



Restorative justice for judges and public prosecutors **Manual for trainers**

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Foreword

by Wojciech POSTULSKI, Policy officer for European judicial training, Unit JUST.B1 General criminal law and judicial training, Directorate General for Justice and Consumers, European Commission

Today, too many professionals and victims of crime still do not know about restorative justice services, or know too little about them. As a result countless victims are left unaware of their rights and do not know where to turn for help or to seek compensation for the harm they suffered. This is why the European Commission is determined to train as many justice professionals as possible about restorative justice and raise victims' awareness about the services at their disposal.

I warmly congratulate the Catholic University of Leuven and its partners on this outstanding manual for trainers, drafted as part of the Judicial Training Project on Restorative Justice, and co-funded by the European Union's Justice Programme. It is high-quality work that will help judicial training actors, both national and European, respond in a flexible way to practitioners' daily challenges to make restorative justice a reality for victims.

This RE-JUSTICE project is central from the perspective of the European Commission policy on the victims' rights and its policy on the judicial training.

The EU strategy on victims' rights 2020 – 2025¹ is based on a two-strand approach – empowering victims of crime and working together for victims' rights. Empowering victims of crime is crucial so they can report crime, participate in criminal proceedings, claim compensation and ultimately recover – as much as possible – from consequences of crime.

In its communication "Ensuring justice in the EU, a judicial training strategy for 2021–2024"² the European Commission sets out a comprehensive strategy to improve justice professionals' training. It recommends that justice practitioners who work with victims should be trained to better support and communicate with them, taking into account in particular the needs of the most vulnerable ones. The strategy also highlights that judicial training should go beyond legal education as the law and legal principles are not disconnected from human beings. Quite the contrary. This is why justice professionals have to develop professional skills based, among others, on empathy and active listening and hence acquire multidisciplinary competences. Such an approach to judicial training is key to develop efficient restorative justice systems.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0258>

² <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0551>

This manual provides good methodology from design to implementation. As such it should become a template to build and implement an all-encompassing training curricula for legal professionals.

The Commission is looking forward to seeing massive dissemination and use of this manual.

We invite all judicial authorities, especially those responsible for judicial training to make the most of this new instrument.

Wojciech POSTULSKI

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Finally, this Manual and associated training materials have been improved and adapted based on the feedback received from the trainers and the trainees following the RE-JUSTICE pilot trainings held

with judges and public prosecutors during 2021 in Greece, Italy and Spain. For this reason, we warmly thank all the participants of the three trainings. Through their strong interest in restorative justice, their active participation and their profound experience on criminal justice matters, they provided an invaluable contribution to advancements in the field of judicial training on restorative justice.

Introduction

This Manual is a guidebook for trainers who will lead and facilitate training on restorative justice to judges and public prosecutors. It is a result of a joint effort of several partners and multidisciplinary professionals within the context of project RE-JUSTICE.

RE-JUSTICE is a 30-month project, co-funded by the European Union's Justice Programme, led by Catholic University of Leuven (KU Leuven) and carried out between November 2019 and April 2022. Through a process of desk and field research and consultation with experts, RE-JUSTICE has developed this training Manual and a training package (handouts, video materials, resources) that were used to provide training on restorative justice to judges and public prosecutors in pilot training sessions in Greece, Italy and Spain. This project involves partners from Belgium, Greece, Italy and Spain. Belgium sees cooperation between KU Leuven, the National Institute for Judicial Training (IGO) and Moderator Forum for Restorative Justice and Mediation, to provide together their technical support through the well-established knowledge and capacities on training and implementation of restorative justice practices. For each of the countries in which the pilot training was given, a partnership between an academic institute and the national judicial training school ensured country-specificity and the long-term sustainability of the training provided. Additionally, endorsement by the national training school confers a level of credibility to the training that is necessary to engage with such judicial professionals. The country-specific knowledge and perspective is supported and coupled by the European expertise brought by the European Forum for Restorative Justice and the European Judicial Training Network.

As part of the specialised set of training needs presented by judges and public prosecutors in the context of the Victim's Directive, this training project focuses on the specific training needs connected to the referral of cases to restorative justice services considering the specific needs of victims (Art. 12, par. 2), and the appropriate, respectful and safe communication with victims, providing them with key information about the availability of restorative justice (Art. 4, par. 1, al. j).

The goal of the project is thus, through training, to contribute in a sustainable way to the process of raising awareness, building knowledge and developing skills and attitudes amongst the target groups. Initially and directly, this is done in the three Southern EU MS partners. Ultimately, on the basis of gained experience, RE-JUSTICE aims to contribute to the promotion of the same process across the EU.

For approximately 20 years multiple European bodies and actors have highlighted the importance of judges and public prosecutors receiving training on restorative justice. The RE-JUSTICE project addresses this training need, with a specific focus on the topic of criminal law and the implementation of the Victim's Directive 2012/29/EU.

The main project objectives were:


- ▶ To formulate a competency profile on restorative justice – including relevant knowledge, skills and attitudes – for judges and public prosecutors (drafted by KU Leuven with partners' feedback, in the phase of preparation)
- ▶ To conduct an assessment of the training needs on restorative justice for judges and public prosecutors in Greece, Italy and Spain (in the phase of preparation, via focus groups that will be conducted in months 5 – March 2020 – in the three countries)
- ▶ To design a training course on restorative justice that addresses the specific needs previously identified. The training course should adopt a blended learning approach, which combines both online and face-to-face training modalities.
- ▶ To conduct pilot delivery of the training in Greece, Italy and Spain (with the judges and public prosecutors)
- ▶ To evaluate the pilot delivery of the training course in each of the 3 Southern EU countries
- ▶ To disseminate the results of the evaluation and the final manual 'Judiciary Training on restorative justice'.

The project aims to accomplish these objectives using a methodologically participatory, bottom-up approach, and also taking the specific situation in each country into account.

How to read this manual

This Manual presents: 1) Instructions and guidance for trainers, which should be adapted for use in the local contexts. 2) The training programme, divided into thematic modules and offered with a blended approach (online and face-to-face).

To make this guidance for trainers effective, the **introduction** provides an overview of how the training for judges and public prosecutors was designed, developed and delivered in the context of the RE-JUSTICE project. The **methodology** section can prove useful for those who will want to pilot the same training in their countries and will need to start from an assessment of the training needs of judges and public prosecutor on restorative justice. The methodology describes in fact how the competency profile designed within the framework can be used to first assess the learning needs before implementing the training. The training materials presented in this Manual correspond with the topics outlined in the competency profile.

Throughout the Manual key lessons from the pilot trainings are highlighted with the 'key' icon  throughout the whole Manual.

After the introductory methodological section, the Manual will introduce the training programme, unpacking its structure (the way it is presented) and its contents (thematic modules).

In the chapter "**Unpacking the training programme**", the trainer will find some key contents about:

- ▶ The structure in which each training module is presented

- ▶ The break-down of all the modules into the blended structure: online and face-to-face sessions
- ▶ The training materials offered within this training package and suggested for future training
- ▶ Practical instructions for the trainers on how to adapt the modules, materials and blended approach to their country specific contexts

The trainers will then find some **Restorative Guidelines** on reproducing and replicating restorative values, principles and processes in their training. This is particularly relevant for the face-to-face sessions, through their attitude, skills and training tools.

After all preliminary methodological hints and practical instructions are provided to the trainers, the actual **training programme** is presented, **module by module**. Under each module, the trainers will find the:

- ▶ **Core contents** that need to be covered in order to meet the training needs identified in the target population. These core contents are distributed between online and face-to-face sessions.
- ▶ A number of **training tools** developed within the RE-JUSTICE project, as well as instructions of training tools that trainers should be able to provide depending on their own local context
- ▶ **Resources** for trainers and for trainees.
- ▶ Examples of exercises and assignments
- ▶ **Further detailed instructions** for trainers on how to tackle each session and exercise, with lessons learnt and tips from the trainings piloted in Greece, Italy and Spain.
- ▶ To complete the training package, the handouts for trainees, designed and developed under RE-JUSTICE, will be available as annexes to the Manual.

The RE-JUSTICE training

TRAINING OBJECTIVES

This training programme has been developed based on the identified training needs of judges and public prosecutors regarding restorative justice in Greece, Italy and Spain, and in order to promote the effective application of Art. 4, par.1, al. j) and Art. 12 of the Victim's Directive.

The project aims in fact to accomplish its objectives using a methodologically participatory, bottom-up approach, and also taking into account the specific situation in each country (e.g. legal context; the level of involvement that each of the National Schools of Magistrates (CGPT, NSJ, SSM) can devote to the training project on restorative justice.

The final aim is, through training, to contribute in a sustainable way to the process of raising awareness, building knowledge and developing skills and attitudes amongst the target groups,

firstly and mainly, in the 3 Southern EU MS (Greece, Italy and Spain) and, ultimately, on the basis of gained experience, to contribute to the promotion of the same process at the 28 EU MS level. The fulfilment of the learning objectives identified under each module should contribute to ensure that the right of victims of crime to have safe access to restorative justice, as part of their right to have access to justice, is respected throughout Europe.

TRAINING METHODOLOGY: THE DESIGN AND DEVELOPMENT

According to Pacurari, Hirvonen and Hornung (2015:72–73) empirical evidence shows that good judicial training is focused on the development of new skills: ‘judicial training must go way beyond the procurement of (legal) knowledge ... it should be focused on sustainably improving the attendees’ professional capacities and skills, and thus enhancing personal as well as institutional changes’. Effectively, as it is explicitly acknowledged by the EJTN Handbook on Judicial Training Methodology in Europe (2016:2) ‘judicial training does not only include legal and judicial knowledge, but also all kinds of (multidisciplinary) knowledge, of the capabilities and skills a good judge and prosecutor needs to possess for the proper execution of their tasks’.

According to the EC Study of the Best Practices in the Training of Judges and Prosecutors in EU Member States, the training cycle should always be composed by 4 steps or phases: 1) Training-needs assessment; 2) Design of the specific training objectives (directly connected to the identified specific needs); Plan and design the training programme; 3) Implement the training programme and 4) Evaluate the training delivered (Cooper, 2015:52). In our training project, which focus on the transfer of knowledge but also on the development of a new set of skills and attitudes towards restorative justice by the two target groups (judges and public prosecutors) these four steps or phases of the training cycle inform the main objectives of the needs assessment, the design and delivery of the training package.

Therefore, the first phase in the training cycle is the development of a **training needs assessment**. Cooper (2015:52) defines need ‘as the gap between existing and desired knowledge, skills, and abilities—a gap that could be reduced or even eliminated through training’. Postulski (2015: 92) defends the development of competency profiles to serve as the basis for the assessment of the specific needs of the target groups of judges and public prosecutors. The training needs identified will correspond to the ‘the gap between competence profiles and actual competences’.

As a result, a competency profile for judicial actors had been devised during the first phase of the project. This indicated the knowledge, skills and attitudes that are required by judges and public prosecutors in order for them to understand and work effectively with restorative justice. The **competency profile** addressed the required knowledge, skills and attitudes across four domains:

1a: Understanding the theories of restorative justice

1b: Understanding the stakeholders of restorative justice

2a: Legal and policy frameworks

2b: Restorative justice in practice

Each of the four domains is split into a number of subsections containing related topics

As part of the needs assessment phase, nine **focus groups** were conducted in Greece, Italy and Spain in the spring of 2020 (three per country). The focus groups were conducted with professionals from these target groups and constituted a participatory research element of the project. Each of the three countries conducted three focus groups, one with judges, one with public prosecutors and a mixed group containing both judges and prosecutors.

The purpose of the focus groups was to assess the training needs for judges and prosecutors with respect to restorative justice. The training needs were assessed at the functional level, which is 'a type of assessment that identifies the knowledge, skills, and competences needed by the profession, i.e., judge or prosecutor '(Cooper, 2015:52). Professionals were asked to share their ideas about the training needs for the professional group as a whole rather than their personal needs regarding training.

During the focus groups the gaps between the existing knowledge, skill and attitudes with respect to restorative justice within each professional group and the knowledge, skill and attitudes set out in the competency profile, were assessed. This gap demonstrates the training need. Training needs are considered at three distinct levels:

- ▶ Primary level training needs – those common to the two professional groups (judges and prosecutors) in all or most of the countries
- ▶ Secondary level training needs – those specific to of one professional group but common to all or most of the countries
- ▶ Tertiary level training needs – those specific to a specific professional group in a specific country

Following the identification of the needs presented by each target group, the phase of **design of the training course** – with the definition of the contents, structure, learning objectives and techniques to be used – was also highly participatory and saw the involvement and active contribution of all project partners, including the national judiciary schools, through the following steps:

- ▶ Drafting of a transnational report with the aim to present summary information regarding the focus groups in each of the three countries along with comparative information regarding the identified training needs
- ▶ A transnational workshop, conducted online with the whole consortium and judges and public prosecutors invited from the implementing countries, to discuss the transnational report and the first proposition of training curriculum
- ▶ A steering committee meeting, conducted again online with the whole consortium, to discuss and validate the structure and contents of the training programme

Through these phases, the training manual and training materials for judges and public prosecutors (Nov 2020 – July 2021) have been designed and developed, starting from the training curriculum – designed against the competency profile and the transnational report – and with the contribution from the University partners and the Judiciary Training Schools in Greece, Italy and Spain.

TRAINING METHODOLOGY: THE PILOT DELIVERY

Between July and November 2021, the RE-JUSTICE training sessions for judges and public prosecutors on restorative justice were held in Naples (Italy), Madrid (Spain) and Thessaloniki (Greece), following the contents and the structure offered in this training manual and in its handouts and other training materials: 10 hours of contents (mostly on the theoretical explanations of restorative justice) were offered **online** – **through the e-learning platforms used by the Judiciary Schools** – and **20 hours** of contents were offered in **face-to-face sessions**, that would maximise the learning experience using debates, working groups, circles, group exercises and experiential tools such as role-play.



The National Judiciary Schools in Italy (SSM), Spain (CGPJ) and in Greece (ESDI) worked in very close and continuous collaboration with the University partners, yet the Schools had direct responsibility for organising the training sessions, selecting the trainers and trainees (among judges and public prosecutors), managing the online platform and hosting the face-to-face sessions. The Schools' ownership of the process ensured engagement of judges and public prosecutors from across the countries.

THE TRAINERS

The trainers who conducted the pilot training sessions in the RE-JUSTICE project were professionals with experience in restorative justice, from the National Training Judiciary Schools, the University partners and the local restorative justice services.



It is important that trainers have in-depth knowledge and experiences in the field of restorative justice and also in the field of criminal justice. To best achieve the necessary skill sets a multidisciplinary pool of professionals and trainers will be necessary: judges and public prosecutors, academics, experienced trainers in the field, mediators, researchers, lawyers. When possible, the involvement of judges and public prosecutors with experience in the application of restorative justice in other countries also contributes to the richness of the training offer and brings a fundamental international perspective. The lessons learnt from countries with an established experience in the field are many and significant, and they make the offer of resources available rich and diversified.

Of particular importance is the presence of a diversified pool of trainers: judicial actors as well as experienced professionals from other background. The presence of researchers, academics and mediators will provide that variety of perspectives and expertise that is crucial to deal with the variety of complex challenges arisen in the every-day working experience of judges and public prosecutors.

THE TRAINEES



The groups of trainees who took part in the three pilot training sessions were mixed groups of around 25–30 judges and public prosecutors, from different geographical areas and from a variety of roles and functions. They generally had different levels of knowledge of restorative justice: they were in fact all professionals with great interest but little knowledge of restorative theories, principles and practices (consistently with the needs assessment conducted in the three countries prior to the development of the training). The selection of participants was conducted by the National Judiciary Training Schools, through *ad hoc* procedures launched at national level.





Similarly to the variety of trainers involved, the diversified audience of both judges and public prosecutors, covering different roles, in different geographical areas and with different lengths of service, adds value to the training experience. This diversity offers, as a matter of fact, a richness in the perspectives and reflections raised that is seldom to be reached in other contexts (given the complexity of bringing together such a multi-disciplinary group of professionals, between trainers and trainees). The complexity of the discussions that can potentially arise from such a group of trainees – especially concerning the intersections between restorative justice and criminal justice – is pivotal, not only in achieving the training objectives, but also in contributing to the development of the whole discipline and moving forward in its solid growth and expansion.

Unpacking the training programme

This training programme consists of five thematic modules, each with an online part followed by face-to-face aspects (see overview on pp. 9-10). Each module is presented in this Manual following this structure:

 <p style="text-align: center; color: #FF8C00; font-weight: bold;">KNOWLEDGE GAPS</p> <p>The gaps between the Competency Profile and the knowledge, skills and attitudes of judges and public prosecutors that most urgently need to be addressed, as identified during the needs assessment process.</p>	 <p style="text-align: center; color: #008000; font-weight: bold;">LEARNING OBJECTIVES</p> <p>In parallel, and in response, to the knowledge gaps, the learning objectives for each module are also pinpointed. The learning objectives should serve as guidance for the trainers throughout the course, and indicate what the trainees will be able to do by the end of each module.</p>
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	<p>BLENDED FORMAT</p>	<p>THE SUBDIVISION BETWEEN AND FACE-TO-FACE SESSIONS</p>	<p>ONLINE</p>
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	<p>STRUCTURE</p>	<p>AN OVERVIEW OF DURATION, PREPARATORY WORK, FORMAT, LANGUAGE AND TOOLS</p>
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The module contents are then presented in the following format, each time the online session being presented first, in line with how this particular approach to the training has been formulated.

Please bear in mind that the presentation of the learning materials and distribution of the sessions presented in this manual serve for illustrative purposes only. **Trainers are encouraged to use the materials flexibly to best serve the learning needs of their group and the practical circumstances.**



ONLINE SESSION



Core contents to cover



Tools



Additional resources



FACE TO FACE SESSION



Core contents to cover



Suggested lesson plan



Tools



Additional resources

Blended programme

This training on restorative justice for judges and public prosecutors is designed to be delivered in a blended learning format: as a course that blends online and face-to-face delivery, combining the best features of online learning and traditional classroom learning.

A substantial proportion of the content is delivered online (10 hours), where the trainees are introduced to the theoretical knowledge about restorative justice, its emergence, values and standards, its main features and the international and national legal framework. The other 20 hours are delivered face-to-face, to allow a restorative training approach and the use of experiential tools.



10 HOURS ONLINE

Programme

Before the face-to-face: Introduction to theoretical knowledge about restorative justice for judges and public prosecutors (8 hours 15 minutes): pre-training survey, videos, recorded lectures, self-directed reading, polls.

After the face-to-face: final assignment, post-training survey and satisfaction survey (1 hour 45 minutes).

The online hours are all asynchronous to give the target audience of professionals a certain flexibility (with self-guided study), given their tight schedules.



20 HOURS FACE TO FACE

Programme

in-depth study, analysis and discussions about restorative justice for judges and public prosecutors, plus direct testimonies and experiences of restorative justice with reflection moments on the role of judges and public prosecutors (20 hours)



The online teaching covers essential knowledge, and are not optional. It is important to ensure that trainees have access to and cover these materials. National Schools of the Judiciary have an essential role to play so need to be involved in the designing the training from the very first discussions. The Schools have a role in:

- ▶ The online platform – preferably managed by the Judiciary School – will have to be available for the trainees very well in advance before the face-to-face sessions, to give them the time to go through the materials
- ▶ The video lectures and video messages need to be tailored to the local contexts and involving local experts that focus on the national legal frameworks
- ▶ The trainers should ensure to follow-up with the trainees their attendance to the online sessions and find ways to motivate them to explore those contents

Finally, it is important to emphasise that the structure presented in this training programme – with the online sessions that precede the face-to-face ones – is just one possible option. The trainers and the organisers of the training, in close continuous collaboration with the National School of the Judiciary, will have to **pre-assess the context and decide if:**

- ▶ *The sessions online are offered before the face-to-face, as in the present Manual, to ensure that the trainees cover the theoretical and core contents before meeting face-to-face and before engaging in experiential exercises*
- ▶ *The sessions online are offered in between face-to-face meetings, to introduce and follow-up contents of the face-to-face sessions*
- ▶ *The online sessions are offered after the face-to-face training, to deepen the contents that the trainers had started to convey in person. In this case in particular, a significant follow-up may be required from the trainers, to ensure that the training participants go through the materials offered online and cover all the contents provided with the training, even after the end of the face-to-face sessions.*

Thematic modules

MODULE I: THE EMERGENCE OF RESTORATIVE JUSTICE IN THE CRIMINAL JUSTICE CONTEXT (6 HOURS)



ONLINE (3 HOURS)

- ▶ Pre-training survey (20 minutes)
- ▶ Welcome message (5 minutes) – video
- ▶ Introduction to restorative justice – video: Trailer and ‘intro to the videos’ (5 minutes)
- ▶ Introduction and definitions of restorative justice (10 minutes)
- ▶ Introduction to restorative justice: Video case study: Bar fight (40 minutes)
- ▶ Theoretical approaches of criminal justice and punishment (40 minutes)
- ▶ Theoretical frameworks and origins of restorative justice (40 minutes)
- ▶ Values and standards of restorative justice (20 minutes)



FACE TO FACE (3 HOURS)

- ▶ Welcoming, scene setting, introductions, circle (45 minutes)
- ▶ Theoretical approaches and frameworks of restorative justice, and values and standards of restorative justice – through the cases (2 hours 15 mins)
- ▶ Warm-up exercise starting to think about restorative justice (35 minutes)
- ▶ 10-minute comfort break
- ▶ Theories, values and standards of restorative justice, through the revising the online part (30 minutes)
- ▶ Theories, values and standards of restorative justice, through a case and group discussion (45 minutes)
- ▶ Closing circle (15 minutes)

MODULE II: UNDERSTANDING RESTORATIVE JUSTICE IN PRACTICE (7 HOURS)



ONLINE (1 HOUR 30 MINUTES)

- ▶ Programmes and practices of restorative justice (50 minutes)
- ▶ Impact and effectiveness of restorative justice (40 minutes)



FACE TO FACE (5 HOURS 30 MINUTES)

- ▶ Welcome and introduction circle (20 minutes)
- ▶ Programmes and impact of restorative justice (1 hour 5 mins)
- ▶ Written exercise: (5 minutes) – and case study on Domestic sexual violence (25 minutes)
- ▶ Circle: (15 minutes)
- ▶ Group discussion: (20 minutes)
- ▶ Intersections and challenges between restorative justice and criminal justice, and the role of the judiciary (4 hour 5 mins)
 - Video interview to Sheriff Mackie: (15 minutes)
 - Plenary discussion part 1: (15 minutes)
 - 'Mapping exercise': presentation of intersections between restorative justice and criminal justice: (40 minutes)
 - Comfort break: (15 minutes)
 - Plenary discussion part 2: (20 minutes)
 - Small group exercise: (90 minutes)
 - Comfort break: (15 minutes)
 - Plenary discussion: (35 minutes)

MODULE III: THE STAKEHOLDERS OF RESTORATIVE JUSTICE (6 HOURS)



ONLINE (40 MINUTES)

- ▶ Stakeholders of restorative justice: (40 minutes)



FACE TO FACE (5 HOURS 20 MINUTES)

- ▶ Welcome and introduction circle: (20 minutes)
- ▶ Video case study (20 minutes)
- ▶ Group discussion: (25 minutes)
- ▶ Comfort break: (10 minutes)
- ▶ Video case study: (10 minutes) – Murder case
- ▶ Group activity: (45 minutes) – “mosaic of emotions”
- ▶ Comfort break: (10 minutes)
- ▶ Group activity: (160 minutes) – Role play, including 10-minute comfort break
- ▶ Closing circle: (10 minutes)

MODULE IV: LEGAL AND POLICY FRAMEWORKS (5 HOURS 30 MINUTES)



ONLINE (2 HOURS 30 MINUTES)

- ▶ Supra-national and European levels of international legal and policy framework on restorative justice: (15 minutes)
- ▶ International and comparative legal frameworks of restorative justice: 30 minutes
- ▶ Video interview with Belgian Public prosecutor: (10 minutes)
- ▶ Legal frameworks of restorative justice at international and at local level: directed reading: (1 hour, 20 minutes)
- ▶ Video interview with Tim Chapman, EFRJ Chair: (15 minutes)



FACE TO FACE (3 HOURS)

- ▶ International and comparative legal and policy framework (1 hour 10 minutes)
 - Introduction: (5 minutes)
 - Quiz: (10 minutes)
 - Group exercise: (45 minutes) small group exercise
 - Comfort break: (10 minutes)
- ▶ National legal and policy framework values and standards of restorative justice (1 hour)
 - Small group exercise: (1 hour)
- ▶ The role of the judiciary within the national legal and policy framework (50 minutes)
 - Live presentation: (50 minutes) – Local speaker and question and answer session

MODULE V: MAKING RESTORATIVE JUSTICE HAPPEN (5 HOURS 30 MINUTES)



ONLINE (45 MINUTES)

- ▶ Video interview with Belgian judge (9 minutes)
- ▶ Self-directed reading of national booklet about the situation of restorative justice services and practices in their country: (33 minutes)
- ▶ Closing video (3 minutes)



FACE TO FACE (3 HOURS)

- ▶ Restorative justice at case level (2 hours)
 - Welcome and introduction circle: (20 minutes)
 - Group exercise: (45 minutes) – Small group exercise – Communication skills
 - 10 minutes: Comfort break
 - Group exercise: (45 minutes) – Small group exercise – Case based exercise
- ▶ Restorative justice at organisational level (1 hour)
 - Group exercise: (30 minutes) – Small group exercise – moving forward with restorative justice
 - Closing circle (30 minutes)

FINAL SESSION ONLINE (1 HOUR 35 MINUTES)



ONLINE (1 HOUR 45 MINUTES)

- ▶ Final assignment (1 hour 10 minutes)
- ▶ Exit questionnaire (25 minutes)

Training tools

Project partners have produced a number of training materials within the framework of the RE-JUSTICE project. These tools focus on supporting judges and prosecutors to become competent in their work around restorative justice, as defined by the Competency Profile, and addressing the needs identified in the analysis process. Tools include:³

- ▶ Pre-training questionnaires
- ▶ Post- and Satisfaction questionnaire
- ▶ Recorded lectures by restorative justice experts
- ▶ Reading materials for self-directed reading (for online sessions)
- ▶ Handouts for trainees:
 - Introduction and definitions of restorative justice (Module I)
 - Power Point on theories on crime and punishment, with the video-lecture (Module I)
 - Theoretical frameworks relevant to restorative justice (Module I)
 - Values and standards of restorative justice (Module I)
 - Restorative justice programmes (Module II)
 - Restorative justice practices (Module II)
 - PowerPoint on impact and effectiveness, with the video lecture (Module II)
 - Factors to determine the impact and effectiveness of restorative justice (Module II)
 - Power point on the stakeholders of restorative justice, with video-lecture (Module III)
 - Snapshot of the supra-national and European levels of international legal and policy framework on restorative justice (Module IV)
 - Restorative justice and systemic implementation: Successful Restorative Justice Development around the World (Module V)
- ▶ National booklets developed by the trainers with the support of the European Forum for Restorative Justice. Each national booklet should at least include:
 - Status quo in the country⁴
 - National resources for: how to develop restorative justice in the country; how to practice restoratively as a judge/prosecutor, even if you are not practising restorative justice
- ▶ Training videos:
 - Training video: 'Experiences of restorative justice' (dialogue in English and Dutch, subtitled in English, Greek, Italian and Spanish) – produced by KU Leuven, the European Forum for Restorative Justice and Moderator

³ For further resources (video, research, reports, contacts, etc.) or if you need support in organising the training consult the European Forum for Restorative Justice website: www.euforumrj.org.

⁴ More details about the contents of the status quo in the country can be found under Module IV.

- Interviews with perpetrators and victims who have experienced restorative justice
 - Round table discussions with mediators, reflecting on some of these cases
 - Interview with a Belgian judge on his experience of using restorative justice
 - Interview with a Belgian prosecutor on his experience of using restorative justice
 - Interview with a former Scottish Judge (Sheriff) on his experience with restorative justice
 - Interview with the Chair of the European Forum for Restorative Justice
 - Thessaloniki University (AUTh) training video: fictionalised case with simulation of a mediation (dialogue in Greek, subtitled in Greek, English, Italian and Spanish)
 - Catholic University in Milan (UCSC) training video: voices from perpetrators, victims, mediators and other parties who have experienced restorative justice (dialogue in Italian, subtitled in Italian, English, Greek and Spanish)
 - University Carlos III in Madrid/Spanish Judiciary School (CGPJ) training video: interviews with perpetrator and victim of a serious crime, who have experienced restorative justice; discussions and interviews to mediators, magistrates and professors (dialogue in Spanish, subtitled in Spanish, Italian, English, Greek)
- ▶ Written restorative justice case studies
 - ▶ Quizzes, assignments and exercises, presented throughout the manual
 - ▶ Bibliography – list of reading materials and other resources. Study resources and those recommended for specific topics are highlighted under each Module

Practical instructions for trainers

BLENDING APPROACH

The blended learning approach requires that the trainers take some specific considerations into account when preparing the training.

The online sessions are self-directed and self-paced, allowing trainees to decide when they engage with the materials offered.

Thus, the trainers should ensure that:

- ▶ The training materials (including audio, video and reading materials) are prepared in advance and made available to trainees far enough in advance of the face-to-face training sessions to allow them – judges and public prosecutors – sufficient time to prepare. Ideally this should be at least four weeks in advance. In all cases, the need for self-guided study prior to the face-to-face sessions and the anticipated time commitment that this involves should be communicated to and agreed with trainees at enrolment.

- ▶ The trainees are advised to go through the training material in the order indicated in this training manual. This guarantees the programme integrity of the training, ensuring that the trainees can be smoothly directed from the theoretical knowledge of the restorative justice origins to its characteristics and links with their daily work.
- ▶ Self-directed readings illustrating the local context are provided to the trainees, in addition to the international ones.

TRAINING MATERIALS

The **handouts for trainees** produced in the framework of the RE-JUSTICE project are made available together with this Manual, in English, Italian, Spanish and Greek.

The **video materials** are not all publicly available, given the highly sensitive issues of protection and confidentiality that their dissemination would entail. They can however be shared, according to appropriate safeguards, with the training institutes and bodies that will be interested in organising and providing a training on restorative justice to judges and public prosecutors. To gain access to them, the trainers and/or their institutions should contact the respective owners of the videos – specified above in the list.

The use of the training materials (including handouts and videos) under specific Modules and sessions is detailed throughout this Manual: a solid rationale is behind the choice of using certain training tools rather than others in each part and moment of the training.

The high variety of local contexts in which this training was used in the piloting phase, and will be used in the future, implies that **the offer provided by this Manual**, in terms of structure of the training, programme and materials, **is adapted to each national setting**.

It is necessary that the trainers assess and choose the most appropriate solution and the most appropriate tool for their specific audience and setting. This choice will have to be based on a thorough assessment of the training needs of the target trainees and on aspects of feasibility and sustainability. These choices will also have to consider the training tools and materials already possibly available at national level, while always providing fundamental international lenses.

For these reasons, in addition to the materials developed within the RE-JUSTICE, trainers are encouraged to create, use tools to reflect the local situations, including:

- ▶ Testimonies of other magistrates who have experienced restorative justice
- ▶ Testimonies of perpetrators and victims who have experienced restorative justice
- ▶ Testimonies of mediators
- ▶ Local resources to present national realities about restorative justice
- ▶ Contributions, face-to-face or online, from magistrates and experts from other countries

- ▶ Contributions, face-to-face or online, from local key stakeholders with restorative justice experience or expertise (victims support organisations, mediation centres, probation officers, social workers, etc...)



RE-JUSTICE

Judicial Training in
Restorative Justice

**THE TRAINING ON
RESTORATIVE JUSTICE
FOR JUDGES AND
PUBLIC PROSECUTORS**

Restorative guidelines for trainers

After a detailed introduction about the general structure of the training Manual and the training programme, this part marks the beginning of the core contents of this Manual. It starts with direct instructions to trainers: these restorative guidelines are meant to support on reproducing and replicating restorative values, principles and processes in their training. This is particularly relevant for the face-to-face sessions, through their attitude, skills and training tools.

Circles will be used, as well as role-play and other experiential training methods and tools, aimed at building an empathy with the position of the restorative justice parties, and a safe environment. 'Restorative training' is, therefore, part of this general approach.

Restorative justice pedagogy aims at:

- Build community among participants;
- Inspire individual and social transformation;
- Give voice to the unique experiences of participants;
- Offer opportunities for real-life problem solving;
- Provide a creative learning environment that is co-created by students and trainers;
- View students as practitioners, theorists, and educators; and
- Invite instructors to view themselves as students and share in the learning process.

(Barb Toews, 2013)

How do we create an environment and a delivery style of training which reflect the restorative process and restorative the values?

These guidelines are intended as a stimulus to your own reflection and preparation. Our invitation is that you use the ideas and exercises in this training Manual as a complement to your own wealth of skills, experience and knowledge.

The aim is to guide you on how to conduct a restorative training, creating a safe, "courageous" space, promoting openness, and positive group dynamics that are particularly important in such a training (for the use of some experiential tools above-mentioned). Although very well aware of the solid experience of the highly skilled trainers that are going to conduct this pilot training, we want to keep in mind that this training manual will be used across European countries, and thus across various levels of experience and expertise about restorative justice.

A 'restorative approach' to the training will integrate the principles of restorative justice, which in practice means, among others, that all exercises are voluntary, people are given as much choice as possible and are enabled to enter in their own learning experience. The training is not meant to be

just an *ex cathedra* teaching, but it is a co-creation between programme development team trainers and learners.

Training Restoratively

As a trainer, which values of Restorative Justice are most important to you in how you conduct your trainings?

How do they reflect in the way you or your organisation approaches training, the learning environment and your interactions with trainees?

What steps can you (personally and as an organisation) take to increase how trainees experience restorative values in their interactions with you?

You may like to consider some of the following:

JUSTICE

"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny.

Whatever affects one directly, affects all indirectly."

MARTIN LUTHER KING JNR.



There are several different possible etymologies for the word 'justice' ranging from righteousness, command, equity, what is needed, limitations on what we can do and even "vital force, life, eternity" (Boatright 2018). Justice can also refer to accountability. Making agreements that address the loss, damage and violation of the harm caused by criminal behaviour and taking steps towards reintegrating the perpetrator of harm can also be seen as justice.

In English 'justice' implies fairness, particularly in the use of power. This reflects the how justice is seen with respect to restorative 'justice'. Here the important principle is that everyone's needs matter and that everyone's voice has value.

IDEAS FOR INTEGRATION

How is the room set up for your training environment?

Consider the training environment that you create. For example, for the face-to-face training sessions when everyone sits in a circle and can see each other easily this can help to create a sense of inclusivity and make it easier for participants to engage with each other. This can also be helpful for people with hearing difficulties who rely on lipreading.

Is the trainer on the same level as the participants or on a higher platform?

When the trainer is standing or sitting at the same level as the participants (rather than standing on a higher platform) this can help to convey the restorative justice value of equal importance amongst participants. How else can you facilitate such dynamics during the training, such as where professionals with different levels of experience are present?

Are you using a microphone?

In a large setting where the trainer needs to use a microphone to be heard, it is also recommended that microphones are also available for participants, so that they can also engage in the discussion and so their voices can also be heard by the entire group.

Would the use of a "talking piece" be useful in some of the exercises or discussion spaces?

Consider the use of a 'talking piece' during some of the exercises. This approach is a useful way to reinforce the idea that everyone has the right to participate to a conversation and that all voices and opinions are valued. Talking pieces are often seen in the restorative processes that are used by First Nations peoples and other communities and our use of talking pieces can serve of an important reminder of the broad scope of restorative processes.

What else might you do to include this value in your training?

Consider taking steps to ensure that you understand what 'justice' or 'just treatment' means to participants within the context of the training. This may have something to do with being well informed of what is expected of them, or having agreements fulfilled. It may mean in practice to use a circle process to ask each training participant about what would support their learning, and then form these ideas into ground rules or a group commitments.

RESPECT FOR HUMAN DIGNITY

“Dignity is as essential to human life as water, food, and oxygen”

LAURA HILLENBRAND

In our complex society, in the reality of the systemic challenges that we face and the differences between us, it can be easy to lose sight of the dignity inherent in every person. This sometimes manifests in ways that we are aware of. Sometimes, though, it manifests unconsciously, in ways that we are not aware of. It can be surprising and even shocking when we are finally made aware of how we have impacted others through what we have said or done, or what we have not said or not done.

IDEAS FOR INTEGRATION

How can our training be a respectful and courageous space for all participants?

A rich learning environment is one in which ideas, questions, challenges and concerns can all be exchanged in respectful atmosphere so that all participants feel that they can speak their truths safely. Consider how you can foster such a respectful and courageous space for all participants. You might, for example, choose to work with ground rules or a talking piece. You might consider different ways to increase group coherence, such as ice-breaker exercises that foster a sense of the group being a supportive space.

How are conscious or unconscious biases dealt with?

Consider how conscious or unconscious bias (for example, around homophobia, gender issues, racism, sexism or other forms of prejudice or discrimination) can be identified and addressed within the training space. Perhaps it could be helpful to decide within the group and at the start of the training how such matters can be tackled in a way that maintains the sense of a courageous and respectful training environment.

Does the principle of voluntariness apply?

Voluntariness is a key principle for restorative justice. Consider taking steps to ensure that participants understand that they can refrain from participation in exercises without being disadvantaged. To what extent are participants voluntarily engaged in the training itself?

SOLIDARITY



"Alone we can do so little. Together we can do so much"

HELEN KELLER

An important ingredient in a restorative training is creating an environment that:

- ▶ supports solidarity rather than competition
- ▶ promotes learning and growth rather than perfection
- ▶ welcomes 'mistakes' as an important parts of learning

Such an environment will foster creativity, support growth and enhance learning.

IDEAS FOR INTEGRATION

Does the training cater to special needs?

Consider how you can create an inclusive learning environment by first identifying and then supporting the diverse learning needs and learning styles of the trainees in your group. Physical disabilities (e.g. mobility, sight or hearing needs) and specific learning needs (e.g. dyslexia) should be considered as well as the neurodiversity of participants and the preferred learning styles (e.g. visual learning or auditory learning) within the group. How accessible is the training? Can sign or other language interpreters be made available? Can support be provided for accessing online materials?

How can solidarity be forged beyond the formal teaching?

You may want to encourage participants to spend time together at break times, or to eat together. You may encourage forums for sharing experiences and information, create opportunities for learning together, or encourage professional cooperation beyond the timeframe of the course.

TRUTH

"Everyone holds a piece of the truth"

GANDHI

As trainers it can be tempting to want to fill all the space with the knowledge we want to impart. After all people have come to learn and gain new skills.

Rather than positioning ourselves as "experts" how can we welcome and encourage the knowledge and experience of the participants while also bringing our own skills to the table?



IDEAS FOR INTEGRATION

Are questions and requests for clarification welcome?

Consider how to foster an environment in which feel comfortable asking questions and making requests for clarification. Consider providing opportunities for questions during group learning sessions but also in individual meetings (1-2-1 settings). Consider providing opportunities to pose questions in written formats and also orally.

Is there space for dissenting voices?

Consider taking steps that ensure that dissenting voices are welcomed and respected. Perhaps the questions can regularly be asked during training such as 'does anybody have a different opinion or experience? Does anybody see things differently?' Consider ways of challenging participants to reflect on the perspectives of others during the training and in their own practice.

RESPONSIBILITY



“Taking responsibility for oneself is by definition an act of kindness”

SHARON SALZBERG

Taking responsibility for ourselves includes taking responsibility for our actions and the possible impacts we may have on others, even when those impacts are at odds with our intentions. Taking responsibility includes taking care of ourselves as trainers as well as caring for others.

