



## European Forum for Restorative Justice<sup>1</sup> Gender Based Violence Working Group<sup>2</sup>

### **How to guarantee high safeguards for victims that want to access restorative justice services: inclusion of restorative justice in the European Commission proposed directive on combating violence against women and domestic violence (VAW).**

The European Forum for Restorative Justice (EFRJ) and its Working Group on Gender Based Violence would like to draw the attention of the European Commission (EC) to the importance of restorative justice (hereinafter RJ) in all matters that involve victims and offenders of violence against women and domestic violence (VAW). In particular, the EFRJ calls on the EC to make RJ available for victims who freely want to access RJ and to guarantee high safeguards for victims participating in RJ.

This position paper presents concrete recommendations on how RJ could be included in the proposed directive on VAW. It also presents key aspects concerning the use of RJ in particularly sensitive cases such as violence against women and domestic violence. Our arguments are evidence-based as well as sustained by relevant international (legal and policy) documents. The Appendix offers an overview of recent research findings related to victims and RJ (in particular victims of VAW), to RJ and desistance from crime, and to the main EU and international documents concerning RJ and victims' rights.

#### 1. Introduction

The EFRJ highly welcomes and supports the proposed Directive on violence against women and domestic violence (VAW). It is a very important step forward in preventing such crimes, to strengthen victims' access to justice and to support their appropriate protection throughout the EU.

Nevertheless, the EFRJ wants to stress that the proposed Directive on VAW does not sufficiently address some important aspects of victims' needs — namely empowering victims of crime by supporting their agency, free choice and recovery. As the EU Strategy on Victims' Rights (2020 – 2025) recognized, RJ is important in this regard, it provides victims with a safe environment to make their voice heard and to attend to their healing process.

<sup>1</sup> The European Forum for Restorative Justice (EFRJ) is the leading European network for supporting the development of restorative justice in Europe. Founded in 2000 at the KU Leuven Institute of Criminology, the EFRJ is a membership organization that currently comprises around 500 members (either individual or organisational), from Europe and beyond.

<sup>2</sup> The Working Group on Gender Based Violence and Restorative Justice was set up by the EFRJ in 2020 and is composed of key experts in this domain. The objective of the Working Group is to discuss and develop models of restorative justice in cases of gender based violence which are safe, anti-oppressive and effective. [Here](#) more information.





Since the 2012 adoption of the EU Victims' Rights Directive (Directive 2012/13/EU), several new international legal instruments and guidelines have demonstrated a growing consensus among the global community in favour of a wider applicability of RJ in criminal matters and beyond. Recently (in December 2021), the Ministries of Justice of the Council of Europe (CoE) Member States unanimously adopted the [Declaration on the Role of Restorative Justice in Criminal Matters](#) (the Venice Declaration). The Venice Declaration fully endorses the [Council of Europe Recommendation CM/Rec\(2018\)8 on restorative justice](#), underlines the importance and advantages of RJ and calls on the CoE to support its Member States in its implementation. The most advanced international document in the field, the CoE Recommendation on RJ states that RJ should be a generally available service at all stages of the criminal justice process and for all types of crime (Rules 18 and 6), including, therefore, violence against women and domestic violence.

Moreover, as research and standards of best practice continue to improve, the benefits that a restorative process can have for victims of domestic or sexual abuse are becoming increasingly recognised and appreciated<sup>3</sup>. In October 2021, the organisation Why me? (a member organisation of the EFRJ) published in October 2021 a new paper – [Using restorative approaches for domestic and sexual abuse: A personal choice](#). As argued by Why me?, survivors of sexual and domestic abuse are so often silenced, doubted and retraumatised. RJ can make them feel empowered, listened to and able to move forward. Every victim should be able to speak to a restorative provider if they want to. The organisation gives voice to survivors that experienced RJ in [its website](#) as well as in the above mentioned paper. Here are some benefits of RJ heard from survivors:

- It was the beginning of the rest of [Lucy's](#) life.
- It was the key that unlocked [Janika's](#) future.
- It allowed [Rosalyn](#) to regain her sense of power and control.
- It made [Wendy](#) feel like a totally different person.
- It gave [Teresa](#) a different picture of herself, which benefits her whole life.

The [UN Second Edition of the Handbook on Restorative Justice Programmes](#) (2020) cites a satisfaction survey conducted on behalf of the Ministry of Justice of New Zealand that reports **that 83 percent of victims of sexual violence who had participated in a restorative justice process were satisfied with the overall process**. It also states that, since sexual crimes have low reporting, prosecution and conviction rates, RJ can provide the opportunity for the victim to access justice services when other processes may be less likely to occur. Very significantly the UN Handbook recognises the risk of second victimisation and that the **“vulnerability of victims of sexual violence raises concerns about if, when and how to approach the topic of restorative justice with them”** but that **“failing to discuss the possibility of restorative justice with the victims may deprive them of an opportunity to heal”**.

