they can help us to enter into a relationship with ourselves and with others in order to build that sense of good neighbourliness, which was mentioned earlier, and to recognise its value.

### **Disseminate: incorporating the project into the educational curriculum**

The proposal of the 'Rights, Duties, Solidarity' project was immediately accepted in the training programme of the 'Provincial Centre for Adult Education,' becoming part of the prison's educational and teaching programme. A cycle of twenty-four meetings was set up in the social sciences course, but it was also open to inmates enrolled at different school levels.

The experience thus became a pilot project that was subsequently repropounded both in other prisons and outside, providing the inspiration for a three-year Erasmus + project that ended two years ago.

The partial and provisional result, as all the paths of the individuals of this shared vision merged in the ideal Constitution, has however the value of having sown good practices of which each participant can potentially become a direct witness and sower in his own community of reference.

This training model can be replicated across cultures and state borders, in different fields of application and with different levels of development of mediation, circles and restorative justice.

### **Training in a humanistic key taking inspiration from the model of this project**

The additional key concepts that can be relaunched for use in a training course inspired by the project in question, in addition to those already described in the article, are:

1. Designing a path in which information is linked to inspiration.

As far as direct work with trainers is concerned, sensitising and exercising practices through which the growth of the cognitive level grows together with the level of internalisation of the value of the shared themes (balance between mental and heart level). In other words, from a project like this the trainer obtains information but can also draw inspiration to revive some aspects and invent others. Information concerns the cognitive mental level; inspiration is closely linked to listening with the heart. Head and heart are the two levels

constantly interconnected in balance and the trainer trains well and the trainee learns well when this balance is manifested and recognised.

## 2. Humility and feeling.

Trainers therefore train themselves, and train the trainees in the circles they propose, to proceed in the discovery of mediation processes in order to experiment with restorative practices without judgement. Feeling prevails to the detriment of thinking. And with respect to this aspect, they mature and transmit more and more the consciousness of being lifelong learners.

## 3. Tailoring flexibility.

Structure training courses as a simple outline, without rigidity, with a willingness to adapt, with the possibility of remodelling the course according to the needs of the group and of discussing it with the group with whom the training is being carried out and with flexibility to adapt the way of learning on the basis of the most appropriate rhythm.

## 4. Plurality of methodologies.

The trainers must be able, during the training, to draw on an assortment of teaching styles in order to adapt the most suitable one to the trainees. Knowledge of more than one methodology and more than one model are fundamental competences, allowing trainers to move fluidly, with the awareness that trainees learn things through different ways. This level of competence allows trainers to adapt the training scheme.

## 5. Abstraction and concreteness.

Trainers are prepared to deal with theoretical and concrete aspects by coordinating the former with real-life examples, i.e. the tangible plane of experience.

## 6. Openness to uncertainty.

Trainers train trainees to internalise the acceptance of uncertainty of outcome in mediation and circles that activate restorative processes. In other words, it is necessary to train them to be aware that it is not the outcome itself (of circles and mediations) that is important, that is, the what, which must never be forced. Instead, the process of accompaniment that the mediation implies, that is, the how, is very important; being very clear that a mediation path is such if there is acceptance of uncertainty; one is a trainer if there is freedom from the need of control. 'The path is made by walking' (Machado, 1917, 'Traveller, there is no path') in consideration of the step of the participants in the journey, with openness towards the possible still invisible to the eyes. The thinking of trainers and trainees learns to disarm itself in order to face uncertainty; everything that involves possibility involves risk and disarmed thinking, which gives up the need for control, will have to recognise the possibilities of risks as well as the risks of possibilities.

## **Ideas and questions for critical reflection**

1. The article describes a project that uses the circle modality and gradually succeeds in resolving conflicts between inmates within the prison, building a coexistence between inmates that was previously informed by mutual hostility and abuse; in some cases it

was possible to create the conditions for a rapprochement between inmates previously enemies and adversaries and for the exchange of formal apologies. Group spirit was gradually built up thanks to shared work on reflection and the construction of a shared rule. Do you consider the experience of the restorative circle to be suitable to go through the disorder linked to the world of emotions? Or would you have opted for creating a lateral, reserved, specific occasion of author-victim mediation? What criteria do you use in the training of trainers to assess the fruitfulness of one way rather than the other?