IDEAS FOR INTEGRATION

- ▶ Consider establishing shared group guidelines for how the training group will function.
- ▶ Consider how the training space encourages participants to care for themselves and others? Are refreshments available? Is it possible for people to sit on the floor or move about so as to care for physical needs and alertness? Are regular comfort breaks planned and communicated in advance to participants? Can participants have some say in how many breaks are taken, when and for how long?
- ▶ Consider the ways in which you can care for yourself as a trainer so that your responsibility is at its best.
- ▶ This list of restorative justice values is not exhaustive, but it is meant to provide trainers with a guide on how to transform restorative principles into practice and into reflections for the training.
- ▶ Consider ways in which you can we take account of other important restorative values including, Reparation, Voluntariness, Inclusiveness of the process, Active participation, Commitment of the parties involved and Confidentiality?

For further reflection

10 ways to live restoratively (Zehr, 2007)

- ▶ **Take relationships seriously**, envisioning yourself in an interconnected web of people, institutions and the environment.
- ▶ Try to **be aware of the impact** – potential as well as actual – of your actions on others and the environment.
- ▶ When your actions negatively impact others, take responsibility by **acknowledging and seeking to repair the harm** – even when you could probably get away with avoiding or denying it.
- ▶ **Treat everyone respectfully**, even those you don't expect to encounter again, even those you feel don't deserve it, even those who have harmed or offended you or others.
- ▶ **Involve those affected** by a decision, as much as possible, in the decision-making process.
- ▶ **View the conflicts and harms in your life as opportunities.**
- ▶ **Listen, deeply and compassionately**, to others, seeking to understand even if you don't agree with them. (Think about who you want to be in the latter situation rather than just being right.).
- ▶ **Engage in dialogue** with others, even when what is being said is difficult, remaining open to learning from them and the encounter.
- ▶ **Be cautious** about imposing your "truths" and views on other people and situations.
- ▶ Sensitively **confront everyday injustices** including sexism, racism and classism.

Resources

- 📄 Boatright, J. (2017). The History, Meaning, and Use of the Words Justice and Judge. 49, 727. *The St. Mary's Law Journal*, 49(4), 727.
- 📄 Hillenbrand, L. (2010). *Unbroken: a World War II story of survival, resilience, and redemption*. Large print edition. New York: Random House.
- 📄 Zehr, H. (2007). 10 ways to live restoratively. Accessed at: <http://emu.edu/now/restorative-justice/2009/11/27/10-ways-to-live-restoratively>
- 📄 Adichie, C. N. (2009). The Danger of a single story [Video]. TED Conferences. https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story

The training programme

Pre-training online questionnaire — 20 minutes

This questionnaire is meant to be administered to the trainees before the beginning of the training. In the RE-JUSTICE training it was put on the online platform at the launch of the training and filled by the participants as first thing.

The whole questionnaire is presented in Annex 11. Trainers should make sure it is uploaded on the online platform in advance of other training materials.



Below an extract of Annex 11, with some key information to give to the trainees before they complete the questionnaire.



PRELIMINARY INFORMATION

The questionnaire is anonymous and exclusively serves the purpose of gathering information on the training needs, learning and knowledge expectations of the participants in the judicial training course on restorative justice.

The results of the questionnaire will be used to improve the learning experience. These results, in anonymous and aggregate form, may also be used for:

- ▶ *The development of a replicable training model*
- ▶ *An updated training manual of the judiciary in restorative justice*
- ▶ *Scientific publications*

At the end of the course, we will ask for a little more of your time to re-evaluate, with a second questionnaire, expectations, interests, training needs, degree of satisfaction and collect your suggestions and proposals.

Module I: The emergence of restorative justice within the criminal justice context



KNOWLEDGE GAPS

Understanding of what restorative justice is and how it is distinct from other interventions

Knowledge of legal theories relevant for restorative justice (especially the relationship between rule of conduct and sanction)

Knowledge of rehabilitation approaches in criminal justice: similarities and differences with restorative justice

Knowledge of different theoretical frameworks of restorative justice (conflict as property, procedural justice, responsive regulation)

Knowledge of citizens' / the community's contribution to justice processes

Knowledge of the values and standards relevant to restorative justice and victim rights and the rights of all the justice system's users

Recognising the potential of restorative justice in addressing the needs of criminal justice system users and the whole community

Knowledge of the principles of restorative justice



LEARNING OBJECTIVES

Define restorative justice

Describe the key features of restorative justice that distinguish it from other types of responses to crime and harm

Describe/discuss classic legal theories, such as utilitarianism and retributivism, and their relationship to restorative justice

Describe at last two theories of rehabilitation and how they relate to restorative justice.

Explain why restorative justice *per se* is not a form of rehabilitation, amendment, or correction.

Describe Christie's 'conflicts as property' approach

Outline the roles that the community can take in restorative justice processes

Outline the benefits of community participation in restorative justice

Describe the origins of restorative justice

Describe the theoretical premises to the emergence of and the theoretical origins of restorative justice

Understanding of how features, major concepts, values and principles of the legal system relate to features, major concepts, values and principles of restorative justice

Knowledge and understanding of the principles of procedural justice, while taking these into consideration during working practices

Understanding of the impact of restorative justice on desistance

Theoretical knowledge base that allows understanding of the needs of the victim, including their protection needs

Situate restorative justice in appropriate theoretical frameworks

Identify basic principles of restorative justice

Identify restorative justice values and standards

Describe the benefits of restorative justice for victims

Describe the benefits of restorative justice for accused persons

Explain how values and principles restorative justice relate to value and principles of the legal system

Describe the theory of procedural justice

Propose ways in which procedural justice principles are / can be guaranteed within the working environment

Describe at least one theory of desistance and **explain** ways in which restorative justice might contribute to a desistance process

Define the justice interests of victims and **explain** how these interests may be satisfied by restorative justice

Explain sentiments commonly expressed by victims



Overview blended format – 6 hours

	SESSION TITLE	DURATION (MINUTES)	TOOLS	
ONLINE	Pre-training survey	20	Online survey	
	Welcome message	5	Video message prepared by the trainers	
	Introduction to restorative justice	5	Video of intro or Trailer	
	Introduction and definitions of restorative justice	10	Handout 1	
	Introduction to restorative justice	35	Video case study: Bar fight	
	Introduction to restorative justice	5	Short written exercise (a few bullet points noting things that were surprising, interesting, or about which they have questions)	
	Theoretical approaches of criminal justice and punishment	30	Video lecture 1	
	Theoretical approaches of criminal justice and punishment	10	Handout 2	
	Theoretical frameworks and origins of restorative justice	30	Video lecture 2	
	Theoretical frameworks and origins of restorative justice	10	Handout 3	
	Values and standards of restorative justice	10	Handout 4	
	Values and standards of restorative justice	10	Self-directed (suggestions in main manual)	
	FACE TO FACE	Welcoming, scene setting, introductions	45	Circle discussion
		Starting to think about restorative justice	35	Warm-up exercise
Comfort break		10		
Theories, values and standards of restorative justice		30	Group discussion, revising the online part	
Theories, values and standards of restorative justice		15	Intro discussion and video of home theft case (KU Leuven)	
		30	Group discussion	
Closing		15	Circle	



Structure

Duration: 6 hours

Format: three hours will be provided online, with video-recorded lectures, audio-video materials and self-directed reading of handouts and other reading materials.

After the trainees have attended the online part of the training, the face-to-face will start off with a first session "to set the scene" followed by other 2 hours face-to-face covering the contents of the first module and picking up on the contents already touched upon the online session. In the face-to-face event, trainers will make use of presentations in the traditional format, but above all of icebreakers, interactive exercise, group discussions.

Language: the training materials, produced in English, are translated and/or subtitled in the local language. The reading materials and videos proposed here are mostly in English, and the trainers are strongly encouraged to find other materials in local language that are appropriate to the specific contents of the module.

Tools: online platform, recorded lectures, handouts.



Online session – 3 hours



CORE CONTENTS TO COVER

1. Theoretical approaches of criminal justice and punishment:

- Summation of main legal theories of criminal justice and punishment relevant for restorative justice
- Punishment theories and rehabilitation rights: how does restorative justice relate to theories of punishment?
- Reference to more recent theories, like neo-retributivism
- Harmful effects; therapeutic jurisprudence
- Introduction and reference to victims' movements, from an international perspective, as a reaction to the limitations of the traditional theories of punishment and to criminal justice's focus on the offender. References to the national contexts to be briefly presented as a bridge to start into looking at the change of perspective and function required for judge and prosecutors working with restorative justice

2. Theoretical frameworks and origins of restorative justice:

- Theoretical frameworks relevant to restorative justice: conflicts as property, changing lenses, procedural justice, theories of harm, trauma, power and control, recovery, restoration of power and control (other further approaches can be mentioned and reference for suggested reading can be given to the trainees: reintegrative shaming, desistance, responsive regulation)
- Origins of restorative justice and some basic definitions: accepted definitions of restorative justice – 3 main definitions, from the CoE, EU, and European Forum for Restorative Justice (and mention to the ECOSOC Resolution 2002/12)
- The definitions should come with a brief mention of the core values of restorative justice and of the main legal provisions (from which two of these definitions come)

3. Values and standards of Restorative Justice:

- Introduction to the values guide restorative practices: Justice, solidarity, human dignity, truth, restoration and reparation, voluntariness, inclusiveness of the process, active participation, commitment of the parties involved and confidentiality
- Introduction to restorative justice practice standards: Voluntary participation based on informed consent; direct and authentic communication; processes designed to fit the participants' capabilities and culture; valuing each participant's needs and wishes equally; Non-judgemental, multi-partial facilitation; the importance of dialogue, and; rigorous implementation of agreed actions
- Practical application of restorative justice values and standards



TOOLS

- ▶ Handouts 1, 2, 3 and 4
- ▶ Recorded lectures
- ▶ Video about case study: Bar fight case
- ▶ Self-directed reading of:
- ▶ [European Forum for Restorative Justice, Manual on Restorative Justice Values and Standards for practice, 2021](#)
- ▶ [UN Handbook on Restorative Justice Programmes \(2020 edition\) pages 3–38](#)



Face to face session – 3 hours



CORE CONTENTS TO COVER

1. **Theoretical approaches and frameworks of restorative justice, and values and standards of restorative justice**
 - The 'evolving' role of judges and public prosecutors, a re-positioning of their role vis-à-vis the offender, the victim, the community, towards a more inclusive and responsive system of justice
 - The function and role of judges and/or public prosecutors and how protecting the rights of all parties involved fits within these, without prejudice to the rights of the accused person nor the victim
 - More practical – but still general (not country specific) implications of the previously presented theoretical approaches: roles of justice system users and their interaction with restorative justice, criminal proceedings and other judicial proceedings
 - How to value victims and offenders' needs and rights, whilst remaining within professional and ethical rules and guidelines
 - How restorative justice can enhance ordinary people's experience of justice: accountability, inclusion, participation, restoration, and orientation
 - The collective level and the involvement of the community in doing justice; citizens'/the community's contribution to justice processes: an important component in the change of perspective, but the trainers may remain general and theoretical, touching upon this, for example mentioning:
 - Existing examples of participation of the community in criminal justice (like jury trials) and to existing interaction between public opinion and law making
 - Other significant examples of practical applications relate to the growing lack of trust of the people towards the justice system and how restorative justice would be important to build bridges
 - How to recognise the potential of restorative practices in the court setting and the restorative justice outcome: the potential of restorative justice in improving the quality of the work of judges and prosecutors
 - Values of restorative justice: Justice, solidarity, human dignity, truth, restoration and reparation, voluntariness, inclusiveness of the process, active participation, commitment of the parties involved and confidentiality



SUGGESTED LESSON PLAN

Setting the scene

 45 minutes

Welcoming, introduction and getting to know each other

This first face-to-face session starts with an introduction from the trainers of the project and the training programme. Importantly, the foundations of the group dynamics are laid, which will influence all of the following learning. Trainers are required to facilitate processes of group coherence and to begin building a “courageous” space. In as far as possible, this should be achieved in line with restorative justice values and principles and drawing on restorative techniques as part of the experiential approach to learning that is key in this training, and this intention should be communicated to the learners. For this session the trainers will follow the instructions given earlier in the “Guidelines” and reinforce them with tools and strategies with which they are familiar, according to their experience in providing training on restorative justice. Exercises will be used to 1) introduce the idea that restorative justice requires looking at familiar things from a different perspective, and that what will be required is an ability to step away from the familiar, and 2) remind the learners that the brain works by making cognitive shortcuts which can lead us to make errors that we are not aware of, so we should be critical of and interrogate our own thinking and decisions. It should be made clear that the exercises are not designed to trick anyone, just to demonstrate the patterns that our brains quickly fall into.⁵

Such exercises should include using short video clips of the psychological ‘selective attention test’⁶ experiments, which are readily available on YouTube and other platforms. We offer here two examples of these exercises, between you can select and that you could decide to use and/or to get inspiration from, for this initial session of the training.

⁵ Suggested reading for the trainer: <https://www.bitbrain.com/blog/cognitive-biases>

⁶ Selective attention tests are psychological experiments which demonstrate that when people are focused on one thing, they tend to ignore other things, even when these things are quite obvious. Classic scenarios involve, for example, two teams of people dressed in different colours who are interspersed between each other and moving. Each team is passing a ball to other members of their team. Participants are asked to count the number of ball passes made between the players of one team. Whilst they are focused on this task, they fail to notice a person dressed as a gorilla walk into the shot.

Attention exercises

Title	How well can you focus?
Description	Group exercise
Aim	To convey differences in attention and focus
Materials	Online video material demonstrating a selective attention test such as: https://youtu.be/vJG698U2Mvo or https://youtu.be/bnnmWY10IM
Details	The facilitator explains the aim of the session. Participants are asked to watch the short video clip and follow the instructions given. The concept of cognitive bias is introduced and discussed, as are a number of concrete cognitive biases. Discussion around how people can take steps to recognise their own cognitive biases in order to introduce the habit of challenging our own biases.
Required time	10 minutes
Additional resources	https://www.skillpacks.com/selective-attention-test-examples/

Title	How 'efficient' is your brain
Description	Group exercise
Aim	To convey the idea of cognitive biases
Materials	An infographic outlining a number of cognitive biases such as: https://apus.libanswers.com/faq/191117 or https://upload.wikimedia.org/wikipedia/commons/a/a4/The_Cognitive_Bias_Codex_-_180%2B_biases%2C_designed_by_John_Manoogian_III_%28jm3%29.png or https://www.visualcapitalist.com/50-cognitive-biases-in-the-modern-world/
Details	The facilitator outlines the aim of the session – that we will be reflecting on how our brains work and how this influences the way we view and also react to the world. The facilitator explains that our brains process information in certain ways. For example, first the brain processes at a 'global' level and only subsequently at the 'local' level. This is why we first recognise that we have met our friend Maria on the street (global processing) and only after a while do we notice that she now has new glasses (local or more detailed processing). Linked to such processing, humans tend to have a number of cognitive biases. Judges and prosecutors are likely to already have received training on how to recognise and interrupt such biases, but the process of revisiting and recognising our biases can contribute to us being able to interrupt such cognitive patterns, so refreshing this information is always advantageous. The facilitator introduces the participants to a number of biases via the infographic and encourages reflection on which biases participants recognise in themselves, how do these manifest, how can they be overcome? Are there particular techniques that are used to achieve this? Are there examples that can be shared about when this goes well or, perhaps, when biases have only been recognised at a later stage? Facilitator should offer examples themselves to help the discussion. This reflection can be done in the whole group, in pairs, or as a private exercise where participants are invited to reflect and make notes for their personal consultation.
Required time	25 minutes
Additional resources	https://youtu.be/GP-cqFLS8Q4 https://youtu.be/wEwGBlr_Rlw

A **circle** should be conducted, for all modules, in all presence sessions, at the beginning and closure of each face-to-face session. The experiential learning approach is an important way to convey a sense of restorative justice to learners, and this should be explained to learners, along with a brief

introduction to the purpose and process of circles in restorative justice. Guidelines on how to conduct circles can be found among the EFRJ resources available online.⁷

For this opening circle, the trainer should include a number of rounds including, for example:

- ▶ Introductions – name, role, city of work etc.
- ▶ From what they have already covered in the online part, one thing they have learnt about restorative justice
- ▶ From what they have already covered in the online part, one thing they are surprised about (positively or negatively) about restorative justice (this round can be repeated if there is need in the group)
- ▶ Feelings about / expectations for the course – the trainer manages expectations by informing learners where their expectations cannot be met by the course and by nothing expectations that can be met during the course and ensuring that these are fulfilled, and where appropriate highlighting to the learner when one of their expectations is being addressed.

Theoretical approaches and frameworks of restorative justice, and values and standards of restorative justice.

Warm-up exercise

 30 minutes

The trainer reads a series of statements, explaining that some of them are incorrect commonplace, some are contested or little-known facts about restorative justice. Trainees have to say / indicate (for example by indicate the strength to which they agree / disagree by standing along an imagined continuum between opposite sides of the room or by marking an 'x' on a target – the closer the mark being made to the bull's eye the stronger the agreement). The trainer should try to create a very relaxed atmosphere, stressing that some answers are surprising. Trainees should be encouraged to say a few words about their choice of answer before the correct answer is given, and then given the opportunity to reflect on the correct answer – stating anything that is surprising, or anything that they feel may be a challenge in their own working practice. The idea is to stimulate discussion about the boundaries of restorative justice, and to break the ice between participants. The contested/debatable issues to discuss about could include:

⁷ Fellegi, B., and Szego, D. (2013). Handbook for Facilitating Peacemaking Circles, among others.

- ▶ Following a court process restorative justice cannot happen because of the ne bis in idem principle
- ▶ Crimes that happened more than approximately 10 years previously are not suitable for restorative justice, people have moved on and should be left alone
- ▶ Only victims can initiate restorative justice (in some countries this is the case)
- ▶ Rape cases are not suitable for restorative justice (in some jurisdictions this is not allowed but when carefully managed)
- ▶ Restorative justice facilitators need to give more attention to victims as they are always the most nervous
- ▶ Victims should be seated in the mediation room first before perpetrators enter
- ▶ In restorative justice processes victims and perpetrators always meet (shuttle mediation can be discussed)
- ▶ Police officers should never be present in restorative justice processes (can mention roles of community representation)
- ▶ If a victim wants to have a restorative process but the perpetrator refuses, then nothing can be done for the victim (opportunity to briefly mention processes using surrogates)
- ▶ In a restorative justice process a maximum of 4 people can be present – facilitator, victim, perpetrator and community representative (can mention circles, conferences, support people etc)
- ▶ Restorative justice works best when people know each other well before the harm happened
- ▶ Restorative justice is not suitable for children under ten
- ▶ Restorative justice does not need to be concerned about legal safeguards
- ▶ When victims can decide the response from perpetrators, they are always too harsh and want revenge
- ▶ Perpetrators can easily manipulate and make victims feel sorry for them
- ▶ Restorative justice can retraumatise the victim
 - Victims should always be given the opportunity to influence the justice process
 - The justice system has a duty to support and encourage rehabilitation
 - The justice system has a duty to punish wrongdoers

Comfort break

 10 minutes

Theories, values and standards of restorative justice, through the revising the online exercise

 **20 minutes**

Group discussion: Seated in a circle (but not necessarily taking the format of a restorative justice circle), learners are asked to share their recollections and first reflections about the materials they watched online. Volunteers are asked to recall details about each lecture and the handouts and make reflections (to recall the information presented but also to reflect on their feelings and how this may or may not fit within their roles). What was new? What was interesting / unexpected / seems controversial to them / what are the risks or concerns / are there any questions? As the discussion goes along the trainer reiterates the definitions of restorative justice, highlights a number of key points from each lecture and outlines the values of restorative justice and notes these so that they remain visible for participants.

Theories, values and standards of restorative justice, through the cases

 **60 minutes**

Using the format of a restorative justice circle, learners are asked to share one thing that stood out to them from the video about the bar fight case that they have been given online. After the first round of sharing, another round of the circle should be undertaken so participant can make further reflections (on the video or on any thoughts/ reactions that have arisen following the first round of the circle).

- ▶ 10 minutes: Video of home theft case is shown
- ▶ 30 minutes: Group discussion
- ▶ The trainer leads a group discussion: Thinking of the two cases, trainees asked to reflect in a general way on what they have seen – is this within their expectations of restorative justice? Was anything positively surprising? Are there any concerns or risks that they would have had in recommending such a case for restorative justice? The trainer makes note of any risks and is sure that, during the course of the session, these are unpicked and, ideally, addressed. If the issue will be covered in a future module the learner is told that the issue will be returned to at a future date. Links are made between the cases and the themes of this session:
 - Critical thinking about the definition of restorative justice: is there evidence that the case study meet the definitions of restorative justice?
 - Critical thinking about the values and standards of restorative justice: which restorative justice values and standards seem to be present in the cases? How do these seem to influence the process or participants? Is there evidence for any of the restorative justice theories?

- Critical thinking about the theories: is there evidence of 'conflicts as property', procedural justice, reintegrative shaming, defiance, desistance,...?⁸ Are there perspectives that restorative justice can give which can enhance some practices within the criminal justice system?
- ▶ Discussion about what 'community' means in restorative justice. Reflections on the role of the 'community of care' and the 'ripple effect' of victimisation and perpetration. What other levels of community are there? How can community involvement in restorative justice compare to their involvement in criminal justice processes? Drawing on the legal and restorative theories, what might the role of community be in justice processes?

Closing circle – what are your first reflections at the end of the first day?

 15 minutes



TOOLS

- ▶ Video materials produced within the project by KU Leuven, the EFRJ and Moderator, and by the national partners: Catholic University in Milan, University Carlos III Madrid and Thessaloniki University
- ▶ Circle and icebreakers
- ▶ Group discussions



ADDITIONAL RESOURCES

- ▶ Website of the EFRJ: www.euforumrj.org, in particular:
<https://www.euforumrj.org/en/our-videos>
<https://www.euforumrj.org/en/restorative-justice-nutshell>
- ▶ Daly, K. (2016). What is restorative justice? Fresh answers to a vexed question. *Victims & Offenders*, 11(1), 9–29
- ▶ Suzuki, M., & Hayes, H. (2016). Current Debates Over Restorative Justice: Concept, Definition and Practice. *Prison Service Journal*, 228, 4–8. Retrieved from <https://doi.org/10.31235/osf.io/gk5c2>

⁸ Please consider in this discussion all the theories you included in the training – they might be slightly different or more than the ones here listed.

Module II: Understanding restorative justice in practice



KNOWLEDGE GAPS

Understanding of the different programmes of restorative justice and their relative strengths, merits, challenges, and pitfalls

Understanding of the processes of restorative justice encounters

Understanding of the differences between mediation in the context of restorative justice and other forms of mediation; the differences between restorative justice and negotiated settlements

Understanding of the factors that can be used to determine the impact and effectiveness of restorative justice

Understanding the rights and duties of victims, accused persons, convicted persons, criminal justice system users and common citizens in the criminal justice system and how these interact with restorative justice

Knowledge of victim-offender mediation, conferencing, circles / direct & indirect / the content of a restorative justice encounter / details of the processes

Knowledge of the rights of justice system users and their interaction with restorative justice, criminal proceedings and other judicial proceedings



LEARNING OBJECTIVES

Describe the format of circles, mediation and conference models.

Explain the relative strengths, merits, challenges, and pitfalls of circles, mediation and conference models.

Outline how restorative justice encounters take place

Describe key differences between mediation in the context of restorative justice and other forms of mediation and/or negotiated settlements

Describe key factors that may be used to determine the impact and effectiveness of restorative justice

Describe ways in which the impact and effectiveness can be measured

Describe the difference between direct and indirect methods of restorative justice, with examples, and explain the strengths and weaknesses of each approach.

Explain why the basic principles of restorative justice provided by the international standards are so important and what procedural rights they protect.

Understanding of the ethical challenges faced by judicial practitioners and how these can relate to restorative justice practices and valuing the needs of victims, accused persons and those who have been convicted

Knowledge and understanding of complex cases (including collective violence, corporate violence, environmental crimes, hate crimes, human trafficking, intimate partner violence, sexual violence, terrorism, etc.) and those involving particularly victims with special protection needs, and also the risks and benefits of applying restorative justice in such cases

Understanding of issues of judicial impartiality, neutrality, independence, judicial coercive power(s), legality and how these relate to restorative justice

Understanding of the function and the role of judges and/or prosecutors and how protecting victim rights fits within these, without prejudice to the rights of the accused person or the convicted person

Knowledge regarding the material and procedural conditions for restorative justice

Explain how the key principles of restorative justice intersect and coexist with the principles of judiciary independence and neutrality, presumption of innocence, legality.

Describe the role of the judge and of the public prosecutor in guaranteeing the procedural conditions of restorative justice without prejudice of their impartiality, neutrality and of the principle of legality.



Overview blended format – 7 hours

	SESSION TITLE	DURATION (MINUTES)	TOOLS
ONLINE	Programmes of restorative justice	30	Video lecture 3
	Programmes and practices of restorative justice	20	Handouts 5 and 6
	Impact and effectiveness of restorative justice	40	Video lecture 4 (10 minutes) Handout 7 and 8
FACE TO FACE	Welcoming, introductions, agenda of the day	20	Circle
	Programmes and impact of restorative justice	5	Brief written exercise to prepare for the case
	Programmes and impact of restorative justice	25	Video case study: Domestic sexual violence
	Programmes and impact of restorative justice	15	Circle
	Programmes and impact of restorative justice	20	Group discussion
	Intersections and challenges between restorative justice and criminal justice, and the role of the judiciary	15	Video interview with Sheriff Mackie
		15	Plenary discussion part 1
	Intersections and challenges between restorative justice and criminal justice, and the role of the judiciary	40	Lecture and mapping exercise
		15	Comfort break
	Intersections and challenges between restorative justice and criminal justice, and the role of the judiciary	20	Plenary discussion part 2
		90	Small group exercise
	15	Comfort break	
	Intersections and challenges between restorative justice and criminal justice, and the role of the judiciary	35	Plenary discussion



Structure

Duration: 7 hours

Format: 1 hour and 30 minutes will be provided online, with video-recorded lectures, self-directed reading of handouts and video materials produced by the project.

In the face-to-face event, 5 hours and 30 minutes, the trainers will continue after Module I, picking up on the contents already touched upon in the online session. In the face-to-face event trainers will make use of presentations in the traditional format, but above all of icebreakers, interactive exercises and group discussions.

Language: the training materials, produced in English, are translated and/or subtitled in the local language. The reading materials and videos proposed here are mostly in English, and the trainers are strongly encouraged to find other materials in local language that are appropriate to the specific contents of the module.

Tools: online platform, recorded lectures, handouts.



Online session – 1 hour and 30 minutes



CORE CONTENTS TO COVER

1. Programmes of restorative justice

- Introduction to what a restorative process is
- Introduction to 'What a restorative justice programme is'; when can we call a (new) programme a 'restorative justice' programme? – 6 conditions for a (new) restorative justice programme from Howard Zehr
- VOM, conferencing, circles / direct & indirect / the content of a restorative justice encounter / details of the processes

2. Impact and effectiveness

- Methodologies of the assessment of impact and effectiveness of restorative justice that can be touched upon:
 - Randomised control trial
 - Qualitative methods of evaluation and assessment of needs and satisfaction (the power of stories and narratives)
- Content, in terms of effectiveness:
- Effect/impact on the work and functioning of the criminal justice system: what is in for as a magistrate?
 - Impact on re-offending and desistance
 - The extent in which justice has been achieved for the parties involved
 - Satisfaction of the parties
 - Justice interest for victims and offenders
 - Procedural justice outcomes
 - Agreements made, fulfilled, etc.











TOOLS

- ▶ Recorded lectures 3 and 4
- ▶ Handouts 5,6, 7 and 8 on: practice, programmes and impact and effectiveness of restorative justice



ADDITIONAL RESOURCES

-  Ludici, A., Laura, P., Faccio, E., & Neri, J. (2020). Application and coherence of the model of restorative justice in Europe. *Global Journal of Sociology: Current Issues*, 10(1), 01–08. <https://doi.org/10.18844/gjs.v10i1.4750>.
-  Paul, G. D., & Swan, E. C. (2018). Receptivity to restorative justice: A survey of goal importance, process effectiveness, and support for victim–offender conferencing. *Conflict Resolution Quarterly*, 36(2), 145–162.
-  **Research report:** Effectiveness of Restorative Justice Programs, Office of Juvenile Justice and Delinquency Prevention Funded Research in Brief, <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/250872.pdf>
-  Shapland, J., Robinson, G. & Sorsby, A. (2011). *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. London: Routledge.
-  Sherman, L.W., Strang, H., Mayo-Wilson, E. et al (2015). Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review. *Journal of Quantitative Criminology* 31, 1–24. Retrieved from <https://doi.org/10.1007/s10940-014-9222-9>
-  Wilson, D. B., Olaghere, A., & Kimbrell, C. S. (2018). *Effectiveness of restorative justice principles in juvenile justice: A meta-analysis*. Inter-university Consortium for Political and Social Research.
-  Short video (1) on unconscious bias: <https://youtu.be/K-n7el87Dmo>
-  Short video (2) on unconscious bias: <https://youtu.be/GP-cqFLS8Q4>



Face to face session – 5 hours and 30 minutes



CORE CONTENTS TO COVER

1. Programmes of restorative justice

- Differences between restorative justice and other purely compensatory/monetary negotiated settlements, between criminal and civil cases, between negotiation, mediation, arbitration, adjudication
- How judges and prosecutors can communicate with the parties from an institutional point of view about restorative justice proposal and about restorative justice programme
- How judges and prosecutors can integrate the outcome of the restorative justice process in their work and decisions

2. Intersections and challenges between restorative justice and criminal justice, and the role of the judiciary

- Issues of judicial impartiality, neutrality, independence, judicial coercive power(s), legality, presumption of innocence as opposed to the fact that the person accused or convicted for the harm agrees with the facts, and how these relate to restorative justice
- Challenges related to these issues of intersection
- How these challenges relate to restorative justice practices and valuing the needs of victims, accused persons and those who have been convicted
- Practical challenges like:
 - Time
 - Practical instruments
 - Information and communication to the parties in clear and unbiased ways
 - lack of restorative justice services
 - Lack of feedback or info from the mediation services
- How the issues of intersection between restorative justice and CJS and the challenges impact the daily work of judges and public prosecutors: how should their role change?
- For prosecutors: possibility to refer cases to restorative justice before launching the traditional criminal procedure
- For judges: possibility to take in consideration and to confirm agreements between stakeholders



SUGGESTED LESSON PLAN

Welcoming, introductions, agenda of the day, circle

 20 minutes

Rounds in the circle can include:

- ▶ Feelings about being back for this second module
- ▶ Reflections on module I
- ▶ Reflections from the online part of module II
- ▶ expectations for this session
- ▶ questions that arouse from the online section (the facilitator will inform the learners that the questions will not be responded to by the trainer in the circle but will be noted and responded to during the session)

Programmes and impact of restorative justice

 1 hour 5 mins

Written exercise: (5 minutes) – Under the headings 'risks / challenges' and 'benefits' write as many words / short sentences as you can (in this short time) regarding the use of restorative justice in cases of sexual violence

Video case study, Domestic sexual violence case (25 minutes)

Circle: (15 minutes) – understanding the impact and effectiveness of restorative justice, through the cases. Rounds in the circle can include:

- ▶ Initial thoughts, feelings, responses to the film
- ▶ Mention one thing that was particularly interesting / worrying / surprising / challenging?

Group discussion: (20 minutes) – understanding the impact and effectiveness of restorative justice, through the cases + understanding the intersections and challenges between restorative justice and criminal justice, through the cases.

Questions can include:

- ▶ How are we to understand the impact of restorative justice in such a case?
- ▶ What can it indicate about the impact of restorative justice more generally?

- ▶ How can we understand the effectiveness of restorative justice through this case?
- ▶ To what extent does this concur with or differ from ideas of effectiveness in criminal justice?
- ▶ What could the risks be / have been and for whom?
- ▶ What could the benefits be / have been and for whom?
- ▶ Which types of effectiveness are prioritised in restorative justice vs criminal justice?

Intersections and challenges between restorative justice and criminal justice, and the role of the judiciary

 4 hours 5 minutes

In the online session of Module II, the trainees will have had the time and possibility to learn the necessary notions about the legal framework (international and national) that allow them now to have a concrete discussion around intersections with the criminal justice system, challenges and how their role is impacted. They will also have been provided with handouts about the international legal framework, the national legal framework and the main issues of intersections between restorative justice and the criminal justice system.

The session about these intersections and challenges starts then with the screening of a video interview and continues with a group discussion.

Video interview with Sheriff Mackie: (15 minutes) – understanding the impact and effectiveness of restorative justice, through the cases + understanding the intersections and challenges between restorative justice and criminal justice, through the cases.

Plenary discussion part 1: (15 minutes) – understanding the impact and effectiveness of restorative justice, through the cases + understanding the intersections and challenges between restorative justice and criminal justice, through the cases.

Questions can include

- ▶ Can restorative justice be a tool for judges and a source of information that assists and supports sentencing decisions?
- ▶ Thinking about, for example, the Northern Irish and Belgian situations where judges and prosecutors are required to refer a case to restorative justice in situations involving juvenile accused persons and have to justify any decision to not do this, where is the place for judicial impartiality?

'Mapping exercise': presentation of intersections between restorative justice and criminal justice (40 minutes): The trainer(s) with the support of guest speakers from the local context (local judiciary and/or university) take the trainees through an analysis of the main legal and penal procedural issues that concern the intersection between restorative justice and the criminal justice system, the challenges and the role of the judiciary. An important reference tool to be used is the Mapping exercise, but with clear and specific references to the local context.



During the pilot training in Italy, for this session two professors of criminal procedure were invited to discuss the intersections and challenges between restorative justice and criminal justice in the Italian legal framework. These professionals contributed to discussions during the entire day. The small group exercise below is drawn from one used during this Italian training.

Comfort break (15 minutes)

Plenary discussion part 2: (20 minutes)– understanding the impact and effectiveness of restorative justice + understanding the intersections and challenges between restorative justice and criminal justice.

A group discussion, guided by the trainers, can cover issues of:

- ▶ Judicial impartiality, neutrality, independence, judicial coercive power(s), legality, presumption of innocence as opposed to the fact that the person accused or convicted for the harm agrees with the facts, and how these relate to restorative justice. *The trainer(s) needs to ensure that the discussion remains on practical implications of these intersections and challenges, so to avoid discussions that can take the trainees too far from a concrete application of restorative justice.*

Small groups exercise: (90 minutes)– The trainees are divided into 2/3 groups of between 7-10 max participants per group, joined and guided in the discussion by the trainers. Each group will discuss the key principles of restorative justice and their intersections with the criminal justice system, with the related challenges.

Discussion can cover the key principles of restorative justice:

- ▶ "(...) Participation in restorative justice should not be used as evidence of admission of guilt in subsequent legal proceedings" [CE Rec(2018)8: Rule 30.2]; "Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings" [UN

Basic Principles: para. 8.2]; "Restorative processes should be used only where there is sufficient evidence to charge the offender" [UN Basic Principles: para. 7]

- ▶ "(...) The offender has acknowledged the basic facts of the case" [2012/29/UE Dir.: art. 12, c)]; "The basic facts of a case should normally be acknowledged by the parties as a basis for starting restorative justice (...)" [CE Rec(2018)8: Rule30.1]; "The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process" [UN Basic Principles: para. 8.1]
- ▶ Discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest [2012/29/UE Dir, art. 12, e]
- ▶ Any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings [2012/29/UE Dir, art. 12, d]; "The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts" [UN Basic Principles: para. 15]; Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings" [UN Basic Principles: para. 17]

Questions related to these principles (the trainers can guide the discussion through these questions for each of the previous basic principles of restorative justice):

- ▶ Why are these principles/international standards so important?
- ▶ What do they protect?
- ▶ What do they mean in terms of penal procedure and in intersection with a criminal proceeding?
- ▶ How can these principles coexist with the principles of judiciary independence, presumption of innocence, judicial impartiality, legality, confidentiality, etc...?
- ▶ Whose interests could eventually come into conflict to reconcile these principles with the principles of a criminal proceeding?
- ▶ What can a judge and/or a public prosecutor do? What can they expect?

Comfort break (15 minutes)

Plenary discussion: (35 minutes) – the groups come back to the plenary and the conclusions of their work are discussed.



TOOLS

- ▶ Video materials produced within the project RE-JUSTICE
- ▶ Circle discussions
- ▶ Group discussions
- ▶ The mapping exercise – Annex 15



ADDITIONAL RESOURCES

- ▶ Sherman, L.W., Strang, H., Mayo-Wilson, E. et al. Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review. *J Quant Criminol* 31, 1–24 (2015). <https://doi.org/10.1007/s10940-014-9222-9>:
- ▶ Mills, L.G., Barocas, B., Butters, R.P. et al. A randomized controlled trial of restorative justice-informed treatment for domestic violence crimes. *Nat Hum Behav* 3, 1284–1294 (2019). <https://doi-org.kuleuven.e-bronnen.be/10.1038/s41562-019-0724-1>
- ▶ Kennedy JLD, Tuliao AP, Flower KN, Tibbs JJ, McChargue DE. Long-Term Effectiveness of a Brief Restorative Justice Intervention. *International Journal of Offender Therapy and Comparative Criminology*. 2019;63(1):3–17. doi:10.1177/0306624X18779202

Module III: The stakeholders of restorative justice



KNOWLEDGE GAPS

Understanding the stakeholders of restorative justice

Understanding of the ways in which stakeholders can be disadvantaged within the justice process, and the willingness to avoid such practices to ensure, amongst other things, safe access to restorative justice

Recognition / understanding of access to restorative justice as a right

Theoretical knowledge base that allows understanding of the needs of the victim, including their protection needs

Knowledge of the particular best practice ideas for working with victims and the skills to apply these in practice

Knowledge of the particular best practice ideas for working with groups of accused and convicted persons with special protection needs and the skills to apply these in practice

Knowledge of the particular best practice ideas for working with community groups / citizens in justice processes and the skills to apply these in practice



LEARNING OBJECTIVES

Identify actors who could be involved in a specific restorative justice process and to identify and know different needs and interests concerning them

Describe ways in which victims, accused person and children can be disadvantaged within judicial processes

Outline key factors that contribute to safe access to restorative justice

Present an argument in support of access to restorative justice as a right

Describe how the principles of restorative justice could be integrated into your normal working practices

Describe a number of victims' justice interests

Describe a number of needs that are typically found in children involved in criminal proceedings

Identify best practice ideas for working with victims

Identify potential risks and challenges when working with victims within restorative justice

Recognising the potential of restorative justice in addressing the needs of criminal justice system users and the whole community

Skills to assess the victim's needs, including their protection needs

Skills to assess the needs of accused and convicted persons

Skills to work in ways that are inclusive and serve to maximise access to restorative justice processes, particularly for groups who traditionally face barriers to accessing justice

Ability to draw upon theoretical knowledge base regarding the needs of victims, accused persons and convicted persons

Ability to identify processes through which community members or representatives can be involved to play a constructive role in restorative justice practices

Ability to communicate explicitly and clearly, also from an institutional point of view, that any proposal for restorative justice programmes is made in the balanced interest of both parties (victim and accused person, and all other participants, and not in one's interest at the expense of the other)

Skills to demonstrate also to victims that their views are listened to and taken account of

Skills of communication allowing that interested parties are informed about restorative justice (and its processes,

Identify potential risks and challenges when working with children within restorative justice

Identify best practice ideas for working with accused and convicted persons

Identify potential risks and challenges when working with accused and convicted persons within restorative justice

Identify best practice ideas for working with community members, community groups and citizens

Identify potential risks and challenges when working with community members, community groups and citizens within restorative justice

Describe the needs of criminal justice system users (including children and the community) and ways that restorative justice can address these needs

Identify victims' needs from presented cases

Identify children's needs from presented cases

Identify the needs of accused and convicted persons from presented cases

Identify steps that can be taken in professional practice to ensure inclusion

Identify steps that can be taken in professional practice to ensure access to restorative justice

Identify groups of people who commonly face barriers to accessing justice and particular measures that can be taken to engage such individuals and groups

programmes, possible outcomes and effects in the criminal proceeding) in a clear and unbiased way

Skills to communicate in ways that allows all criminal justice system users to understand the legal processes

Ability to describe and explain restorative justice processes clearly and accurately

Valuing the involvement of community members/representatives in serving (restorative) justice

Identify the needs of victims, accused persons, and convicted persons from presented cases and identify theories that could be applicable in such cases

Identify the needs children from presented cases and identify theories that could be applicable in such case

Identify processes through which community members or representatives can be involved to play a constructive role in restorative justice practices

Identify ways in which community members could be engaged in professional practices

Demonstrate oral communication aimed at different stakeholders / audiences regarding restorative justice

Draft written communication aimed at different stakeholders / audiences describing restorative justice

Demonstrate active listening skills

Describe considerations to be made when communicating orally about restorative justice to different types of stakeholders / audiences

Describe considerations to be made when communicating in writing about restorative justice to different types of stakeholders / audiences

Identify ways in which oral and written communication can be improved

Describe the benefits of community members/representatives in serving (restorative) justice



Overview blended format – 6 hours

SESSION TITLE		DURATION (MINUTES)	TOOLS
ONLINE	Stakeholders of restorative justice	40	Video lectures 5a (communities), 5b (barriers) and 5c (victims)
			Handout 9
FACE TO FACE	Welcoming, introductions, agenda of the day	20	Circle
	Who are the stakeholders of restorative justice?	20	Video case study: simulation of a mediation (extract from the AUTH video)
		25	Group discussion
	Comfort break	10	
	Who are the stakeholders of restorative justice?	10	Video case study: Murder case
	Co-production of a "collage" with the emotions, interests or needs of main stakeholders of restorative justice	45	Group activity: "mosaic of emotions"
	Comfort break	10	
	Understanding the role of stakeholders in restorative justice: role play	20	Preparation Role play with case study
		30	Development of role play
		45	Role play follow-up and discussion
	Comfort break	10	
	Understanding the role of stakeholders in restorative justice: role play	45	Role play follow-up and discussion
20		Circle for conclusion and closure	



Structure

Duration: 6 hours

Format: 40 minutes will be provided online, with a video-recorded lecture and handout.

