



EUROPEAN **FORUM**
FOR RESTORATIVE JUSTICE

MANUAL ON
RESTORATIVE JUSTICE
VALUES AND STANDARDS
FOR PRACTICE



VALUES

STANDARDS

MANUAL ON RESTORATIVE JUSTICE VALUES AND STANDARDS FOR PRACTICE

Developed in collaboration with the EFRJ Standards and Values Committee (Carmen Borg, Antonio Buonatesta, Tim Chapman, Claudia Christen-Schneider, Lars Otto Justad, Olga Kiseleva, Arti Mohan, Ana Pereira, Valeria Tramonte, Edit Törzs, Kris Vanspauwen, Diána Ziedina)

Reviewed by members and experts: Ivo Aertsen (Belgium), Darren R Broomfield (Ireland), Clara Casado and the representatives of the Restorative Justice Programme for Adults in Catalonia (Spain), Honorata Czajkowska (Poland), Paul Delaney (Ireland), Bernd Glaeser (Neustart – Austria), Peter Keeley (Ireland), Ian Marder (Ireland), Kieran O'Dwyer (Ireland), Patrizia Patrizi (Italy), Frauke Petzold (Germany), Marta San-Bento (Portugal), Gert Jan Slump (The Netherlands), Annemieke Wolthuis (The Netherlands), Christoph Willms (TOA Serviceburo – Germany)

Edited by: Tim Chapman, Malini Laxminarayan and Kris Vanspauwen

Design: Bálint Juhász

2021

European Forum for Restorative Justice vzw
Herbert Hooverplein 10, 3000 Leuven, Belgium
+32 466209112 / info@euforumrj.org
Company number: 0474 656 137
Register of legal entities (Rechtspersonenregister): RPR Leuven



Funded by the
European Union

Connecting People to Restore Just Relations

Contents

The need for a manual on values and standards	7
How to read this manual	10
Key definitions	11
Restorative justice	11
Key terms	11
Four values for restorative justice	14
Standards of practice guided by principles	15
Overview of the restorative process	16
The principle of restoration and reparation	18
The principle of voluntariness	20
The principle of inclusion	25
The principle of participation	29
The principle of commitment	33
The principle of confidentiality	37
Conclusion and recommendations	41

MANUAL ON RESTORATIVE JUSTICE
VALUES AND STANDARDS FOR PRACTICE

The need for a manual on values and standards

The European Forum for Restorative Justice (EFRJ) is an international network organisation connecting members in the field of restorative justice including practitioners, academics and policy makers throughout Europe and beyond. We promote the development of research, policy and practice to ensure that every person has access to restorative justice services. Our main focus is on the application of restorative justice to criminal matters, but other areas, such as families, schools and communities are also relevant.

The EFRJ does not promote any one 'best practice' model of restorative justice. We recognise that restorative justice is an evolving and flexible approach. Nevertheless it is essential that any restorative service should be based on basic values and principles and should adhere to evidence-based standards of good practice. In an earlier stage the EFRJ has adopted four core values of restorative justice: justice, solidarity, human dignity, and truth (See: 3.3. Four core values). In addition, the following principles were also adopted: repairing the harm, voluntariness, inclusiveness of the process, active participation, commitment of the parties involved and confidentiality (See: 4. Standards of practice guided by principles).

Following our mission that every person should have access to high quality restorative justice services, the EFRJ initiated the development of materials on values and standards of restorative justice. These efforts resulted in a Practice Guide on Values and Standards for Restorative Justice.¹ As a follow-up to this guide, this Values and Standards Manual is designed for practitioners, and to support policy makers and managers to integrate the values into practice and to ensure high quality restorative justice practice.

We believe that the field of restorative justice needs guidance on good practice for various reasons. First, as our field is developing, we observe many different understandings and practices referred to as restorative justice in Europe that do not necessarily adhere to these principles or values. Examples include community service or other community-oriented interventions that fall short of applying all the restorative justice principles for those who have been harmed and do not require the active participation of those involved. There are also practices that do not consider victim participation or offender participation, or other

¹ European Forum for Restorative Justice (2018) Connecting People to Restore Relationships. Practice Guide on Values and Standards for Restorative Justice Practices, Leuven, 22 p (<https://www.euforumj.org/sites/default/files/2019-11/efrj-values-and-standards-manual-to-print-24pp.pdf>)

practices that focus solely on reaching an agreement through processes that are not based on restorative justice values. To develop restorative justice programmes and to safeguard those who participate in restorative justice processes, and to increase the acceptance and credibility of the process, we should establish minimum standards of practice. These minimum standards then define which practices fall under the scope of restorative justice processes.