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<sup>3</sup> The organisation Why me? have published in October 2021 a new paper – [Using restorative approaches for domestic and sexual abuse: A personal choice](#). The paper builds on academic research, the testimony of Why me? ambassadors (i.e. survivors of domestic and sexual abuse), and existing good practice to unpick the benefits, concerns and best practice for using restorative approaches in cases of domestic and sexual abuse.





Despite the benefits, RJ services must be prepared to understand and address the risks involved in cases of VAW. These cases should follow high standards that guarantee safeguards for victims. Trained restorative facilitators are best placed to work with the individuals involved and manage the risks.

It is with these considerations in mind that the EFRJ recommends that the European Commission includes the following in the proposed directive combating violence against women and domestic violence:

**I. Secure the availability of RJ for victims, their right to be informed about the existence of these services and the opportunity to freely choose to participate or not, within and beyond criminal procedures, taking into account their individual needs.**

**II. Establish and guarantee provisions related to safeguards and high standards of practice for RJ services dealing with cases of VAW.**

This position paper presents concrete recommendations on how RJ could be included in the proposed directive on VAW.





## 2. Restorative Justice and Violence Against Women

We encourage the EC to include access to RJ and relevant safeguards in the Directive as a means of acknowledging the diverse needs of victims, support their agency and to provide the necessary safeguards to prevent any further harm.

In our experience of engaging with victims of VAW, there are key aspects of what matters to victims that are not addressed by the proposed Directive. These include:

- having their voice heard – speaking of the harm that they have suffered and how it continues to impact the quality of their life and having their truth validated and their lack of responsibility for the harm vindicated;
- holding the perpetrator accountable with their questions and requests, which often relate to their future safety.

After successful restorative meetings, which can be in person, online or through a ‘shuttle’ process through which the parties communicate but do not meet, victims often report a relief of any vestiges of shame, a sense of getting their life back, a release from the coercive power of the perpetrator and an awareness of their own power and strengths.

We believe that such processes are more successful when victims are supported to initiate the RJ process on their own terms and are facilitated to be in control of every step of the process. They should never be under any pressure or coercion to participate. This requires information on RJ to be freely available and accessible to victims. There should be a system which enables them to enquire on RJ without making any commitment to participate. To assure that what matters to them is addressed effectively and that they are safe from any coercion and manipulation, victims can be supported by the restorative practitioner to co-design the meeting.

RJ should be offered at any stage of the criminal justice process. Currently it often takes place after sentencing, when the perpetrator is in custody. If it is offered pre-sentence, steps should be taken to ensure that the perpetrator gains no benefits in the sentence through participation.

RJ does not have to be private. Family and friends of the perpetrator can be invited, organisations safeguarding the well-being and rights of victims may be present. In line with the needs of the victim, psychologists, therapists and experts in trauma may also support the process. People bearing witness to the process and whatever agreement may emerge can significantly alter the balance of power.

RJ is an informal mechanism of justice. It is not a method for achieving reconciliation, forgiveness, or conflict resolution. It should be distinguished from conflict mediation or family mediation. It should never be used to pressure or manipulate women into accepting an oppressive or harmful relationship.

In conclusion RJ will not be suitable for every victim of violence against women and domestic violence, but we believe that if the woman makes a free choice to participate in a restorative process, that choice should be respected and accommodated, especially when the formal criminal justice system cannot address all what matters to specific victims.





### 3. Recommended Amendments to the Proposed Directive on VAW

Per the observations of the GREVIO and the UNODC,<sup>4</sup> restorative mediation and other RJ programmes may be used to address forms of violence against women and domestic violence under the following three conditions:

- a. The RJ professional must be specifically trained in the features of VAW and DV;
- b. The RJ programme must set down specific guidelines to ensure that the process is entered on the basis of an informed and free will of the victim and that there is no risk of either further victimisation or abusive manipulation;
- c. The RJ programme cannot result in discontinuation of the criminal proceedings and thereby result in the avoidance of punishment and/or the re-privatization of the violence.

As such, EFRJ recommends the following provisions to safely and properly introduce restorative justice in cases of violence against women and domestic violence.