Subsequently, the contents already touched upon during the online session will be built during 5 hours and 20 minutes of face-to-face contact. In the face-to-face event trainers will make use of role-play, group activities and audio-video materials.

Language: the training materials, produced in English, are translated and/or subtitled in the local languages. The reading materials and videos proposed here are mostly in English, and the trainers are strongly encouraged to find other materials in the local language that are appropriate to the specific contents of the module.

Tools: online platform, recorded lecture, handout, video produced by the project.



Online session – 40 minutes



CORE CONTENTS TO COVER

Who are the stakeholders of restorative justice?

- Main stakeholders: victim, offender, community and facilitator (central role)
- Other stakeholders: Lawyers, police officers, probation officers, victim support workers, the state, the media, others
- Theoretical concepts and definitions of victim
- Theoretical presentation about victims' needs and about the concept of vulnerability
- References to specific groups that encounter barriers in accessing justice – Additional reading materials to deepen the knowledge of restorative justice with children and with groups who face barriers in their access to restorative justice.



TOOLS

- ▶ Video lectures 5a (communities), 5b (barriers) and 5c (victims)
- ▶ Handout 9



Face to face session – 5 hours and 20 minutes



CORE CONTENTS TO COVER

Getting to know and understand the stakeholders of restorative justice (5 h 20 minutes)

- Victim needs and experiences
- The concept of vulnerability
- Accused / convicted person's needs and experiences: Understanding accused / convicted persons and their needs
- Community / citizens' needs and experiences
- Introduction and general understanding of the possibility to offer restorative Justice to children too: children as suspected or accused persons and children as victims
- Social context of societal harms caused by crime: Societal attitudes towards victims / (particular) harms / dealing with harms / defining 'community' and the community role in restorative justice



SUGGESTED LESSON PLAN

Welcoming, introductions, agenda of the day, circle

 20 minutes

Rounds in the circle can include:

- Feelings about being back for this third module
- Reflections on module II
- Reflections from the online part of module III
- Expectations for this session
- Questions that arouse from the online section (the facilitator will inform the learners that the questions will not be responded to by the trainer in the circle but will be noted and responded to during the session)

Who are the stakeholders of restorative justice?

Video case study (20 minutes) and group discussion (25 minutes): extracts from the AUTH video are shown, showing the simulation of a mediation process. After the presentation of the video, an open discussion will take place among participants.

The discussion can cover issues of:

- ▶ Initial thoughts, feelings, responses to the film
- ▶ Was anything particularly interesting / worrying / surprising / challenging?

Comfort break (10 minutes)

Video case study (10 minutes): Another case is presented to the trainees, about a restorative justice meeting in the case of a murder.

Group activity – “Mosaic of emotions”

 **45 minutes**

- ▶ Aims of activity:
- ▶ Actively engage trainees.
- ▶ Co-production of a “collage” with the emotions, interests or needs that the main stakeholders of restorative justice can face during the restorative procedure.
- ▶ Perspective taking and empathy building (with restorative justice stakeholders)
- ▶ Preparation for the role play exercise

Materials: post-its of different colours, pens

Activity description:

Part one – Participants are asked to recall times when they were directly victimised or unfairly treated. Trainers give examples as prompts, such as: you were robbed in the street, your house was burgled, you were falsely blamed or accused of something, you were assaulted... Participants are asked to write on the post-its feelings or emotions they had at the moment of the incident and on other post-its feelings or emotions that they had at a later time.

The trainer gives the floor to participant volunteers to express what they have described. All post-its to be put on the wall.

Part two – Participants are asked to recall times when someone they care about was victimised or unfairly treated. Trainers give examples as prompts, such as: your sister was robbed in the street, your mother’s house was burgled, your child was falsely blamed or accused of something, your friend was assaulted, etc. Participants are asked to write on the post-its feelings or emotions they had at the moment of the incident and on other post-its feelings or emotions that they had at a later time.

The trainer gives the floor to participant volunteers to express what they have described. All post-its to be put on the wall.

Part three – Participants are asked to think back over the situations that they have just described and are asked if there is anything they would have liked to have asked the perpetrator(s) at the time or afterwards. Trainers should not prompt responses by giving examples. The trainer gives the floor to participant volunteers to express what they have described. All post-its to be put on the wall.

Part four – Participants are asked to recall times when they have harmed someone or done something they knew was wrong. Trainers give examples as prompts, such as: you spoke badly about someone, you received an advantage, item or other benefit that was not due to you and did not rectify the situation, you did not intervene to help someone when they were being unfairly treated, harassed or victimised, you damaged something and did not report it... Participants are asked to write on the post-its feelings or emotions they had at the moment of the incident and on other post-its feelings or emotions that they had at a later time.

The trainer gives the floor to participant volunteers to express what they have described. All post-its to be put on the wall.

Part five – Participants are asked to recall times when they have heard that there has been a crime or some other harm done within their community. Trainers give examples as prompts, such as: there was a riot, an elderly person was attacked in their street, there has been a spate of burglaries, robberies have increased, a place you often visit was vandalised... Participants are asked to write on the post-its feelings or emotions they had at the moment of the incident and on other post-its feelings or emotions that they had at a later time.

The trainer gives the floor to participant volunteers to express what they have described. All post-its to be put on the wall.

Part six – The trainer checks the mosaic of emotions on the wall and comments on the similarities and differences in a global way, also to reflect on how the emotions and feelings translate to justice needs

Part seven – The group to reflect on how / whether the answers to the questions that could be posed to the accused persons may help to alleviate some of the negative feelings and emotions.

Additional information for trainers: some of these words regarding emotions, feelings, needs, interests and experiences of the parties involved in the restorative process are provided as follows:

- ▶ Direct / indirect victim: lack of security, fear, not being heard, informed, victimization, to be understood, explain their story, restored, supported, reparation, to be recognised and restored, get answers, being an active party, respected, believed, tension, post-traumatic stress, redress, access to justice, equality, protected, among others.
- ▶ Accused person: accountability, respected, stress, restored, awareness of the harm, access to justice, reparation, protection, forgiveness, among others.
- ▶ Community: social peace, tension, awareness of the harm, recognition of harm towards victims, rehabilitative, reparation, impartial, among others.
- ▶ Facilitator: respectful, communicative, neutral, empathetic, trained, being close, open-minded, informant, impartial, among others.
- ▶ Judicial professionals: respectful, open-minded, communicative, trained, being close, impartial, informants, among others.

This group activity will not only allow participants to develop their personal skills, but also give, from a practical perspective, the point of view of the main stakeholders involved in Restorative Justice (specially, victims' ones). Furthermore, it will work on the emotional skills of trainees (e.g., to empathize with the parties when a criminal conflict has arisen, being able to communicate with victims about their feelings and experiences from a more human approach, or to the rest of the parties involved).

Comfort break

 **10 minutes**

Group activity – Role play

 **2 hours 50 minutes, including comfort break and final circle**

20 minutes: preparation of the role play.

The role play activity, based on a case-study, is introduced and prepared. The idea is to prepare a role-play in which the main interests and needs of the parties involved in restorative justice can be identified. For further details, please choose a case study.

Firstly, the trainers explain the main contents and guidelines for the role play, what is required from participants as well as the development of it. The trainer explains the roles to the participants, the script in the main lines, and give some key details about how a restorative meeting is conducted. The role play then develops as follows:

- ▶ Volunteer participants offer to be part of the role-play, as the main parties

- ▶ As the idea is to develop a restorative mediation, two trainees should act the two roles of victim and offender
- ▶ If the atmosphere created in the group allows, more trainees get involved (voluntarily) directly in the role-play, also in the role of the mediator/s, otherwise acted by some of the trainers themselves (who should however always strongly encourage the active and direct participation of the trainees)



During the pilot training in Italy, the participants were split into 2 groups. The trainers explained the role-play objectives and gave details about the restorative justice meeting that the role-play was going to represent (what the parties do, what happens in such a meeting, what the roles of the parties involved). Then, the participants were asked to take a role (voluntarily), as the offender, the victim, the facilitator/s (and if other parties were involved). The two volunteers in the role of the victim and the offender at that point went out with the trainer and talked about the case, that was chosen by the trainees themselves (victim and offender), based on their daily working experience. After that, they went back in the room where the trainer shared the key basic details about the case to all the other trainees, and then the role play would started. During the role-play, the trainees who did not participate directly in the play, had to observe carefully, take notes and then feedback.

30 minutes: development of the role play.

Type of case: minor crime taking into consideration different perspectives, needs and interests.

People not assigned to play a character within the role play, they will be asked to take the roles of note taker. They will take notes on verbal and non-verbal communication expressed by the parties, making note of possible feelings, needs and interests that might be being directly or indirectly displayed.

Additional information for trainers: giving feedback on the exercise can be a really good opportunity to refresh previous learning and to focus on deepening the learning on communication skills. In the fishbowl you could contemplate collecting pieces of information and questions that the trainees should consider whilst watching the role play:

- ▶ Info given: list of restorative justice values & standards. Questions: Make a note of how the values of restorative justice appeared and how they could be enhanced. Which values were missing and how could they have been introduced?
- ▶ Info given: restorative justice definitions. Questions: what evidence was there in the role play that the process was within the definitions of restorative justice? What was missing? How could that have been enhanced?
- ▶ Infor given: restorative justice theoretical frameworks: Q: can any of the theoretical frameworks be identified in the interaction presented?

- ▶ Info given: restorative justice Programmes. Q: Imagine that instead of meditation a conference is held. Who could / should be invited? What could their perspectives be? How would their inclusion enhance / possibly hinder the process? Imagine that instead of meditation a circle is held. Who could / should be invited? What could their perspectives be? How would their inclusion enhance / possibly hinder the process?

General questions: How do you think the process / outcome would have been different if there had only been a court case? What do you think the participants would have gained from this process that they wouldn't have gotten during a court case? Were there any risks or challenges or concerning things that you witnessed? If one or both of the stakeholders was a child what considerations would need to be made?

Role play follow-up and discussion (1 hour and 40 minutes, including 10 minutes comfort break)

During this part of the discussion, the participants to the role-play and all the other trainees share their feedback. The trainers will lead the discussion asking feedback to the "actors" and to the rest of the audience about the different aspects they were asked to take notes about. During the discussion, the trainer will provide participants with guidelines/good practices that will allow them to know how to identify and solve the main problems that could arise during a restorative process.

Conclusions and closure (20 minutes)

The trainer(s) will take some time at the end of this module to draw some conclusions and give proper closure. A circle to collect main takeaways from the trainees can be used.

The trainers might keep in mind, in drawing the conclusions, some of the following aspects:

- ▶ Importance of taking into consideration the interests of the parties involved in the restorative process and the importance of special protection for victims' and offenders' interests when they are part of a category that is at risk of experiencing barriers in accessing restorative justice (children, people with disabilities, people from socio-economic disadvantaged background, migrants and/or people with foreign origins, ethnic minorities)
- ▶ The concept of vulnerability and secondary victimization
- ▶ Promising practices that can be applied with the parties involved in the restorative process
- ▶ Emphasis on how restorative justice has the merit/benefit to take into consideration the diversity of interests and needs from all parties involved.
- ▶ Rounds in the circle can include:
 - Reflections / feelings about module III
 - More general reflections on the training so far
 - Does the training make you reflect on your role differently? If so, how?

- Which, if any, changes do you think you will try to implement?



TOOLS

- ▶ Video materials produced within the project by KU Leuven, the EFRJ and Moderator, and by the national partners: Catholic University in Milan, University Carlos III Madrid and Thessaloniki University
- ▶ Circle
- ▶ Role play
- ▶ Group discussions



ADDITIONAL RESOURCES

- 📄 RE-TREAT European Project. Transnational Report on the position of sexual violence victims in criminal proceedings (National Reports from Greece, Italy and Spain and Best Practices Report). Available at: <https://sexualviolencejustice.eu/ebook/>
- 📄 "Sexual violence and victims' justice interests", in Restorative Responses to Sexual Violence, Legal, Social and Therapeutic Dimensions", ZINSSTAG, E., & KEENAN, M. Great Britain: Routledge, 2017.
- 📄 https://www.youtube.com/watch?v=EMMSqiTkw&ab_channel=Javiermacipecosta

Module IV: Legal and policy framework



KNOWLEDGE GAPS

Knowledge and understanding of legal instruments relevant for restorative justice and the rights of victims, accused persons and convicted persons

Knowledge and understanding of policies (European and other supranational) relevant for restorative justice and the rights of victims, accused persons and convicted persons

Knowledge of the harmonisation of EU laws and European regulations relevant to restorative justice and the Victim's Directive into the national contexts of other countries

Knowledge of restorative justice policies and practices in other Member States

Understanding of the local and national landscape with respect to restorative justice services

Understanding of the difference between the black letter law and the law in practice with respect to restorative justice and the rights of victims, accused persons and convicted persons, taking into account at the same time fair trial principles and due process of law safeguards



LEARNING OBJECTIVES

Demonstrate a familiarity with and understanding of the contents of Recommendation CM/Rec (2018)8 concerning restorative justice in criminal matters

Demonstrate a familiarity with and understanding of the contents of the EU Victim's Directive 2012/29/EU

Demonstrate a familiarity with and understanding of the contents of the UN Handbook on restorative justice. (2nd edition)

Demonstrate a familiarity with and understanding of the contents of National legal instruments regarding the use of restorative justice in criminal matters

Describe for other countries how EU laws and European regulations relevant to restorative justice and the Victim's Directive have been harmonised into the national context

Describe restorative justice policies found in other Member States and how these policies support the execution of restorative justice

Demonstrate knowledge of which local and national services do or could support restorative justice and restorative practices, and their possible role

Understanding of the conditions (legal and otherwise) under which restorative justice can take place

Understanding of how restorative justice can be used at different stages of the justice system

Understanding of the nature and function of agreements in restorative processes and how the presence or absence of restorative agreements can be incorporated into the criminal justice process

Understanding of the practical challenges with respect to restorative justice

Understanding of the local and national landscape with respect to victim support services, services to support accused persons and services to support convicted persons

Strong knowledge regarding the practical application of restorative justice at a local level (e.g. referral processes, timescales)

Understanding of the role and requirements of judicial professionals in the local restorative justice and victim services in order to enable access to restorative justice services

Ability to support restorative justice processes even when not stipulated explicitly in national level law, taking into account at the same time fair trial principles and due process of law safeguards

Ability to support lessons learnt from other countries about restorative justice

Demonstrate knowledge of how-to stakeholders can access restorative justice programmes and restorative practices

Explain the gaps between the black letter law and the law in practice with respect to restorative justice

Explain ways in which restorative justice and restorative practices can be implemented in the absence of a clear legal framework

Describe how restorative justice can be applied in 'cross-border' cases.

Describe a number of legal and practice conditions that are required for restorative justice

Explain the procedural steps for initiating restorative justice at the pre-court, pre-sentence and post-conviction stages of the criminal justice process.

Describe the reasons why restorative justice could be considered a suitable option at the pre-court, pre-sentence and post-conviction stages of the criminal justice process

Describe key aspects of restorative justice agreements, including the basis upon which they are formed

Identify types of information that judicial actors can expect to receive regarding agreements, and levels of information would not usually be shared with judicial actors

Explain how judicial actors can incorporate the presence or absence of restorative agreements into the criminal justice process

processes even when not stipulated explicitly in national level law

Ability to apply the law and policies in ways that provide opportunities for restorative justice where appropriate

Identify practical challenges that are likely to be associated with restorative justice

Suggest ways that practical challenges associated with restorative justice can be reduced

Identify at least one local and one national organisation that provides support to victims, accused persons, and briefly explain the types of support that is offered.

Detail the referral processes and timescales for victims and accused persons engaging with restorative justice and/or other local support services

Describe the way(s) in which judicial professionals can support victims to access restorative justice and/or other support services

Describe the way(s) in which individual judicial professionals can operationalise restorative justice processes and principles at a local level

Describe the way(s) in which restorative justice processes and principles have been applied at a local level in a different country and how a similar application could be carried out locally

Outline a number of ways in which opportunities for restorative justice and restorative practices can be created within existing local legal and policy frameworks



Overview blended format – 5 hours 30 minutes

	SESSION TITLE	DURATION (MINUTES)	TOOLS
ONLINE	Supra-national and European levels of international legal and policy framework on restorative justice	15	Handout 10
	International and comparative legal frameworks of restorative justice	30	Video lecture 6
	International and comparative legal frameworks of restorative justice	10	Video interview with Belgian Public prosecutor
	International and comparative legal frameworks of restorative justice	30	Self-directed reading
	Local legal frameworks of restorative justice	50	Self-directed reading about national context
	International and comparative legal frameworks of restorative justice	15	Video interview with Tim Chapman, EFRJ Chair
FACE TO FACE	Welcoming and introduction of the agenda	5	
	International and comparative legal frameworks of restorative justice	10	Quiz provided in the manual
		45	Small groups exercise
	Comfort break	10	
	National legal and policy framework values and standards of restorative justice	15	Lecture
		45	Small groups exercise
	The role of the judiciary within the national legal and policy framework	20	Live presentation of local speaker
30		Q&A session	



Structure

Duration: 5 hours and 30 minutes

Format: 2 hours and 30 minutes will be provided online, with self-directed reading of handouts and other materials suggested in the following sections, and with a recorded lecture and interview.

After the trainees have attended the online part of the training, the face-to-face 3 hours event will pick up on the contents already touched upon in the online session. In the face-to-face event trainers will make use of presentations in the traditional format, icebreakers, interactive exercise, group discussions.

Language: the training materials, produced in English, are translated and/or subtitled in the local language. The reading materials and videos proposed here are mostly in English, and the trainers are strongly encouraged to find other materials in local language that are appropriate to the specific contents of the module.

Tools: online platform, recorded lecture, handouts, reading materials.



Online session – 2 hours and 30 minutes



CORE CONTENTS TO COVER

1. International legal and policy framework

- Supra-national and European levels of international legal and policy framework
- Basic principles on the use of restorative justice in criminal Matters (UN)
- Handbook of the UN on restorative justice programmes
- Recommendation CM/Rec (2018)8 concerning restorative justice in criminal matters.
- Directive 2012/29/EU Victim's Directive and above all papers and researchers/practitioners' contributions about the place of restorative justice in the Directive, also about how such legislation impacts on the parties (e.g., the right to get info about restorative justice)

2. National legal and policy framework

- The role of the law, the role of national guidelines and the role of the judiciary in restorative Justice
- Restorative justice and the national Constitution (*if any*)
- Restorative justice for children and young people
- Restorative justice for adults in various stages of the criminal proceeding:
 - i. pre-trial
 - ii. trial
 - iii. post-trial
- Geographical diffusion of restorative justice in the country
- Internal soft law: protocols/agreements by/among judicial authorities, restorative justice services, local authorities, NGOs

3. Comparative legal and policy framework

- Examples of restorative justice models from other countries so that learners can understand the values, principles and legal frameworks existing in restorative justice and how they are applied



TOOLS

- ▶ Handout 10
- ▶ Video lecture 6
- ▶ Video interviews, with Belgian public prosecutor and with Chair of the EFRJ
- ▶ Self-direct readings provided by the trainers on the national context and based on the core contents listed above
- ▶ Video recording between Edit Törzs (Executive Director of the European Forum for Restorative Justice) and Tim Chapman (Chair of the Board of the EFRJ)



ADDITIONAL RESOURCES

- 📖 International Juvenile Justice Observatory & European Council for Juvenile Justice (eds.) (2015). *European Research on Restorative Juvenile Justice*, Brussels, International Juvenile Justice Observatory:
- 📖 Vol 1: Dünkel, F., Horsfield, P. and Păroșanu, A., *Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States*. Retrieved from
- 📖 Vol 2: Chapman, T., Gellin, M., Aertsen, I., and Anderson, M., *Protecting Rights, Restoring Respect and Strengthening Relationships: A European Model for Restorative Justice with Children and Young People*
- 📖 Vol 3: Chapman, T., Gellin, M., and Anderson, M., *Toolkit for Professionals: Implementing a European Model for Restorative Justice with Children and Young People*
- 📖 ECOSOC Resolution 2002/12 on "Basic principles on the use of restorative justice programmes in criminal matters"
- 📖 Recommendation CM/Rec (2018)8 concerning restorative justice in criminal matters + Explanatory Commentary' to the Recommendation
- 📖 Pali, B., *Restorative Justice in the Victims' Directive Survey Results – European Forum for Restorative Justice 2017*
- 📖 Commentaries about the Victims' Directive and restorative justice [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]
- 📖 UNOCD Handbook on Restorative Justice Programmes, 2ed., 2020, §§1.5, 2.5, 4.4, 5.1, 7.1, 7.4
- 📖 UNOCD Education for Justice, Crime and Prevention&Criminal Justice, Module 8 (Restorative Justice), Topic Four
- 📖 Dünkel et al. *Restorative Justice in Europe*, 2015, Vol. 2, pp. 1015–1096
- 📖 Lemonne, A., *The adventure of the institutionalisation of restorative justice in Belgium*, *The International Journal of Restorative Justice* 2018 vol. 1(2) pp. 230–251



Face to face session – 3 hours



CORE CONTENTS TO COVER

1. International and comparative legal and policy framework

- The content provided in the online session is assessed and refreshed by speakers in presence, and Q&A are answered

2. National legal and policy framework

- The role of the law in restorative justice.
 - The fundamental role of legislative provisions to ensure accessibility and availability of restorative justice where it intersects with criminal justice institutions: a legal framework as a crucial asset in developing new restorative justice programmes and strengthening perceived legitimacy.
 - UN Basic Principles: para.12
 - CE Rec (2018)8, Rules 21–23
 - The need to combine legislation with quality of practice, funding, public awareness, cooperation between providers to ensure full implementation of restorative justice .
 - The need to avoid that the legal preconditions and the severity of the offence restrict the type of cases eligible for restorative justice
 - The possible facilitating and protective function of national legislation by ensuring
 - Accessibility of restorative justice at all stages of the criminal justice system
 - Predictability in the use of restorative justice
 - Proper referrals to restorative justice
 - Legal safeguards for those participating in restorative justice programmes
 - National legislation on restorative justice : possible virtuous options of legislative recognition enhancing trust in restorative justice and contributing to a more systematic and compliant implementation vs possible counterproductive legislation contradicting and betraying the basic principles of restorative justice .
 - National guidelines on restorative justice as quality alternatives, or complements, to national legislation for advising the adoption of protocols governing the conduct of restorative justice intervention and relating to needs and rights of parties, local community, judicial system and restorative justice agencies.
- Existing national framework in the country (refresher from the online session)
 - Legislation, policies and protocols

- Focus on national rules to provide information to the parties about their rights, the nature of the restorative justice process, the possible consequences of their decision to participate, and the details of any grievance procedures
- Presence and concrete operation of restorative justice services.
- Compliance and betrayals with supranational basic principles of restorative justice.

3. The role of the judiciary within the national legal and policy framework

- Role of prosecutors and judges in providing information to the parties about their rights, the nature of the restorative process, the possible consequences of their decision to participate, and any grievance procedures.
- Role of prosecutors and judges in various national jurisdictions and in various stages of the criminal justice proceeding where restorative justice intersects with criminal justice system.
- Role of prosecutors and judges in referrals according to national legislation.
- Judicial supervision of restorative processes and outcomes according to national legislation and its limits.
- Impact of restorative justice on judicial decision according to national legislation.
- Need for a common understanding about restorative justice: consultation, cooperation and coordination among prosecutors, judges, judicial authorities, criminal justice and restorative justice agencies, legal professionals, victim services and communities.
- Soft, non-technical 'restorative' skills interacting with judicial powers and warranties.



SUGGESTED LESSON PLAN

International legal and policy framework

 **1 hour 10 minutes**

5 minutes: the trainer(s) refresh the contents of the self-directed reading made by the trainees during the online session, giving a recap of the international legal and policy framework on restorative justice, providing examples of international practices and insight for further reflection.

10 minutes: the trainers propose a quiz using [Poll Everywhere](#).⁹ It requires only that all participants have a cell phone available, and they can answer the questions using their phone.

QUIZ




According to the main international legal provisions:

- 1. Restorative justice must be available:**
 - A. at any stage of the proceedings
 - B. only in the investigation phase
 - C. only during the trial
 - D. only in juvenile proceedings

- 2. Decisions by judicial authorities to discontinue the charge on the grounds that a restorative justice agreement has been reached:**
 - A. never preclude the reopening of the proceedings
 - B. have the same status attributed by domestic law to similar decisions based on different grounds
 - C. always preclude the reopening of the proceedings
 - D. are not allowed

- 3. Participation in restorative justice programs:**
 - A. can be imposed by the law
 - B. can be imposed by the judge
 - C. can be imposed by the police
 - D. must always take place on a voluntary basis

⁹ Alternatives are Slido, Mentimeter, Kahoot: <https://kahoot.com/> // <https://www.mentimeter.com/> /<https://www.sli.do/>

- 
- 4. According to Council of Europe Recommendation CM/Rec (2018) 8, restorative justice programs should be used:**
- A. only if they are in the interest of the victim
 - B. only if they are in the interest of the accused
 - C. In the interest of all parties involved
 - D. In the interest of the public prosecution /judge
- 5. According to Directive 2012/29/EU, restorative justice programs should be used:**
- A. only if they are in the interest of the accused
 - B. only if they are in the interest of the victim
 - C. in the interest of all parties involved
 - D. in the interest of the public prosecution /judge
- 6. Consent of the parties to the use of restorative justice programs:**
- A. can be withdrawn at any time
 - B. cannot be withdrawn
 - C. can be withdrawn until the program starts
 - D. can be withdrawn only with the permission of the judicial authority
- 7. In order to participate in restorative justice programs, the accused person should:**
- A. plead guilty
 - B. acknowledge the essential facts of the case
 - C. compensate the damage
 - D. carry out public utility work
- 8. Participation in restorative justice programs:**
- A. means a guilty plea in subsequent proceedings
 - B. cannot be interpreted as a guilty plea in subsequent proceedings
 - C. constitutes inculpatory evidence
 - D. constitutes exculpatory evidence
- 9. Restorative justice programs are eligible if:**
- A. there are sufficient elements to convict the offender
 - B. there are insufficient elements to open a criminal proceeding
 - C. there are sufficient elements to charge the offender
 - D. the suspect has no criminal record
- 10. Statements made during restorative justice programs can be disclosed:**
- A. always
 - B. with the consent of the parties
 - C. never
 - D. only if they have incriminating value

11. Victims must be informed of the availability of restorative justice programs:

- A. from the first contact with the proceeding authority
- B. from the hearing
- C. from the indictment
- D. only in the execution phase



12. When the crime is considered serious:

- A. precludes the access to restorative justice programs
- B. precludes the access to restorative justice programs in the investigation phase
- C. does not in itself preclude the access to restorative justice programs
- D. precludes the access to restorative justice programs before sentencing

13. Content of restorative justice agreements:

- A. are stipulated by the law
- B. are imposed by the judge
- C. are imposed by mediators
- D. are determined by the parties, with the mediator's/facilitator's support

14. The existence of power imbalances between the parties:

- A. Is, in itself, enough to preclude the access to restorative justice programs
- B. should be taken into account in determining whether to use restorative justice programs
- C. is irrelevant to the use of restorative justice programs
- D. precludes the access to restorative justice programs, unless the accused pleaded guilty

15. Failure to implement a restorative justice agreement:

- A. justifies the conviction
- B. justifies a more severe sentence
- C. does not justify a more severe sentence
- D. justifies the application of a precautionary measure

Correct answers

1 – a); 2 – b); 3 – b); 4 – c); 5 – b); 6 – a); 7 – b); 8 – b); 9 – c); 10 – b); 11 – a); 12 – c); 13 – d); 14 – b); 15 – c)

45 minutes: the trainees are divided into group to conduct an assignment. Two ideas for assignment are proposed below: the trainers shall be able to choose between the two, according to the context and their familiarity with the tools. The assignments both test the knowledge of the trainees after

the online sessions and after the previous hours of face-to-face training, and will encourage their further reflections on the application of international legal standards on restorative justice.

GROUP ASSIGNMENT IV.1



After the lectures on the international legal and policy framework for restorative justice, participants are invited to cluster in small homogeneous groups according to respective functions by:

- i. separating prosecutors and judges and, when possible,
- ii. separating pre-trial/trial/post-trial functions

and they are asked to identify and discuss about the procedural consequences – depending on the different stages of the proceeding – that can be associated to the restorative justice principles, and how those principles can be granted also in the absence of a legal framework on restorative justice (20 mins.)

E.g.:

Group 1: Voluntariness

Group 2: Confidentiality

Group 3: Accessibility

Group 4: Consent to restorative justice is not admission of guilt (presumption of innocence)

Group 5: Right to be informed

Group 6: Ne bis in idem

Group 7: The 'time' issue

Group 8: Agreements and impact on the criminal proceeding

The answers are later shared and commented in the plenary (25 mins).

Group assignment IV.2



After the lectures on the international legal and policy framework for restorative justice, participants are invited to cluster in small heterogeneous groups by

- i) Composing each group with both prosecutors and judges and
- ii) Gathering participants working in the same jurisdiction (minors/adults) and in the same stage of the criminal proceeding (pre-trial/trial/post-trial)

Each group is asked to identify the meaning and the procedural consequences of one specific principle or recommendation covered by international legal provisions (20 mins).

E.g.:

Group 1: Voluntariness

Group 2: Confidentiality

Group 3: Accessibility

Group 4: Consent to restorative justice is not admission of guilt (presumption of innocence)

Group 5: Right to be informed

Group 6: Ne bis in idem

Group 7: The 'time' issue

Group 8: Agreements and impact on the criminal proceeding

The answers are later shared and commented in the plenary (25 mins).

Comfort break

 **10 minutes**

National legal framework

 1 hour

15 minutes: The trainer(s) bring the focus of the discussion to the national context, providing first a recap of the contents that the trainees had already discovered in the online session. Ideally the focus of discussion of the following 2 hours of this module should be, as provided in the list of contents above, on the role of the law in restorative justice and on details about the national context that can support the trainees understanding what is practically possible, in their country, for what concerns the application of restorative justice.

45 minutes: the trainees are divided into groups to conduct an assignment. Two ideas for assignment are proposed below: the trainers shall be able to choose between the two, according to the context and their familiarity with the tools, and possibly offering a variety of activities, compared to the previous sessions. The assignment will both test the knowledge of the trainees acquired so far, but above all it will encourage their further reflections on the practical application of national legal standards on restorative justice and will lead to the discussion around their own role, the role of the judiciary in restorative justice.

Group Assignment IV.3



After the lectures on the existing national legal and policy framework for restorative justice and the role of judiciary within it, participants are invited to cluster in small homogeneous groups according to respective functions by

- i) separating prosecutors and judges
- ii) gathering according pre-trial/trial/post-trial functions

and they are asked to hypothesize an official informative for the parties involved in the criminal proceeding about the possibility of undertaking a restorative program, according to the specific stage of the proceeding/case (25 mins.)

The proposals are later shared and commented with the reunited plenary (20 mins).

Group Assignment IV.4



After the lectures on the existing national legal and policy framework for restorative justice and the role of judiciary within it, participants are invited to cluster in small heterogeneous groups by

- iii) composing each group with both prosecutors and judges
- iv) gathering participants working in the same jurisdiction (minors/adults) and in the same stage of the criminal proceeding (pre-trial/trial/post-trial)

and they are asked to identify a concrete case among those which one of them is currently managing and to hypothesize

- concrete referral,
- judicial supervision
- possible impacts on judicial decisions

according to national legislation (25 mins).

- ▶ A short synthesis by each group is later shared and commented with the reunited plenary (20 mins).

The role of the judiciary within the national legal and policy framework

 **50 minutes**

20 minutes: a guest speaker/s from the judiciary – a judge and/or a public prosecutor – who has experience of restorative justice at local and/or international level is invited to share their experience with the trainees and to answer their questions¹⁰.

¹⁰ As suggested earlier, get in touch with the European Forum for Restorative Justice if you need support in contacting the appropriate speakers – at national and international level.

30 minutes: the previous intervention will spark some further questions and discussion, that the trainers should steer towards some specific reflections about the points listed among the contents above and that we reiterate here:

- ▶ The role of prosecutors and judges in providing information to the parties about their rights, the nature of the restorative process
- ▶ The role of prosecutors and judges in various national jurisdictions and in various stages of the criminal justice proceeding where restorative justice intersects with criminal justice system
- ▶ The role of prosecutors and judges in referrals according to national legislation
- ▶ Judicial supervision of restorative processes and outcomes according to national legislation and its limits
- ▶ Impact of restorative justice on judicial decision according to national legislation
- ▶ Need for a common understanding about Restorative Justice: consultation, cooperation and coordination among prosecutors, judges, judicial authorities, criminal justice and restorative justice agencies, legal professionals, victim services and communities
- ▶ Soft, non-technical 'restorative' skills interacting with judicial powers and warranties

The trainers need to keep in mind that the discussion about the practical use of restorative justice in each national context will be continued in the following and last module, entirely focused on restorative justice applications at case and at organisational level.

The discussion here should then be very focused on legal provisions and put the seeds of reflection to be picked up in the next module.



TOOLS

- ▶ Quiz, Poll Everywhere
- ▶ Group assignment 1 or 2
- ▶ Group assignment 3 or 4
- ▶ Guest speaker/s intervention

Module V: Making restorative justice happen



KNOWLEDGE GAPS

Understanding of the role of the judicial professionals in the local practices and practical application of restorative justice processes

Ability to activate restorative justice process whenever in the interest of all concerned, whenever requested by those concerned

Soft skills (e.g., active listening)

Ability to provide opportunities for restorative justice processes to take place where restorative justice principles (confidentiality, voluntariness, confidentiality, neutrality, the accused or convicted person accepts the facts of the case etc) are met

Ability to draw upon case specific understanding of victim needs and also local understanding of restorative justice practices to inform decisions

Ability to provide opportunities for restorative justice processes to take place where the conditions for restorative justice are met

Ability to contribute to the climate of organisational change that will allow openness for restorative justice and



LEARNING OBJECTIVES

Describe the different ways in which judicial professionals can apply principles of restorative justice to their daily work

Explain how judicial professionals can become involved in the practice of restorative justice locally, including in setting up and/or initiating restorative justice processes

Describe how information is exchanged between restorative justice facilitators and the Court once the restorative justice process has started

Explain a number of best practices examples of restorative justice from other countries and outline how these could be implemented in daily practice

Outline the steps that would be taken to initiate restorative justice or a restorative intervention

Evaluate written and verbal communication observed throughout previous sessions and propose ways in which it could be improved

Explain key points of attention necessary to ensure positive written and oral communication from a person in authority

Explain the principles of active listening

increased attention for the rights of victims, accused persons and convicted persons

Ability to develop cooperation and work in partnership with victim support and restorative justice organisations also when they operate outside of the criminal justice system

Ability to adjust working practices to enable restorative justice to take place and to also take a victim sensitive approach

Outline the steps that would be taken to initiate restorative justice or a restorative intervention

Explain decisions regarding restorative justice cases drawing on knowledge of stakeholder needs and local service provision

Describe the possible risks and benefits of restorative justice intervention based on case study information

Propose ways in which restorative justice and restorative practices could be implemented in daily practice

Detail the processes required for initiating restorative justice and restorative responses

Describe a number of steps that could be taken to increase the presence of restorative justice values in current organisational structures.

Outline the key barriers to restorative justice that are related to organisational culture within the justice system and suggest ways to overcome these barriers

Propose a number of ways that cooperation with organisations that can support restorative justice and victim assistance can be developed and/or strengthened

Describe a number of key ways that current working practices can be altered to facilitate restorative justice
Describe a number of key ways that current working practices can be altered to increase sensitivity to victim needs.



Overview blended format – 5 hours 30 minutes

	SESSION TITLE	DURATION (MINUTES)	TOOLS
ONLINE	Restorative justice practices from other countries	9	Video interview with Belgian judge
	Restorative justice services and practices in your country	33	Self-directed reading of national booklet
	Closure	3	Closing video
FACE TO FACE	Welcoming, introductions, agenda for the day	20	Circle
	Restorative justice at case level	45	Small group exercise – Communication skills
	Comfort break	10	
	Restorative justice at case level	45	Small group exercise – Case based exercise
	Restorative justice at organisational level	30	Small group exercise – moving forward with restorative justice
	Closure	30	Closing circle
FINAL ONLINE SESSION	Contribution to the development of a European model for judicial training on restorative justice	70	Final assignment
	Post-training questionnaire	25	Online survey



Structure

Duration: 5 hours 30 minutes

Format: a session of 45 minutes will be provided online, showing video-recorded interviews to judges and public prosecutors from various EU countries.

After the trainees have attended the online part of the training, for Module V the face-to-face session will last 3 hours and pick up on the contents touched upon in the previous modules. In the face-to-face event, trainers will make use of presentations in the traditional format, but above all of icebreakers, interactive exercise, group discussions, group exercises.