2. The article points out three elements: reason, context and text. A text without context becomes a mere pretext and therefore an exercise in style for its own sake. The lack of a reason connected to the context and the text risks producing an answer without there being a question. A reason and a context without a text do not offer transformative opportunities. The coexistence of all three sets the premises of meaning for a restorative project. Do you agree? Are you able to use this reference grid in setting up a restorative practice project?
3. Trainers and trainers of trainers have to be experienced in using a variety of learning tools (object's game above all, role playing, simulations, interactive lesson, listening exercises, communication and non-verbal reading exercises, group work and team spirit building) and be aware of being lifelong learners. Who is the right person to be a supervisor of trainers and what is the criterion for choosing him/her? Do you check with a supervisor for regular training to keep yourself trained? In the context of training of trainers what criteria do you use for supervision?

### Recommended sources

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## Emanuela Biffi, 2021

### Restorative justice and violent extremism

Restorative justice offers opportunities in cases of serious crime, such as violent extremism, not only to respond to the individual needs of victims and perpetrators, but also to take into consideration the collective dimension of the (victimisation and radicalisation) experience. Its principles (e.g. justice, responsibility, solidarity, truth) aim at connecting people to restore more just and human relationships, and its practice ground rules (e.g. voluntariness, openness, respect, safety) are meant to ensure careful, honest and well-prepared encounters. While this may seem a soft and light response to violent extremism, several evidence-based research studies on the effectiveness and efficiency of restorative justice have proved its positive outcomes in different types of serious crime. What is more striking are the bottom-up experiences shared by ‘witnesses’ who engage in restorative encounters in cases of domestic political violence and terrorism in Europe (e.g. Basque Country, Germany, Italy, Northern Ireland) and other types of violent conflicts beyond Europe (e.g. Israel/ Palestine, Lebanon, South Africa). While not all these experiences fall under the ‘traditional restorative justice practices’ (i.e. victim offender mediation, conferencing and circles), all have in common the restorative-oriented approach to reflect on the role of the other side and to engage in a dialogue (direct or indirect) on what can be done to transform the negative experience of the violence, learn from past mistakes and repair the harm and injustice suffered.

This article will focus on the restorative justice experiences in the Basque Country and in Italy, because of the different practices adopted to bring together opposing parties and the many similarities in terms of lessons learnt. It will not go into detail on the specificities of each conflict, although a brief summary to set the scene is explained in table 1.<sup>21</sup>

#### Table 1: The conflict and the restorative experience

##### Basque Country, 1959–2011

For more than 50 years, the Basque Country experienced an armed conflict aiming at the independence of this region from Spain; the liberation movement was led by ETA — Euskadi Ta Askatasuna, known internationally as a terrorist organisation. It resulted in more than 1000 deaths and 1000 injured people.

In 2011, when ETA announced the cessation of the armed activities, a restorative justice programme in prison was launched by the Ministry of Interior of the Spanish government and the Directorate of the Basque Community responsible for assisting and supporting victims of terrorism. New mediation processes may be initiated at the end of 2021.

##### Italy, 1969–1988

For almost 20 years, during the so-called ‘Years of lead,’ Italy experienced a wave of far-right and far-left incidents of political terrorism that resulted in more than 400 deaths and 1000 injured people, including the kidnapping and assassination of prime minister Aldo Moro.

In 2005, inspired by the South African experience of the truth and reconciliation commissions, the ‘Group of the Encounter’ was born, including victims, ex-combatants, youngsters, wise people and mediators. The group started from a bottom-up initiative of letters (collective or individual, signed or anonymous) exchanged between former terrorists and victims.

<sup>21</sup> This article is mostly based on previous publications on this topic by the author, i.e. Biffi (2020); (2021)

## Restorative encounters in the Basque Country and in Italy

In the Basque Country's case, fourteen victim-offender encounters took place in 2011 in the prison of Nanclares de Oca (in the province of Álava in the Basque Country). These experiences are recorded in the book *Los Ojos del Otro: encuentros restaurativos entre víctimas y ex miembros de ETA* (Pascual Rodríguez, 2013), in the theatre play *La mirada de l'otro* (Proyecto 43-2) and in the film *Maixabel* (Bollaín, 2021). Other restorative-oriented initiatives to support social cohesion and community building took place in the region, such as the so-called workshops of coexistence, and other practices of commemoration. Among them, the Glen Cree reconciliation initiative (educational public events with victims), the 'MemoriaLab' (two-day events in residence with opposing groups) and the 'Afaloste' (participatory cooking workshops of conviviality). Also, participatory restorative walks were organised bringing together young students and victims to reflect on the concepts of violence, war and terrorism, while walking in public spaces and discussing events of Spanish history.