Second, the Directive 2012/29/EU (Victims' Directive) establishing minimum standards on the rights, support and protection of victims of crime establishes the right to safeguards for victims in the context of restorative justice services to ensure that "victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services" (Art 12.). As the Victims' Directive does not define the requirements of a safe and competent restorative justice service fully, we offer this manual in order to define the standards of a restorative justice service that provide the necessary safeguards for victims. These safeguards must also be in place for perpetrators and for community participants to ensure a balanced approach.

Finally, because restorative justice is still a developing field in Europe, we put forward this manual to support the development of legislation and policy. When new legislation is being created, reviewed or advocated for, the values and principles set forth in this manual can provide a good basis to refer to and integrate in the formulation of restorative justice, its functioning, and the safeguards that must apply to all involved.

Standards of restorative justice processes are defined in many international documents. The UN Basic Principles (2002) encourages UN Member States to establish guidelines and standards that set out the use of restorative justice practices appropriate to their legal systems. The Council of Europe adopted its first recommendation in the field in 1999 while its more recent Recommendation on restorative justice in 2018³ is considered the most advanced international legal instrument on restorative justice, not only proposing a set of principles, but promoting restorative justice⁵ as an underlying philosophy for the whole criminal

² United Nations Economic and Social Council (ECOSOC) Resolution 2002/12 on basic principles on the use of restorative justice programmes in criminal matters

³ Council of Europe Recommendation No. R (99) 19 of the Committee of Ministers to member states concerning mediation in penal matters

⁴ Council of Europe Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters

⁵ Marder, I. (2020) The new international restorative justice framework: reviewing three years of progress and efforts to promote access to services and cultural change, *The International Journal of Restorative Justice*, 3, 395–418.

justice system and its institutions. The above-mentioned Victims' Directive (2012) of the European Union is the first legally binding international legal instrument that sets basic rules concerning restorative justice in criminal matters. The Guidance Document of the EC⁶ suggests that for Member States it "may be useful to develop national service delivery standards relating to the provision of restorative justice, which fulfil the Directive's requirements and reflect European good practice in relation to victims of crime. These should include the ability of the parties to give free consent, be duly informed of the consequences of the mediation process, issues of confidentiality, access to impartial/neutral advice, the possibility to withdraw from the process at any stage, the monitoring of compliance with the agreement and the competence of mediators."

The most important principles appearing in most international documents, that also have key importance in this manual, are voluntariness (in the sense of free and informed consent) to participate in the process, confidentiality, neutrality and the multiparty of the facilitator, the active participation of those involved, non-domination, the focus on repairing the harm, reintegration and achieving mutual understanding, and restorative justice as a generally available service at all stages of the criminal justice process.

While the role of these documents is crucial in shaping national legislation and service development, the documents themselves very rarely give concrete instructions on how to achieve or implement the principles in practice. With this Standards and Values Manual for Practitioners, we aim to support national policymakers in creating national standards, and to guide practitioners and their managers on what these principles mean in the everyday practice and in the organisational context.

Acknowledging that restorative justice can be implemented in many different ways and contexts, we would like to emphasise that this manual cannot cover all the aspects of practice nor all forms of practices that may exist, especially restorative oriented work with offenders or victims only. We also recognise that we do not have the authority to set universal standards. Therefore we see this manual as a guiding instrument and a genuine recommendation to be used by practitioners and policymakers. Restorative justice is a flexible approach with a clear framework. This manual reflects that reality.

⁶ DG JUSTICE Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

How to read this manual

The layout and structure of this manual is organised around the guiding principles that we mentioned above. For a good understanding on the use of this manual and its terminology, the first chapter is dedicated to key definitions. Discussing restorative justice processes requires a common language about how we interpret relevant concepts and ideas.

The remaining sections of this manual describe the guiding principles. For each of these principles we have developed a set of standards of good practice that illustrate what we mean by these principles. For each of these principles we have included a set of guiding values that – if applied well – could turn restorative justice processes into a high quality practice. And finally within the framework of each of these principles a list of challenges and risks are mentioned that could affect the quality of a restorative justice practice.

Key definitions

Restorative justice

The EFRJ defines restorative justice as “an approach for addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.”

The definition includes different forms of restorative practices that allow all those affected to participate, whether they are directly or indirectly affected by the harm. Restorative processes should be as inclusive and flexible as possible and seek to identify and satisfy the needs and interests of the parties involved. These needs should represent the starting point for the implementation of any restorative process. In order to provide such flexible, needs-based and culturally appropriate processes, a range of methods is needed.