Language: the training materials, produced in English, are translated and/or subtitled in the local language. The reading materials and videos proposed here are mostly in English, and the trainers are strongly encouraged to find other materials in local language that are appropriate to the specific contents of the module.

Tools: online platform, recorded lectures, handout.



Online session – 45 minutes



CORE CONTENTS TO COVER

1. **Conditions for restorative justice (for children and adults):** Case selection criteria / gaps between possibilities and practice / Importance and limitations of judicial actors as gatekeepers / restorative justice at different stages of the system / understanding agreements and the lack of agreements
2. **Motivational processes for victims and offenders (important for judges and prosecutors)**



TOOLS

- ▶ Video interview with Belgian judge
- ▶ National factsheets with information about the restorative justice services available at local level
- ▶ Restorative justice and systemic implementation: Successful Restorative Justice Development around the World (Module V)
- ▶ Closing video



Face to face session – 3 hours



CORE CONTENTS TO COVER

1. Restorative justice at case level

- Accessibility of restorative justice: Importance of accessibility for all/barriers to accessibility/societal attitudes towards restorative justice
- Complex and specialist cases: collective violence, corporate violence, environmental crimes, hate crimes, human trafficking, intimate partner violence, sexual violence, terrorism, etc.

2. Restorative justice at organisational level

- Restorative justice services and procedures: the involved agencies/the required procedures/challenges and possibilities of implementation/the role of judges and public prosecutors in restorative justice locally/making referrals
- Communication: interpersonal communication, communicating the offer of restorative justice, communicating about restorative justice
- Worth mentioning also the communication to the public and media (especially for the magistrates that have an official role in external relationships)



SUGGESTED LESSON PLAN

Restorative justice at case level

 2 hours

20 minutes: Welcoming, introductions, agenda for the day including breaks, circle¹¹

Rounds in the circle can include:

- ▶ Feelings about being back for this final module
-

¹¹ An alternative to this circle/exercise, and to introduce the trainees more in depth to soft skills required to work restoratively, is to invite a local expert (professor, facilitator/mediator, ...) on interpersonal communication, psychology, soft skills, to speak about how to communicate about restorative justice to the parties and to the community.

- ▶ Reflections on module IV
- ▶ Reflections from the online part of module V
- ▶ Expectations for this session
- ▶ Questions that arouse from the online section (the facilitator will inform the learners that the questions will not be responded to by the trainer in the circle but will be noted and responded to during the session)

Small group exercise – Communication skills (45 minutes):

- ▶ Trainer sets the scene by asking learners to think about the different groups of people they see before them in court and the communication needs that they may have (blind people, English as a foreign language, juveniles, attention deficit). For example – have a list of adjectives (angry, scared, fed up, nervous, excited, joyful...) and they are required to say a sentence in the chosen tone and the other has to guess which it was from the list. The examples of exercises provided below are meant as self-reflection moments for the trainees: to reflect on their own work and experiences in the light of what they have learned in the previous models, and to emphasise the crucial importance of soft and communication skills in applying restorative justice.
- ▶ Communication skills exercises:

Communication skill exercise – Option 1

Title	Power of tone and emphasis 1 – 'I never said she stole my money'
Description	Group exercise – (pairs, larger groups or whole group)
Aim	To convey the power of voice tone in conveying information
Materials	List of descriptive words / phrases. List of short sentences.
Details	The facilitator sets the scene by explaining that the way that words are said is extremely important in conveying meaning in verbal communication. Important factors include pitch, tone, intonation, emphasis, speed, etc. The facilitator explains the aim of the exercise. The exercise is centred around the phrase 'I never said she stole my money'. The facilitator has seven descriptions ways that this sentence can be understood. Each of these is on a folded piece of paper. Participant A chooses one, without the others seeing, and tries to say the sentence in a way that conveys that particular implication. Participant A chooses one of these options:

1. She stole something else, it wasn't money that she stole
2. You didn't make the accusation verbally
3. Perhaps she just borrowed the money
4. Perhaps another person is responsible
5. The missing money does not belong to you
6. You have never made such an accusation about the theft
7. Someone else said that she stole the money, but you didn't say so

The other participants have to guess what implication is being conveyed, only through the emphasis placed on the words. The next participant chooses from the remaining 6 options and repeats the exercise. The following sentences respectively indicate how the shifts in meaning can be conveyed for the points above (the word in bold and underlined should be emphasised during the spoken sentence):

1. I never said she stole my money
2. I never said she stole my money
3. I never said she stole my money
4. I never said she stole my money
5. I never said she stole my money
6. I never said she stole my money
7. I never said she stole my money

The exercise can work in pairs, with small groups or with one person speaking the sentence and the rest of the group guessing.

In a brief reflection following this exercise trainees should consider how the ways that they say things may have influenced the experiences of the people they come in contact with during their professional tasks.

Required time 10 minutes

Additional resources for the exercises The facilitator should feel free to use a different or an additional sentence, as long as the aim of the exercise can be achieved.

Further information <https://youtu.be/5UUV49tf2m0>
<https://youtu.be/OdFMuBzseQQ>

Communication skill exercise – Option 2

Title	Power of tone and emphasis 2
Description	Group exercise – (pairs, larger groups or whole group)
Aim	To convey the power of voice tone in conveying information
Materials	List of short sentences and description for emphasis
Details	The facilitator sets the scene by explaining that the way that words are said is extremely important in conveying meaning in verbal communication. Important factors include pitch, tone, intonation, emphasis, speed, etc. The facilitator explains the aim of the exercise. Two lists are made available to all participants (written on a board or given in handouts): one list of descriptive words that refers to moods/sentiments; a second list with sentences. Participants are split into pairs. Participant A picks a sentence from the second list (or uses their own). They aim to say the sentence in a way that conveys one of the feelings or sentiments provided in the first list. Participant B has to guess which descriptive word was chosen.

Examples of descriptive words:

Joy	Regret	Hesitation	Fear
Triumph	Sorrow	Anger	Excitement
Threat	Passion	Despair	Questioning
Exasperation	Disbelief	Hilarity	Disgust
Determination	Confidence	Disinterest	Resignation

Examples of sentences:

<p>Winter is coming I am wearing shoes Tuesday comes after Monday Pineapples are sweet fruit</p>
--

The exercise can work in pairs, with small groups or with one person speaking the sentence and the rest of the group guessing.

Required time	10 minutes
Additional resources for the exercises	The facilitator should feel free to add to or change the example words / phrases provided above, as long as the aim of the exercise can be achieved.

Sources of
further
information

<https://youtu.be/5UUV49tf2m0>

Title	Empathy with auditory hallucinations
Description	Group exercise – groups of four
Aim	To convey some insight into the experience of having auditory hallucinations
Materials	None required
Details	<p>The facilitator sets the scene by asking learners to think about the different groups of people they see before them in court and the particular communication needs that they may have (e.g., physical health challenges and disabilities – blindness, deafness –, neurological challenges, learning needs and mental health challenges – ADHD, autistic spectrum disorders, auditory hallucinations –, non-native language speakers, juveniles). The facilitator explains the aim of the exercise. Participants are split into groups of four (one or more group of 3 is also possible). One participant takes the role of the interviewer and another takes the role of the interviewee. These participants sit opposite each other. The interviewer asks a series of questions that the interviewee has to answer as truthfully as possible. The questions should require the interviewee to recall a something through a series of open ended questions / instructions. The topic can be decided between them (e.g., on the topic of how the interviewee travelled to the training session – what time did you wake up this morning? What did you have for breakfast? Explain in detail how you made your coffee. Explain in detail how you tied your laces...). The two other participants (the ‘whisperers’) are sat either side of the interviewee, slightly behind them. These people will represent the auditory hallucinations. Their task is to comment to and about the interviewee. Hallucinations can be negative and critical, so they can make comments such as ‘that was a stupid idea’ or ‘I really don’t know why you did it like that, you always mess things up’ or ask questions directly to the interviewee ‘you drunk coffee? You really wanted a beer with your breakfast though, didn’t you?’ The ‘voices’ can also enter into a conversation with each other if they wish. The voices should talk in a loud whisper, so that the interviewee can still clearly hear the interviewer. After one minute participants should swap roles. The exercise should be repeated until every participant has played each role. After the turns have been finished participants provide feedback in the small group what it was like to play each role. For the interviewer, how did the interviewee come across?</p>

Distracted? Rude? Strange? What did the interviewee display through their non-verbal behaviour? Verbal responses? What was it like to be the interviewee? Was it upsetting? Distracting? Disturbing? Did it make them feel angry or like they wanted to lash out? Feedback can be invited from the full group.

Required time 15 minutes

Additional resources for the exercises It can help the interviewee to be provided with a list of sample topics and possible questions / statements that can be asked of the interviewee. A list of prompt sentences can be provided to help 'the whisperers' think of things to say

Sources of further information <https://www.mind.org.uk/information-support/types-of-mental-health-problems/hearing-voices/living-with-voices/#.Xc6QxVf7SM8>

Title Instruction origami

Description Group exercise

Aim To convey that people often interpret instructions in different ways

Materials Pieces of paper for each participant

Details The facilitator explains the aim of the session. Participants are each given a sheet of paper (square for origami). They are blindfolded, or asked to keep their eyes closed while they follow the instructions that they hear. They are not allowed to speak during the exercise. The facilitator gives spoken instructions as to how to make an origami shape (or paper aeroplane. The facilitator should read from a list of instructions and should avoid adapting the explanation (the words, emphasis or the timing) to help the participants. After all instructions have been given a comparison should be made between what the facilitator has instructed and what the participants have made.

Required time 10 minutes

Additional resources <https://origami.guide/howto/origami-step-by-step/>

<https://www.thecoolist.com/best-paper-airplane-designs/>

Comfort break

 **10 minutes**

Small group exercise – Case based exercise (45 minutes)

Two ideas for group exercise are proposed below.

Group exercise based on a case study – Option 1



5 minutes: one case study is shared and read by the trainer(s) to the trainees, and then they are divided into groups to discuss, first, the facts and the referral of the case to restorative justice services and then the feedback/outcome of the restorative process. It would be ideal during this session if the trainer(s) would be accompanied by guest trainer(s), representative/s from the restorative justice services available in the country/region. The guest trainer(s) can actively be part of the group discussion and support the trainees in the discussions.

20 minutes: The trainees are divided into three groups and be given the following roles: members of the judiciary, facilitators, stakeholders. One person from each group should be a notetaker, and each group will focus on different discussion points:

- Group of the judiciary: discuss (and note down) why they would refer this case (or not) and what indications they would look for in their contact with the stakeholders (based on what learned so far) in order to take such decision
- Group of facilitators: discuss the soft skills needed in order to make the referral, challenges of the case study from the facilitator's point of view
- Group of stakeholders: discuss 'who' is the community in this case – which groups of or specific people have an interest? What are those interests? For what reasons do those groups of or individual people have a stake in what has happened and what will happen? Where a group of people has a stake, which individuals should represent that group? How should they be selected / elected or otherwise be engaged in the restorative justice process?

All the three groups are also asked to discuss about the role of the prosecutor/judge, the procedural matters (neutrality, confidentiality, following up on the agreement by the judiciary, etc...), comment on the agreement (what terms would they propose, proportionality, etc...).

20 minutes: the groups report to the plenary and the ideas are discussed altogether, with a feedback from the trainer(s).

Group exercise based on video materials – Option 2



10 minutes: the video produced by the AUTH is shown till the end of the preparatory phase

10 minutes: the trainees discuss together with the trainer what they have seen, the case, answering to some questions:

- Answering some questions like: Would you refer this case, based on the facts? Why was this case referred to restorative services and what indications would they look for in their contact with the stakeholders in order to refer (based on the previous lecture)?
- Commenting on the judiciaries' role in the referral and on their cooperation with the facilitator, and on the presence of the offender's father and of the community to the following restorative meeting
- Commenting on the strengths of the demonstrated communication and what could be improved and how

10 minutes: the trainees continue to watch the second part of the video

15 minutes: the trainees discuss together with the trainer what they have seen, the case, particularly referring to the role of the prosecutor/judge, comment on the procedural matters (neutrality, confidentiality, following up on the agreement by the judiciary, etc...), comment on the agreement (what do they think on the terms proposed especially keeping in mind the proportionality principle, terms would they propose, etc...)

Comfort break

 **10 minutes**

Restorative justice at organisational level

 1 hour

Group exercise: how to move forward with restorative justice in their local community (30 minutes)

15 minutes: the trainees are divided into 2-3 groups and invited to discuss on an 'implementation plan' for increasing the *restorativeness* of the offer to the public where they work, and for increasing the restorative quality of interactions at an organisation and structural level, with a view of keeping this effort sustainable.



At this point, towards the end of the training, the trainees are encouraged to reflect on the challenges and opportunities to implement restorative justice at three organizational levels: a) Micro level: in their daily work as members of the judiciary/in the courts' organizational system, b) Meso level: in cooperation with agencies and other services locally (eg. municipality, prefecture, province—depending on each country), c) Macro level: in a policy level (depending on the country, it could be nationally, but also federally, regionally, etc...).

15 minutes: The representative of each group reports back to the plenary the key points emerged from the discussion. The trainees are asked to take notes during this session as they will be useful for the last assignment online.

Closing circle (30 minutes)

Rounds in the circle can include:

- ▶ Reflections / feelings about module V
- ▶ More general reflections on the training as a whole
- ▶ Does the training make you reflect on your role differently? If so, how?
- ▶ Which, if any, changes do you think you will try to implement?



TOOLS

- ▶ Video materials produced within the project
- ▶ Group exercises
- ▶ Final circle



ADDITIONAL RESOURCES

- 📄 Articles from the Recommendation CM/Rec (2018)8 to be used by the trainees for the final assignment: micro level: 56, 57, 61; meso level: 36, 37, 55, 56; macro level: 60, 65.
- 📄 For what concern the macro level, together with the recommendations, an extract from the commentary of the Recommendation is also to be discussed: "This Recommendation goes further than the 1999 Recommendation in calling for a broader shift in criminal justice across Europe towards a more restorative culture and approach within criminal justice systems." p.2, [Commentary to Recommendation CM/Rec \(2018\) XX of the Committee of Ministers to member States concerning restorative justice in criminal matters.](#)

Final online session – 1 hour 35 minutes



Final assignment – 1 hour 10 minutes

The assignment will be given to the trainees via a platform or Google form. The exercise is not subject to assessment so it should be conducted anonymously. The platform chosen should then support that.

This is not meant to be an exam or an assessment, but a contribution, from the side of the trainees, to the active promotion of restorative justice in their own country and a contribution to the improvement and finalisation of training for judges and public prosecutors on restorative justice.

The last discussion held during Module V should feed this exercise.

Trainers should consider choosing one between Option 1 and Option 2, and ask the trainees to fill part a, b, and c of each option chosen:

OPTION 1

Part A

Write a letter (approx. 700 words) to either the School for training of the Judiciary or to the Court Administration Authority (Ministry of Justice – It depends on what authority responsible for organizational matters of the courts is in the respective country) expressing your ideas on how you would implement restorative justice, within your own organization (court), in cooperation with your colleagues and in cooperation with local agencies, and in judiciary training programmes.

Part B

Write a letter (approx. 700 words) to the state's legislative body expressing your ideas on the changes you would propose in order to support your ability to refer cases to restorative justice (legislative or administrative changes, etc).

Part C

Write 3 main recommendations for restorative justice practitioners and services on how to approach, train and sensitise the judiciary in your country on restorative justice? (approx. 700 words)

OPTION 2

Part A

Imagine you are asked to put together a brief action plan to get restorative justice going in your local system. Please write this action plan, answering these questions (approx. 700 words)

- ▶ What resources (human, finance, time, other) would be needed?
- ▶ Which policies and procedures are necessary?
- ▶ What would be the risks, opportunities?
- ▶ Where would the challenges and tensions be and how should these be negotiated?

Part B

Can you reflect upon and write on 3 aspects of your work that you will try to do differently following this training? What are those areas and what will the change be? What will be the added value, particularly thinking to specific cases where you think restorative justice could be beneficial or add value to a justice process? (approx. 700 words)

Part C

Can you write your 3 main recommendations for restorative justice practitioners and services on how to approach, train and sensitise the judiciary in your country on restorative justice? (approx. 700 words)

Post-training and satisfaction survey – 25 minutes

This questionnaire is to be **administered to the trainees** after the closure of the training. In the RE-JUSTICE training it was uploaded to the online platform and completed by the participants after the teaching had been completed.



The complete questionnaire is available as Annex 12. Trainers should make sure it is uploaded on the online platform in advance and make sure to follow-up with trainees to have it filled in. To avoid the risk of low rate of responses, the trainers could decide to administer the final assignment and the post-training questionnaire in person, at the end of the last session.

Below an extract of Annex 12, with some key information to give to the trainees before they fill the questionnaire in.

This questionnaire is anonymous and performs exclusively the function of collecting information from the judges and public prosecutors participating in the training on:

- ▶ Achievement of the expected learning objectives
- ▶ Degree of satisfaction with the overall training experience
- ▶ Interest and relevance of the subject
- ▶ Proposals and further suggestions.

The results of the questionnaire, in anonymous and aggregate form, will be used for

- ▶ The development of a replicable training model
- ▶ The improvement of the training experience.

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List of video-lectures

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Video lecture 2: Theoretical framework and origins of restorative justice (Module I)

Video lecture 3: Programmes of restorative justice (Module II)

Video lecture 4: Impact and effectiveness of restorative justice (Module II)

Video lectures 5a (communities), 5b (barriers) and 5c (victims) (Module III)

Video lecture 6: Comparative legal framework (Module IV)

List of handouts available from Annex 1 to 10

Introduction and definitions of restorative justice (Module I)

PowerPoint on Theories on crime and punishment, with the video-lecture (Module I)

Theoretical frameworks relevant to restorative justice (Module I)

Values and standards of restorative justice (Module I)

Restorative justice programmes (Module II)

¹² "Please note that the video-lectures and the handouts have been adapted from the original recording and draft, after the feedback received during the pilot training by the judges and public prosecutors from Greece, Italy and Spain. In particular, Video-lecture 4 and Video-lecture 5 have been split into shorter videos and more targeted messages, as suggested by the trainees.

Restorative justice practices (Module II)

PowerPoint on impact and effectiveness, with the video lecture (Module II)

Factors to determine the impact and effectiveness of restorative justice (Module II)

PowerPoint on Stakeholders of restorative justice, with video-lecture (Module III)

Snapshot of the supra-national and European levels of international legal and policy framework on restorative justice (Module IV)

Restorative justice and systemic implementation: Successful Restorative Justice Development around the World (Module V)

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Annex 2 – PowerPoint on Theories on crime and punishment (Module I)

Annex 3 – Theoretical frameworks relevant to restorative justice (Module I)

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Annex 7 – PowerPoint on impact and effectiveness (Module II)

Annex 8 – Factors that can be used to determine the impact and effectiveness of restorative justice (Module II)

Annex 9 – PowerPoint on Stakeholders of restorative justice (Module III)

Annex 10 – Snapshot of the supra-national and European levels of international legal and policy framework on restorative justice (Module IV)

Annex 11 – Restorative justice and systemic implementation: Successful Restorative Justice Development around the World (Module V)

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Page 32: *Lady Justice joins the circle*. Designed by Dr. Lindsey Pointer, illustrated by Phil Dickson

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Page 36: *Awareness gap*. ©Maria Cidonelli

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Annex 1

Handout 1: Introduction and definitions of restorative justice





Restorative justice is one of the most debated areas of criminology.[1]

Brief history of the modern Restorative Justice

movement:

- ▶ **Criticism** increases of the **prison and criminal justice system** – it does not reduce criminality, detention actually leads to increased offending, it favours the organisation of criminals and their hierarchy, the stigma and conditions attached to release drive reoffending behaviour, victims are not cared for by the system (e.g. Foucault) [2]
- ▶ Christie in “**Conflicts as property**” advocates for participatory and community justice, that “neighbourhoods” are the owners of the conflicts rather than professionals in the justice system. [3]
- ▶ 1970s – the first restorative justice dialogue experiments are used in Canada and then in the USA, later called **Victim Offender Mediation (VOM)**. [4]
- ▶ Eglash identifies three **types of justice** (retributive, distributive and restorative), arguing that retributive & distributive justice focus on punishing offenders and ignoring victims, while RJ focuses on the restoration of the harm caused by crime.[5] Eglash is credited with coining the term “restorative justice”, however he borrowed it from German theologians the original word being “*heilende Gerechtigkeit*” (**healing justice**).[6]
- ▶ Barnett advocates for a new paradigm for **crime as an offence committed by one person against another** rather than against the state.[7]
- ▶ 1980 in New Zealand, a ‘listening campaign’ is held to hear the concerns of the the indigenous Maori community about the overrepresentation of their children in the welfare and criminal justice systems. **Family Group Conferencing (FGC)** emerges, a model informed by Maori values with an emphasis on including extended family and community. In NZ, conferences are used in child protection and youth justice cases.[8]
- ▶ Scholar Zehr advocates for a paradigm shift, **a change of ‘lens’**, which sees that “crime is fundamentally a violation of people and interpersonal relationships”, it offers an alternative to blame and punishment, and seeks to “address harms, needs, and obligations... to heal and put things as right as possible”. [9]
- ▶ Conferences spur experiments and news models in other countries. In the '90, Judge Barry Stuart in Canada, inspired by the First Nations indigenous people of Yukon, starts using **circles** in criminal justice cases leading to an explosion of different types of circle practices. [10]



- ▶ Around the same time, late 70's and 80s, in Europe victim–offender mediation pilots begin in Norway and Finland. Official programs are then funded in Australia, Germany, Belgium and other EU countries. [11]
- ▶ By the 1990s, large scale programs and the institutionalisation of restorative justice was happening in Europe, Canada, USA, New Zealand, Australia, UK. RJ is now being used also in Africa, Asia, Latin America, and Oceania. [12]

Definitions of Restorative Justice

The RJ movement **began and developed from practice by those working in the field**, in response to criticisms of the criminal justice system, and to victim rights movements, therefore theory is often 'catching up' with practice. Currently there is **no consensus definition** of RJ and debate exists as to whether this is necessary or not. [13]

Marshall's "**purist**" definition of RJ :

a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future'. [14]

1. Bazemore & Walgrave "**maximalist**" definition of RJ :

every action that is primarily oriented toward doing justice by repairing the harm that has been caused by crime. [15]

This definition focuses on **outcomes**— repairing the harm — it does not limit RJ to a specific process. Maximalists aim to transform all conventional justice practices into restorative ones.

2. Braithwaite & Strang suggest viewing RJ not as a dichotomy between process and outcome but as a **continuum** '*involving a commitment to both restorative processes and restorative values*'. [16]

3. Zehr changed his view of the dichotomy between "retributive" and "restorative" lenses and now argues for a concept of justice along a continuum from '**fully restorative**' to '**non-restorative**'. [17]

4. **United Nations Economic and Social Council Resolution 2002/12** definition:

"Restorative process" ... any process in which the victim and the offender and ... any other individuals or community members affected by a crime, participate together actively in the

resolution of matters arising from the crime, generally with the help of a facilitator.... mediation, conciliation, conferencing and sentencing circles.

“Restorative outcome” ... an agreement reached as a result of a restorative process... reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities ... achieving the reintegration of the victim and the offender.

5. Council of Europe, CM/REC 2018 definition on the use of RJ in criminal matters

“Restorative justice” ... any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party....

... it often takes the form of a dialogue ... between the victim and the offender, and can also involve,... other persons directly or indirectly affected by a crime.

... victim-offender mediation, penal mediation, restorative conferencing, family group conferencing, sentencing circles or peacemaking circles, *inter alia*.

Restorative justice may be used at any stage of the criminal justice process.

Practices which do not involve a dialogue between victims and offenders may still be designed and delivered in a manner which adheres closely to the basic principles of restorative justice.

Restorative principles and approaches may also be applied within the criminal justice system, outside of the criminal procedure

The Legal Basis for Restorative Justice

Restorative Justice can and is practiced in many countries without a legal framework and outside of the criminal justice system, for example in schools universities, businesses or community organisations. Having a legal framework allows for clarity in the criminal justice system and safeguards participant’s rights. However some scholars and practitioners criticise the institutionalisation of restorative justice and the risk of it deviating from its original purposes.

Many countries have developed legislation specific to the use of restorative justice in criminal matters, outlining the stages at which it can be used, the methods and the requirements for the training of facilitators. COE 2018 recommendations encourage member states to establish a clear legal basis for the use of restorative justice in criminal matters, policies regarding its use and procedural safeguards.

Despite these advances some scholars argue that “across Europe, many victims and offenders remain excluded from the well-evidenced benefits of restorative justice.. due in part to some professional gatekeepers being unaware or unsupportive of restorative justice.” [18]

Questions for reflection

- ▶ If you were asked, how would you define Restorative Justice? Please explain your definition.
- ▶ What is the history of the development of Restorative Justice in your country?
- ▶ What do you think are the main opportunities and challenges for Restorative Justice in your country?

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Further Study

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Judicial training in restorative justice





Annex 2

Handout 2: Theories of punishment

Overview

Why do we punish?

1. Utilitarianism
2. Retributivism

Punishment in society

1. Different perspectives on punishment in social theory

What is the relationship with restorative justice?

Bentham

- Utility: explain people's action by the two "masters", increase pleasure, decrease pain
- People commit crime to increase their own pleasure, but crime harms others
- Reducing crime entails increasing the costs (pain/ suffering) of choosing to do so
- Utility also applies to the actions of the government
 - Punishment proportionate to the gains of the crime
 - If not proportionate, no incentive not to commit more serious crimes
 - Punishment restricted to what is necessary to deter/ prevent crime
- The reason why we punish crime is related to the net harm it does to others in society

Utilitarianism

The future good is served by the reduction and prevention of crime

METHODS USED TO ACHIEVE SUCH FUTURE BENEFITS:

1. Individual and general deterrence

- When offenders and society refrain from criminal actions

2. Rehabilitation

- Improving the offender's position in society/changing the offender's personality to make him less prone to criminal behaviour

3. Incapacitation

- Physical restraint to prevent reoffending

Relationship to RJ?

Restorative justice can be conceived as a (more effective) way of preventing crime

Utility of RJ might also be sought in other means: for instance therapeutic goals

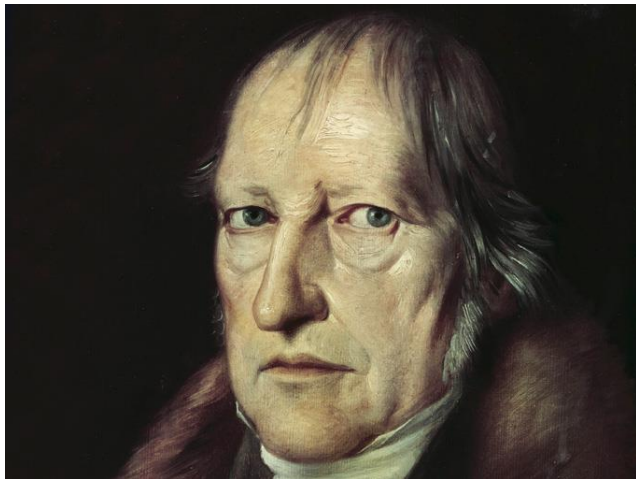
Question is though whether this type of thinking might *instrumentalize* RJ

Or might detract from the perspectives of *stakeholders*

Retributivism

- Punishment of offenders is intrinsically good or a duty
- No need for justification regarding future beneficial effects
- Indeed, punishing an offender for the good of society means using that offender for the good of society, and this is outright opposed by certain retributivists

Not Bentham, but who are they?



Kant and Hegel

KANT

1. Retribution as a categorical imperative
2. Punishment strictly proportionate to wrongdoing
3. "Let justice be done, lest the world perish"

HEGEL

1. Respect for the moral autonomy (free will) of the criminal requires that he be punished
 - Already speaks against "rehabilitative" treatment versions of utilitarianism
2. Punishment strictly proportionate to the crime

Recent retributivism

1. Benefits and burdens theories (social contract/ unfair advantage): crime as a "free rider" problem: Criminal benefits from the social contract, but does not do his part.
2. Communicative theories: punishment is a means of paying respect to the offender, trying to help him understand what he did wrong.
3. Intuitionist theories: we widely share the belief that people, including ourselves, should be punished for crime
4. Censure/ just deserts theories: offender is morally culpable and must be punished as much as he deserves

This is my preferred version

- Expressive theories: punishment as an authoritative declaration what the offender did is criminally wrongful, both acknowledges crime as a “public” wrong and acknowledges the victims.
- Jean Hampton (1991): Crime as a moral injury to the victim, retribution as any action that seeks to correct that moral injury.
- *A moral injury is not the same as a wrongful loss or harm. The latter concept... involves material or psychological damage to that over which a person has a right (for example, her possessions, her body, her psychological well-being), and comes about because of a wrongful action. In contrast, a moral injury is an injury to what I will call the victim’s “realization of her value”*
- *What these reflections show is that retribution is actually a form of compensation to the victim. the real contrast between corrective justice and retributive justice is not that the former is compensatory whereas the latter is not, but rather that each compensates a different form of damage. Corrective justice compensates victims for harms, whereas retributive justice compensates victims for moral injuries.”*

Retributivism and RJ

- Often positioned as polar opposites: retributive justice versus restorative justice
- If retribution is synonymous with punishment as a necessary answer to crime, than this is probably true.
- But Hampton?

- Compare Howard Zehr (2002):
- *"In my earlier writings, I often drew a sharp contrast between the retributive framework of the legal or criminal justice system and a more restorative approach to justice. More recently, however, I have come to believe that this polarization may be somewhat misleading." "...they have much in common. A primary goal of both retributive theory and restorative theory is to vindicate through reciprocity, by evening the score. Where they differ is in what each suggests will effectively right the balance"*

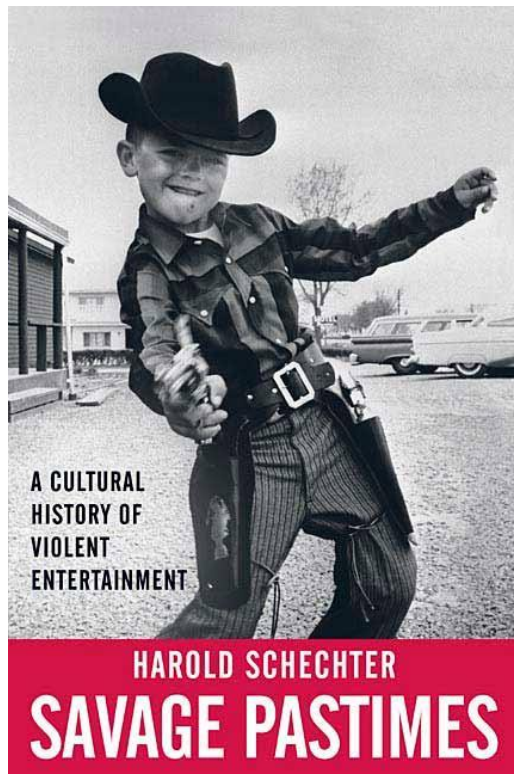
Some other perspectives

- Nietzsche
- Girard
- Durkheim
- Marx/ Loic Wacquant
- Foucault

Punishment as a cruel spectacle

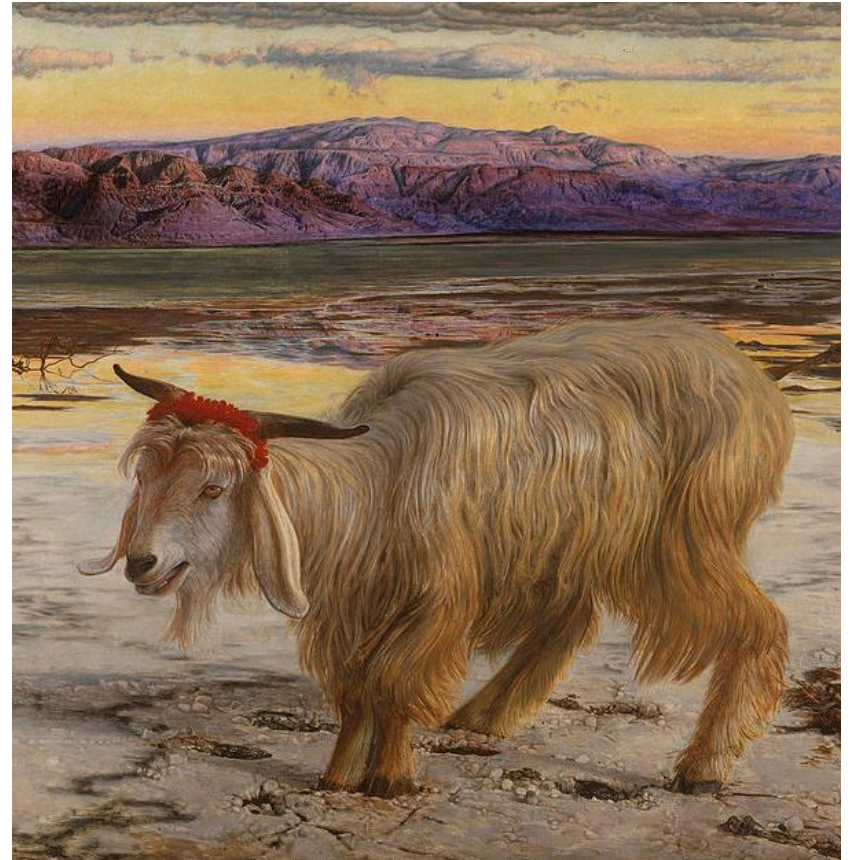
- “Without cruelty there is no festival: thus the longest and most ancient part of human history teaches – and in punishment there is so much that is festive!”
- “In any event, it is not long since princely weddings and public festivals of the more magnificent kind were unthinkable without execution, torturing or perhaps an auto-da-fe, and no noble household was without creatures upon whom one could heedlessly vent one’s malice and cruel jokes”
- Nietzsche, *On the Genealogy of Morality*, 2, 6.

The cruel spectacle throughout the ages



Punishment and scapegoating

- Rene Girard
- Importance of scapegoating in maintaining societal coherence
- Punishment as a means of exclusion

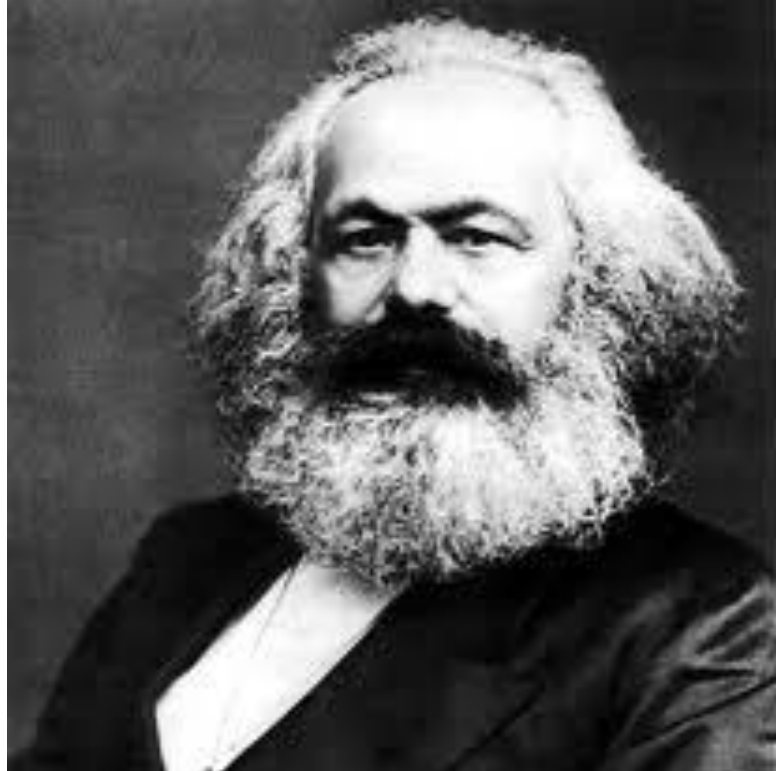


Durkheim

- Criminal law as a mechanism for declaring, reinforcing and changing basic social norms about wrongful behaviour
- Not, and not very effective for the type of things most often attributed to it
- Criminal justice and punishment as a morality play that denounces bad behaviour and affirms good behaviour



Power and inequality



April 28, 2022



19

Wacquant

- Mass incarceration in the United States is a means to perpetuate power inequalities
- Racial inequality, remnants of slavery → overpopulation of African Americans in prison
- And criminalization of poverty



Changing meaning

Foucault and the changing nature of punishment

- In the past display and establishment of the power of the state
- Today disciplining citizens into conformity to bureaucratic society

Relationship to restorative justice

- Nietzsche: criticism of the underlying idea of punishment
- Girard: criticism of the nature of exclusion in punishment
- Marx/ Loic Wacquant: criticism of (mis)use of power in punishment
- Foucault: criticism of disciplining nature of punishment
- Durkheim: echoes view that criminal justice does not do what it proposes to do, seek other rituals to fulfil function

Recap

Why do we punish?

1. Utilitarianism
2. Retributivism

Punishment in society

1. Different perspectives on punishment in social theory

What is the relationship with restorative justice?



RE-JUSTICE

Judicial Training in
Restorative Justice

Annex 3

Handout 3: Theoretical frameworks of restorative justice



Innovative theoretical approaches

Two important publications became an eye-opener for many:

- ▶ *Nils Christie: Conflicts as property (1977)*
 - Conflicts, including crimes, should not be 'stolen' from their 'owners' (victims, offenders, communities).
 - By restricting the personal involvement and limiting the responsibility from those immediately involved, people adopt formal roles and do not see each other as 'total persons' anymore.
 - Instead of the negative image of 'conflict', the positive value of conflicts should be recognised: an opportunity for participation and norm clarification for victim, offender and community.
 - We have to change our 'belief systems' within criminal law, as this thinking evokes and justifies our (punitive) reactions.
 - Law enforcement is a permanent process of normative and moral construction, for which adequate 'expressive arenas' are needed.
 - Direct dialogue between conflict parties counters anxiety and stereotypical images of 'the other'.
 - Socio-ethical concern: low level of pain infliction.

- ▶ Howard Zehr: *Changing Lenses (1990)*

We can adopt very different ways of looking at the landscape of crime and criminal justice, depending on the lens we put on our camera:

Two different views	
Criminal justice	Restorative justice
<ul style="list-style-type: none"> • Crime is a violation of the law and the state • Violations create guilt • Justice requires the state to determine blame (guilt) and to impose pain (punishment) • Central focus: offenders getting what they deserve 	<ul style="list-style-type: none"> • Crime is a violation of people and relationships • Violations create obligations • Justice involves victims, offenders and community members in an effort to put things right • Central focus: victim needs and offender responsibility for repairing harm



Three different questions	
Criminal justice	Restorative justice
<ul style="list-style-type: none"> • What laws have been broken? • Who did it? • What do they deserve? 	<ul style="list-style-type: none"> • Who has been hurt? • What are their needs? • Whose obligations are these?

Restorative justice is not an abstract idea, but is concerned about 'needs' and 'roles' of people and communities who are confronted with wrongdoing in their daily life. Restorative justice aims at addressing and balancing the needs of all involved: the victim, the offender and the community.

Towards integrated theories

Explanatory and normative theories - A set of assumptions or principles to be confirmed by empirical testing.