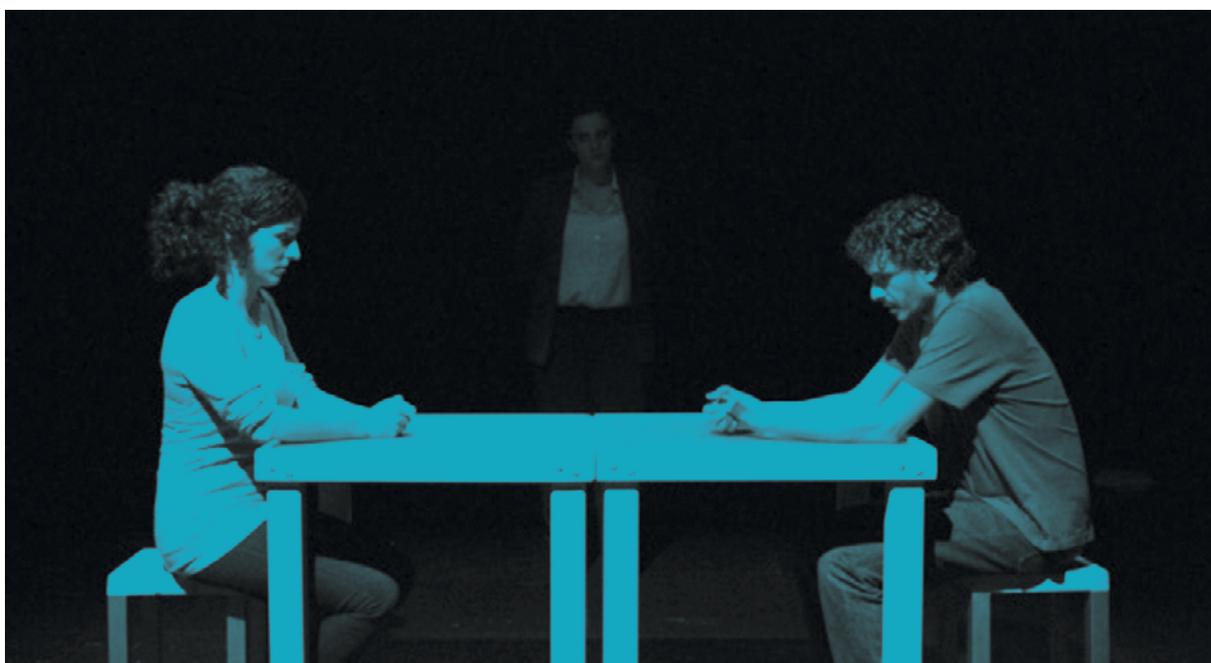


Photo: Juan Carlos Mora. María San Miguel and Pablo Rodríguez in *La mirada del otro* by Proyecto 43-2

In the Italian case, more than 100 restorative encounters brought together between 9 and 60 people, including facilitators, witnesses (victims, former combatants, family members), guarantors (or wise people), first third parties (youth). The restorative justice methods used included mediations (victim-offender mediation, or mediation between former members of the armed groups only, or between them and their family members), conferencing and circles, but also other restorative-oriented initiatives (such as collective visits to memorial places) and more informal approaches (i.e. the fact that meetings took place in residential settings where informal moments for dialogue would arise). These experiences are recorded in the book *Il libro dell'incontro: vittime e responsabili della lotta armata a confronto* (Bertagna et al., 2015). Several members of this unique experience keep on sharing their story in public events (e.g. festivals, schools, conferences, training centres of criminal justice professionals).

Cross-border restorative encounters between victims and former combatants from Italy and the Basque Country took place in Vitoria-Gasteiz (2013), San Sebastian (2019) and online (2021). The first one was organised by the Fernando Buesa Blanco Foundation. The last two, bringing together opposing groups from Northern Ireland, Israel and Palestine, were organised by mediators and academics from the Catholic University of the Sacred Heart and the University of the Basque Country, in cooperation with an artist from the UK, supporting dialogue between the participants through the use of artistic methods.

In both cases, the response of the criminal justice system has been quite repressive and still, in some cases, the responsible actors were not found. Also, such a punitive response failed to treat the wider traumas suffered at the individual and societal level. This left people with a sense of injustice and insecurity in society and some sought alternative ways of finding the truth and giving a sense of closure to what happened. Both countries adopted different types of justice responses, including a mix of criminal, transitional and restorative justice. This served to dismantle the clear political ideologies, supported by a general group solidarity, that created the harm and to reflect on how the role of individuals, and thus 'the other,' changed over time and had no fixed role within and beyond the conflict.