Different terms are used to describe restorative justice processes. They include: victim-offender mediation, victim-offender dialogues, restorative conferences, family group conferences, circle processes and restorative dialogues. Restorative processes are often based on a direct or an indirect dialogue between victims and offenders. However, even practices that do not involve such a dialogue can be designed and implemented in a way that closely adhere to the basic principles of restorative justice, namely by ensuring a victim-centred approach that emphasises repairing the harm and/or holding the offender responsible.

The outcome of a restorative process should primarily be decided upon by the participants, as promoting their agency is a key principle within restorative justice. The restorative justice practitioner and organisation are tasked with creating and sustaining the optimal conditions in which participants can engage in generating the outcomes that are most satisfactory to them.

Key terms

Restorative justice – an approach for addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.

Harm – may include damage to or loss of property, physical, psychological or emotional injury, violation of what matters to a person such as respect, justice, safety or personal autonomy, or a breach of obligations that creates a rupture in personal or social relations. A crime or a breach of rules or norms may be perceived as a harmful incident. Such an incident will have one or more perpetrators and one or more direct or indirect victims. A person is a perpetrator or a victim only in relation to the specific incident.

Special attention has to be paid to cases of severe harm, harm that has been repeatedly inflicted upon victims, or in cases where victims are particularly vulnerable. However, practice shows that this assessment of the “seriousness” is not always clear at the start of a restorative justice process. Sometimes issues of power imbalance, symptoms of past trauma or special vulnerability only emerge during the process. Therefore facilitators should be aware of this potential challenge, and a restorative justice process should be carefully designed for these possibilities. Therefore, special attention needs to be given in cases when:

- harm has been especially severe such as murder and serious physical or sexual violence;
- harm has been repeated over an extended period (by one perpetrator or other perpetrators at different moments in time);
- there is an evident risk or intention of continuing harm;
- there are perpetrators or victims who are considered vulnerable due to age and/or physical and/or mental disability;
- there are issues of power and control over victims;
- the victim and/or perpetrator has symptoms of past trauma;
- the seriousness of the harm represents a significant risk to the public.

Participants – all those engaged in the restorative process, who are encouraged to directly or indirectly participate actively in order to ensure the most effective outcome possible.

Supporting persons – all those participants in a mediation process that are present for the purpose of supporting one or more parties, and are not actively participating in the process. Examples are a family member, caregiver, friend, social worker or counsellor.

Victim – the person that has suffered harm as a result of a crime or harmful incident. In this manual, the term “victim” is used to facilitate identification of a person in relation to a specific harmful act.

Perpetrator – the person who has caused the harm. This term too often has a stigmatising and labelling effect and it is not the intention of this manual to identify perpetrators just by their harmful acts or to infer that the perpetrator has never been the victim of harm. As is the case with the term “victims,” it is used to facilitate the identification of the person in relation to a specific harmful act.

Restorative processes – the umbrella term used in this manual to refer to the different restorative justice processes used within Europe for dialogue-based methods. Examples are victim-offender mediation, family group conferences, and peacemaking circles.

Indirect restorative processes – processes where parties do not meet during a face to face dialogue, but rather indirectly. Communication can take place through ‘shuttle’ processes, video, online or telephone conferences, in addition to recorded or written messages.

Facilitator – a person who is competent to engage, prepare and enable people to participate safely and effectively in restorative processes. The term facilitator also covers the other terms commonly used, such as mediator, restorative justice coordinator, etc.

Values – a concept which denotes a quality of importance, worth or benefit to a field of action. Our values enable us to decide what is necessary when understanding the problems that restorative justice addresses, to define solutions to these problems and to practice with integrity.

Principles – a set of propositions or beliefs governing practices. Our principles provide guidance based upon experience and research on how we should act according to our values to achieve our aims.

Standards – a level of quality or attainment used as a measure, norm, or model to specify what people can reasonably expect from the practice of restorative justice and can be used to evaluate performance. Our standards of practice are promises or commitments to those we serve so that they may expect a high-quality, beneficial service and are protected from abuse and/or unethical practice. Standards enable us to hold ourselves accountable.

Four values for restorative justice

In an earlier publication, the EFRJ introduced its core values for restorative justice with the following definitions:⁷

Respect for human dignity – the underlying philosophy of restorative justice recognises each human being as valuable and worthy of being respected. Restorative processes are accordingly to be designed in a way that participants feel safe and respected, empowered with a feeling of ownership of the process and able to speak freely. Restorative processes also acknowledge and appreciate the capabilities and strengths that each person brings to the process and allow these to flourish.