PROCEDURAL JUSTICE

The theory	Application to restorative justice
<p>Social psychology: satisfaction with the justice system more determined by process control than outcome control (Lind & Tyler, 1988; Tyler, 1990; Hoyle & Batchelor, 2018).</p> <p>The experience of being treated with respect and in a fair way.</p> <p>Elements of procedural justice: trust, standing, neutrality.</p> <p>People are more likely to comply with the law when they feel fairly treated by the justice system.</p>	<p>Participants in restorative justice have high levels of satisfaction with the fairness of the process.</p> <p>They feel empowered because of the process of participation:</p> <p>Understanding what is going on in the process.</p> <p>Able to express their views.</p> <p>Experience that they can correct mistakes.</p> <p>Therefore, restorative justice will support compliance with the law.</p>

REINTEGRATIVE SHAMING

The theory	Application to restorative justice
<p>Explanatory and normative theory from criminology – an integrated cognitive social-learning theory (Braithwaite, 1989).</p> <p>The role of informal social control: 'Crime is best controlled when members of the society are the primary controllers.'</p> <p>Moral reasoning is formed by 'reintegrative shaming processes':</p> <p>Inducing shame in a stigmatising or a reintegrative way.</p> <p>Shame is evoked most effectively by persons of trust.</p> <p>Shaming has to be followed by gestures or reacceptance.</p> <p>The role of interdependency and communitarianism.</p>	<p>Restorative justice conferences allow for reintegrative shaming processes:</p> <p>Active involvement and participation of support persons ('significant others') for both offender and victim.</p> <p>Not the shaming by police, judges or newspapers, but 'shame in the eyes of those we respect and trust'.</p> <p>The discussion of the consequences of the offence structures shame into the process.</p> <p>The offence ≠ the offender.</p> <p>Plan to restore harm and to reintegrate into society.</p>

DEFIANCE THEORY

The theory	Application to restorative justice
<p>Shame must be acknowledged properly, in order not to result in disrespect, rage or violence</p> <p>Defiance theory (Sherman, 1993): punishment can have three different effects, based on emotional response by sanctioned person): Provoking future defiance of the law, thus intensifying deviant behaviour; sanctioning conduct is experienced as illegitimate, weak bonds to the sanctioning agent and community, and offenders denying their shame and becoming proud of their isolation and status.</p> <p>Deterrent effect (less deviant behaviour); offenders experience sanctioning conduct as legitimate, have strong bonds to the sanctioning agent and community, and accept their shame and remain proud of solidarity with the community.</p> <p>Ineffective (no influence on future delinquent behaviour).</p>	<p>Restorative justice processes are more likely to meet the conditions of proposition 2: See also role of procedural justice and reintegrative shaming.</p> <p>Offender experiences strong community support.</p>



DESISTANCE THEORY

The theory	Application to restorative justice
<p>From 'Why do people commit crime' and 'What works' to 'Why do people stop committing crime' and 'How does desistance work'.</p> <p>Challenging the 'top down' approach of traditional offender rehabilitation and instead locating the agency to change in communities, social networks and within the individual him/herself. (Farrall, 2002; Maruna, 2001, 2016; McNeill, 2006)</p> <p>'Desistance begins with a shift in "readiness to change" that increases receptivity to environmental "hooks" for change.'</p> <p>Important elements which further affect desistance: 'employment, social support, intimate relationships, education, narrative shifts in identity transformation, positive social attitudes towards offenders by others, being able to break with the past, spirituality, agency, motivational elements, cognitive elements, and self-perceptions of the possibility of leading a non-offending life'.</p> <p>Thus: 'motivational and cognitive elements such as decisions to desist, self-perceptions of the possibility of leading a non-offending life, and considering a possible new personal and social identity are critical elements in the process of desistance'.</p>	<p>The motivational and cognitive elements have obvious links with the processes taking place in restorative justice practices:</p> <p>Starting from strengths and self-image of the person.</p> <p>Offering space for meaning-making and transformation through encountering with 'the other'.</p> <p>Informal social support and community integration.</p> <p>'Not so much the formal content of the intervention, but rather the informal, human engagement of one person reaching out to another' and 'simply being treated as a worthwhile and complex individual with genuine strengths and the potential to change'.</p> <p>Restorative justice: 'mostly a support, sometimes a trigger and occasionally no impact at all' (a significant proportion of participants in restorative justice have already a certain openness for or a desire to desist at the moment they engage in a restorative justice process).</p>



VICTIMS' JUSTICE NEEDS THEORIES

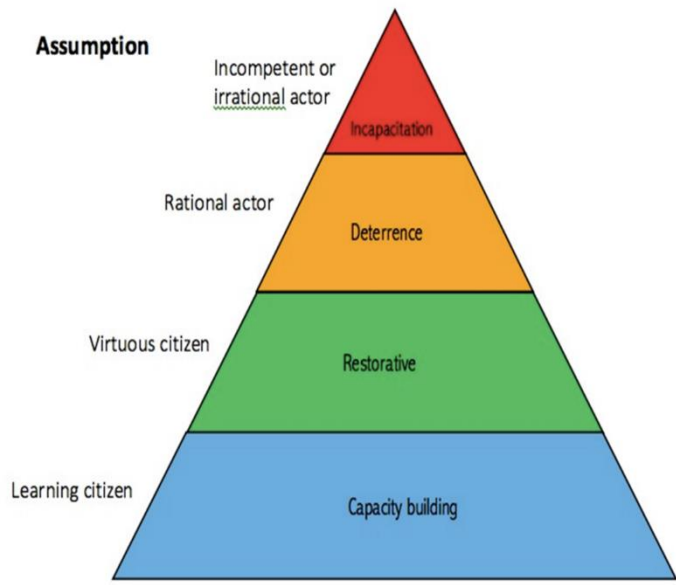
The theory	Application to restorative justice
<p>Victimisation as a process (Dignan, 2005) 'A social process that starts with an event and requires cognitive decisions over a longer period of time.'</p>	<p>Restorative justice processes offer the victim a safe space and time – through dialogue with the offender – to develop a cognitive meaning to what happened.</p>
<p>Understanding the experience of wrongfulness for victims (Pemberton & Vanfraechem, 2015):</p> <ul style="list-style-type: none"> • Power/Status concerns – Retributive intuition • Value concerns – Focus on common values and link to community 	<p>Restorative justice processes are based on (building) shared values, where norm clarification can take place.</p>
<p>Victims' 'justice needs' and 'justice interests' (Daly, 2017):</p> <ul style="list-style-type: none"> • Participation • Voice • Validation • Vindication • Offender accountability 	<p>Restorative justice processes offer an opportunity for the victim to participate actively, to express his/her voice, to be believed and respected, to experience a confirmation that the act against him/her was wrong, and to see the offender gives accounts for his/her action and takes active responsibility.</p>



COMMON SELF-INTEREST THEORY

The theory	Application to restorative justice
<p>A socio-ethical foundation for a fundamental alternative to punishment (considered as intentional pain infliction) can be found in the idea of 'common self-interest'. (Walgrave, 2008).</p> <p>A restorative response, as a justice mechanism, uses reparations to undo harm. This presents an outcome oriented, maximalist approach to restorative justice.</p> <p>A common self-interest allows people to work toward their own self-interest by maintaining the quality of social life – the perspective of a communitarian society paving the way to participatory democracy.</p> <p>A criminal justice system based on a restorative justice response provides a 'pyramid of restorative law enforcement': from deliberative conflict resolution by stakeholders when conflicts arise in the community, to restorative responses to crime ranging from cooperation of the offender to coercive judicial sanctions.</p>	<p>Restorative justice is defined as 'an option for doing justice after the occurrence of the offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence'.</p> <p>'Conferencing' is the preferred model of restorative justice, as it involves community interests as well.</p> <p>In a maximalist conception of restorative justice, offering a fully-fledged alternative to punishment, there is room for judicial coercive action to impose reparative sanctions if needed.</p>

RESPONSIVE REGULATION THEORY

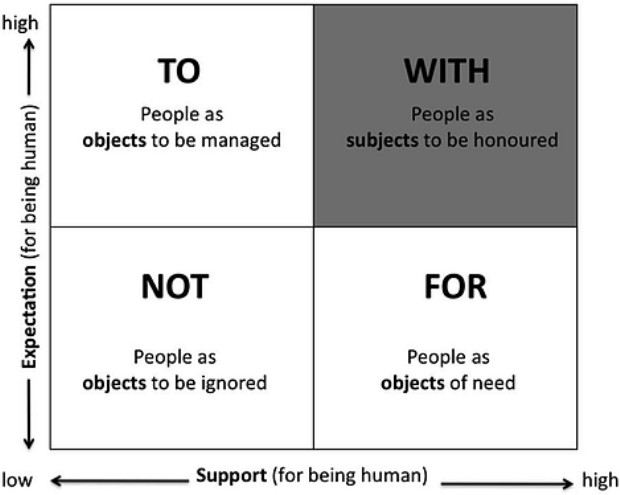
The theory	Application to restorative justice
<p>Another attempt to integrate restorative justice as part of a more encompassing framework of regulatory processes in society: the concept of 'responsive regulation' (Braithwaite, 2002).</p> <p>The scope of injustices is extended 'to include experiences of relational, historical and structural injustice that may or may not involve legal constructions of wrongdoing'. Restorative justice offers 'a path forward for the timely sorting out of injustice in all spheres of human relations'.</p> <p>Towards an integration of restorative, deterrent and incapacitative justice: a regulatory pyramid.</p>	<p>'Regulatory Responsive Regulation involves listening to multiple stakeholders and making a deliberative and flexible (responsive) choice from regulatory strategies that can be conceptually arranged in a pyramid. At the bottom of the pyramid are more frequently used strategies of first choice that are less coercive, less interventionist, and cheaper.'</p> <div style="text-align: center; margin-top: 20px;"> <p>Assumption</p>  </div>

Theoretical variations

THERAPEUTIC JURISPRUDENCE

Can the law and a justice system be applied in a more therapeutic way, contributing to the wellbeing of those involved and to problem solving? Relevance for restorative justice (Gal, 2020).

RELATIONAL JUSTICE

<p>'These types of interactions describe how relationships at any level can either diminish or nurture one's inherent worth as human being'</p> <p>'This perspective of humanity is foundational to the broader concept of justice'</p> <p>'Justice as honouring the inherent worth of all, where people meet with the intent of fulfilling their vocation of becoming more fully human'</p> <p>(Vaandering, 2013)</p> <p>'The relational complexity of restorative justice' – 'A relational ecology that deepens democracy'</p> <p>(Llewellyn & Morrison, 2018)</p>	<div style="text-align: center;"> <p>Relationship Window (subject-object relationship)</p>  </div>
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Further reflection

- ▶ What does 'Changing lenses' mean for you in your job and professional environment?
- ▶ How do you look at 'procedural justice' and what is the link with restorative justice?
- ▶ How do you understand 'desistance from crime' and how would that work in a restorative justice process?
- ▶ How would you define the needs of victims in terms of 'justice experience'?
- ▶ Can you reflect about the role of criminal justice authorities against the background of one of the theoretical frameworks above?



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RE-JUSTICE

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Annex 4

Handout 4: Values and standards of restorative justice



What values and standards guide restorative justice practices? These vary widely, however common values, standards and practices are: voluntary participation, informed consent, direct communication, cultural adaptability, valuing all participant's needs, non-judgmental & multi-partial facilitation, involvement in decision-making and so forth.

CONTINUUM CONCEPT OF RESTORATIVE JUSTICE [1]

	
Fully restorative	Not at all restorative
The more a process is...	The less a process is...
Voluntary	encourages direct dialogue
involves participants in decision making	is suited to the culture of the participants
cares for everyone's needs	ensures participants give informed consent
and so forth....	and so forth....
...the more it will be restorative	...the less it will be restorative

EUROPEAN FORUM OF RESTORATIVE JUSTICE [2]

The EFRJ identifies values and principles that guide and safeguard restorative practices: Justice, solidarity, human dignity, truth, restoration and reparation, voluntariness, inclusiveness of the process, active participation, commitment of the parties involved and confidentiality.

The EFRJ also identifies restorative justice practice standards, such as: voluntary participation based on informed consent; direct and authentic communication; processes designed to fit the participants' capabilities and culture; valuing each participant's needs and wishes equally; non-judgmental, multi-partial facilitation; the importance of dialogue, and rigorous implementation of agreed actions

JOHN BRAITHWAITE STANDARDS AND BOTTOM-UP EMPOWERMENT 3

“Evidence and innovation from below instead of armchair pontification from above should be what drive the hopes of restorative justice to replace our existing injustice system with one that actually does more to promote justice than to crush it. It would be a less tidy justice system, but tidiness seems decisively not a good candidate for a justice standards framework.” (See 3, p 576)

CONSTRAINING STANDARDS - minimum, which must be assured

Non-domination	Empowerment
Honouring legally specific upper limits on sanctions	Respectful listening
Equal concern for all stakeholders	Accountability
Respect for the fundamental human rights (Universal Declaration of Human Rights)	Appealability

MAXIMIZING STANDARDS - to be actively encouraged for best practice, based on the parties actual needs

Restoration of human dignity	Restoration of property loss
Restoration of safety/injury/health	Restoration of damaged human Relationships
Restoration of communities	Restoration of the environment
Emotional restoration	Restoration of freedom
Restoration of compassion or caring	Restoration of peace
Restoration of a sense of duty as a citizen	Provision of social support to develop human capabilities to the full
Prevention of future injustice	

EMERGENT STANDARDS – cannot be demanded or expected, may ‘emerge’ in successful restorative justice processes

Remorse over injustice	Apology
Censure of the act	Forgiveness of the person
Mercy	

Braithwaite proposes a ‘bottom-up’ approach for setting up restorative justice programs : stakeholder assemblies, the use of restorative justice practices to discuss contested standards, on-going peer view and local regulatory conversations holding a balance between state support of certain rights and standards and care for local innovation and cultural differences.

COUNCIL OF EUROPE CM/REC(2018)8 4

- ▶ Principle of stakeholder participation
- ▶ Principle of repairing harm
- ▶ Voluntariness
- ▶ Deliberative, respectful dialogue
- ▶ Equal concern for the needs and interests of those involved
- ▶ Procedural fairness
- ▶ Collective, consensus-based agreement
- ▶ Focus on reparation, reintegration and achieving mutual understanding
- ▶ Non-domination.

Confidentiality “discussions in restorative justice should remain confidential and may not be used subsequently, except with the agreement of the parties concerned (see Rule 53)” – this is important to create a safe environment for the dialogue

Availability “the type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders”

“Restorative justice services should be available at all stages of the criminal justice process.”

Autonomy “restorative justice agencies should be given sufficient autonomy in relation to the criminal justice system. Balance should be preserved between the need for these agencies to have autonomy and the need to ensure that standards for practice are adhered to.”

Questions for Reflection

- ▶ Which values, standards and principles do you think are most important in restorative justice? Please explain.
- ▶ If something is called "Restorative Justice" does that necessarily mean it is? In what ways do you think values, principles and standards can support and safe-guard restorative justice?

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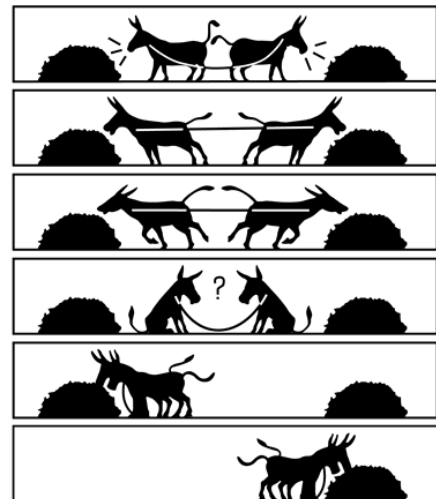
Annex 5

Handout 5: Restorative Justice Programmes



What is conflict? Ways of responding to conflict

NEGOTIATION



ARBITRATION

Arbitration is a process in the parties agree to submit their dispute to the binding decision of one or more arbitrators

Example : Permanent court of arbitration established in 1899 in The Hague by the "Convention for the Pacific Settlement of International Disputes." The PAC still operates today, one of its latest rulings was on the Croatia and Slovenia border (2017)

ALTERNATIVE DISPUTE RESOLUTION (ADR) – CONCILIATION AND MEDIATION

CONCILIATION

A process in which one or more experts are chosen or appointed to settle a dispute. The conciliator proposes solutions and if the parties cannot agree will decide on an outcome they consider fair to all parties.

MEDIATION

A process in which a neutral, independent and impartial third party, who has no decision-making power, helps parties come to agreement themselves.

The mediator supports the parties to find their own solutions.

Outcomes are usually informal, but can be made legally bindings if the parties choose to do so. Mediators, depending on their experience, may refer disputes relating to violence, crimes or harm to restorative justice programmes.

RESTORATIVE JUSTICE

Council of Europe's 2018 definition of Restorative Justice :

“any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party... it often takes the form of a dialogue ... between the victim and the offender, and can also involve,... other persons directly or indirectly affected by a crime.”

Nils Christie – “conflicts as property” (1977)

- ▶ conflicts belong to the people involved and affected by them, not judges, lawyers or professionals in the justice system.

Zehr (1990 & revised 2015)

- ▶ RJ does not seek to blame or punish
- ▶ emphasis on relationship, addressing needs and harms, community ownership of conflict, and collaborative processes involving the affected parties, with some models including the community as a specific party



WHAT ARE THE DIFFERENCES BETWEEN MEDIATION AND RESTORATIVE JUSTICE?

	RESTORATIVE JUSTICE	MEDIATION
TARGET	<ul style="list-style-type: none"> • For victims, offenders and communities impacted by harm, crime or conflict 	<ul style="list-style-type: none"> • For parties in dispute who are able to dialogue together. • Situations in which there has been current or past violence are usually excluded from mediation processes – Mediators, depending on their experience, may refer disputes relating to violence, crimes or harm to restorative justice programmes
FOCUS	<ul style="list-style-type: none"> • Dialogue between parties • Respectful listening • Repairing harm • Making things right • Participation in decision making (in some models) 	<ul style="list-style-type: none"> • Dialogue between parties • Respectful listening • Problem solving • Decision making • Outcomes are informal agreements which can be made legal
PREPARATION	<ul style="list-style-type: none"> • Significant preparation of all parties impacted by the harm and the author(s) of the harm 	<ul style="list-style-type: none"> • Information session • Sometimes pre-mediation individual session(s)
REQUIREMENTS	<ul style="list-style-type: none"> • Willingness to participate • Some models require the offender(s), or person(s) who have done the harm to take responsibility or at least recognise that the harm happened 	<ul style="list-style-type: none"> • Willingness to participate

DIRECT AND INDIRECT RESTORATIVE JUSTICE

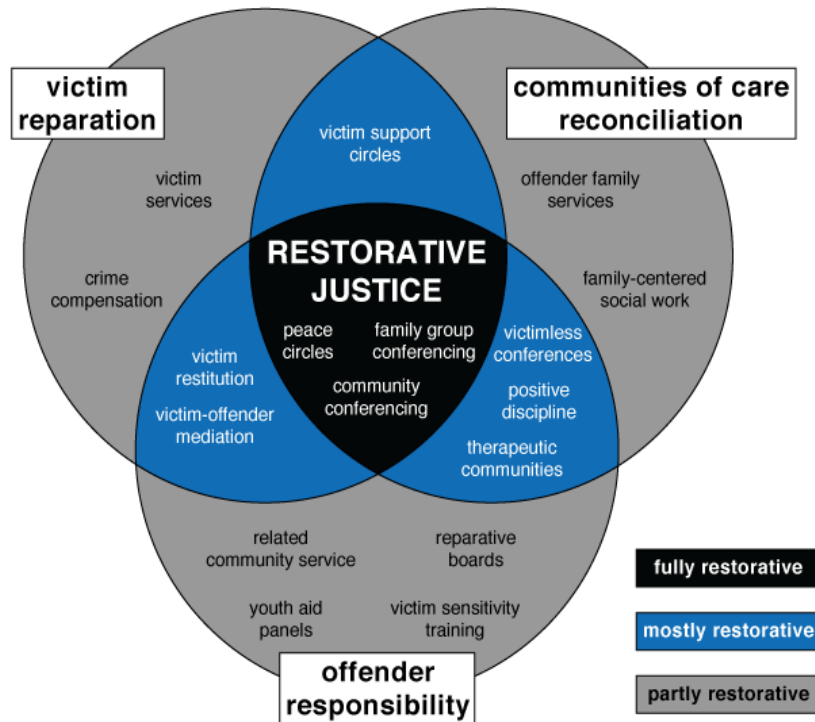
RJ meetings can be direct, where parties meet face to face. RJ can be indirect where parties dialogue through a facilitator, shuttle mediation, or some other means (letters, videos).

RJ amends or reparations can be direct, where one party might pay damages to another, or they can be indirect where the party who caused harm might do some form of community service.

Reparations can also come in symbolic form – a public apology, a statement of acknowledgement of harm, or some other symbolic gesture.

TYPES OF RESTORATIVE JUSTICE PRACTICES

Types and Degrees of Restorative Justice Practice



<https://www.iirp.edu/defining-restorative/restorative-justice-typology>

- ▶ Victim-offender mediation
- ▶ Conferences (for example Family Group Conferences)
- ▶ Circles (sentencing circles, peace making circles, restorative circles)

STAGES OF RESTORATIVE JUSTICE PROCESSES

- ▶ Information giving and access
- ▶ Individual interviews and preparation
- ▶ Meetings or gatherings (can include "post meetings")
- ▶ Formalising agreements
- ▶ Feedback to other parties (judge, community)
- ▶ Reparation

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Annex 6

Handout 6: Restorative Justice Practices



Main forms of restorative justice currently in use [1]

- ▶ Victim Offender Mediation (VOM) mainly criminal justice settings; widely used in the USA and Europe
- ▶ Conferencing (FGCs or other) used in criminal justice & child protection settings; most used in Australia and New Zealand. Conferencing extends the encounter to include "communities of support" (family and professionals)
- ▶ Circle processes are used in criminal justice settings, increasingly in schools and other settings. They take different forms – Restorative Circles (Brazil), Sentencing Circles (Canada), Peacemaking Circles (US and Europe). Circles are usually less formal and include the community itself as a party to the process.

Prototypes of Restorative Justice [2]

Note: definitions and practices vary and are debated. You may notice areas of overlap between the different forms of RJ practice.

CHARACTERISTICS OF PROTOTYPICAL VOM	
Stage in the criminal justice process	Diversion, pre-court, post-process adjudication, post-sentence
Kinds of cases	Initially minor crimes, increasingly more serious & violent crimes
Role of facilitator(s)	Create safety, guide process
Participants	Initially one victim, one offender and mediator (s). Now may also be multi-party including victim(s), offender(s) and possibly family members and supporters
Preparation	In-person strongly recommended



CHARACTERISTICS OF PROTOTYPICAL CONFERENCING

Stage in the criminal justice process	Diversion, pre-court,, post-sentence Note : in NZ & Australia used in child protection
Kinds of cases	Initially child welfare and less serious crimes; increasingly more serious & violent crimes
Role of facilitator (s)	Create safety, guide process; script option possible, but not recommended in some forms of conferences
Participants	Primarily victims, offenders, family members, supporters and some government staff; can take place without victims
Preparation	Phone contact in some forms, in-person recommended in others

CHARACTERISTICS OF PROTOTYPICAL CIRCLE

Stage in the criminal justice process	Diversion, pre-court, post-process adjudication, as sentence, post-sentence Note: now used in schools, communities and other settings
Kinds of cases	Initially minor crimes; increasingly more serious & violent crimes; cases needing extensive follow-up
Role of facilitator (s)	Create safety, talking piece to guide process or repeat-back dialogue methodology
Participants	Primarily victims, offenders, family members, supporters, criminal justice system personnel, members of the local community
Preparation	In-person recommended; sometimes done through the use of preliminary circles

Concepts of Restorative Justice [3]

ENCOUNTER CONCEPT	REPAIR CONCEPT	TRANSFORMATIVE CONCEPT
Direct face to face meeting between parties in supportive environment	Repair of harm is central.	Seeks to change social responses to crime and conflict at a deep level
Parties democratically involved in decision-making which affects them	Inflicting punishment or pain on offenders is unhelpful to victims and counterproductive for offenders	Restorative Justice is a way of life – a transformation of how we see ourselves, how we relate to others and our environments
Parties center-stage, not professionals	Repair in the form of material or symbolic restitutions	No hierarchy – all people are connected (sometimes natural environment is also included in the interconnection)
Need restorative justice principles to guide	Restorative principles need to be followed – involvement, equity, and legal protection	Most important is repairing harm, meeting needs, putting things right

Questions for Reflection

Practitioners and scholars argue that whichever forms of restorative justice are used, they must be guided by restorative principles and values, or they can be conducted in non-restorative ways; one famous example being a meeting ending with the decision that the young person would publicly wear an “I am a thief” T-shirt. [4]

- ▶ What do you consider to be the ‘dangers’ or ‘challenges’ of Restorative Justice?
- ▶ Which form of Restorative Justice practice, or concept most appeals to you? Please explain.

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CONCEPTS

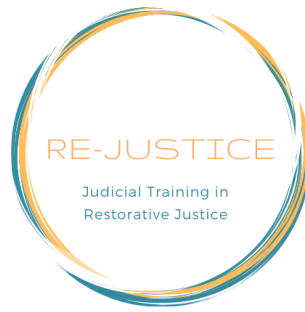
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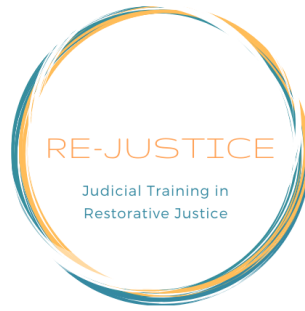


Annex 7

Handout 7:

Impact and effectiveness of restorative justice

Questions for consideration



- Which factors should we use to measure the impact and effectiveness of RJ ?
- How should conflicting ideas regarding indicators or priorities of impact and effectiveness be handled? For example, how should the victim's desire for resolution (through talking to the perpetrator) be weighed against a direct financial saving because a RJ process would not be offered in that case?

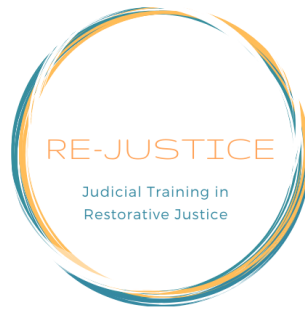


Defining...

- **Resource:** Cost effectiveness, time saving, reduced legal caseload, confidence in the justice system
- **Perpetration:** Recidivism, desistance, deterrence, diversion
- **Direct stakeholder factors:** Self esteem, fear of crime, post traumatic symptomology,
- **Satisfaction:** outcome / process / procedure



Measuring



Type of data

- Qualitative / quantitative / mixed

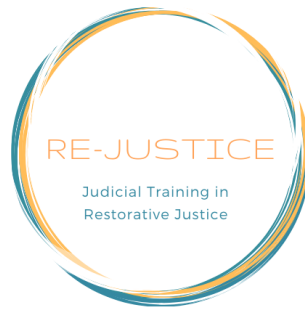
When to measure

- Pre / post / pre & post
- Direct / longitudinal

Research design

- Action research
- Comparative group
- Randomised controlled trials

RCT – RISE experiments



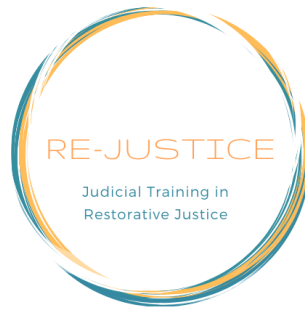
Court vs conferences

- Property crimes with individual victims, committed by offenders (under 18) who admitted responsibility
- Violent crimes committed by offenders (up to 29) who admitted responsibility
- Police officers referred cases...

RJ = significantly more satisfying than court for both victims and offenders

(Strang, 2002)

RCT – Jerry Lee RJ programme

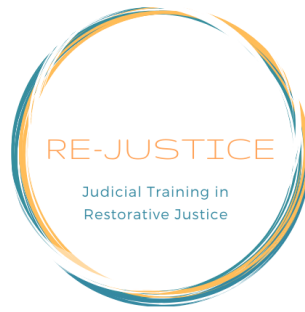


Effects of RJs on victims

- Fear of repeat attack by same offender → decreased
- Satisfaction with case handling → increased
- Need for violent revenge → decreased
- Offender apologies received → increased
- Satisfaction with justice → increased
- PTS → decreased (UK, robbery and burglary victims, esp. female)
- Emotional impact from crime → decreased (Aust., violent and property crimes)

(Sherman, Strang et al., 2015)

Research – 12 randomised trials

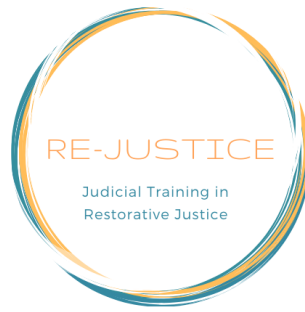


Main effects of RJC's on offenders

- Repeat offending frequency → reduced
- Cost-effectiveness → high (all UK tests)
- Long term recidivism → no main effects (15+ years, Australia)
- Long term recidivism → (UK)?

(Sherman, Strang et al., 2015)

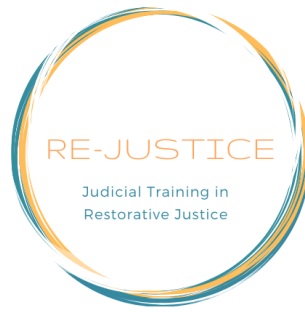
Research – Other experiments



- Desistance
 - Higher impact on offenders motivated to change
 - Important role of mediator

(Lauwaert & Aertsen, 2017)

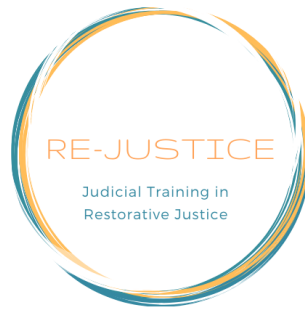
Questions for consideration



- Which factors should we use to measure the impact and effectiveness of RJ ?
- Has something been considered in this lecture that you do not agree with as an evaluation measure or that you would not expect?
- Are there things that have not been covered here that are important measures of impact or effectiveness?
- How should concepts like proportionality and distributive justice be handled?



Thank you for your attention



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Annex 8

Handout 8: Impact & evaluation of restorative justice





STAKEHOLDERS

A number of actors have a perspective when it comes to assessing and understanding and evaluating the impact of restorative justice. When we think about impact and effectiveness, we have to orientate ourselves to a perspective. We have to ask, 'for what / whom?'

- ▶ Justice system
- ▶ Victims & their support networks
- ▶ Perpetrators & their support networks
- ▶ Local communities & wider society

DEFINING

There are many factors that can be included in an assessment of the impact and effectiveness of restorative justice. The different stakeholders may share understandings of what 'impact' and 'effectiveness' mean but do sometimes have competing ideals.

MEASURING

Given the different conceptualisations of impact and effectiveness it is not surprising that a number of different indicators are available. These include monitoring or measuring policy implementation (how well are policies and guidelines regarding restorative justice put in practice?), perception (how much do people know and understand about restorative justice?) and operation (what happens with restorative justice in practice?).

RESEARCH

Experimental research and monitoring practice provides a great deal of information about the impact and effectiveness of restorative justice. Randomised control trials compare one group of people who receive an intervention with one or more other groups of people (control groups), who do not receive the intervention. Evidence from such trials indicates that restorative justice is significantly more satisfying than court for both victims and offenders (Strang, 2002). Sherman, Strang et al., (2015) report on a set of 12 longitudinal randomised control trials that were carried out in the UK and Australia. Positive effects demonstrated include a reduction in fear of repeat victimisation (victims), a reduction in the frequency of repeat offending (perpetrators) and increased cost effectiveness (UK trials).

CHALLENGES

'RJ conferencing may have different effects on different kinds of people, especially when it is delivered in different kinds of offences by different kinds of staff' (Strang & Sherman, 2015).



POINTS TO REFLECT UPON:

- ▶ Which factors do you think of when you think of the impact and effectiveness of justice?
- ▶ When you think of impact and effectiveness, which perspectives/stakeholders do you find yourself most readily considering? Which perspectives come less readily to mind?
- ▶ Are the process of RJ (the meeting / interaction) and the outcome of RJ (the agreement and its fulfilment) be given equal importance when evaluating the impact and effectiveness of RJ?
- ▶ Should 'legal safeguards' be considered important measures for impact or effectiveness when it comes to restorative justice? What about factors such as proportionality? Should concepts such as distributive justice be considered important?



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- ▶ **Short video (1) on unconscious bias:** <https://youtu.be/K-n7el87Dmo>
- ▶ **Short video (2) on unconscious bias:** <https://youtu.be/GP-cqFLS8Q4>



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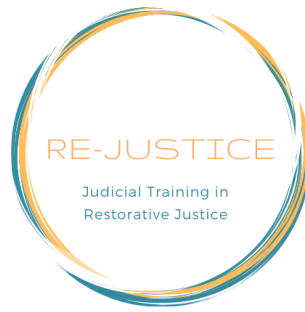
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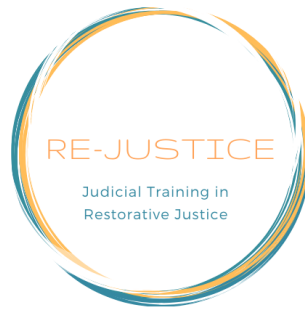


Annex 9

Handout 9:

Stakeholders of restorative justice – victims

Overview – Stakeholders of RJ



- Victims
- Barriers to justice
- Community

Process of victimisation

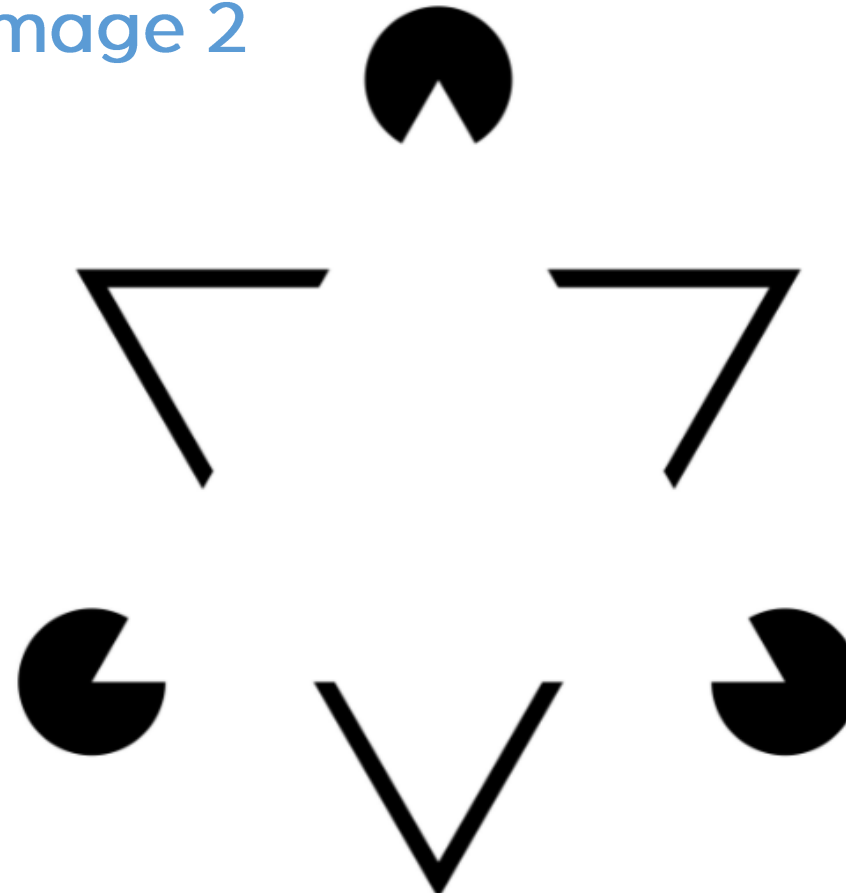


Exercise

Image 1



Image 2



Victim characteristics



Ideal victim



A person or category of individuals who, when hit by crime, are most readily given the complete and legitimate status of being a victim'

(Christie, 1986)



Non-ideal victim



Hierarchy of victimisation



Ideal victims



Less likely to:

- achieve 'legitimate victim' status
- be taken seriously when they report
- secure court conviction (Carrabine et al., 2004)
- see themselves as a victim →
- Increased secondary victimization
- Reduced trust in justice system

Other victims



Victims – justice interests



- Legitimacy / integrity of justice procedure and outcome

(Daly 2014)

- Participation

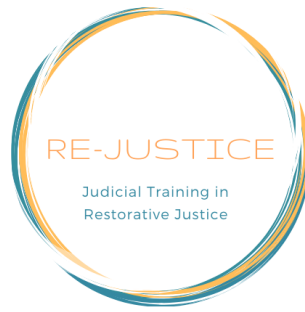
- Voice

- Validation

- Vindication

- Perpetrator accountability

Thank you for your attention



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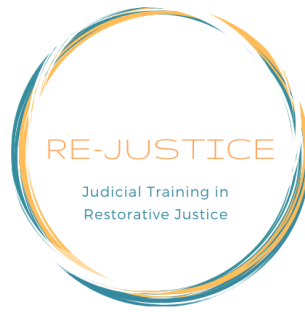
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This project is co-funded by the Justice Programme of the European Union (2014-2020)

Judicial training in restorative justice



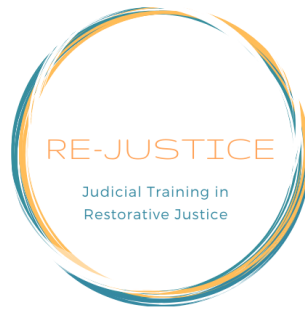


Stakeholders of restorative justice – barriers to justice

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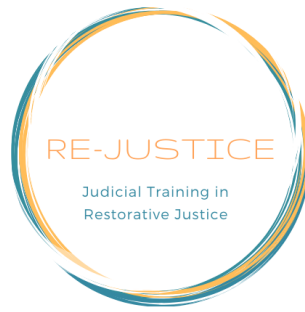
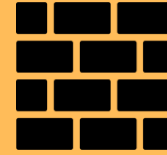
KU LEUVEN

Overview – Stakeholders of RJ



- Victims
- Barriers to justice
- Community

Importance

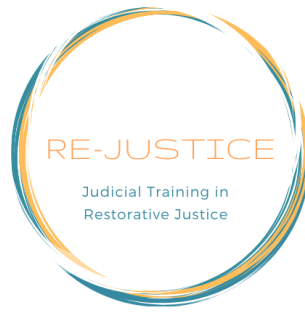
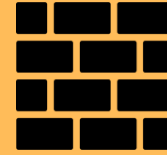


- Sustainable Development Goal 16: Peace, justice & strong institutions



Fair, equal access to justice

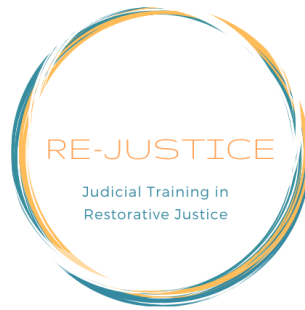
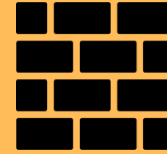
Types of barriers



Individual

- Communication challenges
- Lack of knowledge of / trust in the system
- Mental / physical health challenges / learning needs
- Previous negative experiences with justice systems

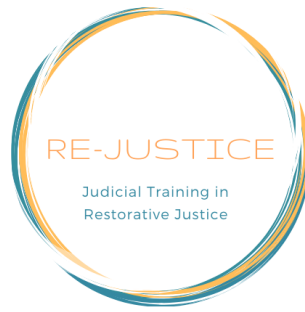
Types of barriers



Structural / operational

- Statute of limitations
- Rigidity of legal services and practices
- Biases towards focus on certain types of crime
- Availability and accessibility of services
- Lack of 'special measures'
- Lack of communication between departments
- Professionals' lack of knowledge, skill, awareness

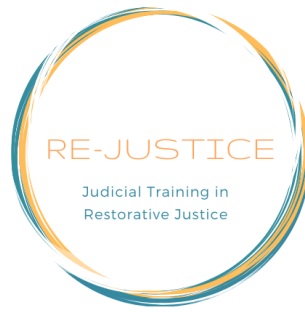
Questions for consideration



- How might RJ help to overcome some of the barriers to accessing justice?
- In what ways is RJ at risk of reinforcing or replicating existing barriers, or indeed creating new barriers?