The EFRJ recommends the following definition of RJ for inclusion in the Recitals:

*Restorative justice services, including for example those that offer victim-offender mediation, restorative conferencing, family group conferencing and sentencing circles, can be of great benefit to the victim. Such services should have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm, including by ensuring that the victim's voice is heard, that the process is delivered in a balanced manner, and that the decision to participate in or agree to outcomes in restorative justice is based on free and informed consent. This requires that victims be given both the information and the opportunity to determine whether restorative justice is right for them. Those services must be governed by recognised, evidence-based standards of practice and training to ensure the protection of victims, including vulnerable victims and victims of serious offences, if they opt to participate to restorative justice. Standards aim to ensure that services address and repair harm effectively and prevent secondary and repeat victimisation, intimidation and retaliation. Restorative justice should, in principle, be confidential, unless agreed otherwise by the parties, or required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.*

<sup>4</sup> United Nations Office on Drugs and Crime (UNODC). (2020). [Handbook on restorative justice programmes: Second edition.](#)





CHAPTER 3 of the proposed directive on VAW:  
“PROTECTION OF VICTIMS AND ACCESS TO JUSTICE”

**Article 18: “Individual assessment to identify victims’ protection needs”**

Before beginning a restorative justice process for an incident of violence against women or domestic violence, it is necessary to assess the risks for the victim.<sup>5</sup> Therefore, we recommend the addition of a specific risk assessment to Article 18. We suggest the following formulation at the close of Art. 18§6 (collaboration with all relevant competent authorities):

“Before entering a restorative justice process, a specifically trained restorative justice service must conduct an individual assessment in order to verify whether there is a risk of repeated and secondary victimisation.”

If there is a further need to clarify this process in line with Article 20, we recommend the following stipulation: “If RJ services identify a persistent unbalanced power dynamic in the relationship—such that it could expose the victim to the risk of secondary or repeated victimisation—then the RJ services must decline the case.”

**Article 23: “Guidelines for law enforcement and judicial authorities”**

In cases of violence against women and domestic violence, specific guidelines must ensure that RJ is introduced and conducted in a victim-sensitive manner, having regard to the specific needs and risks related to the position of the victim of gendered violence.<sup>6</sup> We recommend including this point with the following formulation:

“Member States shall issue guidelines for the competent authorities acting in criminal proceedings, including prosecutorial and judicial guidelines, including restorative justice guidelines, concerning cases of violence against women or domestic violence. Those guidelines shall include guidance on:

- identical
- how to conduct the individual assessment under Articles 18 and 19, and how to verify victims’ full and free consent to enter non-compulsory alternative proceedings and restorative justice processes;...”

**Article 26: “Compensation from offenders”**

This article provides for full compensation from the offender related to all the damages resulting from violence. To protect victims from pressure related to informal bargaining on the amount of compensation, we recommend stipulating that compensation can only be determined during a judicial procedure or restorative process in which a neutral judge or mediator can protect the balance of power between the victim and offender. Therefore, we recommend the following formulation of Article 26§2:

<sup>5</sup> UN Women (2012). Handbook on Violence Against Women. New York, NY.

<sup>6</sup> Ibid. 5





“Member States shall ensure that victims are able to obtain a decision on compensation in the course of criminal proceedings or as an outcome of a restorative justice procedure entered into and conducted under the conditions provided in Article 18 and Article 23.”

Relatedly, drafters may want to underline the difference between RJ and other informal procedures such as conciliation and civil mediation, and ban the latter when introduced informally and in an extrajudicial context by lawyers. In these circumstances, there is not sufficient attention paid to victims’ needs, their vulnerability, and power imbalance between the parties.

CHAPTER 4 of the proposed directive on VAW:  
“VICTIM SUPPORT”

**Article 30: “Specialist support for victims of sexual harassment at work”**

In order to prevent informal conciliation that could perpetuate the unbalanced power dynamic within the workplace, it is necessary to provide a reference to impartial RJ services at the end of the article. We suggest the following formulation:

“Member States shall ensure external counselling services are available for victims and employers in cases of sexual harassment at work. These services shall include advice on adequately addressing such instances at the workplace, on legal remedies available to the employer to remove the offender from the workplace, and on the possibility of early conciliation conducted by independent restorative justice services, if the victim so wishes.”

CHAPTER 5 of the proposed directive on VAW:  
“PREVENTION”

**Article 38: “Intervention programmes”**

Restorative justice programmes may be highly beneficial at encouraging offenders to counter violent behaviour patterns, adopt non-violent behaviours in interpersonal relationships, and take responsibility for their actions (as noted in recital 62 of the proposed directive, see the Appendix for more details). However, these benefits must not come at the expense of victims. To avoid the risk of further victimisation, restorative justice processes can be introduced only after the careful individual assessment outlined in Article 18 and only if they do not result in a discontinuation of a criminal trial. To this end, we recommend adding the following formulation:

1. “Member States shall take the necessary measures to ensure that targeted and effective intervention programmes are established to prevent and minimise the risk of committing offences of violence against women or domestic violence, or reoffending”.