Solidarity and responsibility for others – people are independent, interconnected and diverse and the quality of those relationships is crucial to the wellbeing and social cohesion of individuals. The aim is to reconnect participants and find ways that they can fulfil their corresponding obligations for the wellbeing of others and allow them to assume their personal responsibilities.

Justice and accountability – the focus of restorative justice is on harms which are unjust or wrong. The goal ought to be to alleviate suffering and to reduce the likelihood of further harm. For this to be effective, the restorative process should be fair and to the greatest extent possible without any domination by any of the parties. Justice also refers to accountability and the notion of contributing to the ‘substance’ of justice, as perceived and experienced by the parties.

Truth through dialogue – a central value for participants in restorative processes, especially for victims, who often need to understand what happened is obtaining truth through dialogue. Victims often have many questions to ask the offender and their need is often to hear the truth about what and why things happened. Restorative justice recognises that there is no such thing as “one truth” but that the narratives of each person contain a form of truth, which may be partial but add to the whole integrative truth. Through storytelling and questioning more about the truth surfaces and participants need to understand the importance of telling the truth and being sincere in their intentions and commitments they make throughout the process.

⁷ European Forum for Restorative Justice (2018) Connecting People to Restore Relationships. Practice Guide on Values and Standards for Restorative Justice Practices, Leuven, 22 p (<https://www.euforumrj.org/sites/default/files/2019-11/efrj-values-and-standards-manual-to-print-24pp.pdf>)

Standards of practice guided by principles

In order to offer participants a fair and safe implementation of restorative processes, it is important to work within the boundaries and protections of human rights and the rule of law; not to discriminate against anyone on the basis of age or any personal characteristic; and to support the active participation of people within democratic societies as active and equal citizens.

Standards of practice enable practitioners to provide participants in restorative processes with a strong and safe platform through which they can prevent harm or restore what has been damaged, lost or violated by harm.

Standards ensure that agencies and practitioners responsible for making restorative processes available to the public are accountable for the quality of their practices and the ethics of their conduct. Accountability protects people's rights and safeguards their well-being. It enables government policy makers and funding organisations to understand what it is they support and to monitor the performance of agencies responsible for making restorative processes available to the public. Where standards are adhered to, practitioners are protected from inappropriate and unsubstantiated complaints.

In the following section, the principles of repairing the harm, voluntariness, inclusion, participation, commitment and confidentiality will be presented in terms of the standards of practice that should be met.

Overview of the restorative process



REPAIR
ING

**REPAIRING
THE
HARM**

THE
HARM

The principle of restoration and reparation

Depending on the context, restorative processes can provide a meaningful experience of justice:

- through repairing what has been damaged, lost or violated by an unjust harmful act to the greatest extent possible;
- through restoring broken relationships;
- through restoring dignity, respect and the feeling of safety, to the greatest extent possible;
- through providing what perpetrators need to assist them in desisting from harming others;
- through providing what is needed within wider (institutional or social) systems to prevent further harm.

STANDARDS OF PRACTICE

- Those harmed can ask questions, describe how they experienced the harm and request actions to repair the harm.
- Those responsible for harm are enabled or adequately supported to account for their actions.
- The impact of the harm will be fully addressed, including the social ripple effect beyond those directly impacted.
- The needs of each participant will be addressed both through the process and the outcome(s).
- Consideration is given to how to prevent further similar harm.
- Actions, will address the actual or potential harm, emerge from the process of dialogue, and are ideally agreed upon by all participants in a voluntarily manner.
- Actions will support the reintegration of all parties involved and to restore dignity for the victim.
- The agreed actions are specific, measurable, relevant to the issues raised by the parties involved and time-bound for review and completion.

Values increasing the quality

- The principle of restoration recognises that an unjust act of harm is a violation of a person's dignity and weakens relationships of solidarity within society. As a consequence, respect, responsibility and justice should be addressed through a process of accountability and dialogue based upon truth and sincerity.
- Evidence shows that restorative processes generally engage victims and perpetrators more effectively when compared to the traditional justice system. Victims' needs and interests are taken into

account. Perpetrators believe that they are treated more fairly than through traditional justice. Both parties associate restorative justice with fair treatment.