Thank you for your attention



Monique.anderson@kuleuven.be



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RE-JUSTICE

Judicial Training in
Restorative Justice

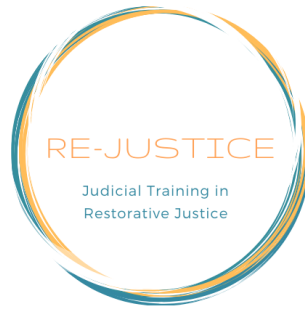


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Judicial training in restorative justice



Judicial training in restorative justice



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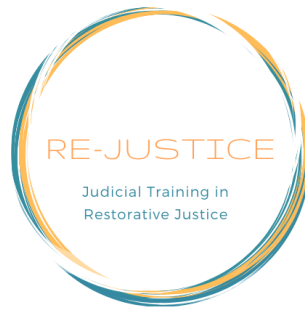
Stakeholders of restorative justice – community

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KU LEUVEN

Overview – Stakeholders of RJ



- Victims
- Barriers to justice
- Community

Communities and society



- Geography
- Interdependency
- Identity
- Relationship



Communities and society



Contribution of citizens to justice

- Participating in democracy
- Lay judges, jury trials, volunteer police officers
- “where the justice of the people bubbles up to reshape the justice of the law and where the justice of the law percolates down to the world of citizens ...” (Braithwaite and Parker, 1999)

Community support of RJ



Direct participation in RJ

- Community of care
- Volunteers, board members, ...
- Cooperation with civil society organizations (referrals, training, support)

Passive support

- Public acceptance
- Policy / political decision

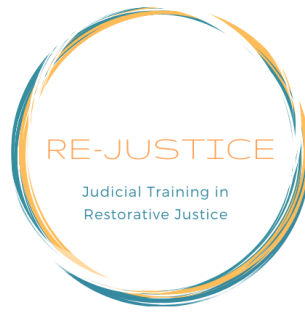
Questions for consideration



- In which ways can involving the community in RJ help to reduce the barriers to accessing justice?
- Should RJ be thought of as an intervention in the community or an intervention by the community, or both?
- How should unequal powers and influences in the community be addressed?
- How should selective participation be addressed?
- Should the RJ process impose, challenge or clarify social norms (such as social norms to be punitive)?
- What other potential risks are associated with involving the community in RJ?



Thank you for your attention



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RE-JUSTICE

Judicial Training in
Restorative Justice

Annex 10

Handout 10: Supra-national and european levels of international legal and policy framework on restorative justice

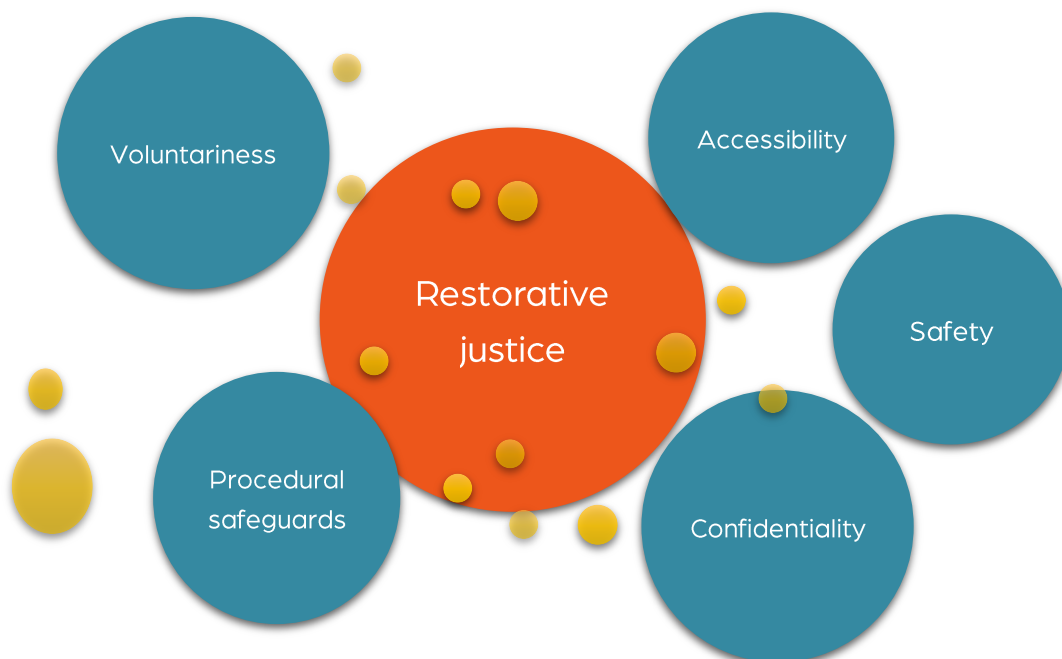


Main supra-national and European sources

1. UN – ECOSOC Resolution 2002/12 – Basic principles on the use of restorative justice programmes in criminal matters
2. 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
3. Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters (Adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Ministers' Deputies)

Some relevant common elements

Supra-national and European documents set several and consistent recommendations and rules. They cover many different aspects, such as the basic principles of restorative justice, type and peculiarities of restorative justice programs, safeguards for a safe participation of the parties, rules for the relationship with judicial proceedings, inspiration for the developing of restorative justice in the future. Therefore, some core elements are particularly and specifically relevant for judicial authorities in dealing with restorative justice referrals. The most important of them are described in the boxes below through the direct quotations of the international sources.





2.1. DEFINITIONS OF RESTORATIVE JUSTICE

«Restorative process” means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles» (UN Res. 2002/12, § 2).

«'Restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party» (Dir. 2012/29/EU, art. 2, § 1, lett. d).

«"Restorative justice" refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the "facilitator") (CM/Rec(2018)8, § 3).

Those – very similar – definitions point the core elements of a restorative justice program: the encounter and facilitated dialogue between those who – directly or indirectly, such as community members – are involved and touched by a crime, in order to actively address the subsequent consequences and to find possible solutions for the matters arised from the crime. See also CM/Rec(2018)8, §§ 13, 14.

2.2. VOLUNTARINESS

«Restorative processes should be used only [...] with the free and voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily [...], (UN Res. 2002/12, § 7). «Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes», (UN Res. 2002/12, § 13 lett. c).

«The restorative justice services [...] are based on the victim's free and informed consent, which may be withdrawn at any time»; «any agreement is arrived at voluntarily», (Dir. 2012/29/EU, art. 12, § 1, lett. a-d).

«Restorative justice is voluntary and shall only take place if the parties freely consent, having been fully informed in advance about the nature of the process and its possible outcomes and implications, [...]. The parties shall be able to withdraw their consent at any time during the



process», (CM/Rec(2018)8, § 16); «Restorative justice shall only take place with the free and informed consent of all parties. No person should be induced by unfair means to participate in restorative justice. Restorative justice shall not proceed with those who are not capable, for any reason, of understanding the meaning of the process», (CM/Rec(2018)8, § 26).

Voluntariness also means:

- ▶ Right to be fully informed (see UN Res. 2002/12, § 13 lett. b; Dir. 2012/29/EU, art. 12, § 1, lett. b; CM/Rec(2018)8, § 25)
- ▶ Absence of negative consequences on the criminal proceeding in case of refusal or interruption of the restorative justice program (see UN Res. 2002/12, §§ 16, 17; CM/Rec(2018)8, § 35).

2.3. CONFIDENTIALITY

«Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law», (UN Res. 2002/12, § 14).

«Discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest», (Dir. 2012/29/EU, art. 12, § 1, lett. e).

«Restorative justice should be performed in a confidential manner. The discussions in restorative justice should remain confidential and may not be used subsequently, except with the agreement of the parties concerned», CM/Rec(2018)8, § 17; «Notwithstanding the principle of confidentiality, the facilitator should convey information about imminent or serious crimes which may come to light in the course of restorative justice to the competent authorities», CM/Rec(2018)8, § 49.

Confidentiality also means:

- ▶ Reports by facilitators to judicial authorities do not include the contents of discussion between the parties (see CM/Rec(2018)8, § 53)
- ▶ Facilitators cannot convey information also on the behavior of the parties during restorative justice (see CM/Rec(2018)8, § 53)

2.4 ACCESSIBILITY AND AVAILABILITY

«Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law», (UN Res. 2002/12, § 6).

«Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive: [...] j) the available restorative justice services», (Dir. 2012/29/EU, art. 4, § 1).

«Restorative justice should be a generally available service. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders» (CM/Rec(2018)8, § 18); «Restorative justice services should be available at all stages of the criminal justice process. [...]», (CM/Rec(2018)8, § 19)

Accessibility also means:

- ▶ Adequate human and financial resources (see CM/Rec(2018)8, § 54)
- ▶ Engagement and coordination between restorative justice agencies, judicial authorities, criminal justice agencies and other relevant public services at the local level (see CM/Rec(2018)8, § 62)

2.5 PROCEDURAL SAFEGUARDS

Due to the – necessary – victim oriented view of the EU Directive 2012/29, procedural safeguards regarding the criminal proceeding are not taken into account in the Directive itself. The box below quotes therefore only the Un Resolution 2002/12 and the CM/Rec(2018)8.

«[...] Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings», (UN Res. 2002/12, § 8); «Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings», (UN Res. 2002/12, § 16). «[...] Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings», (UN Res. 2002/12, § 17).



«[...] Participation in restorative justice should not be used as evidence of admission of guilt in subsequent legal proceedings», (CM/Rec(2018)8, § 30); «When a case is referred back to the judicial authorities without an agreement between the parties or after failure to implement such an agreement, the decision as to how to proceed should be taken without delay and in accordance with legal and procedural safeguards existing in national law», (CM/Rec(2018)8, § 35).

Procedural safeguards also means:

- ▶ Legal basis and policies for restorative justice within the criminal proceeding (see CM/Rec(2018)8, §§ 21, 22)
- ▶ Right to legal assistance, grievance procedures, translation services (see see CM/Rec(2018)8, § 23)
- ▶ *Ne bis in idem* principle (see CM/Rec(2018)8, § 34)

2.6. SAFETY

«Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process» (UN Res. 2002/12, § 9). «The safety of the parties shall be considered in referring any case to, and in conducting, a restorative process» (UN Res. 2002/12, § 10).

«Restorative justice services [...] can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. [...] Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim [...] should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process», (Dir. 2012/29/EU, Cons. 46); «Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services [...]», (Dir. 2012/29/EU, art. 12)

«Restorative justice should not be designed or delivered to promote the interests of either the victim or offender ahead of the other. Rather, it provides a neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible», (CM/Rec(2018)8, § 15); «Judicial authorities and criminal justice agencies [...] with responsibility for making these referrals should contact restorative justice services prior to making a referral if they are unsure whether disparities with respect to the parties' age, maturity, intellectual capacity or other factors may preclude the use of restorative justice. [...]», (CM/Rec(2018)8, § 28).

Safety also means:

- ▶ Specific safeguards for children involved in restorative justice, as the right of their parents or legal guardians to attend (see CM/Rec(2018)8, § 24)
- ▶ 'All-partiality' and respect for the dignity of the parties (see CM/Rec(2018)8, § 46)
- ▶ Sufficient time for preparation, sensitiveness to the parties' vulnerabilities, readiness to discontinue restorative justice if necessary (see CM/Rec(2018)8, § 47)



RE-JUSTICE

Judicial Training in
Restorative Justice

Annex 11

Handout 11: Successful Restorative Justice Development around the World



What is success in Restorative Justice?

WHOSE PERCEPTION OF SUCCESS IS IT?

- ▶ the victim
- ▶ the offender
- ▶ victim/offender families and communities of care
- ▶ professionals in the justice system
- ▶ local communities

WHAT DO WE MEAN BY SUCCESS?

- ▶ satisfaction for the participants of a process
- ▶ lower rates of re-offending
- ▶ impact on post-traumatic stress for victims
- ▶ reintegration of offenders
- ▶ cost-effectiveness for policy-makers
- ▶ transformation of contexts that consciously or unconsciously support behaviours with harmful impacts – for example changing attitudes towards hate crimes or domestic violence, better training and support for police to address unconscious racism and police violence
- ▶ adherence of RJ principles, standards and values
- ▶ suitability of RJ practices and policies to the communities where they are used



Using a systemic framework for Restorative Justice

Look at the image.
What is your first gut
reaction?
What do you notice?
What does this remind
you of?

Where would you place
yourself in the picture?

***Our Restorative
Justice processes
are already
starting in this
landscape, not in
neutral conditions.***



This image shows how power and privilege, and therefore access to resources, can be organised in communities and societies. The purple people have easy access and total control of the resources (apples), the red people have little access and no control, the blue people have no access and are intentional kept out by the fence, the barbed wire and the purple people.

Resources can be:

- ▶ Material (apples or salary rates)
- ▶ Access to services (health care, education, Restorative Justice)
- ▶ Power and privilege – being taken into account, having a voice (the needs of this group matter in society)
- ▶ Safety (freedom of movement, levels of fear, chances of being harmed by police).

*Engaging with systemic issues of power and privilege needs to be consciously and proactively designed into everything we do and how we do it, or we will definitely reproduce these patterns, probably unconsciously.*¹

***“Every social intervention will have unintended consequences.
It will always go astray,
even if we build-in safe-guards.” –***

Howard Zehr²



Interpersonal restorative justice & Systemic restorative justice

Key learning:

- engagement at all 3 levels is systemic transformation
- all 3 levels exist & reproduce each other

CULTURE =
assumptions & ideas about the world
the roots of deep transformative restorative justice



transformation here - direct level only, is interpersonal restorative justice, it may change behaviors but doesn't transform systemic patterns of power & privilege

STRUCTURES
law, policies, rules, practices, language discourse, institutions (e.g. finance, education, justice), access structures for Restorative justice (implicit or explicit)

Johan Galtung, 1990
Positive and Negative Peace

Illustration by Willemijn Lambert, Wwww.Drawin.Ink

One Brazilian judge warned that much care is needed to ensure that restorative justice is **not coopted** to reinforce judgement and exclusion or that practice becomes a "disguised circular courtroom".³

Practitioner Dominic Barter warns of the '**punitive drift**' that can occur when systemic issues are not taken into account in RJ policy and practice.⁴

Academic Galtung argues that direct violence, while remaining the choice and responsibility of those who commit such acts, is made possible by structural and cultural violence.⁵

Example: the intentional murder of a woman by her husband (**direct violence**) may have been exacerbated by the fact that the police reporting structures did not follow up on previous complaints (**structural violence**), possibly because in that society consciously or unconsciously, violence in the family may be considered a private matter (**cultural violence**).

Restorative Justice which is truly successful will focus not just on the direct level of violence (**interpersonal RJ**), but also at the structural levels (**access to RJ services, impacts of structural issues**) and at the cultural levels looking at the **assumptions and beliefs** which may consciously or unconsciously support harm (**systemic Restorative Justice**).

Howard Zehr addressed the importance of systemic awareness in Restorative Justice and the need for action to ensure it does not perpetuate systemic injustices in his 2015 anniversary edition of Changing Lens.⁶

One example of such systemic action is the New Zealand development of Restorative Justice. That particular RJ practice came about when those with much power and the little impact from the justice system (the government, policy makers, criminal justice professionals) took the time to listen to those with less power and the most impact from the system (the indigenous, colonised Maori community)⁷

What might be possible if Restorative Justice development addressed systemic issues?



Questions for Reflection

- ▶ What would successful Restorative Justice look like for you?
- ▶ In your own context who is most impacted by the criminal justice system? Do they have a chance to participate in RJ development?
- ▶ Drawing on one of your own cases, can you identify the direct, cultural and structural violence at work in the situation.
- ▶ What do you think are the most important systemic issues of power and privilege in your country? How might these issues begin to be addressed?
- ▶ Are there one or two concrete actions you could take to begin to participate in addressing systemic issues in restorative justice in your context?



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For further study

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CANADA & USA

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RE-JUSTICE

Judicial Training in
Restorative Justice

Annex 12

Handout 12: Pre-training questionnaire



RE-JUSTICE: Sustainable training in a challenging field
(Grant Agreement no. 854042) – Work Package 4: TRAINING COURSE ON RESTORATIVE JUSTICE IN ...

JUDICIAL TRAINING ON RESTORATIVE JUSTICE

PILOT TRAINING

NAME OF THE COUNTRY – JUDICIAL TRAINING SCHOOL AND ... UNIVERSITY OF ...
Blended Training, ... (date)

PRE-TRAINING QUESTIONNAIRE



Questionnaire developed by KU-Leuven in collaboration with the ... University of ...
(Document translated from English to ...)



TRAINING referent persons:
Trainers: ...



Judicial training on restorative justice

Pre-training questionnaire



PRELIMINARY INFORMATION

The questionnaire is anonymous and serves exclusively the purpose of gathering information on the training needs, learning and knowledge expectations of the participants in the judicial pilot training course on restorative justice, in the framework of the RE-JUSTICE project.

The results of the questionnaire will be used to elaborate the learning objectives of the pilot course.

These results, in anonymous and aggregate form, may also be used for:

- The development of a replicable training model
- The updated training manual of the judiciary in restorative justice
- The scientific publications of the project

At the end of the course, we will ask for a little more of your time to re-evaluate, with a second questionnaire, expectations, interests, training needs, degree of satisfaction and collect your suggestions and proposals.

WE THANK YOU FOR THE TIME YOU WILL DEDICATE TO THE QUESTIONNAIRE.

For any further information, please contact

- ▶ University
- ▶ Judicial Training School

JUDGE

PUBLIC PROSECUTOR

INTEREST AND EXPECTATIONS

What motivates you to deepen the theme of restorative justice?

You can also answer by keywords

How do you rate your knowledge of restorative justice?

We ask you to circle the appropriate number on a scale from 1 (no knowledge of restorative justice) to 10 (a thorough knowledge of restorative justice)

1 2 3 4 5 6 7 8 9 10

Little or no knowledge

Some knowledge

In-depth knowledge

I. What are your learning expectations with this training?

You can also answer by keywords

What skills or abilities would you like to develop with this training?

You can also answer by keywords

Are there any specific topics you are particularly interested in? If so, can you indicate which ones?

Do you think you can share your restorative justice knowledge with other colleagues?

How do you assess your possible role in promoting and applying restorative justice in your professional environment?

1 2 3 4 5 6 7 8 9 10
Not important Rather important Very important

How do you think, to date, you can be involved in the development and application of restorative justice in your work as a magistrate?

You can also answer with just keywords

How do you imagine this course?

You can also answer with keywords only

Do you have any concerns, fears or concerns about this course? If so, which ones? Compared to what?

You can also answer with keywords only



RESTORATIVE JUSTICE: A LOOK ON THE TOPIC

If you were asked to provide restorative justice, how would you define it?

Which of these elements do you think may have influenced the birth of restorative justice?

Multiple answers are possible

- a. Critique of the penal system and in particular of the prison sentence
 - b. Criminal abolitionism
 - c. Movement for the rights of victims
 - d. Experiences and experimental projects bottom-up, initiated by judicial actors or other justice actors
 - e. New theoretical developments in academia and research
 - f. Demand from local communities for a different justice
 - g. Dissatisfaction with the administration of justice
 - h. Other (*Please specify*)
-

Which of the following aspects would you point to as essential elements of restorative justice?

Multiple answers are possible

- a. Satisfaction of the victims
 - b. Informed consent of the participants
 - c. Voluntariness
 - d. Direct dialogue
 - e. Involvement of the people concerned in making decisions about the situations that concern them
 - f. Obtain compensation for damages
 - g. Care and attention to the needs of all those involved
 - h. Forgiveness
 - i. Involvement of the wider community
 - j. Confidentiality
 - k. Ability to offer and receive apologies
 - l. Reparation of the consequences of the crime by the perpetrator
 - m. Compensation by the offender
 - n. Reconciliation
 - o. I don't know
 - p. Other (*Please specify*)
-



For which crimes do you consider it appropriate to resort to restorative justice programs?

Multiple answers are possible

- a. Petty offenses
 - b. Serious offenses
 - c. Violent offenses
 - d. All crimes regardless of their seriousness
 - e. All crimes, except terrorism and organized crime
 - f. All crimes, except sexual crimes and domestic violence
 - g. Crimes involving the community as victims
 - h. Crimes involving multiple victims
 - i. I don't know
 - j. Other (*Please specify*)
-

In your opinion, restorative justice should be

- a. An alternative to the criminal system and autonomous from the latter
- b. Complementary to the penal system in force

At what stage do you think we can resort to offender-victim mediation?

Multiple answers are possible

- a. Before the crime is reported
 - b. During the criminal proceedings
 - c. After sentencing
 - d. During execution
 - e. After the end of the sentence
 - f. At any time
 - g. At any time, useful based on the interests of the people involved
 - h. I don't know
 - i. Other (*Please specify*)
-

Who, in your opinion, could be involved in a restorative justice process?

Multiple answers are possible

- a. Victim
 - b. The offender, accused person, person to whom the crime is attributed
 - c. Representatives of the community
 - d. Victim support people
 - e. Support people for the offender, accused person, person to whom the crime is attributed
 - f. I don't know
 - g. Other (*Please specify*)
-



Which of the following statements comprehensively describes, in your opinion, the victim's primary interest or need in accessing restorative justice?

Only one answer is possible

- a. Be assisted by a defender
- b. Be listened to, believed, supported and informed
- c. Obtain compensation for damages
- d. Be recognized as a victim
- e. Have a say in the sanctioning response
- f. Be protected from secondary victimization
- g. Be protected from repeated victimization
- h. Get satisfaction
- i. I don't know

Which of the following statements comprehensively describes the primary interest or need of the person accused/who has committed the harm, in in accessing restorative justice?

Only one answer is possible

- a. Be assisted by a defender
- b. To be listened to, believed, supported and informed
- c. Obtain a mitigation of the criminal response
- d. Be held responsible without being stigmatized and identified with the crime committed
- e. Be free not to join the reparative path
- f. Avoiding the penalty
- g. Demonstrate your repentance
- h. Avoid condemnation
- i. I don't know

Do you believe that a path of restorative justice can reconcile the interests of the victim and of the perpetrator of the crime?

- a. Yes
- b. No
- c. I don't know
- d. I prefer not to answer
- e. I would like to specify or justify my answer

Do you think it possible, in general and abstract terms, that restorative justice paths are used when the victim and/or the offender are underage?

- a. Yes
- b. No
- c. It depends on the cases



Do you think it is possible, in general and abstract terms, that restorative justice paths are used when the victim and/or the offender are vulnerable people (e.g. due to mental disability, to intellectual impair, etc)?

- a. Yes
- b. No
- c. It depends on the cases

In your opinion, in order to participate in a process of restorative justice, the suspect or accused person should:

Multiple answers are possible

- a. Confess or to have confessed
 - b. Recognize the essential facts of the case
 - c. Be informed of the nature and outcome of the restorative justice program
 - d. Be willing to repair the consequences of the crime
 - e. Be aware of their responsibility
 - f. Want/wish a meeting with the victim
 - g. No conditions are necessary
 - h. I don't know
 - i. Other (*Please specify*)
-

In your opinion, in order to participate in a process of restorative justice, the victim should:

Multiple answers are possible

- a. Be open to forgiveness
 - b. Recognize the essential facts of the case
 - c. Be willing to receive reparation from the offender
 - d. Want/wish a meeting with the perpetrator
 - e. No conditions are necessary
 - f. I don't know
 - g. Other (*Please specify*)
-

Which of the following statements do you agree with?

Multiple answers are possible

- a. Public utility work is a form of community justice
 - b. ... are a form of restorative justice
 - c. Probation is a form of restorative justice
 - d. Restorative justice is an element of rehabilitative treatment
 - e. Participation in a restorative justice program is a sure sign of repentance
 - f. I don't agree with any of the previous statements
 - g. If you wish, please explain why.
-



With respect to what objectives, in your opinion, restorative justice could be effective?

Multiple answers are possible

- a. Reduction of recidivism
 - b. Desistance from the crime
 - c. Safeguarding people's rights
 - d. Safeguarding of procedural guarantees
 - e. Satisfaction of the parties involved
 - f. Crime prevention
 - g. Satisfaction of the demands for justice for the people involved
 - h. Satisfaction of the victim
 - i. Outcomes of the criminal proceedings
 - j. Reaching and fulfilment of agreements
 - k. Victim protection
 - l. Satisfaction of the offender
 - m. Rehabilitation of the offender
 - n. Strengthening the sense of collective security
 - o. I don't know
 - p. Other (*Please specify*)
-

I. To assess the effectiveness of restorative justice, who do you think should be heard, for example in the context of interviews for research purposes?

Multiple answers are possible

- a. The judiciary
 - b. Legal practitioners in general
 - c. The victims
 - d. The victims and their entourage
 - e. The perpetrators
 - f. Perpetrators and their entourages
 - g. The mediators / facilitators
 - h. Local communities
 - i. Scholars
 - j. Who has carried out restorative justice programs
 - k. Who has promoted restorative justice programs
 - l. Experts working in international and supranational organizations I don't know
 - m. I don't know
 - n. Other (*Please specify*)
-

THANKS FOR HAVING PARTICIPATED IN THE QUESTIONNAIRE AND FOR HAVING
CONTRIBUTED TO THE STUDY OF THE INTERESTS AND TRAINING NEEDS OF THE
JUDICIARY IN THE FIELD OF RESTORATIVE JUSTICE



RE-JUSTICE

Judicial Training in
Restorative Justice

Annex

13

Handout 13: Post-training and satisfaction questionnaire



RE-JUSTICE: Sustainable training in a challenging field
(Grant Agreement no. 854042) – Work Package 4: TRAINING COURSE ON RESTORATIVE
JUSTICE IN ...

JUDICIAL TRAINING ON RESTORATIVE JUSTICE

PILOT TRAINING

NAME OF THE COUNTRY – JUDICIAL TRAINING SCHOOL AND ... UNIVERSITY OF ...

Blended Training, ... (date)

POST-TRAINING AND SATISFACTION QUESTIONNAIRE



Questionnaire developed by KU-Leuven in collaboration with the ...
University of ...
(Document translated from English to)



TRAINING referent persons:
Trainers:

...

Judicial training on restorative justice

Post-training and satisfaction questionnaire



PRELIMINARY INFORMATION

The questionnaire is anonymous and serves exclusively the purpose of gathering information on the training needs, learning and knowledge expectations of the participants in the judicial pilot training course on restorative justice, in the framework of the RE-JUSTICE project.

The results of the questionnaire, in anonymous and aggregate form, will be used for:

- The development of a replicable training model
- The updated training manual of the judiciary in restorative justice
- The scientific publications of the project

WE THANK YOU FOR THE TIME YOU WILL DEDICATE TO THE QUESTIONNAIRE.

For any further information, please contact

- ▶ University
- ▶ Judicial Training School

JUDGE

PUBLIC PROSECUTOR



SOME QUESTIONS ABOUT RESTORATIVE JUSTICE

Compared to before the training, please indicate the topics on which you believe you have acquired additional knowledge that you had not deepened before:

Multiple answers are possible

- a. Notion of restorative justice and characterizing elements
 - b. The emergence of restorative justice in the penal system
 - c. Restorative justice in relation to theories of justice, theories of punishment, conflict resolution models
 - d. International and European sources, standards and principles in restorative justice
 - e. Restorative justice programs
 - f. Stakeholders of restorative justice
 - g. Mediators / facilitators
 - h. Restorative Justice Centers
 - i. Intersections between restorative justice and the criminal justice system
 - j. Role of the judicial authority in the application of restorative justice
 - k. Evolution of theoretical and practical perspectives
 - l. Problems and critical issues
 - m. Application areas
 - n. Debate and international and European scenarios
 - o. Experiences and applications of restorative justice in other countries
 - p. Cases, stories, testimonies
 - q. Other (Please specify)
-

Compared to before the training, please indicate the topics on which you believe you have **not** acquired knowledge as expected before the training

Multiple answers are possible

- a. Notion of restorative justice and characterizing elements
- b. The emergence of restorative justice in the penal system
- c. Restorative justice in relation to theories of justice, theories of punishment, conflict resolution models
- d. International and European sources, standards and principles in restorative justice
- e. Restorative justice programs
- f. Stakeholders of restorative justice
- g. Mediators / facilitators
- h. Restorative Justice Centers
- i. Intersections between restorative justice and the criminal justice system
- j. Role of the judicial authority in the application of restorative justice
- k. Evolution of theoretical and practical perspectives
- l. Problems and critical issues
- m. Application areas
- n. Debate and international and European scenarios
- o. Experiences and applications of restorative justice in other countries

- p. Cases, stories, testimonies
- q. Other (*Please specify*)

Regarding the knowledge, skills and attitudes improved during this training, please indicate the most challenging issues for what concerns the application of restorative justice in the criminal justice system

Regarding the knowledge, skills and attitudes improved during this training, please indicate the aspects that you think exhaustively characterise restorative justice

Based on what you learnt during this pilot training, which soft skills do you think that judicial actors should acquire to support and promote the application of restorative justice?

Is there any further comment you would like to add?

SOME QUESTIONS ABOUT SATISFACTION, INTEREST AND EXPECTATIONS

After taking the course, how do you rate your interest in restorative justice? Is it increased or decreased?

After participating in the pilot course, how do you (re) consider your potential role in promoting and applying restorative justice in your professional environment?

We ask you to circle the appropriate number on a scale from 1 (non-important) to 10 (very important)

1 2 3 4 5 6 7 8 9 10

Non important Quite important Very important

How do you feel now that you can be involved in the development and application of restorative justice in your work as a magistrate?

You can also answer with keywords only

Was the training course as you expected it?

- a. No. I am disappointed
- b. No. I am positively surprised
- c. Yes, and that is why I am satisfied
- d. Yes, and that is why I am disappointed

Can you please briefly elaborate you answer?

Are you satisfied by the blended approach, with some sections online and some face-to-face?

We ask you to circle the appropriate number on a scale from 1 (not at all) to 10 (very much)

1 2 3 4 5 6 7 8 9 10

Not at all To some extent Very much

Please elaborate if you wish

In particular, did you find the circles an appropriate instrument for this training and for this audience?

We ask you to circle the appropriate number on a scale from 1 (not at all) to 10 (very much)

1 2 3 4 5 6 7 8 9 10

Not at all

To some extent

Very much

Can you please briefly elaborate your answer?

Do you have any criticism towards the structure and/or the contents of this pilot training?

You can also answer with keywords only

Are there aspects of this pilot training that you deem particularly positive?

You can also answer with keywords only

Do you have any recommendations/suggestions for the development of a "European model" of training on restorative justice for judicial actors?

You can also answer with keywords only

How do you consider the use of testimonies from people who directly took part in restorative justice programmes? *Multiple answers are possible*

- a. Important
- b. Important but challenging
- c. Inappropriate
- d. Inappropriate if the testimonies concern certain kind of offences

Please specify which ones

-
- e. Embarrassing
 - f. Problematic
 - g. Essential
 - h. Useful but challenging
 - i. Useful but painful
 - j. Painful and challenging
 - k. Useful and positive
 - l. Enriching

Can you please briefly elaborate your answer?

How do you consider, for the future, the possibilities of testimonies in the presence of people who have participated in restorative justice programs, including offenders? If so, are special conditions or precautions necessary in your view?

Would you like to share further comments or reflections?

THANK YOU VERY MUCH FOR TAKING THE TIME TO FILL IN THIS QUESTIONNAIRE AND FOR YOUR CONTRIBUTION TO A EUROPEAN TRAINING MODEL ON RESTORATIVE JUSTICE FOR JUDICIAL ACTORS



RE-JUSTICE

Judicial Training in
Restorative Justice

Annex 14

Case studies



Case study 1

Type of restorative justice practice: Family Group Conferencing

Country: New Zealand

Context: Judicial context

Case: Family Group Conferencing in New Zealand

"The following story is about a 16-year-old boy who was charged with "rape times three" on the same victim, a 13-year-old girl.

As is so often the case, the offender – I'll call him Robert – had himself been the victim of pedophiles from the age of five. His mother would take him to meetings of pedophiles and participate in their activities.

Joanna, his victim, had also been a victim previously.

Robert and Joanna ended up living in the same home as longer-term plans were being made for their care.

After hearing her rights, Joanna said she wanted to view the Conference but not be in the same room as the offender. Joanna proposed that her caregiver represents her at the Conference while she observed, with an adult woman and her social worker.

During the meetings, Joanna sent three powerful letters from outside the room for her representative to read. In the first letter she directly challenged Robert, the offender, saying he was not taking enough responsibility for what happened. As a result, Robert apologized and took full responsibility.

In the second letter she stated that she did not want Robert to lose his job so that he could pay for the self-defense lessons she wanted to take. In the third letter, she expressed her concern that she not run into him during the early stages of her recovery. The Conference worked out a plan that met all of Joanna's requests.

[After the conference] the caregiver said, "When we got home, Joanna walked in the door and said, 'I don't need to wear this coat anymore'...she slipped it off and let it drop to the floor." Joanna had worn that coat ever since she was abused. The day after the Conference met, "She was present in a different way than I had ever seen her before. She looked as if an incredible weight had been lifted from her, and she was full of smiles and energy."

Robert completed all his obligations. He faced the fact that he did not have the right to victimize others while acknowledging that he needed help to live successfully and positively within the community. This plan pushed boundaries: typically, the boy would have gone to jail. And that would likely have led to his committing further offenses, eventually destroying any hope of his living successfully within the community.

The potential outcome for this case was so ground-breaking that the police were not willing to shoulder responsibility for it alone. They wanted a judge to take that responsibility. The judge agreed, and she was given no cause for regret.

Joanna, although only 13 years old, was a very strong person who used the Conference to meet her own needs for healing.

I learned that even very young victims need to have a voice...overprotecting can be disempowering. A young person like Joanna can know what she needs for her own well-being and can initiate healing through the Conference process."

This story is taken verbatim from Allan MacRae in Allan MacRea & Howard Zehr, "The Little Book of Family Group Conferences New Zealand Style, in Zehr, Howard, Amstutz, Lorraine, MacRae, Alan, Pranis, Kay, The Big Book of Restorative Justice. Four Classic Justice & Peacebuilding Books in One Volume, New York, Good Books, 2015, location 2398 of 429

Case Study 2

Type of restorative justice practice: Restorative Circles

Country: Brazil

Context: Judicial context

Case: A Restorative Circle

"One circle I remember because of the powerful impact it had on me and on the participants. It was one in which a fourteen-year-old boy had killed his girlfriend and had then hidden her body. About six months or a year into the boy's detention in prison, the father of the young woman came to the court to find out if the boy was fulfilling his sentence. We offered him restorative justice and I did the pre-circle

with him and the mother. The mother wanted to participate, but the father chose not to. So we held the circle with the boy and his family and the mother of the girl and a supportive friend of hers. I was the facilitator.

It was really rich for everyone. The mother asked questions and he answered them all. Both families had held onto many doubts, the pain and confusion of not knowing what had happened. The mother could not understand why because the couple was happy together and she knew they both liked each other.

The youth shared freely about what had led to his girlfriend's death. He explained that they had gotten into a fight in the kitchen and the girl had picked up a knife. In the ensuing struggle he

accidentally killed her. The boy shared about his feelings and grief because he had loved her.

However, he blocked and his feelings overcame him when it came to talking about him hiding the body and burying it under the house. I think it was because of the guilt and of his conscience. Because the death itself had been an accident, but the hiding of the body was a choice he made. He wrapped her body in a carpet and buried under the house.

We held a second circle which was very tense and emotional. The boy shared some things about what had happened and why he had done what he did. It was very emotional for everyone. The mother cried. It was very emotional for me. But it was worth it. The participants were satisfied. They saw the need to go through the emotion and the tension; not to go on with the shadow and each person chose how they wanted to move forward.

This example was given in an interview in 2016 with a facilitator of Restorative Circles for the 1st Pilot Project in Porto Alegre, Brazil, Justiça pelo Século 21 2005–2008, researcher Christina De Angelis

Case Study 3

Type of restorative justice practice: Restorative Circle

Country: Brazil

Context: Judicial context

Case: A different way

“Deivid is a postman in Rio and also a composer of Samba in the Mangueira district of the city. One day in 2015, as he was sitting on the bus after work in the city centre looking at his phone ; a young man suddenly grabbed the phone out of his hand through the window.

Deivid – “I looked at him and he said ‘Come on, come and get it.’ So I did.”

As he was following the youth, people suddenly started yelling at the youth, calling him *ladrão*, thief, and they started to beat him.

Youth – “The people, like, when they got me. Lots of things happened. I was punched in the face. I was kicked many times. I got really scared because I’d never been through that before.”

The aggression could have led to death, not an uncommon occurrence. Instead, Deivid got into the action to protect the young man.

Deivid – “People were saying, ‘But he robbed’. I said “He robbed from me. Calm down. We will take him to the police and make sure he does not get away, but we won’t beat him or hurt him”.

I asked him ‘Where do you live, man?’ And he said, ‘In the Mangueira.’ I said, ‘What, in the Mangueira? I’m a composer and I play in the Mangueira.”

Youth – “He looked at me with a smile. He did not look at me with a nasty face as if ‘Ah, he robbed me. He’s a *ladrão*, a thief. He smiled at me. He tried to help me.”

Deivid – “I asked him why he didn’t play in the Mangueira band, why he is not at school or in a job. He said he had no father or mother and no one would give him a job. He started crying and asked if I could let him go. I said “Look if you don’t want to get arrested then you had better not steal. If you robbed, you did something wrong, I can even help you. But you need to pay for what you did, man.”

Deivid took the boy to the police station but left with his head full of ideas and plans.

Deivid – “I know for certain that he has known hate, he has known exclusion, prejudice. He has missed out on knowing love, charity, compassion. That is what I want to introduce him to. »

Deivid put his reflections on Facebook, saying he wanted to help the boy out, help him get a job or a chance to play in the Mangueira band. He wrote that he had decided to adopt “his bandit.” The posting was a hit, with 30,000 likes, 5,000 shares and lots of comments.

The two met again during the court hearing. Deivid discovered that the boy’s parents were assassinated when he was four years old and pleaded for him with the judge.

The youth was convicted and sentenced to detention in a semi-open unit that would allow him to go to school, find work, and even go home on weekends.

They met again during a Restorative Circle organised by the youth’s defense lawyer. During the circle both shared openly with each other.

Youth – “What I have to say to you is thank you for everything you are doing for me. Because you believe I can change.”

Deivid – “You can relax. I’m not going to give up on you. Even if you give up.”

Youth – “He’s going to be for me now the father I never had. A motivator.”

The youth shared that no one had ever spoken to him like that before; only Deivid.

Deivid – “When you manage to recover a youth like this you are not only saving his life, but the lives of all those around him.”

Compiled from an interview with the youth’s defence lawyer in Rio, a clip in the TV program, Fantastico “<http://globoplay.globo.com/v/4642333/>” which narrated the event, and from Deivid’s post on Facebook. <https://www.facebook.com/deivid.domenico/posts/1195941547088146>. Research and translation by Christina De Angelis

Case Study 4

Type of restorative justice practice: Apologies / indirect meeting

Country: Italy

Context: Judicial

Case: First offender

Giovanni is a 19-and-a-half-year-old university student.

He has always been diligent at school, sporty and active in volunteering.

On a Friday evening, after passing a university exam with a good grade, he goes to the disco with some new friends.