2. “As restorative justice programmes may encourage offenders to take responsibility and reduce the risk of reoffending, Member States shall support the availability and





accessibility of such programmes [under the conditions provided in article 18 and article 23]\*”

[otherwise]

\*under the following conditions: a) the victim initiated or has given informed and free consent to participate in the restorative justice process; b) the restorative justice service has conducted the individual assessment under Art. 18, verifying that no risks of repeated violence nor secondary victimisation are present; c) the restorative justice process does not result in the discontinuation of a criminal trial”.

3. “The intervention programmes shall be made available for participation including to persons who fear they might commit any offence of violence against women or domestic violence”

CHAPTER 6 of the proposed directive on VAW:  
“COORDINATION AND COOPERATION”

**Article 40: “Multi-agency coordination and cooperation”**

In order to ensure better coordination among all the institutions and services involved in dealing with violence against women and domestic violence, we recommend including the following formulation in § 1 a reference to RJ services as follows:

“Member States shall put in place appropriate mechanisms to ensure effective coordination and cooperation, at the national level, of relevant authorities, agencies and bodies, including local and regional authorities, law enforcement agencies, the judiciary, public prosecutors, restorative justice services, support services providers as well as non-governmental organisations, social services, including child protection or welfare authorities, education and healthcare providers, social partners, without prejudice to their autonomy, and other relevant organisations and entities.”





#### 4. Concluding Remarks

Although we look forward to increased systemic responsiveness as a result of the proposed directive, we also recognize that there are significant gaps to address in the criminal justice system, particularly as it relates to VAW. Evidence tells us that just one-third of female victims report physical or sexual partner violence to police;<sup>7</sup> an even smaller fraction — between 15-20% - report the most serious incidents.<sup>89</sup> In cases of sexual assault, reporting rates are rising throughout Europe but still only represent a small fraction of total incidents – ranging from 2 to 46 out of every 100,000 assaults.<sup>10</sup>

The proposed directive highlights excellent opportunities for the criminal justice system to address these issues and EFRJ believes that RJ can complement and enhance these efforts.

In the *Handbook on Restorative Justice Programmes: Second Edition*, the United Nations Office on Drugs and Crime<sup>11</sup> clearly states,

*While the controversy continues over the appropriateness of, and the risks associated with, restorative justice in situations involving serious crime, enough progress has been made to conclude that restorative justice can be blended with conventional criminal justice responses to address some of the gaps left by mainstream justice responses and be more responsive to the needs of victims.*

Indeed, in Europe the last decade saw the development of safe, effective and evidence-based models of restorative justice in cases of violence against women (see the Appendix for more information). The EFRJ would like to emphasise that RJ services are a natural fit under the provisions of Article 18 of the proposed directive on VAW, which places a special emphasis on victim empowerment and choice:

<sup>7</sup> European Institute for Gender Equality. (2020). [Beijing + 25: the fifth review of the implementation of the Beijing Platform for Action in the EU Member States](#).

<sup>8</sup> European Union Agency for Fundamental Rights. (2014). [Violence against women: an EU-wide survey](#).

<sup>9</sup> Ibid. 4

<sup>10</sup> Lovett, J. & Kelly, L. (2009). [Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe](#). Among those who do report, rates of satisfaction are low with only 60% of physical partner violence victims and 49% of sexual partner victims approving of their experience. In fact, victims ranked police involvement as the least satisfying of all available support services (FRA, 2014). When victims report, their efforts may not yield a substantive experience of justice. For example, in cases of rape, high attrition rates continue to keep conviction rates low and, in some places, getting lower (Lovett & Kelly, 2009). In an in-depth study of nine European countries, Lovett and Kelly found that 38% of rape investigations led to a charge and only 19% led to a trial. A mere 14% resulted in a conviction. Guilty verdicts typically correspond to stereotypic cases involving stranger rape, seemingly “criminal” suspects (i.e., immigrants, ethnic/racial minorities, or suspects with criminal histories), and “believable” victims with documented injuries, no mental health issues, and no consumption of alcohol at the time of assault. This type of systemic bias shuts out the majority of victims who, for various reasons, fail to fit this profile.