- Perpetrators appreciate the opportunity to meet the victim, to actively participate and to express remorse. They have been found to have a more positive attitude towards police and the law as a result of participating in restorative justice. Restorative justice often helps to strengthen relationships with their friends or relatives, encouraging desistance.
- Entering into a safe and truthful dialogue with others enhances each participant's understanding of what has happened from each person's point of view and leads to a sense of responsibility to repair or restore the consequences of the harm.
- The responsibility is ideally reflected in a sincere agreement on actions which are specific, measurable, relevant to the issues raised by the participants and time scheduled for review and completion. This specificity enables people to be held accountable by others.

Challenges and risks affecting the quality

- **Discrimination:** participants are excluded or receive less favourable opportunities or treatment on account of their gender, disability, race, social, ethnic, cultural, religious or domestic background.
- **Imbalance of power:** some participants dominate or intimidate others.
- The involvement and participation of the victim is primarily used for the perpetrator's rehabilitation, or the involvement and participation of the offender is primarily used to satisfy the victim's urge for retribution.
- The system prioritises case processing, efficiency and costs, and statistical targets at the expense of quality.
- Restoration is imposed unilaterally by judicial or other authorities without any attempt to involve the parties in the decision making process.
- **Secondary victimisation:** the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.
- The practitioner is not trained and prepared to facilitate processes addressing complex, sensitive or serious harm.
- The practitioner leads the participants towards the practitioner's own preferred outcome.
- There is a lack of trust in the impartiality of the facilitator.
- The professionals dominate the process.
- Individuals are not supported to have a voice and be heard.

- There is a low level of communication and understanding between the participants.
- Active shaming of an individual by others.
- Victims' emotions and stories are not validated.
- Apologies are coerced or contrived.
- Perceived lack of sincerity exists in relation to answers to questions, to the apology and to offers of reparation and promises to avoid further harmful behaviour.

VOL
VOLUN
UNIT
TARI
AIDIN
NESS
ESS

The principle of voluntariness

Participants must voluntarily choose to participate. This means the process must only occur if all prospective participants freely give the facilitator permission to organise and facilitate the process, after they have received appropriate information about how it will work. They should also have had an opportunity to have their questions answered so that they fully understand what to expect and should be given sufficient time to reflect before deciding.

STANDARDS OF PRACTICE

- The restorative process proceeds after an offender admits responsibility for his or her part in the criminal offence or harmful act. This form of responsibility does not necessarily entail full responsibility for the legal charges that are laid against the offender, but includes at least an acknowledgement of responsibility in the act or in the harm it caused.
- Participants understand their rights, the nature of the (legal) process and expectations of participants, and of the possible negative consequences of both participation and non-participation.
- Involvement and participation in the process is voluntary and based on informed consent.
- Participants understand that informed consent can be withdrawn at any time throughout the process.
- Refusal to participate in the restorative process or withdrawal of informed consent cannot disadvantage any participant in light of the criminal procedure that may follow.
- Participants arrive at any agreement voluntarily.

Values increasing the quality

- The principle of voluntariness is associated directly with the value of respect for the dignity of people.
- Restorative justice recognises each human being as valuable and worthy of being respected as a person. Restorative processes are accordingly to be designed in a way that participants feel safe and respected. People are encouraged to express any concerns over safety and respect that they may have. These concerns are taken seriously and addressed to the satisfaction of each party.
- People will experience a sense of control over their participation in the process resulting in a feeling that the process is designed and facilitated for their needs and wishes rather than that they are being used to further the goals of others. When inviting people to partici-

pate, the facilitator acknowledges and respects the capacities and strengths that each person brings to the process.

- A restorative process is a motivational process through which the offender and the victim can start considering to take part in the process.
- It is important that people are aware that they can say “no” and that at any stage of the process they can withdraw their consent and permission.

Challenges and risks affecting the quality

- The institution, the personal environment or practitioners coerce or induce, by unfair means, participation or non-participation.
- The practitioner fails to fully explain the voluntary nature of participation.
- The capacity of peoples’ verbal capacities, emotional and cognitive maturity, self-confidence, etc. is not taken into account by the practitioner.
- People are not fully informed and have a low level of understanding of the restorative process.
- People lack trust in the impartiality of the facilitator.
- The mediator or the referring body exerts undue influence over elements of the outcome or agreement.
- The legal framework does not clarify consequences of withdrawal, or does not ensure that it has no effect on the proceedings or a future new attempt to restorative justice.