He is not familiar with super alcoholic and for the first time in his life he gets seriously drunk and with his friend he starts provoking a group of thirty-somebods at the table next to him.

When those people leave the table and go dancing, leaving some bags at the table, he takes one of the wallets and – to show off – he takes out two 50-euro bills.

While he still has the wallet in his hand, he is seen by the security of the dancing club, who approaches and stops him.

The owner of the wallet, Filippo, aged 32, also arrives and raises his voice against Giovanni, who instead remains speechless after the security intervention.

After a few days, Giovanni is called by a policeman, who informs him that the Prosecutor has initiated a criminal proceeding against him and invites him to appoint a defence attorney.

Giovanni is shocked and full of shame towards his parents, who have always known him as a good boy.

At the first meeting with his defence attorney, Giovanni explains her that it was an isolated episode, that he would do his best to repair in some way, and that he really wants to explain to Filippo and to the Prosecutor that he understood how wrong was to behave like that just to impress new friends and that he will never do anything like that again. Giovanni wants to make it clear that he is a person who cares and has always tried to be of help to others.

The defence attorney goes to talk to the Prosecutor.

Since Giovanni is no longer a minor, according to national legislation the fact that he is a first offender, and the tenuity of the episode could not be enough to get a dismissal.

The Prosecutor listens carefully to the attorney representing Giovanni's feelings and intentions and decides to take them in due consideration. The defence attorney reports it to Giovanni.

Giovanni then writes a very heartfelt apology letter to Filippo, asking him instructions on how to take action to demonstrate that he has understood his mistake and that he is deeply sorry.

Filippo is impressed by the 19-years-old's letter and responds equally heartily, suggesting that Giovanni goes on with volunteering and giving him advice to face university life without excessive anxiety but also without making stunts to pour out anxiety.

Giovanni is very relieved and motivated by Filippo's answer and he asks Filippo's permission to show both letters to the Prosecutor. Filippo gives his permission.

After reading the letters, the Prosecutor decides to dismiss the case, arguing that it was an attempted crime and not a committed crime and, therefore, the fact would have been punishable with a minor sanction, such as to allow the filing of the fact for tenuity even in the case of an adult / no longer a minor offender.

Inspired by a real case (UCSC)

Case study 5

Type of restorative justice practice: VOM

Country: Any

Context: Judicial

Case: Assault causing Harm, producing a Weapon, Violent Disorder, Threats to Kill

This case arose from a violent confrontation on the main street of a town on a weekend afternoon and was referred to the Probation Service by a Circuit Court Judge. Three men were before the courts. A father and his son pleaded guilty to offences of assault causing harm, inflicting serious injury in the course of a dispute, and violent disorder. A third man, on the other side of the violent dispute, pleaded guilty to violent disorder and threats to kill. All parties received injuries requiring medical treatment; one person had been stabbed and was hit on the head and body.

Furthermore, the three parties had experienced ongoing psychological and physical harm from the conflict surrounding the violence, over many years. These offences arose out of an ongoing issue between the identified parties and their extended families. In addition to the harm of the above-mentioned physical confrontation, the three men told their probation officers about the negative impact upon them of this conflict. The father stated that he had experienced 'years of hell'. He lived in constant fear of attack and of his home being targeted and had concerns for the safety of his family and the effect of the situation on his daughter. He reported that he had even dreamt of the other man attacking him.

Following reports to the Court, it was suggested that the case might benefit from mediation. The case was adjourned and referred to the Probation Service. Following further review by the probation services, it was decided that a restorative justice approach was potentially suitable. This decision was made through consultation between the local manager and the Probation Service's Restorative Justice and Victim Services Unit. It was considered that restorative justice might help those involved realise that their actions hurt others, take responsibility for their actions and be held accountable, with the ultimate aim of enabling those involved to reflect on how they behaved and agree a plan to prevent further harm and conflict. Early indications were that all parties were open to mediation, encouraged by the Judge and the potential for lengthy custodial sentences if they failed to do so.

A Senior Probation Officer and Probation Officer from the Restorative Justice and Victim Services Unit facilitated the process. All three men before the courts agreed to participate in victim-offender mediation (VOM). In this particular case, the offenders were also victims. The aim of the process was to provide an opportunity for those involved to meet in a safe, controlled setting, with the facilitators.

After preparing for the meeting separately with each party, the Probation Officers facilitated a discussion between the parties to address and repair the harm caused and agree on a plan on how to avoid further conflict. This took place over a number of sessions in the local Probation Service office. As mentioned earlier, besides the incident pertaining the Court case, there had been numerous incidents between these three men, ranging from name-calling to threats of physical harm, in person and over social media. The mediation process allowed all parties to verbalise the impact of the feud upon them and others, such as other family members and the public. It also helped put a mirror up to them, reflecting back to them the impact of their own actions.

It emerged that none of the parties were aware of how or why the feud began or how they became involved. Meanwhile, many other individuals were operating at the side-line of the conflict and encouraging it to continue at their own expenses. All parties spoke of a desire for the feud to cease and a chance to apologise for their actions, while expressing doubts about the other side's genuine commitment to the process, in light of the Court case as a motivating factor for engagement.

As such, the face-to-face meetings were key to the ultimate success of this process. The final meeting was preceded by four long preparatory meetings with each party. The success of the process was certainly due to the amount of preparation undertaken. The ground rules and agenda were jointly agreed beforehand and, before meeting, both sides had agreed on what the best outcome would be and developed a plan to achieve it.

The final meeting allowed the parties to verbalise the hurt and harm caused to them and to express remorse for what happened. All parties agreed and signed the following contract:

Not to engage in any further acts of physical violence, threats, intimidation or verbal abuse towards each other

- ▶ Not to engage in any acts of provocation, such as posting on social media, spreading gossip or rumours, or attempting to influence others to engage in unacceptable behaviour toward each other
- ▶ To avoid contact with others who are intent on provoking conflict and report any unlawful activities to the police
- ▶ To be respectful to each other in all circumstances and situations
- ▶ To share the content of this agreement with their respective Probation Officers
- ▶ That anything said during this process will remain confidential as agreed
- ▶ To comply fully with all of the above

The Judge was informed, by way of Probation Reports, that all parties were deemed to have co-operated and engaged in the process. Over the course of the long adjournment period, there had been no more issues between the parties involved. This matter was finalised by way of suspended sentences with conditions attached. There were reports that the parties had had contact with each other in the town and that this contact had been cordial.

Preparation by the facilitators was identified as a key element in enabling the participants to benefit and take ownership of the mediation process. In addition to the ongoing support of the line manager, the manager of the Restorative Justice and Victim Services Unit provided appropriate supervision and assistance.

Case study 6

Type of restorative justice practice: VOM

Country: Any

Context: Judicial

Case: rape

A female victim of sexual violence was informed by the Irish Prison Service Victim Liaison Officer that the perpetrator of the offences against her, a close family member, was due for release in the coming months. A conversation ensued regarding the services available to her, including restorative justice. With her consent, her contact details were forwarded to the Probation Service's Restorative Justice and Victim Services Unit. The Coordinator of the Unit then contacted the victim in response to her request to explore restorative justice, and allocated her case to a Probation Officer to progress.

The offender was convicted of the rape and sexual assault and was sentenced to several years in custody. The harm he had caused to the victim in this case was physical, emotional, psychological and mental. It impacted her daily life, her education and her capacity to live freely as she had before these offences. She found it difficult to engage with other services and suffered from anxiety and fear. The extended family were secondary victims.

In the initial meeting with the Probation Officer, the victim indicated that she wished to meet the offender in person before he was released from custody as she had questions she wished to ask him. She wished to request that he not return to where she lived as the impact of this crime was devastating for her and her family. She wanted to ask him, face-to-face, why he had raped her, and to show him that she had moved on with her life. In keeping with good practice and with consent, contact was made with services providing support to the victim, who expressed the view that this process would be of benefit.

As part of the preparatory work, the Probation Officer met with nominated members of the victim's extended family and they expressed their concerns for her and indicated their willingness to support her through the process. After further consultation with the Victim Services Coordinator, and based on the victim's request, it was agreed to proceed to the next stage of preparation for victim-offender mediation.

Several meetings took place with the victim and, separately, the offender to prepare them for the facilitated conversation. The Probation Officer worked jointly with another Probation Officer in facilitating those meetings, on some occasions meeting one of the parties together, on other occasions meeting a party one-to-one. They held discussion with prison staff regarding the logistics of the meeting. All planning was undertaken in line with agreed arrangements that exist between the Irish Prison Service and the Probation Service for the management of restorative justice

requests. The people to be involved on the day of the meeting were the lead and co-facilitators, the victim, a victim support person, the offender and the Probation Officer who was based in the prison.

The date was set and one facilitator met with the victim and her support person to travel to the prison. The facilitator sought to support the victim through her anticipated feeling of distress as she neared the destination. The co-facilitator was waiting at the prison to ensure that there were no barriers to access and the smooth running of the meeting.

The victim wished to enter the room first and did so, followed by the offender, who took a short time to compose himself. The process was then reiterated and agreed to and, as per the victim's request, the offender spoke first. The offender spoke respectfully, accepting full responsibility for the rape and sexual assault. He offered his explanation as to why the abuse had occurred. At this point, the victim asked for a short break, and this was facilitated.

The meeting resumed, and the victim asked her prepared questions. She began by asking why he abused her, to which he gave his prepared answer. As the conversation developed, she explained the severe impact the attacks had on her and how he had blamed her throughout the Court case. He acknowledged that he had blamed her and expressed regret for his actions and the harm he had caused. The victim then discussed her personal safety concerns, and he assured her that he would not return to the area. As the meeting ended, the victim said that she would never forgive him. He accepted this statement, apologised and asked her to forget about him and live her life.

The victim initially required time to process the meeting. She said that if she had not engaged in restorative justice, she would still be traumatised and worried about meeting him in public. She said that she felt that 'she had a voice' throughout the process which she did not have during the trial. Prison staff supported the offender, and he expressed his hope that the victim would be able to recover and move forward with her life having listened to his explanations and apology – in the room, it seemed that healing had begun as the harm caused was acknowledged and closure commenced.

In relation to cases involving serious crime, such as this case, specific training is required to ensure that facilitators have sufficient knowledge of the criminal justice system and sexual offending, and understand the impact and trauma caused by sexual abuse. It is essential that preparation is sufficiently long and flexible to meet the needs of both victims and offenders. Facilitators must have the ability to manage and respond sensitively to emotions and distressing content. The awareness of cues agreed codes for breaks and supportive follow-up with both individuals is also a crucial element of the process and essential to the healing journey.

This case clearly illustrated how assessment, preparation, analysis, support, critical reflection and debriefing are key components to facilitate a meeting. Ongoing training and development in this area is required, along with shared learning with others.

Case study 7

Type of restorative justice practice: VOM

Country: Any

Context: Judicial

Case: Burglary

A 20-year-old man broke into the apartment of a couple (the wife is a school professor and the husband a cafe owner) in the middle of the night. He was searching for money due to the difficult economic situation of himself and of his father (his mother died when he was 2 years old). The couple heard the noise, and the husband (40 years old) went to the living-room to see what was happening. He was seriously injured by a furniture pushed by the offender as he was trying to escape. The wife (38 years old) was not present at this "accident" because she stayed in the bedroom. When the offender escaped from the house, she went to the living room, and when she found her husband unconscious on the floor she started screaming. A 30-year-old neighbour of the couple heard her screaming and helped her to call the ambulance.

The offender was arrested a few days later. In fact, he was recognized by a 45-year-old neighbour, housewife and mother of 3 children. The offender was a first-time offender, and he did not deny the facts when arrested by the police. The offender was informed by the prosecutor about the possibility of meeting his victims in the frame of the restorative justice. He was interested about a restorative justice encounter because of the prosecutor mentioning that, in case of a successful restorative justice process and achievement of a restorative agreement, the case would be closed without being brought to court.

The victims were both informed by the prosecutor about the restorative justice services and, despite reluctance from the husband, they agreed to see the facilitator and to learn more about what restorative justice could offer in their case.

During their first meeting, the facilitator explained to the offender the principles of the restorative justice process and the purpose of restorative justice. The offender mentioned that he wanted to apologize to the victims. During the victims' meeting with the facilitator, the husband hesitated about this encounter, while the wife mentioned she had already heard about the possibility of restorative justice from a friend, and she was curious to know more. The husband was very reluctant and would have preferred that the offender faced a prison sentence. He was however convinced to try this opportunity because the prosecutor said that restorative justice might be faster than the traditional criminal procedure. After having received more information by the facilitator, they agreed to participate in a restorative justice encounter with the offender.

The facilitator contacted the offender again and during their talk (s)he also informed him that his father can be present during the meeting if he wished to, but first the victims had to agree on this.

The victims agreed to the participation of the father, and it is also agreed that the 2 neighbours involved in the case would participate. So, the stakeholders participating in this restorative justice conference were the young offender with his father, the couple (victims), the 45 years old neighbour who saw the offender escaping the house of the couple and recognized him at the police, and the 30 years old neighbour who helped the shocked woman to call the ambulance.

The restorative justice encounter: The facilitator launched the discussion by reminding everyone about the general rules of the process that they already agreed upon and then the procedure began. The facilitator started with a question to the offender about the basic facts of the case and then mentioned that the referral was done by the prosecutor.

Then (s)he asked the offender and the victims what they expected of this encounter and the discussion went on to what led the offender to commit the crime, what happened during the break-in (how the husband was injured, the immediate aftermath of the act, etc...), the harmful consequences of the acts to each of the stakeholders [for the victims: injuries (the husband was undergoing physiotherapy and was unable to return to his normal work activities), fears (due to their home invasion), a miscarriage (due to the shock of her husband's injuries), economic difficulties (due to the husband's injury); for the offender: fear for a prison sentence, relationship break, stigma as an offender, economic difficulties due to crisis and inability to find work because he never finished school, etc)].

The father of the offender and the 2 neighbours also shared their perspectives, both on the events and on the other issues (such as the fear of crime in the neighbourhood). At the end of the restorative justice conference, the facilitator discussed with the parties what kind of restorative agreement they would find satisfactory. The offender wanted to "make it up" to his victims; his father thought that he should pay them or offer to work for them, and the victims agreed that prison might not be the best idea for the offender. The husband proposed that the offender should work for two years without money at his café because after the lockdown he needed help to make it work again. The wife thought that this is too much, and she proposed that the offender should work for free at her husband's café for one year under the condition that he would finish his education and obtain his diploma.

The restorative agreement was filed to be validated by a magistrate, who would check the legality of the conditions, the terms of execution of the agreement, etc. The facilitator would be responsible for the following up and the compliance to this agreement in collaboration with the magistrate.

Case study 8

Type of restorative justice practice: VOM

Country: Greece

Context: Judicial

Case: Domestic violence

A young woman, living in a village, was physically abused and humiliated by her husband. She filed for a divorce, but he did not desist his abuse. The woman took their child and went to her parents' house, while also asking for a restriction order against him. The case was referred to social services, the husband had the certificate he went to the necessary number of sessions, but there was no follow up to his stance. Meanwhile, he went to her parents' home, where the wife was staying, and threatened them. Despite reporting the incidents to the local police station, it was dismissed as "family matters" and no action was taken against him. Before the restriction order was discussed in court, the husband went again to his wife's family home, found her there and stabbed her along with her brother. They were fatally injured. Her parents and child were not at home at the time of the act. The man is facing a possible life sentence. It is reported that the whole community was aware of the abuse taking place and of the offender's attitude.

Matter for reflection: during her filing for restriction order or for divorce, the case could have been referred to a social worker/psychologist for mediation between the two stakeholders, but it was not. Discussion of a possible different outcome in case of restorative justice referral to a specialized agency/facilitator with the participation of the stakeholders, family and the community.

Inspired by a recent case in Greece (AUTH)

Case study 9

Type of restorative justice practice: Identifying stakeholders of restorative justice and their interests towards restorative tools

Country: Any

Context: Different procedural contexts

Case: 3 brief cases regarding the identification of the stakeholders and their interests and needs



- ▶ Around midnight, in the city of Florence (Italy), two young people (15 and 16 years old, respectively) decided to commit a theft against a citizen. They were looking for a woman who could be easily stolen or a person with disabilities as the possibility to commit the crime without being caught is easier. They saw a woman walking in the street, Antonella (35 years–old) with reduced mobility (she had to walk with crutches as she broke her leg by falling by her home stairs), unaccompanied, and with no possible witnesses near her. The two boys decided eventually to commit their planned crime against Antonella. Moreover, she had no chance of calling for help or being assisted and she spent two hours on the ground until a passer-by assisted her.
The victim received support by a victims' assistance office where she received psychological support and information about traditional criminal procedure and restorative justice. In this case, the perpetrators committed a robbery without violence in which they stole 600 euros, a mobile and a gold ring. Antonella decided to report the events to the Police after speaking with a grandson who was really worried about what happened. After several weeks since the report, the authorities managed to arrest the two robbery suspects. Police was able to identify the perpetrators through a video camera of a bank located in the same street where the robbery took place. Once the case reached to the public prosecutor, she considered that it was feasible to refer the case to a restorative justice process. Both victim and aggressors freely agreed to start this process.
- ▶ Nicolas, a 17-year-old teenager, had his motorbike stolen in the city of Buenos Aires. Two weeks later, the police, due to a routine control in the streets of the Barracas neighbourhood, arrested a 15-year-old boy, Richard, who was driving Nicholas' motorbike.

On the one hand, the victim, Nicolas, did not want neither the motorbike nor money. In fact, the victim had only one interest in relation to the case: to know who had stolen his motorbike and what had happened. Nicolas' parents continuously supported their son in his quest to get information about what happened, although they did not want to go to criminal proceeding that could be detrimental to the child offender. In order to avoid this procedure, Nicolas' parents gathered information from a restorative justice centre, where they were informed about all the implications regarding this procedure. They decided that it could be the best option to obtain information as well as to talk with the offender about what happened.

On the other hand, the teenage offender, Richard, felt labelled like a thief in his neighbourhood as everyone knew what he did and no one had ever expected this behaviour as everyone would know him as a good and respectful person towards everyone. In the restorative process, Richard informed Nicolas that he had stolen his motorcycle because some friends encouraged him and, after the robbery, he sold some original parts of the motorcycle to get some money. The victim expressed that he did not want any money, but that the offender would participate in a bike repair workshop for disadvantaged children who cannot afford a bike.

- ▶ Diana was 10 years–old when she was sexually abused by her cousin, Rodrigo, who was 14 years–old at the time of the abuse. For 2 weeks every summer, the cousins were left in the care of the grandmother while the parents worked. They normally lived in different parts of the country. Therefore, it was the only time the cousins would see each other. The children were left to play in the garden unsupervised for the whole day, only needing to come inside for lunch and dinner. The abuse started with Rodrigo encouraging Diana to play a game where he was the daddy and she was the mummy, and they pretended to be a couple with their own children. As part of the game, he suggested that they should kiss. Diana did not want, but he said she had to. Over the course of the 2 weeks holidays, the ‘game’ escalated. By the start of the second week, Rodrigo was regularly penetrating Diana with his fingers and forcing her to masturbate him. Diana never told anyone what had happened. Later that year, Rodrigo’s parents moved away. When Diana was planning her wedding 30 years later (currently, she is 40 years–old), there was an expectation that Rodrigo and his family would be invited to the wedding. Diana did not want this situation to occur and began reflecting on what had happened to her, realising that she still needed some resolution. She knew that there would be no evidence for the police to work on and, also, the crime could have lapsed. Furthermore, she did not want to be part of a criminal traditional procedure. She thus decided that a restorative justice process may be a good option.
- ▶ Cecilia, 14, was learning how to drive a car in her home neighbourhood of Bosa located in the city of Bogota (Colombia). Her father was sitting next to her in order to teach her how to do it. Along the way, Cecilia ran over and killed a woman, Martina, who was passing through a crossing and was 40 years old.
- ▶ Martina was a well-known person in the Bosa neighbourhood due to her work as a volunteer helping the most disadvantaged people. Everybody loved her for the outstanding social and humanitarian work she did for her neighbours. Because of this situation, many people in Bosa, as well as Martina's own family members, wanted to lynch both Cecilia and her family for the accident. For several weeks after the accident, there was a high level of social tension in the neighbourhood between the relatives of the victim and the offender.

The authorities decided to initiate a restorative justice procedure between the victim and her family and Martina’s family. However, they did not know whether to initiate a criminal mediation or if there were other restorative services that could have been applied.

Proposed questions to guide the discussion

- ▶ Could these cases be referred to restorative justice? Why / Why not?
- ▶ What are the main stakeholders involved in each of the cases? What are their priorities towards restorative justice?
- ▶ What other actors could be involved in the cases further than the ones mentioned in the cases? Why these actors could be involved in this type of restorative processes?
- ▶ What do you think are the possible interests and needs of the main parties involved?
- ▶ And the community's one?

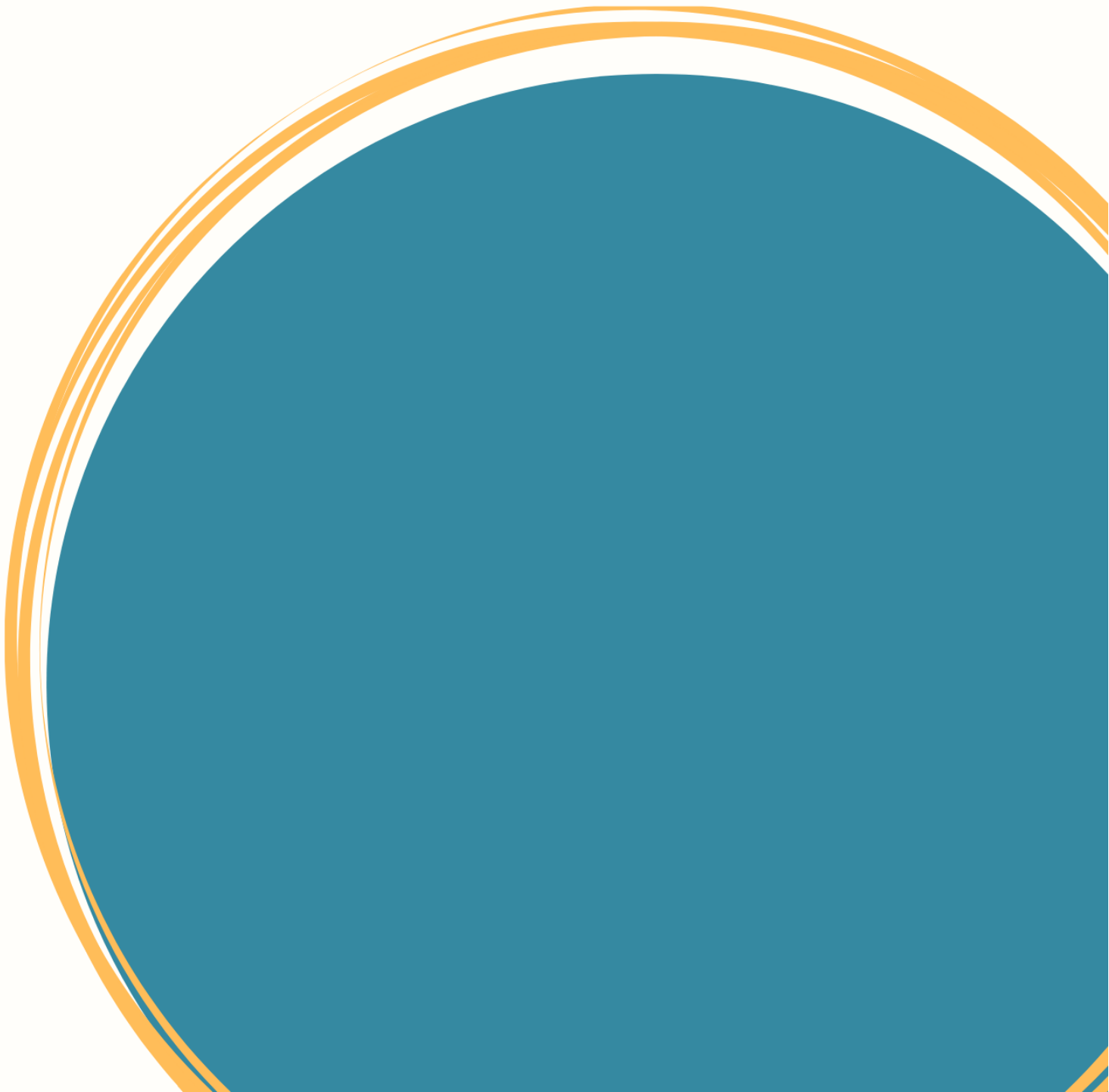


RE-JUSTICE

Judicial Training in
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Annex 15

Guidelines for role play



Example of possible scenario for role play

This role play could be adapted to different countries and contexts as it is proposed from a generic point of view.

OVERALL DESCRIPTION OF THE ROLE PLAY

An initial introduction of the role-play should be presented by the facilitators. Trainees are divided into working groups depending on the number of participants (ideal: 5–6 students per each group). Then, the case study is presented to participants. The idea is to give the most important contents of the role-play as well as to explain participants the importance of having an active participation during the whole activity (as an actor in the role play or by answering the different questions that are posed throughout the role play). It is important also to take into consideration that after each part of the role play a discussion concerning the questions is fundamental as participants can understand the whole role play as well as the restorative justice process.

AGENDA / PLANIFICATION OF THE SECTIONS ABOUT THE ROLE PLAY (3 HOURS AND 20 MINS)

10 mins: Introduction about the role-play and what is expected from the participants.
60 mins: Approach
45 mins: Knot/Crux
15 mins: Break
30 mins: Denouement
30 mins: Epilogue
10 mins: Final conclusions and outcomes

ROLE-PLAY CASE STUDY

Carlos is married and has a four-year-old daughter. He has been working all his life in an insurance company that, due to the COVID-19 pandemic and the consequent economic crisis, has started to lay off its employees. He is forty-five years old and feels a lot of pressure because he knows that, at his age, it would be difficult to find a new job. This pressure has led him to abuse alcohol. His wife has told him that he cannot go on like this because when he drinks too much – something he has been

doing more and more frequently – he gets aggressive and upset very easily, which makes it very difficult to live together. After six months, she files for divorce. By mutual agreement, they decide that the mother will have custody of the child, with an extensive visitation regime for Carlos, who has to leave the home and go to live in a boarding house.

The situation causes him to drink even more, and his company finally fired him. His ex-wife, aware of the worsening of his pain and difficulties, requests the suspension of the visitation regime because she is afraid that something bad might happen to the child when she is with her father. The court agrees to the temporary suspension of the visitation regime.

Two days later, Carlos goes to the gas station where he usually refuels and, armed with a machete with a fifteen-centimetre-long blade, threatens to kill the employee, María, and tell her to give him all the money in the cash register. Since the employees shift change has just taken place, the cash register is empty. There are only two hundred euros in coins and bills for the change. After collecting the money, Carlos leaves the store.

Half an hour later, the police arrests him because the establishment's cameras have recorded everything and Carlos is a neighbor of the area, a regular and well known customer. The police, who arrested him, finds him totally confused and drunk.

When questioned about what had happened, he explains that he could not bear to not seeing his daughter, that he believed that all his problems derived from his bad economic situation and that, to solve it, he could not think of anything else than committing a robbery. He also explains that, as he did not have the courage to carry it out, he took several pills prescribed by his psychiatrist and drank a lot of alcohol, and that he went to the gas station because it was the only place open at that time of the night. He asks the police if he has hurt anyone and tells the police to please apologise to the employees and owner of the gas station for what happened. Throughout the police interrogation he has been crying.

When the gas station employee and the owner of the gas station, Rogelio, are interviewed and offered to appear in the criminal proceedings, both say that they could not believe what had happened, as Carlos had always been a good customer and was considered a polite and kind person. They know he is going through a rough patch and are very worried about what might happen to him. The employee also admits that she was very frightened to see him so aggressive and carrying the machete.



EXPLANATION CONCERNING THE DEVELOPMENT OF THE ROLE PLAY

Approach (1 hour)

Imagine that in your first assignment as judge or public prosecutor you receive a police report with the case explained above.

Diligently, you read the police report – robbery with intimidation and use of a dangerous weapon – and you see the sentence that may be handed down. The offender has no previous criminal record, but he will surely go to prison. Carlos makes you feel sorry for him. It is evident that he did not have much luck in the last few years. You start to think about this case in the solitude of your office.

Suddenly you remember that during a training you learnt about restorative justice and criminal mediation, and somewhere in your memory you remember two criteria for referral to mediation: crimes with a specific victim and recognition of the facts by the perpetrator.

Then, you think to yourself, "That's it, these requirements apply in the current situation".

From there, you decide to refer the case to restorative justice.

Please, answer the following questions:

- ▶ What resolution should be dictated to make this referral (type of resolution, reasoning, effects on the process...)?
- ▶ On what rule are you going to base this resolution?
- ▶ How are you going to explain it to the parties?
- ▶ If one of the parties tells you that he/she does not want to participate in a Restorative Justice procedure, how can you force her/him? You are convinced that this case completely fit in Restorative Justice characteristics.
- ▶ Does your court have a mediation service?
- ▶ What can you do if there is no mediation service?
- ▶ There is someone you can ask for help?

Task: Write the referral resolution and answer the questions succinctly.

Hint: Handbook on Restorative Justice Programmes (Second edition) and Directive 2012/29/EU of the European Parliament and the Council, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crimes.

Knot / Crux (45 mins)

Both victims and Carlos agreed to go to a Restorative justice procedure throughout a criminal mediation. Your next challenges as judge / public prosecutor are the following ones:

- ▶ How to contact the mediation service?
- ▶ How to send the casefile to the mediation service?
- ▶ How long can last a criminal mediation procedure?
- ▶ How can be found out what happens when the parties are in mediation?

- ▶ Can you ask the mediator how is going the criminal mediation?
- ▶ If the process ends without an agreement, can you summon the mediator to testify and tell you everything that has been discussed? This sounds like an excellent idea for the traditional criminal procedure.

Task: Answer succinctly to the questions.

Hint: Handbook on Restorative Justice Programmes (Second edition) and Directive 2012/29/EU of the European Parliament and the Council, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crimes.

Break (15 mins)

Denouement (30 mins)

Finally, the facilitator/mediator tells you that the parties have reached an agreement. The agreement has been submitted to the public prosecutor and the defence attorney as they can work on it.

Questions:

- ▶ What type of agreement do you think can be reached in this case?
- ▶ Procedurally, how do you think it can be channelled? Explain the steps that should be taken.
- ▶ What do you think that are the main interests and needs of the parties involved in the Restorative Justice process? What about the perspective of victims about the agreement?
- ▶ Who do you think is responsible for monitoring the fulfilment of the agreement?
- ▶ What type of judicial resolution would be appropriate to approve the agreement?

Task: Indicate possible ways to implement the agreement and succinctly answer the questions.

Hint: Handbook on Restorative Justice Programmes (Second edition) and Directive 2012/29/EU of the European Parliament and the Council, of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crimes.

Epilogue (30 mins)

This case-study was a real criminal mediation case. At the end, an agreement between the parties was reached.:

"But you, as we have already agreed before, are a very good person –look at all you have done to help poor Carlos, who, by the way, thanked you a hundred times in the appearance you made– have something in your mind. It seems to you that, since we have already started to help, to really help, you could do something else. Mediation is fine, but wouldn't there be other tools that would really

allow you to see the problem in its full dimension?

You are aware that an important piece of what has happened has to do with Carlos' family and work problems and, of course, alcohol abuse. One of the commitments in the mediation agreement was that he would undergo alcohol withdrawal treatment".

For the victims, this commitment was very important because they considered that this problem was the origin of everything and they wanted Carlos to really recover so that such a thing would not happen again. Could his ex-wife be present to talk about the needs of their common daughter and her welfare? Could there be a family member of Carlos or a supportive friend? Could his therapist be present? Could a judge or the public prosecutor be present?

And, again, you remember that in RE-JUSTICE Training we were told about other restorative tools. So, please, answer the following questions:

- ▶ Could you tell us which other Restorative Justice practices are the most used in practice?
- ▶ Which would be the ones that could be best adapted to this case? And to parties needs and interests?
- ▶ Which people should intervene?
- ▶ What would you like the end of this adventure to be?

Task: Answer the questions succinctly.

Hint: UN Handbook on Restorative Justice

Final conclusions and outcomes

Do you remember an event in your life when someone has hurt you? When you remember it, does it still hurt? Inside yourself, what do you feel? What would it take for the pain not to exist when you remember it? What worries you the most? Why cannot you overcome it?

Think carefully now about an event in your life when you know you hurt someone. When you remember it, do you feel bad? Would you like to be able to remedy that situation? How could you do it?

We are human beings. The quality of victim or offender is not always chosen. But if we can choose to do something, we can know, use or create tools that allow us or help us to get out of this situation.

- ▶ If you were involved in a legal problem, as a victim, do you think that the criminal procedure would give you the answers you need?
- ▶ If you were involved as an offender, do you think that the traditional criminal system would allow you to explain and express what you need?

Task: Just think about these questions.

It is in our hands to be able to make, from our jobs as judges / public prosecutors, that those who pass through our courts leave these places being better people, repaired, cared for and relieved. In restorative justice processes, the parties win, society wins, justice wins, but have no doubt...those who win the most are us.

We hope you have enjoyed this activity.



RE-JUSTICE

Judicial Training in
Restorative Justice

Annex 16

Working paper for general discussion

MAPPING OF RELEVANT ISSUES

(updated: November 2020)

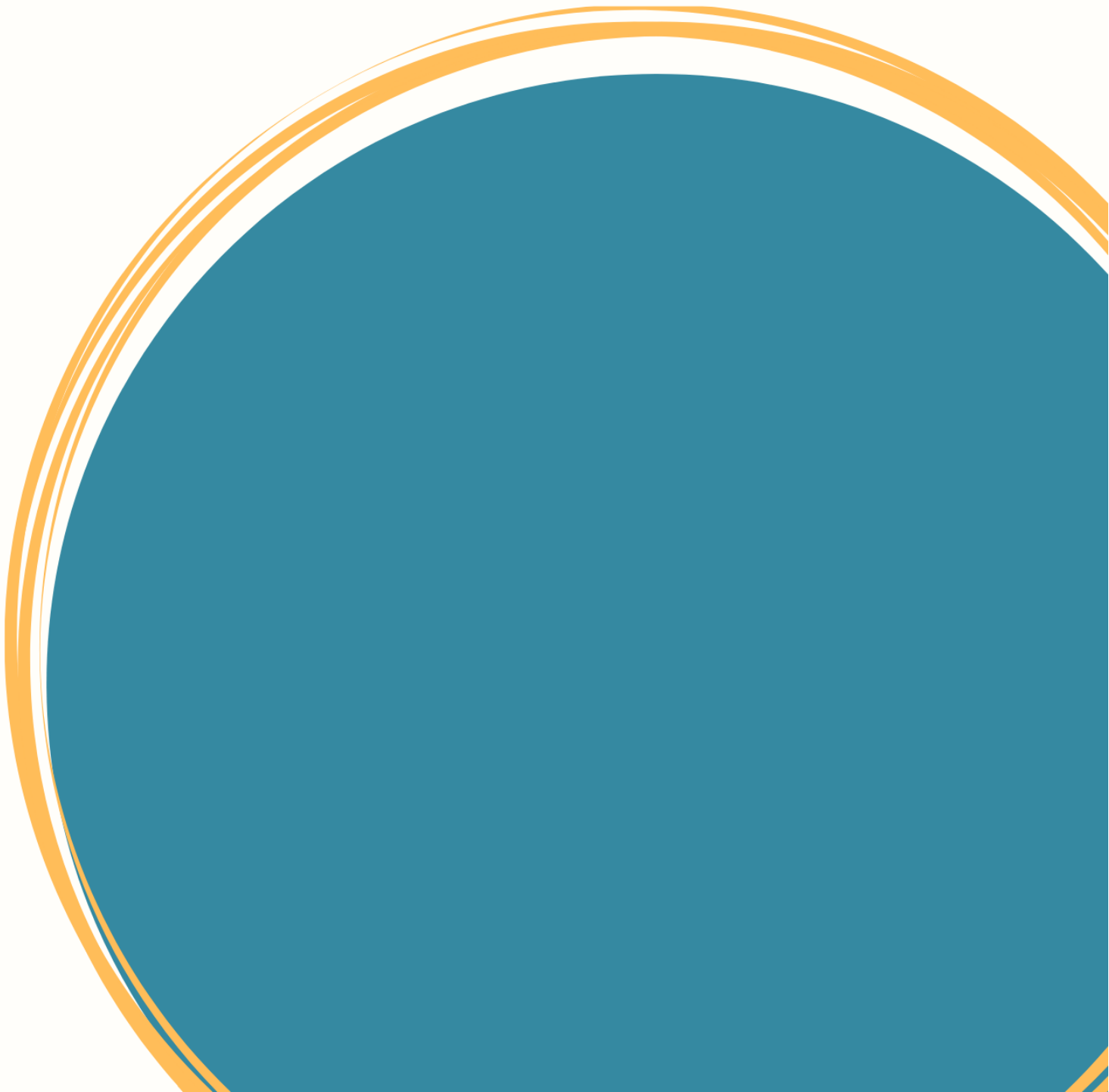


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Introduction

Nature and purpose of the document. Rationale

The *Mapping of relevant issues* is a confidential **working paper** only for internal circulation and discussion among the members of the Re-Justice consortium.

This discussion has been initiated during Work Package 2 (Training Needs Assessment on Restorative Justice; WP2) and in view of Work Package 3 (Design of Training Course on Restorative Justice; WP3) by one of the partners (UCSC) out of the need of a common understanding of (the use of) restorative justice in criminal matters according to UN, CE and EU standards and regulations. The proponents intended to provide the research group with a tentative list of critical issues prepared to serve as a basis for a common dialogue towards a shared awareness of significant topics, and possibly shared proposals or solutions to be presented during the training activities and in the Manual 'Judiciary Training on RJ' (WP3, D.3.5).

This document is the **result** of a **preliminary general discussion** among the project's university partners, EFRJ, Moderator with the fundamental contribution of single members of some of the Schools for the Judiciary involved in the project. This discussion took place during e-meetings and thanks to online feedbacks.

The working paper consists of a mere (though rich) inventory of **issues, questions, problems** raised by the cross-fertilisation of restorative justice and criminal justice. The document, at this stage, does not provide answers nor solutions: answers and solutions *may* result from further debate within the entire consortium. This, of course, if coming to uniform (not identical) conclusions and possibly practical proposals will be commonly perceived as a shared need in view of the delivery of training. This document is, therefore, an **unforeseen output of the Re-Justice project**, whose topics and purposes fruitfully **challenge** the partners own understanding of restorative justice in the first place, before conveying it to others—and particularly to the project beneficiaries during the judicial training activities.

Consistent with the **Competency Profile** report (WP2, D. 2.1.), the pillars of the Re-Justice training course on restorative justice are threefold: knowledge, skills and attitudes, resulting in specific competence(s) prosecutors and judges should acquire in the field. Therefore, the design of the training is not only a matter of 'structuring' the course, but also a matter of filling it with proper contents. The purpose of this document is to provide a flexible, but hopefully robust, basis to possibly build a **shared vision of the contents the consortium aims at conveying to trainees** throughout the project's training activities. The quest for **harmonisation** is particularly relevant in the frame of EU law, and it becomes even more necessary when dealing with a relatively new topic and a poorly regulated tool, such as restorative justice in criminal matters.