<sup>11</sup> Ibid. 5





*The [victim] assessment shall take into account the victim's individual circumstances, including whether they experience discrimination based on a combination of sex and other grounds and therefore face a heightened risk of violence, as well as the victim's own account and assessment of the situation. It shall be conducted in the best interest of the victim, paying special attention to the need to avoid secondary or repeated victimization (Article 18 (4)).*

With its participatory, voluntary structure, RJ allows victims to meet self-identified - rather than assumed - justice goals, including assurances of safety, validation, information, restitution, and feelings of empowerment.<sup>12</sup>

Therefore, the EFRJ proposes to the EC to uphold the importance of RJ services in the proposed directive by distinguishing it from civil mediation and workplace conciliation, securing its availability for victims who freely choose to participate, and safeguarding participants with minimum standards of practice.

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<sup>12</sup> Yoder, C. (2005). The little book of trauma healing: When violence strikes and community security is threatened. Good Books.





## APPENDIX

### What is Restorative Justice?

*“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.”* (EU Victims’ Rights Directive, Directive 2012/29/EU)

Restorative Justice is an evolving approach oriented towards repairing, as far as possible, the harm caused by crime or other transgressions. Active participation by the victim, the offender and possibly other parties (the community) is a core element of RJ with voluntary participation based on informed consent. RJ practices such as victim-offender mediation, conferencing and circles are used in Europe and beyond to bring together people who experience harm in society, the justice system, organisations, schools or families. Involved parties engage in a respectful, facilitated dialogue over specific questions, mostly about the harm, responsibility and restoration. RJ is a justice process that encompasses both RJ principles and practices and that must be distinguished from mediation in penal matters and from mediation in family proceedings.

To increase physical safety, particularly in cases of VAW, RJ can take the form of indirect (letter writing), shuttle (sharing information through a facilitator), or surrogate (having a third party represent them) processes. Processes can also enhance civil remedies like emergency barring and protective orders by appointing community safety monitors (as in the Circles of Peace programme)<sup>13</sup> and designing reparations plans that include restrictions on behaviour, whereabouts, and interaction with mutual contacts (as in Northern Irish conferencing schemes).<sup>14</sup> Research suggests that processes may increase psychological safety, too, by decreasing rates of post-traumatic stress disorder.<sup>15</sup>

### The European and International Policy Framework on RJ

Recently, the field of RJ has gone through a significant development to enhance the rule of law and access of justice. In the last few years, in fact, significant progress has been made in the provision of RJ in the following international and European instruments:

#### Europe

- The [EU Victims’ Rights Directive 2012/29/EU](#) has provided RJ in Europe with a more solid position and a clear victim orientation. In this binding document, the EU instructed Member States to safeguard victims and “ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services” (Article 12). By including RJ in the proposed directive on VAW, making it available to victims that freely choose to participate, guaranteeing high standards of practice, and distinguishing it from civil mediation, the EC will fulfil this

<sup>13</sup> Mills, L.G., Barocas, B., & Ariel, B. (2012). The next generation of court-mandated domestic violence treatment: A comparison study of batterer intervention and restorative justice programs. *Journal Of Experimental Criminology*, 9(1), 65-90.

<sup>14</sup> Lauwaert, K. & Aertsen, I. (2014). Desistance and restorative justice: Mechanisms for desisting from crime within restorative practices. Retrieved from <https://www.euforumrj.org/en/research-reports>

<sup>15</sup> Koss, M.P. (2014). The RESTORE program of restorative justice for sex crimes: Vision, process, and outcomes. *Journal Of Interpersonal Violence*, 29(9), 1-38.





obligation. The EC will also follow its own guidelines by promoting victims' own account and assessment of the situation and supporting programmes that reduce the risk of reoffending.

- In June 2020, the European Commission adopted an [EU Strategy on victims' rights \(2020 - 2025\)](#) that recognises the role of restorative justice to achieve the first objective of the Strategy itself, namely empowering victims of crime.
- The [Council of Europe Recommendation CM/Rec\(2018\)8](#) concerning restorative justice in criminal matters), adopted on 3 October 2018, reflects new developments and a broader concept of RJ approaches. Importantly, it neither prohibits nor otherwise restricts the application of RJ in cases of violence against women and domestic violence. Instead, it states that "*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*" (Rule 18). The CoE Recommendation asserts that no offences are considered unsuitable.

The Recommendation affirms the importance of victim agency, noting "*the legitimate interest of victims to have a stronger voice regarding the response to their victimization, to communicate with the offender and to obtain reparation and satisfaction within the justice process.*" It recognizes, moreover, "*the importance of encouraging the offenders' sense of responsibility and offering them opportunities to make amends, which may further their reintegration, enable redress and mutual understanding, and encourage desistance from crime.*" The key criteria are the willingness of the perpetrator and victim to meet or communicate in some other way and the obligation of the professionals to ensure that the process is safe for all parties.