INC

INCLUSION

ION

The principle of inclusion

Each restorative process is carefully designed to fit the needs and capacities of the participants and will be accessible, sensitive and adapted to the diversity of the participants' gender, domestic responsibilities, racial or ethnic origin, language, disability, religion or belief, age and sexual orientation. Inclusion also refers to the people who might also be affected by what happened directly or indirectly, and thus are to be approached and invited to participate in the process as well.

STANDARDS OF PRACTICE

- Great care is taken to identify who should participate in the process and agreed criteria are followed for any decisions about excluding potential participants.
- Victims and perpetrators have been given an opportunity to invite supporters (family members, friends, or other people important to them). The role of supporters will always be clearly defined in the process so that issues of power (im)balance are addressed.
- Victims and perpetrators have an opportunity to involve or consult a lawyer. Their role in the process, however, is always clearly defined and agreed upon by all parties.
- Victims and perpetrators are invited to participate in a restorative process on the basis of their own needs and interests and never simply to serve the needs and interests of others. However, for an offender, admitting responsibility is sometimes connected with duties, which do not always meet their needs and interests, but are required for a good process and outcome of the restorative justice process.
- Where appropriate, representatives of the affected communities and relevant professionals are invited to participate. Also, their role and involvement in the process is clearly defined and agreed upon by all parties.
- The practitioner has inquired into how cultural factors may have an impact on the inclusion of some people and has adapted the restorative process appropriately.
- Great care has been taken in engaging and inviting the individuals to participate, by recognising and managing language, domestic or capability barriers so that restorative justice is accessible to all.
- An assessment of risks and concerns has been conducted with each participant. The practitioner has understood any risks and taken steps to protect the safety of all participants (e.g., through a risk mitigation plan).

- Decisions about unsuitability of cases because of perceived risk to victims should not be taken without consulting the victim.

Values increasing the quality

- The principle of inclusion is associated directly with the dignity of people through respecting the diversity of their backgrounds, needs, wishes and capabilities.
- Restorative justice is based upon the proposition that those most affected by a harmful act should be involved in coming up with a plan to address its consequences.
- Those affected include victims and those close to them, perpetrators and those close to them and the appropriate community. A facilitator bears in mind the balance among the supporting persons on each party's side in order to prevent any party from feeling abandoned, vulnerable and disempowered.
- Some models of practice may also include relevant professionals.
- Restorative processes are to be designed in a way that participants feel safe and respected.
- People should be encouraged to express any concerns over safety and respect that they may have regarding participation. These concerns should be taken seriously and addressed to the satisfaction of each individual.
- Evidence suggests that restorative processes work best if people affected by harm meet and communicate directly with each other.
- Victims are willing to meet those who have offended against them for many reasons including to tell their story, ask questions, to seek reparations, and to advance their recovery. In some cases, victims hope that they can help to prevent reoffending and contribute to a safer society.
- Most perpetrators welcome the opportunity to express their remorse, to repair the harm that they have caused and restore their reputation in the community. In some cases, the offender may want to avoid prosecution or punishment.
- The community's understanding of the crime is enhanced and this can result in the reintegration of offenders and more support for victims. The participation of people from the community may persuade the offender to take more responsibility.
- The inclusion of the community also offers a meaningful learning process for citizens in dealing with injustices, and hence a restorative process can contribute to a democratisation of justice into or towards society.

Challenges and risks affecting the quality

- **Discrimination:** participants are excluded or receive less favourable opportunities or treatment on account of their gender, disability, race, social, ethnic, cultural, religious or domestic background or language and communication skills.
- **Systems' (criminal justice, school, social services) values and priorities override the principle of inclusion:** e.g., by prescribing the suitability of referrals, neglecting victims, advising that restorative justice is an 'easy option'.
- **Stigmatisation:** labelling and treating participants solely according to perceived moral or psychological deficits such as personal responsibility and motivation, risk, vulnerability.
- **Power imbalance:** number of supporters of one party significantly outweighs the number of another one; a victim or a perpetrator feel themselves disempowered and uncomfortable, are afraid to speak in the presence of so many people representing another party.
- **Instrumentalisation:** the process is delivered to achieve the system's priorities and outcomes, e.g., the restorative process is considered simply as a means of reducing offending, or the presence of victims is used for the perpetrators' rehabilitation.
- **Re-victimisation:** disregard for and failure to address the trauma experienced by some people, or their needs and rights.
- **The offender's only motivation to participate is to avoid prosecution or punishment.**
- **Lack of resources required for restorative processes to be available, accessible and inclusive:** availability of competent and trained practitioners, time constraints, delays, unsuitable venue and facilities.
- **In its desire for agreements as successful outcomes the system favours the selection of the 'ideal' victim or perpetrator for restorative justice.**
- **Lack of skill and attention devoted to engaging victims on the basis of their needs.**
- **The capacity of peoples' verbal ability, emotional and cognitive maturity, self-confidence etc., is not taken into account.**
- **People lack trust in the impartiality of the facilitator.**



PARTICIPATION

PARTICIPATION

The principle of participation

Restorative processes must sustain the safety, respect and fairness required for participants to speak and express themselves freely, honestly and from their own perspective. No party should dominate the process and restrict the participation of others.