The adoption of recommendations drafting basic principles and a set of minima standards

internationally is the sign of the need to both *encourage* restorative justice and *orient*, position and adjust its use in the proper and advisable forms. The United Nations, the Council of Europe, and the European Union have all addressed the need to set common, uniform standards in the use of restorative justice programmes in criminal matters, while acknowledging in several ways the persistent lack of awareness, accessibility, availability about this tool. On the other hand, *comprehensive* national regulations concerning restorative justice in criminal matters are currently lacking in the majority of European Countries, not to mention those Countries (like Italy, for instance) where no regulation at all is available yet. This means that the use of restorative justice is still largely discretionary: discretion consisting here in both practical (in)accessibility and (un)availability of restorative justice and in bending restorative justice to the purposes the single State addresses with its criminal policy, sometimes even regardless of the particular crime policy restorative justice expressly supports. This is why the UN Basic Principles (together with the newly released UNODC Handbook), the CE 2018 Recommendation, and the Victims Directive represent a fundamental 'compass' to guide the adoption and implementation of restorative justice in criminal matters.

This said, matching the restorative principles and standards set by the UN, CE, UE with the national criminal justice systems and, partially, with the EU legislation (in the field of criminal justice and victims' rights) is not always an easy task, nor it is easy to practically draft the ways restorative justice can '*complement* traditional criminal proceedings or be an *alternative* to them' (cf. CE CM/Rec(2018)8, emphasis added). The diversity of judicial systems and criminal justice systems makes—it seems—all the more necessary to strengthen a uniform *core* concept of restorative justice, in terms of *main* values, *basic* principles and *minima* standards, following the valuable international and European documents we dispose of.

This is why an open discussion among all the project partners is deemed necessary to (at least) **identify the most relevant issues and thorny problems** the judiciary (here including prosecutors and judges) faces (or will face) when encouraging, promoting, resorting to, using, or evaluating restorative programmes in criminal matters consistent with international basic principles and standards. These issues and problems will probably come up from trainees during the training activities in terms of questions, cases, personal/professional experiences, etc.

Furthermore, while moving towards WP3, and even more during Work Package 4 (Delivery of Training Course on Restorative Justice), to take these topics into account beforehand might be a useful exercise in preparation to the training—and in preparation to its uniform, **harmonised** (not identical) delivery in the project Countries. This is the reason why **each item of the map is combined with references** to one or more elements of the **competency framework** presented in the **Competency Profile report (knowledge, skills, attitudes)**. The merger of elements resulting from the mapping exercise and the Competency Profile, and data resulting from **focus groups** (WP2) may provide a good assessment of the **contents of the training and the manual** in terms of practical guidelines for prosecutors and judges. Along these lines, to make the concept of restorative justice more concrete for prosecutors and judges, theoretical issues mapped during the

exercise could be turned into **practice**, by building a few **model cases**, each attracting one or more mapped topics. These topics could in turn be discussed by trainers and trainees during the training in the context of the case.

Finally, given the great expertise and high qualification of the project partners in the all the concerned fields (judicial/prosecutorial functions, judicial training, restorative justice) a constructive and proactive discussion may potentially result in the drafting of **recommendations for policymakers and legislators at the UN, EU and national levels** (this activity, in case, might be part of Work Package 5, Sustainability and Dissemination of Judiciary Training Course on Restorative Justice).for prosecutors and judges, theoretical issues mapped during the exercise could be turned into **practice**, by building a few **model cases**, each attracting one or more mapped topics. These topics could in turn be discussed by trainers and trainees during the training in the context of the case.

Finally, given the great expertise and high qualification of the project partners in the all the concerned fields (judicial/prosecutorial functions, judicial training, restorative justice) a constructive and proactive discussion may potentially result in the drafting of **recommendations for policymakers and legislators at the UN, EU and national levels** (this activity, in case, might be part of Work Package 5, Sustainability and Dissemination of Judiciary Training Course on Restorative Justice).

The mapping 'exercise'

As said, the document is nothing but a working paper to trigger a discussion. It is more like an agenda, rather than a text.

The drafters have gathered the basic principles and core standards from the UN, CE, EU legal tools, and put them in relation to criminal justice, having particularly the role of prosecutors and judges in mind. Furthermore, reflecting on the scope and contents of the said legal tools, it is interesting to analyse the possible interaction between, on one hand, the legally binding EU Victims Directive and its national transpositions – which provide a general frame for the development of restorative justice in the European Union – and, on the other, the soft law principles and standards set by both the United Nations and the Council of Europe – which provide basic recommendations and 'orientations' on several issues concerning restorative justice and its relation to the criminal justice system. The result of this interaction, together with the national legal framework (constitutional principles and relevant criminal law and procedure), shape the field where the criminal justice and restorative justice can meet and complement each other, moving the way responses to criminal wrongdoing are conceived in new directions.

This work has insofar resulted in a conceptual re-organisation of the said principles and standards of restorative justice under a few transversal items. These items have been matched basically with fundamental legal safeguards and principles related to the role of the judiciary (here including also prosecutors), the due process of law, etc. This resulted in turn in a sort of open survey of relevant issues/topics for discussion that may be *potentially* critical and/or problematic. There might be Countries where some (or all) the topics mentioned in the paper do not pose any problem—neither in theory nor in practice—, and others where they may represent severe obstacles in making restorative justice properly available, accessible and delivered. If this were the case, it is all the more worth exchanging good practices and solutions (even legal or judicial solutions) to ensure the harmonisation of restorative justice and its accessibility and availability throughout the EU.

For each item, the drafters have:

{ included a reference to the Competency Profile in terms of knowledge, skills, attitudes }

- quoted the legal source providing the international/European standard(s)
- provided an open list of topics for common discussion within the partnership organisation; it is a list of questions—open to new, and potentially constant, feeds—: answers to these questions directly concern the kind of recommendations, advice, suggestions the partners would like to convey to trainees and beneficiaries of the training manual.

The use of colours and bullet points helps the reader identify quotes and questions.

In brief, the text is divided into three parts —from theory and ideals (§1) to problems and practice

(§2), to further developments and future challenges (§3):

CRIME POLICY AND RESTORATIVE JUSTICE

Tentative statements that in principle should be agreed upon within the partnership organisation, since they stem from UN and CE recommendations and refer to these common standards. Nonetheless, it might be worth checking how common and shared this understanding is).

CRITICAL TOPICS DRAWN FROM INTERNATIONAL/EUROPEAN PRINCIPLES AND STANDARDS

A collection of critical issues and related questions for the partners to answer according to a common (not necessarily identical) understanding of restorative justice, consistent with the contents the project wants to convey for the purposes of the training delivery and the drafting of the manual (WP3, WP4). The inventory of critical issues and related questions is practice-oriented: it addressed largely unresolved topics that are relevant to the proper implementation and accessibility of restorative justice programmes in criminal matters according to international / European principles, standards and regulation.

CHALLENGES AND OTHER RELEVANT THEMES OF DISCUSSION

A collection of inputs from partners concerning other very relevant challenges and topics for discussion with a broader scope.

1. Crime policy and restorative justice

Do we agree about the following statements drawn international and European principles and standards?

{ Reference to the Competency Profile: Knowledge }

- RJ is not an ally of and does not support
 - retributive justice
 - punitive justice (deterrence and incapacitation)
 - penal populism, enemy criminal law
 - over-criminalisation [CE Rec(2018)8]
 - overuse of punitive criminal sanctions [CE Rec(2018)8]

- RJ promotes
 - the *ultima ratio* principle in criminal law
 - the rethinking of criminal law and criminal justice in restorative directions, the progressive development of a restorative criminal law, restorative criminal justice
 - responsive regulation and responsive models of justice
 - procedural fairness and respect towards all those involved
 - participatory, voluntary, collaborative, inclusive responses to wrongdoing
 - constructive, forward-looking responses to wrongdoing
 - compliance (comprehension of and consent to rules of conduct, behaving accordingly)
 - responsibility-taking; active responsibility vs. passive responsibility
 - offender desistance
 - victim recovery and redress; victim empowerment
 - citizens' and stakeholders' participation and empowerment, and therefore a stronger democratic sensitivity in criminal justice
 - the understanding of the underlying causes of crime [UN Basic Principles: preamble]
 - community well-being [UN Basic Principles: preamble]

- RJ advocates
 - criminal justice reform (underpinning of broader reforms to criminal justice: [CE Rec(2018)8: Rule 14])
 - respect of the dignity and equality of each person
 - non-discriminatory practice
 - a greater sense of respect and reciprocal obligations between citizens
 - victims' and offenders' reintegration
 - community involvement, citizens' and stakeholders' participation
 - a needs-based approach to all those involved in the matters arising from the crime
 - building of understanding, and promotion of social harmony through the healing of victims, offenders and communities [UN Basic Principles: preamble]
 - social relationships and cohesion / social inclusion and social integration



- restoring safety and security by bringing people together to undo injustices and repair harms through dialogue and agreement [EFRJ, Practice Guide on RJ Values and Standards]
- *de lege ferenda* the formal and legal recognition of restorative justice as a right

- RJ
 - advances criminal justice to support its reform towards a responsive–restorative direction
 - is a service (people should be entitled to access and request RJ)
 - is freely, equally and easily accessible to all those interested
 - is not a privatisation of criminal justice, nor a privatisation of the management of conflicts of criminal relevance
 - is not a mere diversion mechanism, nor aims at diversion per se, although it can have impacts on the reduction of proceedings, charges, and convictions, etc.
 - is not equivalent to victim support and assistance, although it can contribute to support victims
 - is not equivalent to community service and reparation schemes, although voluntary community service and voluntary reparation may be incorporated in restorative outcomes and agreements resulting from restorative processes
 - is not equivalent to diversion, although it can have a diversion effect or be a component of a diversion measure
 - is not equivalent to alternatives to detention/non–custodial measures, although it can be a component of a non–custodial response and programme or scheme
 - is not equivalent to offender rehabilitation, although it can contribute to offender rehabilitation
 - is not equivalent to reconciliation or forgiveness, nor aims at them, although RJ can incorporate both provide the conditions for them to flourish (e.g. reconciliation in transitional settings)



2. Critical topics drawn from international/ European principles and standards

2.1. RJ and criminal proceedings

2.1.1. PRESUMPTION OF INNOCENCE

{ Reference to the Competency Profile: **Knowledge** }

- *"(...) Participation in restorative justice should not be used as evidence of admission of guilt in subsequent legal proceedings"* [CE Rec(2018)8: Rule 30.2]
- *"Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings"* [UN Basic Principles: para. 8.2]

Topics for common discussion:

- Why is this principle so important in restorative justice?
- What recommendations are we going to provide the judiciary with?
- With regard to this principle, relevance of a clear distinction between criminal proceeding and restorative processes is deemed necessary.
- What might be the implications of the in dubio pro reo principle in restorative justice processes?
- What is the relationship, or interconnection, between this principle and the principle requiring the 'acknowledgement of' / 'agreement on' the basic facts of the case? (see below § 2.2.5.)

2.1.2. ACCUSATION AND CHARGES

{ Reference to the Competency Profile: **Knowledge** }

- *"Restorative processes should be used only where there is sufficient evidence to charge the offender"* [UN Basic Principles: para. 7]

Topics for common discussion:

- What recommendations are we going to provide the judiciary with?
- What fundamental rights and safeguards is this principle addressing?

- At what stage of proceeding information about restorative justice services should be provided by the judiciary? (see also below § 2.2.1. availability at all stages of the criminal proceeding).
- Would it be good to nuance this principle a little? The judiciary (especially prosecutors) might refer the case to help resolve conflicts that are not of criminal nature; of course in these cases the judiciary discharges the suspect/accused. Prosecutors may also refer cases where a criminal offence is not strictly identified but a need for a restorative process may emerge (e.g., neighbours' disputes). Which may be the possible impact, in terms of net-widening effect, of such nuances or exceptions to this relevant principle?
- Impact and consequences of mandatory/discretionary charging systems on restorative justice.
- What is the relationship between diversion and restorative justice? How does diversion impact (or affect) restorative justice?

2.1.3. TIME

{ Reference to the Competency Profile: Knowledge, Skills and Attitudes}

- *"Restorative justice may be used at any stage of the criminal justice process"* [CE Rec(2018)8: Rule 6; see also UN Basic Principles: para. 6]
- *"Facilitators must be afforded sufficient time and resources to undertake adequate levels of preparation, risk assessment and follow-up work with the parties"* [CE Rec(2018)8: Rule 29.1]
- *"The facilitator should take sufficient time to prepare the parties for their participation (...)"* [CE Rec(2018)8: Rule 47.2]
- *"Restorative justice should be carried out efficiently, but at a pace that is manageable for the parties. Sensitive, complex and serious cases, in particular, may require lengthy preparation and follow-up (...)"* [CE Rec(2018)8: Rule 48.1]
- *"A decision to refer a criminal case to restorative justice, where this is taken with a view to discontinuing legal proceedings in the event that an agreement is reached, should be accompanied by a reasonable time frame within which the judicial authorities should be informed of the state of the restorative justice process"* [CE Rec(2018)8: Rule 31]
- *"In order to make mediation accessible, its use should not be prevented by the risk of expiry of limitation terms. In order to rectify this problem, member states are encouraged to consider implementing provisions for the suspension of limitation terms"* [CEPEJ 2007 Guidelines: para. 35]

Topics for common discussion:

- Multifaceted experience of time: time and pace for those involved, time-stage and pace of the story, time-stage of the criminal proceeding: how to balance them? Which should prevail? At what costs?
- Accessibility and availability of RJ at all stages of the criminal justice process and time issues [CE Rec(2018)8: Rules 6, 18–19, 28; UN Basic Principles: para. 6].

- Question of the timing of the offer: when is best, when and how many times can it be repeated?

2.1.4. IMPACT OF RJ ON JUDICIAL DECISIONS

{ Reference to the Competency Profile: Knowledge and Skills }

- *"(...) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings"* [2012/29/EU Dir.: art. 12, d)]
- *"Restorative justice agencies should be given sufficient autonomy in relation to the criminal justice system. Balance should be preserved between the need for these agencies to have autonomy and the need to ensure that standards for practice are adhered to"* [CE Rec(2018)8: Rule20]
- *"Decisions by judicial authorities to discontinue criminal proceedings on the grounds that a restorative justice agreement has been reached and successfully completed, should have the same status as decisions on other grounds, which, according to the national law, have the effect of discontinuing criminal proceedings against the same persons, in respect of the same facts and in the same State"* [CE Rec(2018)8: Rule34]
- *"When a case is referred back to the judicial authorities without an agreement between the parties or after failure to implement such an agreement, the decision as to how to proceed should be taken without delay and in accordance with legal and procedural safeguards existing in national law"* [CE Rec(2018)8: Rule 35]
- *"Where restorative processes are not suitable or possible, the case should be referred to the criminal justice authorities and a decision should be taken as to how to proceed without delay. In such cases, criminal justice officials should endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and support the reintegration of the victim and the offender into the Community"* [UN Basic Principles: para. 11]
- *"The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts"* [UN Basic Principles: para. 15]
- *"Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings"* [UN Basic Principles: para. 16]
- *"Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings"* [UN Basic Principles: para. 17]

Topics for common discussion:

- The achievement of a restorative process and the possible restorative outcomes can have only *mitigating* effects (always *pro reo*) and shall never, in principle, be used to strengthen, harshen, increase the punitiveness of a measure or sanction
- Autonomy of RJ and relevance/impact of its outcome on the criminal proceeding: how to reconcile those issues? Which are the risks?
- What might be *the benefits* of the autonomous position of restorative justice for the criminal justice system? The autonomous position of restorative justice should not be considered as a threat or something embarrassing [See also CE Rec(2018)8: Rule 20]
- Impact and effect of RJ in criminal justice: on what grounds? Under which requirements? With what limits?

2.1.5. IMPACT OF RJ AT THE POST-CHARGE STAGES

{ Reference to the Competency Profile: Knowledge and Skills }

[CE Rec(2018)8: Rule 6; European Prison Rules CE Rec(2006)2, Rule 103.7; CE Rec 11(2008): Rule 23.2 (juveniles); European Rules on community sanctions and measures CE Rec(2017)3]

- *"In appropriate cases, and having due regard to the rights and needs of victims of crime, offenders should be enabled and encouraged to make reparation for their offences to the victims or to the community"* [CE Rec(2017)3, Rule 10].
- *"Regime activities (...) may include (...) i. programmes of restorative justice" [dealing with juveniles]* [CE Rec(2008)11: Rule 77]

Topics for common discussion:

- What recommendations will we provide the judiciary with?
- Which is the range of legal consequences of restorative processes on the execution of criminal sanctions in each national system?
- What about offender-initiated RJ in this phase?
- What about victim-initiated RJ in this phase (e.g. mediation for redress in Belgium)?
- How can the judiciary support these initiatives?
- What could the role of prison personnel be at this stage? What connections are there between the role of the judiciary and the role of prison staff / rehabilitation staff?
- Relevance of voluntariness
- Need to avoid that restorative justice is used as an intensification of – or an 'add-on' to – the original penalty or measure.

2.2. Operation of RJ in relation to criminal justice

2.2.1. ACCESS TO RJ AT ALL STAGES OF THE CRIMINAL JUSTICE PROCESS

{ Reference to the Competency Profile: Knowledge, Skills, and Attitudes }

[CE Rec(2018)8: Rules 6, 18–19, 25, 28; UN Basic Principles: para. 6]

- “Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral” [2012/29/EU Directive: art. 12]
- “(...) Member States are invited to consider encouraging the use of mediation during criminal proceedings, as well as during the execution phase, at least in cases of less serious or minor crimes [2001 FD, EU Commission, 2009 Implementation Report]

Topics for common discussion:

- Role of the judiciary in referrals (see also below § 2.3.) and its interconnection with the principle of availability and accessibility of restorative justice at all stages of the criminal justice system
- The ‘who’ of referrals: the police, the prosecutor, the judge? All of them depending on the case?
- The ‘how’ of referrals
- Which is the impact of diversion on restorative justice?
- While affirming in principle to refer as many cases as possible, and to formulate the offer to as many suspects/accused/offenders and victims as possible,
 - Would it be good to follow a case-by-case selection?
 - Would it be good to think of contraindications to referrals?
 - Would it be good to propose discussion/coordination between the judiciary and mediators over the wisdom of referral and the doability of RJ programme? Is it wise to refer t?
 - Would it be good to support local coordination and cooperation?
- Conditions for referrals? ‘Suitability’ of cases? Preclusions? Who decides on suitability: the judiciary or RJ service? What degree of discretion and flexibility on the part of the judiciary in referring cases to RJ? What if a victim wants to participate in a restorative process but the judicial professional feels the case is ‘unsuitable’ (cf. also below §§ 2.2.2. Voluntariness of RJ; 2.2.3. Victim rights and safeguards)? What if an offender wants to participate in a restorative process but the judicial professional feels the case is ‘unsuitable’? (cf. also below §§ 2.2.2. Voluntariness of RJ; 2.2.4 Suspect/accused/offender rights and safeguards; 2.2.10 RJ responses to serious crimes)
- How to reconcile the principle of easy, equal accessibility to RJ and the obligation to protect victims from repeat and secondary victimisation? (Cf. also below §§ 2.2.1. Access to RJ at all stages of the criminal process; 2.2.2. Voluntariness; 2.2.3. Victims’ rights and safeguards; 2.4. RJ responses to serious crimes and RJ programmes with vulnerable subjects; 2.2.10 RJ responses to serious crimes)
- EU recommendation to *facilitate* referrals and to *encourage* them at all stages of CJS

- Is the introduction of RJ services in criminal justice systems mandatory?
 - Not mandatory, according to Directive 2012/29/EU [cf. DG JUSTICE GUIDANCE DOCUMENT on 2012/29/EU Dir., art. 12, page 32: *"The Article does not oblige the Member States to introduce restorative justice services if they do not have such a mechanism in place in national law"*; CJEU rulings in cases C-205/09 Eredics and Joined Cases C-483/09 and C-1/10 Gueye/Sanchez interpreting Article 10 FD on mediation has confirmed that Member States are not obliged to introduce mediation/restorative justice for all offences]
- What are the margins to implement RJ when criminal proceedings cannot take place (because of time limitations or other legal reasons? (Cf. also below § 2.5 Restorative justice inside/outside the CJS)

2.2.2. VOLUNTARINESS OF RJ

{ Reference to the Competency Profile: Knowledge, Skills, and Attitudes }

- *"No person should be induced by unfair means to participate in restorative justice"* [CE Rec 8(2018): Rule26].
- *"Prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences"* [European Prison Rules: rule 103.7, cf. the commentary: *"Rule 103.7 acknowledges the increasing recognition that the techniques of restorative justice may be used with sentenced prisoners who wish directly or indirectly to make reparation for their offences. It is important that such participation is voluntary and does not amount to an indirect form of further punishment"*]
- *"Restorative justice shall not proceed with those who are not capable, for any reason, of understanding the meaning of the process"* [CE Rec 8(2018): Rule26]

Topics for common discussion:

- Voluntariness of RJ by victims (cf. also below § 2.2.8 Unbiased information); voluntariness in cases where RJ can have a mitigating effect; guarantees that victims are not pushed to accept RJ (e.g. in juvenile justice: by providing the victim with information that makes the victim feel responsible for the offender's rehabilitation)
- Voluntariness of RJ and coercive nature of (punitive) criminal justice: how to reconcile this contradiction? Which procedural safeguards to ensure voluntariness and voluntary participation or non-participation by suspected, convicted and/or imprisoned persons?
- Procedural safeguards to ensure voluntariness by juveniles (whether as victims or as accused or as convicted persons) [CE Rec 8(2018): Rule24]
- Procedural safeguards to ensure voluntariness by any vulnerable subject (no matter the role in the RJ process, and no matter the reason of the vulnerability: e.g., non-native speaker, migrant, elderly, etc.)
- What about offenders and victims who are not capable of understanding? Is the somewhat 'categorical' provision of Rule 26 [CE Rec 8(2018): Rule26] and the

subsequent direct exclusion of those who are not capable of understanding the process always fair? Do we want to recommend and advocate milder case-by-case approaches?

2.2.3. VICTIM RIGHTS AND SAFEGUARDS WITHIN RJ PROCESSES WITH SPECIAL REGARD TO THE FOLLOWING BINDING PROVISION

{ Reference to the Competency Profile: **Knowledge, Skills, and Attitudes** }

- "(...) the restorative justice services are used only if they are in the *interest of the victim*" [2012/29/EU Directive: art. 12]

but see on the contrary CE Rec 8(2018) introducing balances

- *"Restorative justice should not be designed or delivered to promote the interests of either the victim or offender ahead of the other. Rather, it provides a neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible"* [CE Rec 8(2018): Rule15]

Topics for common discussion:

- Do we agree to recommend equal consideration of the interests of all those involved (victims, suspect or accused persons, offenders, family members, community members, other interested subjects)?
- Safeguards for victims with special protection needs

2.2.4. SUSPECT/ACCUSED/OFFENDER RIGHTS AND SAFEGUARDS WITHIN RJ PROCESSES

{ Reference to the Competency Profile: **Knowledge, Skills, and Attitudes** }

Cf. rules and principles mentioned above at §§ 2.1.1. (Presumption of innocence), 2.1.2. (Accusation and charges), 2.1.4. (Impact of RJ on judicial decision), 2.2.2. (Voluntariness of RJ)

- *"Restorative justice should not be designed or delivered to promote the interests of either the victim or offender ahead of the other. Rather, it provides a neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible"* [CE Rec 8(2018): Rule15]

Topics for common discussion:

- Do we agree to recommend equal consideration of the interests of all those involved?
- Safeguards for offenders with special needs, such as juveniles or offenders with reduced criminal capacity.

2.2.5. ACKNOWLEDGEMENT OF THE BASIC FACTS

{ Reference to the Competency Profile: Knowledge }

- “(...) the offender has acknowledged the basic facts of the case” [2012/29/UE Dir.: art. 12, c)]
- “The basic facts of a case should normally be acknowledged by the parties as a basis for starting restorative justice (...)” [CE Rec(2018)8: Rule30.1]
- “The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process” [UN Basic Principles: para. 8.1]

Topics for common discussion:

- What does this principle mean? Which are the aims of this principle? Which safeguards does it entail? Which risks does it carry?
- Why is this a ‘basic’ principle?
- How should this principle be interpreted?
- How should this principle be implemented?
- Is ‘acknowledgement of’ / ‘agreement on’ the basic facts really necessary? For the sake of whom? For the sake of what?
- ‘Basic facts’: what does this expression mean? Which facts? The concept of ‘facts’ in (more) ‘informal’ restorative processes and in (more) ‘formal’ criminal proceedings are not equal (narrative concept of ‘fact’, legal concept of ‘fact’, fact with criminal relevance)
- What is the relationship between this ‘acknowledgement of’ / ‘agreement on’ and the presumption of innocence? (see also above the presumption of innocence § 2.1.1.)
- What is the relationship between this ‘acknowledgement of’ / ‘agreement on’ the basic facts and the confidentiality principle? (see also below § 2.2.6.)
- Should we advocate a change of this standard at the UN, EU and CE level?
- How does this principle work in cases where neither the offender nor the victim take part in the RJ processes? E.g., “A Conversation”, where only the families of the offender and the victim participated in a RJ encounter
- Exception to the principle from the victim’s side: victims desiring to meet the offender besides the dis-agreement or non-acknowledgement of the basic facts
- Exception to the principle from the suspect/accused/offender’s side: suspect/accused/offender desiring to meet the victim besides the dis-agreement or non-acknowledgement of the basic facts
- Is the principle necessary to avoid judicial referrals for investigative purposes?

2.2.6. CONFIDENTIALITY [CE REC(2018)8: RULES 17, 49, 53; UN BASIC PRINCIPLES: PARA. 14; 2012/29/EU DIRECTIVE: ART. 12, E)]

{ Reference to the Competency Profile: Knowledge, Skills, and Attitudes }

Topics for common discussion:

- Why is this principle of confidentiality so important, what is its function in restorative justice?
- Which interests conflict with the confidentiality principle (such as the need for justice to be seen)?
- Impact of RJ on judicial decisions; relevance of the restorative outcome in subsequent criminal proceedings
 - *"Any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings" [2012/29/EU Directive: art. 12, d)];*
- Crime reporting obligations
 - e.g., *"Discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest" [2012/29/EU Directive: art. 12, e)];*
 - e.g. *"Notwithstanding the principle of confidentiality, the facilitator should convey information about imminent or serious crimes which may come to light in the course of restorative justice to the competent authorities" [CE Rec(2018)8: Rule49];*
- Privilege reporting exemption; disclosure exemption
- Hearsay – witness exemption
- What is the relationship between the confidentiality principle and the acknowledgement of / 'agreement on' the basic facts of the case? (see also above § 2.2.5.)

2.2.7. PROVIDING INFORMATION TO THE FACILITATOR

{ Reference to the Competency Profile: Knowledge and Skills }

- *"Before restorative justice starts, the facilitator should be informed of all relevant facts of the case, and provided with the necessary information by the competent judicial authorities or criminal justice agencies" [CE Rec(2018)8: Rule 33]*

Topics for common discussion:

- Is this a duty of judicial authorities (prosecutors / judges)? Judicial authorities seem to be supposed to provide information on the case, but maybe they will not receive information from the facilitator after the mediation at all because of the confidentiality

- What pieces of information are relevant for facilitators? Why?
- Should judicial authorities (prosecutors / judges) provide facilitators with clear information about the judicial scenario taking place with / without a restorative outcome?
- Minimalist approach (minima information) to leave room to narratives?
- Facts and/or identification of those involved?
- Secrecy of pre-trial investigations
- Is a legal recognition of mediators / facilitators and a regulation of their role needed to legitimise their access to information (e.g., GDPR and data protection; secrecy of pre-trial investigation)

2.2.8. PROVIDING INFORMATION TO THE PARTICIPANTS. UNBIASED INFORMATION, POTENTIAL OUTCOMES, PROCEDURES OF SUPERVISING THE IMPLEMENTATION OF THE OUTCOMES, GRIEVANCES

{ Reference to the Competency Profile: Knowledge and Skills }

- *"(...) the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement"* [2012/29/EU Directive: art. 12]
- *"Before agreeing to restorative justice, the facilitator must fully inform the parties of their rights, the nature of the restorative justice process, the possible consequences of their decision to participate, and the details of any grievance procedures"* [CE Rec(2018)8: Rule 25]
- *"Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision"* [UN Basic Principles: para. 13.b]
- *"Restorative justice is voluntary and shall only take place if the parties freely consent, having been fully informed in advance about the nature of the process and its possible outcomes and implications, including what impact, if any, the restorative justice process will have on future criminal proceedings. The parties shall be able to withdraw their consent at any time during the process"* [CM/Rec(2018)8: Rule 16]

Topics for common discussion

- What recommendations will we provide the judiciary with?
- Which is the range of legal consequences of restorative processes in each national system?
- What kind of supervision of the implementation of agreements is compatible with RJ? What kind of supervision is compatible with each national legal system?
- What legal status does an agreement reached in mediation have?
- What consequences for non-implementation of agreements?
- What do grievances refer to? Outcomes, denials of referral, both?

- Need for cooperation and coordination among the judiciary, the defence lawyers and RJ practitioners to avoid creating wrong expectations and to avoid incorrect information to the parties about restorative outcomes, implications and impact on the criminal proceeding (see also §§ 2.2.7, 2.4.)
- Cf. also the discussion topics mentioned above § 2.2.2. Voluntariness of RJ

2.2.9. DATA PROTECTION AND RJ

{ Reference to the Competency Profile: Knowledge and Skills }

[Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC – General Data Protection Regulation (GDPR); Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA]

Topics for common discussion

- Given the generalised lack of comprehensive European and/or national legislation on restorative justice, what recommendations will we provide the judiciary with?
- Relevant issues impacting on the applicable EU/national legislation concerning the lawful processing of personal data in restorative processes:
 - nature of RJ in relation to the GDPR and Directive (EU) 2016/680
 - the function and/or qualification of facilitators in relation data protection duties and obligations
 - the type of personal data processed during RJ processes
 - access to data, data protection and other rights of the parties

2.2.10. RJ RESPONSES TO SERIOUS CRIMES; RJ PROGRAMMES WITH VULNERABLE SUBJECTS/SUBJECTS WITH SPECIAL NEEDS

{ Reference to the Competency Profile: Knowledge, Skills, and Attitudes }

[CE Rec(2018)8: Rules 18, 43; UNODC, *Handbook on Restorative Justice Programmes*, 2020 edn: Chapter 6]; cf. also above §§ 2.2.3. Victim rights and safeguards; 2.2.4. Suspect/accused/offender rights and safeguards; 2.3.1 The role of the judiciary in referrals

- *“Restorative justice should be a generally available service. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other*

considerations, preclude restorative justice from being offered to victims and offenders”
[CE Rec(2018)8: Rule 18]

- *“Facilitators should be experienced and receive advanced training before delivering restorative justice in sensitive, complex or serious cases”* [CE Rec(2018)8: Rule 43]

Topics for common discussion

- How to reconcile the principled availability of RJ potentially in all cases, no matter the type and seriousness of the offence, with the obligation to ensure tailored protection to victims, especially those with special protection needs, following the Victims Directive, (arts. 18 ff.)?
- Which recommendations or guidelines are we going to provide the judiciary with (during training) in relation to the management of ‘special’ cases (partner/domestic violence, sex offences, human trafficking, terrorism, organised crime, international core crimes, etc.)?
- Which recommendations or guidelines are we going to provide the judiciary with (during training) in relation to vulnerable groups and vulnerable subjects (e.g., children/juvenile victims and/or offenders; people with disabilities; the elderly; migrants, asylum seekers, refugees, etc.)?
- How to reconcile the basic principles and standards on RJ – and particularly the presumption of innocence [CE Rec(2018)8: Rule 30.2; UN Basic Principles: para. 8.] and the principle that *“Restorative processes should be used only where there is sufficient evidence to charge the offender”* [UN Basic Principles: para. 7] – with the fact that in some ‘sensitive’ cases there may not be sufficient evidence to charge the offender (e.g. sexual abuse in the church, family violence, violence against children, paedophilia)?
- How to promote confidence by the judiciary on the competence of mediators and facilitators in dealing with sensitive cases / vulnerable subjects / subjects with special needs?

2.3. The role of the judiciary (prosecutors and judges)

2.3.1. ROLE OF THE JUDICIARY IN REFERRALS [2012/29/UE DIR.: ART. 12; CE REC(2018)8: RULES 6, 18–19, 28]

{ Reference to the Competency Profile: Knowledge, Skills, and Attitudes }

Topics for common discussion

- Conditions for referrals? Equal accessibility?
- ‘Suitability’ of cases? Appropriateness of cases / of referrals?
- Preclusions?
- Need/not need for guidance/guidelines from head of judicial offices (both prosecutors and courts)

- Do we need to work with a system of 'positive selection' or 'negative selection': do we need reasons to refer a case to restorative justice, or do we need reasons not to refer some cases (when the law prescribes, for example, that all victims and offenders have to be informed about the offer of mediation, and when it has to be considered as a 'general available service', see CE 2018 Rec)?
- Role of prosecutors in mandatory/discretionary charging systems in relation to restorative justice, its accessibility, implementation, and impact on judicial decisions
- When referring a case, the judiciary should provide the parties with an unbiased information regarding the fact that RJ is carried out in the balanced interest of all the parties (victim and offender, others involved) and not in one's interest at the expense of the other [CE Rec(2018)8: Rule 15]. Need for coordination between the judiciary and other subjects, professionals and agencies providing information to the parties before judicial referral.
- Impact of RJ on investigations
- Safety and security of all participants [UN Basic Principles.: para. 10]: is it a facilitators'/mediators' task to ensure safety and security? Or has the judiciary a role to play in it when referring cases (or not)?
- Repeat and secondary victimisation, retaliation, intimidation [2012/29/UE Dir.: arts. 12, 18, 20]. Is it a facilitators'/mediators' task to ensure safety and security? Or has the judiciary a role to play in it when referring cases (or not)?
- Which interpretation of UN Basic Principles: para. 9 (*"Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process"*)?
- Which recommendations are we going to provide the judiciary with?

2.3.2. JUDICIAL SUPERVISION OF RESTORATIVE PROCESSES AND OUTCOMES

{ Reference to the Competency Profile: Knowledge and Skills }

- *"The need for judicial supervision is greater if restorative justice will have an impact on judicial decisions, as when the discontinuation of prosecution depends on an acceptable settlement, or when the agreement is put to court as a recommended order or sentence"* [CE Rec(2018)8: Rule 7]
- *"Where a case is referred to restorative justice by the judiciary before conviction or sentencing, the decision on how to proceed after the outcome agreement between the parties is reached, should be reserved to the judicial authorities"* [CE Rec(2018)8: Rule 32]
- See also above § 2.1.4.

Topics for common discussion

- Pros and cons
- Fundamental rights and safeguards connected to judicial supervision (see also § 2.2.6)

- Powers of the judiciary
- Limits to judicial supervision
- Should the judiciary 'supervise' the RJ process? Its fairness? Its proportionality? The proportionality of outcomes?
- Confidentiality and the judge's 'need to know'
- Impact of RJ on judicial decision
- Which recommendations are we going to provide the judiciary with?
- What is a successful RJ process? (e.g. mediators/facilitators may consider the respectful communication between the parties as a success, even if they don't reach a final agreement) Is the agreement a success? Or is this latter related the fulfilment of that agreement?) Should the monitoring of an agreement be part of the restorative justice process (and done by mediators), or should it be independent from them?
- Can the judiciary criticize or comment the content of an agreement (not proportional, only symbolic etc.? (Cf. also above § 2.1.4. Impact of RJ on judicial decision)

2.3.3. SOFT, NON-TECHNICAL 'RESTORATIVE' SKILLS AND JUDICIAL POWERS AND WARRANTIES

{ Reference to the Competency Profile: [Skills and Attitudes](#) }

Topics for common discussion

- Is there a 'restorative' prosecutor? Is this recommendable? If so, how? If not, why? Which are the risks? Which are the challenges? Which are the opportunities?
- Is there a 'restorative' judge? Is this recommendable? If so, how? If not, why? Which are the risks? Which are the challenges? Which are the opportunities?
- From the perspective of judicial authorities (prosecutors / judges), how can technical-legal skills interact well with judicial non-technical-restorative skills within the function, role, power and guarantees attributed to the judiciary?

2.4. COOPERATION AND COORDINATION

{ Reference to the Competency Profile: [Skills and Attitudes](#) }

- *"There should be regular consultation between judicial authorities, criminal justice and restorative justice agencies, legal professionals, offenders and groups acting on behalf of victims and communities, in order to enable the development of a common understanding of the meaning and purpose of restorative justice"* [CE Rec(2018)8: Rule 55]

Topics for common discussion

- Need for a better knowledge and a common understanding inside judicial authorities (prosecutors / judges) about RJ in general
- Need for a common understanding about RJ (its objectives and limits) *in the particular case* among the public prosecutor, the judge and the defence lawyers
- Need for a common understanding of RJ in general and in the particular case among all the subjects institutionally involved, including RJ practitioners, in order to avoid the parties' expectations being deceived, frustrated or betrayed
- What should this 'regular consultation' look like in practice? How should this 'regular consultation' be carried out?
- On which level this consultation should happen (case-level, local, national...)?
- What are the implications of this Rule (interdisciplinarity, joint-training, etc.)?

2.5. RJ INSIDE AND OUTSIDE THE CRIMINAL JUSTICE SYSTEM

{ Reference to the Competency Profile: [Skills and Attitudes](#) }

[CE Rec(2018)8, Rule 8, sec. VII, Rules 60–61; cf. also European Prison Rules: Rule 56.2 with regard to conflicts between prisoners, and between prisoners and prison officers; cf. CE Rec(2008)11: Rule94.1 with regard to juveniles]

Topics for common discussion

- Pros and cons
 - How can restorative justice be used internally (in case of conflict between staff ...) for a better functioning of the CJS? (CE Rec (2018)8, Rule60–61)
- Risks:
 - Net-widening effect
 - Everything becomes restorative justice; RJ features are lost

3. Other challenges and relevant themes of discussion

3.1. Different understandings of RJ

- Victim-oriented, balanced, offender oriented, meeting, reparation...
... and international principles and standards
- Procedural justice and RJ

3.2. The role of regulation in implementing RJ in criminal matters

- Lack of comprehensive regulations in the field of RJ and the role of the judiciary (prosecutors and judges) within the frame of the principle of legality and the rule of law.
- Would it be convenient to regulate how to use restorative justice in legal proceedings?
- How to reconcile the possible need for binding provisions with the necessary flexibility of RJ?
- What would be a good level of regulation of the RJ processes to avoid the dangers of a very detailed regulation? Is soft law regulation – easily changed, adapted to every community – convenient enough? Should it be sensible, in relation to restorative justice, to advocate a combination of – or a distinction between – formal/primary legislation, and more local, subordinate and ‘flexible’ forms of regulations (guidelines, circular letter from Ministries, ...)? Would this be compatible with the rule of law and the legality principle in criminal matters?
- Cf. CE REC (99)19 Explanatory memorandum: Necessity to leave room for adaptation; possible wisdom of different levels of regulation. In most countries most regulation is lower sources (guidelines; internal regulation, standards, and ethical codes by RJ services Not expect everything from the law
- RJ and legal system reform: drafting of a ‘restorative legal system’?

3.3. EU policy

- How can RJ impact and improve the EU 'new strategy to empower victims' (European Commission, *EU Strategy on victims' rights (2020–2025)*)?
- How to keep together the UN Handbook on RJ practice, the Coe 2018 Rec and EU policies?
- Can policy proposal stem from the project?

3.4. The issue of language: restorative vocabulary and legal vocabulary

- How can RJ become an instrument to improve regulations themselves?
- How can RJ influence the production/development of regulations, laws?
- How can the language used by judges affect people?