- More recently, the CoE (2021) underlined the importance of RJ in the *Venice Declaration on the Role of Restorative Justice in Criminal Matters*. As in their earlier Recommendation, CoE neither prohibited nor restricted the application of RJ. Rather, the CoE called upon member States to "*Stimulate... a wide implementation of restorative justice, its principles and methods as a complement or, where suitable, as an alternative to or within the framework of criminal proceedings aiming at desistance from crime, offenders' reintegration and victims' recovery*" (paragraph 15(iii)).

### International

- In the *Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence Against Women*, the United Nations Office on Drugs and Crime (UNODC, 2014) encouraged Member States to develop guidelines for the implementation of RJ in these cases.
- Then, in May 2020, the UNODC released the [Second Edition of the Handbook on Restorative Justice Programmes](#). It integrates the developments in the field and in particular the potential of restorative justice to deal with serious crimes, including sexual violence. Significantly, as already cited above, the UN Handbook recognises the risk of secondary victimisation, but qualifies it, stating, "*[The] vulnerability of victims of sexual violence raises concerns about if, when and how to approach the topic of restorative justice with them [but that] failing to discuss the possibility of restorative justice with the victims may deprive them of an opportunity to heal*".
- The UN's *Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law* (2021) also encourages member states to "*Facilitate... restorative justice processes at relevant*





*stages in criminal proceedings in order to assist the recovery of victims and the reintegration of offenders, as well as to prevent crime and recidivism, and assess their usefulness in this regard” (42).*

Despite the broad support for RJ, misunderstandings persist. The stipulations of the UN Handbook on Violence Against Women<sup>16</sup> and the Istanbul Convention (2014) have caused confusion about the use of RJ in cases of violence against women. Some have suggested that the prohibition of mediation (Article 3.9.1 in the UN Handbook) or mandatory mediation (Article 48 in the Istanbul Convention) precludes RJ from use. This position, however, incorrectly conflates RJ with mandated civil mediation and workplace conciliation.

The difference is clear upon a closer reading of the text. The UN Handbook on VAW explains, “[Mediation] removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability.” RJ, however, does not need to operate outside the scope of the criminal justice system. It can remain under prosecutorial or judicial review as a court-ordered diversion (as it does in Austria)<sup>17</sup>, function as a parallel process (as it does in Belgium)<sup>18</sup>, or take place after sentencing, sometimes even in detention. Additionally, far from diminishing offender accountability, RJ requires it. Unlike criminal justice and civil proceedings, which allow perpetrators to argue their culpability, RJ processes only move forward when offenders take responsibility for their wrongdoing.

Similarly, the Istanbul Convention states, “Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to [violence against women]” (Article 48). On May 2021, the EFRJ Working Group on Gender Based Violence participated in the EC open consultation on “Combating gender-based violence – protecting victims and punishing offenders”. The EFRJ submitted a position paper mainly concerning RJ and the Istanbul Convention<sup>19</sup>. As analysed in this paper this peremptory exclusionary rule results quite mitigated in Greivio’s Reports, where State parties are invited to make a careful check of victim’s will: due to the relationship of domination and control over the victim, the informed, voluntary and free consent of the victim involved must be carefully checked. Moreover, the high risk of secondary victimization suggests that a special caution has to be used in assessing victim’s ability to consciously and freely choose the restorative process and to face it without undergoing the effects of an unequal relation. In addition, the risk for a gender-based violence victim entering into a mediation is greater when the legal professional concerned (such as judges, prosecutors and mediators) are not trained in the dynamics and risks of violence against women. On the second side, the Explanatory Report means to avoid that violence against women is treated as a private matter, reducing violence to the dimension of a conflict between spouses managed as a family matter. For this reason, mediation should not replace the trial in front of the Court and should not be alternative to punishment, justifying the idea that violence is not worth be punished, while one of the aims of the Istanbul Convention is to raise the complaint rate and the punishment to make clear that gender-based violence cannot be longer tolerated.

<sup>16</sup> UN Women (2012). Handbook on Violence Against Women. New York, NY.