Research supports the argument that restorative processes are most genuine and satisfying when parties can meet directly. However, the use of other methods such as shuttle mediation, proximity and letter are integral and equally valuable options within a restorative process and participants may choose freely. In this respect the mode and nature of participation for parties in restorative justice processes is case-unique and dynamic.

It is crucial that restorative processes are led by trained and experienced facilitators that are capable of offering the right options in any circumstance and in any type of conflict.

STANDARDS OF PRACTICE

- Each participant is fully prepared to participate in the process in their own way.
- Where appropriate to the process, a victim and a perpetrator can choose to bring supporters to the process.
- The process takes place in an environment that is accessible, safe, private and confidential for all parties involved, and takes place at a convenient time for all parties.
- The process accommodates any special needs taking into account the age, gender, verbal and physical abilities, and cultural and language sensitivities.
- The focus of the meeting is on the actual or potential harm and its prevention or repair and not on the individuals.
- The participants are encouraged to speak freely and honestly about their feelings and their accounts of the harm, its causes and consequences.
- Each participant is encouraged to freely ask their questions and enter into dialogue with others.
- Steps are taken to ensure each person was heard and understood.
- No participants were able to dominate the dialogue or intimidate others.
- Supporting persons or professionals cannot act on behalf of the parties and exert undue influence on the outcomes of the process and on the conditions of the prospective agreement.

Values increasing the quality

- The principle of participation is associated directly with the values of respect for the dignity of people, solidarity and responsibility for others, justice and accountability and dialogue through truth.
- The restorative process respects each person's lived experience, intelligence and ability to communicate and to solve problems.
- The process of restorative justice is primarily participative and depends upon all participants being facilitated to actively communicate with each other.
- Such communication requires skilful preparation of each party so that they are enabled to articulate in their own way their narratives, their emotions, their needs and what really matters to them.
- It is important to focus on the harm and its consequences so as to avoid stigmatising individuals. Facilitators should not only support participants to express themselves but also check that the others have understood accurately.
- The process will be validated to the extent that participants have spoken openly and truthfully without fear. Both victim and perpetrator can at any time ask for a private conversation with a facilitator, often known as a time-out.
- The supporting people taking part in the process can express their opinions and their feelings if that is clearly agreed upon by all parties. However they do not determine the process outcome.
- The parties' lawyers are aware of their agreed role in the process. They can provide legal advice to the parties that they represent. However, they cannot influence the process nor the decisions taken by the parties.

Challenges and risks affecting the quality

- The facilitator fails to prepare the parties to participate actively in the process.
- Discrimination: participants are excluded or receive less favourable opportunities or treatment on account of their gender, disability, race, social, ethnic, cultural, religious or domestic background.
- The facilitator or some participants are permitted to dominate or intimidate others.
- The process is delivered to achieve the system's priorities and outcomes, e.g., the restorative process is considered a means of reducing offending or reducing the caseload of the courts. The presence of victims furthermore cannot be used for the perpetrators' rehabilitation.

- Re-victimisation: trauma experienced by participants is disregarded, failure to address the needs and observe the rights of the participants.
- System focuses on case processing, efficiency and costs, statistical targets and measures at the expense of quality, with no room for innovation.
- The facilitator frames the participants' accounts to control what is said, how it is said and what is heard.
- The parties' supporters interrupt or speak for an offender or a victim, or impede their communication with other participants.
- The agreement is not signed or is signed under pressure because of undue pressure exerted on the parties by their supporters, lawyers or family members.
- The facilitator is not trained and prepared to facilitate processes addressing complex, sensitive or serious harm and as a result, victims of crimes such as intimate partner violence, sexual offences or hate crime, feel unsafe, intimidated or manipulated.
- The facilitator fails to ensure that each participant has access to appropriate support before, during and after the restorative process.
- The capabilities of the participants (verbal ability, emotional and cognitive maturity, self-confidence etc.) have not been taken into account.
- Participants have a low level of understanding of the restorative process.
- Lack of trust exists in the impartiality of the facilitator.
- The professionals dominate the process.
- Individuals are not supported to have a voice and be heard.
- Low level of understanding exists between the participants.
- Shaming of an individual by others occurs.
- Victim's emotions and stories are not validated.