### Preparing restorative encounters

An in-depth preparation phase with single individuals is a key practice principle (Table 2) for using restorative justice in any type of crime, not only in cases of violent extremism. This serves to understand the parties' motivation to meet, to ensure the voluntary participation and to remind parties about the possibility of leaving the programme at any time (if needed). It also serves jointly to agree to keep confidential the information shared in the encounters, unless agreed otherwise.

### Table 2: Key practice principles

In the Basque Country's case, the conditions of participation in the mediations were:

- Prisoners must commit to desist from violence and crime
- Prisoners could not profit from any penitentiary benefits
- Mediators clarified that there was no guarantee that the encounter would happen
- Mediators adopted a non-directive style encouraging dialogue and interrupting only when necessary
- When needed, collaboration with prison staff and/or with victim support services was established

In the Italian group, each individual committed to basic ground rules of restorative justice processes and of general education and conviviality:

- Respect
- Active listening
- Care for others
- Gracefulness
- Seriousness and sobriety
- Balance between time for talking and time for silence
- Punctuality
- Equidistance

## Initiating restorative encounters

In both cases, the restorative justice process initiated thanks to self-referrals, meaning that participants got interested in meeting the other party and contacted directly a service or individual mediators. Facilitators had multiple phone conversations and/or face-to-face meetings with individual participants to understand their motivations and expectations and to provide emotional support before a potential encounter. Despite the experimental area of application, with little research on the use of restorative justice in cases of extreme violence, facilitators carefully prepared the encounters, counting on each other's feedback, leaving little room for improvisation (Table 3).

### Table 3: The restorative encounters

About 20 prisoners of ETA asked to meet with their victims. In terms of access to restorative justice, these mediation processes received institutional support from the Spanish Minister of Interior and the Basque Direction of Victims' Support, but they were still kept secret and confidential (in line with restorative justice principles) to avoid media attention.

The senior mediators involved were Jose Castilla, Xavier Etxebarria, Julián Carlos Ríos Martín, Alberto Olalde, Esther Pascual and Eduardo Santos, mostly working for NGOs or freelancers. They all had more than ten years' experience in penal and penitentiary mediation in cases of serious crime; they developed their own methodology (learning by doing approach), preparing in advance all potential questions that victims may have asked prisoners.

Some participants were trained in communication skills and expression of emotions (when needed) and facilitators clarified the limitations and boundaries of restorative justice processes (e.g. the fact that these are not therapy sessions). The preparation phase lasted between 3-6 months per case. Good cooperation was established with the prison and victim support services.

Several former combatants and victims got in touch with Guido Bertagna, a Jesuit priest and mediator, who involved in this process two more mediators, Claudia Mazzucato and Adolfo Ceretti (both also professors in criminal law or criminology). In the 1990s, Bertagna participated in two courses delivered for the opening of two restorative justice services (Bergamo and Padova), while Mazzucato and Ceretti attended a one year course delivered by Jacqueline Morineau (Milan). Additionally, they participated in professional development programmes (e.g. inspired by Mark Umbreit, or on specific topics such as negotiation skills). They adopted a 'learning by doing approach' for facilitating cases of terrorism, relying on intense exchange between each other and, later on, with the 'guarantors' (wise people with relevant professional backgrounds who could give feedback on this work).

The preparation phase lasted two years (2005–2007). The actual encounters (2007–) were spontaneous, informal and confidential initiatives. The group chose not to ask for funding and to avoid visibility on media. The group's dynamics were (and still are) shaped by sharing narratives (personal narratives as well as narratives from literature, poetry, cinema, arts, and religion). Narratives served as tools for preparing and reflecting on the actual restorative encounters with others.

## Outcomes of the restorative encounters

The people who met in the restorative encounters of both case studies had the opportunity to tell their personal stories and revise the collectively shared history of the facts, shifting between their own memory and the societal one. In this way they could understand the co-existence of different truths, as explained in transitional and restorative justice literature:

- *Forensic truth* refers to the actual measurable facts and details of the same situation (e.g. data presented in court, number of days in the hospital, loss of a loved one);
- *Narrative truth* refers to the unique experience of each individual, which is based on their own personal values, existing relationships and emotional background;
- *Dialogical truth* refers to a more complete shared narrative which arises when people affected by the same situation meet to share facts (history) and subjective experiences (memories) of what happened;
- *Transformative truth* may happen as a consequence of the dialogical encounter, when people make new sense of what happened.