<sup>17</sup> Ibid. 14

<sup>18</sup> Ibid. 14

<sup>19</sup>[https://www.euforumrj.org/sites/default/files/2022-](https://www.euforumrj.org/sites/default/files/2022-02/EFRJ%20paper%20on%20GBV%20to%20the%20EC%20%281%29.pdf)

[02/EFRJ%20paper%20on%20GBV%20to%20the%20EC%20%281%29.pdf](https://www.euforumrj.org/sites/default/files/2022-02/EFRJ%20paper%20on%20GBV%20to%20the%20EC%20%281%29.pdf)





In this sense, restorative justice is not a way to avoid the trial, it is a way to overcome the silence. We argue, that depriving the right of access to RJ for victims that wish to choose this path is a secondary victimisation per se.

### Research Findings and Further Resources

“Restorative justice can help victims reclaim power that may have felt lost, particularly in the context of gender-based harms, rectifying the disempowerment created by being assaulted.”<sup>20</sup>

Research on RJ shows considerable evidence about its effectiveness for victims, offenders and communities.<sup>21</sup> Research findings tell us that victims and offenders have a much more satisfactory experience of justice than with the formal, traditional process. Restorative justice processes empower victims and offenders by engaging their participation. Studies consistently state that restorative processes improve closure and healing for victims and achieve at least 85% satisfaction among victims, reducing their fear of further harm and reducing post-traumatic stress symptoms.

Current research also suggests that RJ has a role to play in reducing recidivism<sup>22,23,24</sup>. Findings indicate that RJ processes are suited to both perpetrators of serious crime<sup>25</sup> and low-risk offenders.<sup>26</sup> Processes are more effective than both the average rehabilitative intervention<sup>27</sup> and incarceration.<sup>28</sup> In addition to reducing risk factors correlated to recidivism, RJ can promote support for long-term desistance from violence. EFRJ's<sup>29</sup> own research found that RJ processes best support offender change when mediators maintain a non-judgmental attitude, allow for open communication, and affirm the inherent dignity and worth of the participants.<sup>30</sup> The involvement of the victim is also crucial, especially during in-person mediation. If victims want to participate, their presence can encourage the offender to address shame, guilt, and remorse. Indeed, 95% of offenders who participated in

<sup>20</sup> Marsh and Wager (2015), “Restorative Justice in Cases of Sexual Violence”

<sup>21</sup> European Forum for Restorative Justice. (2017). *Effectiveness of restorative justice practices: An overview of empirical research on restorative justice practices in Europe*. European Forum for Restorative Justice. Leuven. Belgium. Retrievable on [www.euforumrj.org](http://www.euforumrj.org)

<sup>22</sup> Wilson et al. (2017), Wong et al. (2016), and Sherman et al. (2015) in Suzuki, M. & Yuan, X. (2021). How does restorative justice work? A qualitative metasynthesis. *Criminal Justice and Behavior*, 48(10), 1347-1365.

<sup>23</sup> Bonta et al. in Hennessey, H. (2007). Reoffending and restorative justice. In G. Johnstone & D.W. Van Ness (Eds.), *Handbook of Restorative Justice*. Devon: Willan Publishing.

<sup>24</sup> Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85(2), 127-144.

<sup>25</sup> Shapland, J., Robinson, G., & Sorsby, A. (2011). *Restorative justice in practice: Evaluating what works for victims and offenders*. London and New York: Routledge Taylor & Francis Group.

<sup>26</sup> Bonta, J., Jesseman, R., Ruge, T., & Cormier, R. (2006). Restorative justice and recidivism: Promises made, promises kept? In D. Sullivan & L. Tiffit (Eds.) *Handbook of Restorative Justice: A Global Perspective*. London and New York: Routledge Taylor & Francis Group.

<sup>27</sup> Bonta, J., Wallace-Capretta, S., Rooney, J., & McAnoy, K. (2002). An outcome evaluation of a restorative justice alternative to incarceration. *Contemporary Justice Review*, 5(4), 319-338.

<sup>28</sup> Sherman, L.W. & Strang, H. (2007). *Restorative justice: The evidence*. London: Smith Institute.

<sup>29</sup> Ibid. 14

<sup>30</sup> For similar conclusions, see Suzuki, M. & Yuan, X. (2021). How does restorative justice work? A qualitative metasynthesis. *Criminal Justice and Behavior*, 48(10), 1347-1365.





RESTORE program for sexual assault reported that the opportunity to “apologiz[e] to the person I harmed” influenced their decision to choose restorative justice.<sup>31</sup>

Among the most desired justice outcomes of victims of VAW are the perpetrator’s acknowledgment of the harm, community recognition and disapproval of the crime, and an opportunity to return to the community without shame.<sup>32</sup> Unlike criminal court proceedings in which defendants deny, minimise, or victim blame, RJ processes require a basic acceptance of the criminal event(s) to participate. As such, victims are assured recognition of their suffering and answers about why it happened. Communal processes like conferences and circles with family, friends, and community members ensure this truth is shared and affirmed.

Although some victims request various forms of reparations during RJ processes, all can benefit from the opportunity for empowerment. RJ processes like dialogues, conferences, and circles end the silence surrounding abuse and uplift victims’ voices. In this way, they can correct the power imbalance that often characterizes violence against women, particularly domestic violence. These processes also make room for the complexities of indecision, uncertainty, hope, and love. Although victims of violence against women and domestic violence certainly want their suffering to end, many feel ambivalent about pursuing punishment. By protecting RJ services, we ensure that victims can get help at any point in their journeys.

Although development of more robust research base is envisaged, early findings regarding the applicability of RJ to violence against women are promising. In one standout study, all female domestic violence victims (n=21) who participated in restorative mediation reported an end to the abuse and an overall improvement in their partners’ conduct following the process<sup>33</sup>. Even when studies have excluded cases of domestic and sexual violence, the conclusions remain relevant. For example, one study found that the key RJ variables in reducing reoffending were the inclusion of victim impact statement, restitution, and community service; these components could be included in cases of violence against women.<sup>34</sup>

#### Further references:

Developing Integrated Responses to Sexual Violence: An Interdisciplinary Research Project on the Potential of Restorative Justice (2013-2015). Practice Guide:

<https://www.euforumrj.org/en/developing-integrated-responses-sexual-violence-interdisciplinary-research-project-potential>

EFRJ dedicated webpage: <https://www.euforumrj.org/en/restorative-justice-and-sexual-violence>

<https://www.lawreform.vic.gov.au/publication/improving-the-justice-system-response-to-sexual-offences-report/9-restorative-justice-for-sexual-offences/#footnote-987>

<sup>31</sup> Ibid. 15

<sup>32</sup> Herman, J. (2005). Justice from the victim’s perspective. *Violence Against Women*, 11(5), 571-602.

<sup>33</sup> Dissel, A. (2003) in Edwards, A. & Sharpe, S. (2004). Restorative justice in the context of domestic violence: A literature review. Alberta, Canada: Mediation and Restorative Justice Centre

<sup>34</sup> Ibid. 28





Bolitho, J. & K. Freeman (2016). The use and effectiveness of restorative justice in criminal justice systems following child sexual abuse or comparable harms. Royal Commission into Institutional Responses to Child Sexual Abuse.

Centre for Innovative Justice (2014). Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community.

Coker, D. (2018). Restorative responses to campus sexual harm: promising practices and challenges. *The International Journal of Restorative Justice*, p. 385-398.

Community Legal Centres NSW (2019). Restorative justice after sexual assault. Retrievable on: <https://www.clcnsw.org.au/restorative-justice-after-sexual-assault>

Daly, K. (2011). Conventional and innovative justice responses to sexual violence. *Australian Centre for the Study of Sexual Assault*, 12, 1-35.

Hudson, B. (2000). Restorative justice and gendered violence: Diversion or effective justice? *British Journal of Criminology* 42(3), 616-34.

Keenan, M., Zinsstag, E. & O'Nolan, C. (2016). Sexual violence and restorative practices in Belgium, Ireland and Norway: a thematic analysis of country variations. *Restorative Justice: An International Journal*. 4(1). 86-114.

McGlynn, C., Westmarland, N. & Godden, N. (2012). 'I just wanted him to hear me': sexual violence and the possibilities of restorative justice. *Journal of Law and Society*, 39(2), 213-240.

Mercer, V., Sten Madsen, K., Keenan, M., & Zinsstag, E. (2015). Sexual violence and restorative justice: A practice guide. KU Leuven Institute of Criminology, Belgium.

O'Nolan, Caroline; Zinsstag, Estelle; Keenan Marie (2018). Researching 'Under the Radar' practices: Exploring restorative practices in sexual violence cases. *Temida* 21 (1) 107-129

Restorative Justice Council (2016). Restorative justice and sexual harm. Retrievable on: <https://restorativejustice.org.uk/restorative-justice-and-sexual-harm>

Pali, B. & Sten Madsen, K. (2011). Dangerous liaisons? A feminist and restorative approach to sexual assault. *Temida*, 14(1) 49-65.

Walgrave, L., Ward, T. & Zinsstag, E. (2019), When restorative justice meets the Good Lives Model: Contributing to a criminology of trust. *European Journal of Criminology*.

Zinsstag, E. & Keenan, M. (eds.) (2017). Sexual violence and restorative justice: legal, social and therapeutical dimensions. London: Routledge.