This is probably the main success of these restorative interventions. The history of what happened in those years of violent conflicts in the Basque Country and in Italy is left to historians, criminal investigators, journalists and other professionals whose work is to find and tell the true facts. Participants of the restorative justice encounters, instead, had the opportunity to engage in a dialogue, understanding the (co-)existence of different truths and making sense of this to transform their experience into an opportunity for change.

### Lessons learnt

Some lessons learnt can be drawn from both cases:

- Access to restorative justice (i.e. the offer of this service) should be provided in all cases, even the most serious, violent and complex ones, as some individuals may wish to engage in an encounter to find answers to their questions.
- It is important to treat cases of violent extremism in their individual dimension (i.e. as acts of violence done by offenders to victims, where both may have been 'objectified enemies'), not only for their collective dimension (which may be influenced by other sources such as media and politics).
- Involving young people and the wider society in such experiences is crucial to prevent violence from reoccurring, especially when these stories have an impact on society as a whole and thus on future generations.
- As in all restorative justice cases, participants walk their own path; thus each process is unique, making it impossible to develop a toolkit of best practices for using restorative justice in cases of violent extremism.

### Practical tips for practitioners and trainers

A few practical tips drawn from these experiences are:

- Inspiration for working on cases of violent extremism may come from other types of serious, complex and violent crimes, involving individuals or groups as victims and offenders. Trainers may benefit from exercises and case studies designed to train trainers in the use of restorative justice in cases of homicide, group rape, historical abuse, corporate crime and other types of crime which may include extreme violence and a collective dimension.
- The use of narratives (e.g. from literature, poetry, cinema, arts, religious books) is useful to reflect with participants, in a more neutral way, on different concepts relevant before, during or after the encounter (e.g. 'the other,' violence circles). A training may include some activities for training trainers in using such materials and also a resource kit with

a list of films, books, poems, images and other materials that could inspire their work as trainers and as mediators.

- A detailed methodology designed by senior mediators may include going through all questions that participants may wish to ask to each other, encouraging mediators to put themselves in the shoes of the other one. During the training, participants may be asked to wear different hats (e.g. the one of the victim, the one of the prisoner), imagining the actual encounter, and write down all questions (not necessarily the answers) that could come up better to prepare in case of some 'complex' questions.
- Restorative encounters in cases of violent extremism may get much attention from media and politics and it is crucial to agree on a set of ground rules with participants to keep the encounters confidential and private. During the training, it may be useful to have an exercise reflecting on a methodology for co-creating a chart of ground rules in the preparation phase as well as during the actual encounters.
- Mediators must be prepared to start a self-development journey with its up and downs. A training for trainers may include concrete exercises on empathy, silence, attachment and other topics that may support them, as well as future mediators, in engaging in this intricate work bringing together opposing parties connected by extreme violence and the wish to reshape their futures.

### Questions for critical reflection

- What are your first thoughts (i.e. challenges and opportunities) concerning the use of restorative justice in cases of violent extremism and terrorism?
- Do you envisage additional challenges or opportunities when considering restorative approaches in cases of non-domestic types of violent extremism, or when considering the different (political, religious, ideological, social, economic, or other) motivations justifying violent extremism?
- In your opinion and/or experience, how can restorative justice have a role in preventing (not only countering) the radicalisation process in which individuals enter into violent extremism?
- What links can you make between your own (restorative justice) experience and the ones from the Basque Country and from Italy in cases of violent extremism?
- How can you use the Basque and Italian restorative experiences in cases of violent extremism in the future?

### Further reading

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Silvia researched and published on child justice, human rights in detention, restorative justice and diversion with children in Europe, Eastern Africa and at global level. To know more about her research work and her publications, visit her website: <https://silviarandazzo.consulting>

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## About the project

This publication is one of the intellectual outputs created by the MEDIAREJ project team members from different countries, working together for 26 months, starting from November 2020.

Over the last years various training proposals related to Restorative Justice and mediation have been developed. Some of them tend to train mediators as individual professionals with postgraduate courses, some others form groups of mediators linked to specific communities. The MEDIAREJ project aims to take stock of various training methods and implementing them through joint staff training and work on innovative methodology and materials in four European countries, establishing a network among trained professionals and organisations. This exchange is aimed at drafting agreed guidelines to clarify the essential requirements for the training of mediators and mediation trainers to operate effectively and efficiently and to achieve high professional standards across the borders of states and legal systems.

For access to more information about the project and the partner organizations involved, as well as the learning resources we created, please visit [www.mediarej.eu](http://www.mediarej.eu)

Please attach a nice photo of the project team here





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