C O

M M M I

T M

E N T

The principle of commitment

Parties involved in the process are encouraged and supported for completing the actions agreed upon through a restorative process.

Not all restorative processes are suitable to reach agreements and not all processes succeed in reaching an agreement. Not all parties wish an agreement as the outcome of the process and this should not prevent a restorative dialogue to take place.

STANDARDS OF PRACTICE

- Commitments are perceived as sincere, especially by victims.
- Commitments agreed upon during the process are always measured against the principle of proportionality.
- Commitment is regarded as a growing feature in the course of the process, and requires ongoing motivational support from the facilitator.
- Those who had made commitments to act are supported and held accountable for keeping their commitments.
- Commitments made during a process will always pass the test of “reality checking”, and at the same time taking into account the management of expectations of all parties involved.
- Achievement in completing agreements is recognised and celebrated.

Values increasing the quality

- The principle of commitment is associated directly with the values of respect for human dignity, solidarity and responsibility for others, and justice and accountability.
- The credibility of restorative justice is undermined unless agreements made are carried out fully. This requires commitments to be adhered to through a system of support and accountability.
- Perpetrators who honour their agreements have complained that they do not receive any recognition. Their reintegration and desistance from further harmful actions can be reinforced by significant people including victims being aware of and acknowledging their efforts and success.
- As far as possible, when commitments are not kept, the response should be restorative rather than punitive.

Challenges and risks affecting the quality

- **Discrimination:** participants are excluded or receive less favourable opportunities or treatment on account of their age, gender, disability, race, social, ethnic, cultural, religious or domestic background.
- **Instrumentalisation:** the process is delivered to achieve the system's priorities and outcomes, e.g., reparative actions are not given the same priority as rehabilitative actions.
- **Lack of resources** required for support and accountability.
- **System focuses on case processing, efficiency and costs, statistical targets and measures at the expense of quality.**

CONFIDENTIALITY

CONFIDENTIALITY
FIDELITY
CONFIDENTIALITY

The principle of confidentiality

Confidentiality should be guaranteed when participating in a restorative justice process. This principle provides a space in which the participants feel safe to engage in a truthful dialogue, ultimately encouraging mutual understanding. Confidentiality is of utmost importance to providing an environment where no single party feels susceptible to harm. Breaches of confidentiality can further ostracise the participant or lead to further legal actions taken against the perpetrator.

By guaranteeing confidentiality, parties are in a better position to exchange experiences on the causes that might have driven the perpetrator to harmful behaviour and the repercussions on the victim(s). Such exchange places the participants in a position to better reach an agreement which fully considers the needs and wishes of all participants.

STANDARDS OF PRACTICE

- Potential participants are informed of what the restorative justice process entails.
- From the beginning, potential participants are informed that participants in the process are bound by the principle of confidentiality. The facilitator accurately explains what this principle entails and addresses any questions and/or concerns participants might have.
- Any regulations limiting confidentiality are fully explained to the participants. These regulations may apply to the safeguarding of children and vulnerable adults, indicators that an individual is considering self-harm or suicide and disclosures of serious criminal offences which are not known by the authorities.
- The parties must give consent if an approved person wishes to observe the restorative process (e.g., a politician, judge, prosecutor, journalist, or researcher) and give their explicit permission to disclose any detail of the process.
- Any issue concerning confidentiality raised throughout the restorative justice process is immediately addressed by the facilitator.
- The final agreement should include a clause addressing confidentiality, which should serve as a reminder to all parties. If parties wish to disclose information on the mediation, this should be with the agreement of all parties and should be clearly stated in the agreement.

- Confidentiality must be kept by the facilitators. It should be guaranteed that facilitators may not disclose any information to third parties, including lawyers, authorities, the court or family members, except if it is explicitly agreed upon by all parties involved.

Values increasing the quality

- The principle of confidentiality is based on the values of respect for human dignity and solidarity and responsibility for the well-being of others.
- Restorative justice depends upon justice being attained through honest accounts of responsibility for harm and of the experience of being harmed. This process requires dialogue based upon people's truths.
- The provision of a service which is based on free and true dialogue requires parties to trust each other with private information.
- Ideally an informed consent form which addresses voluntary participation and confidentiality, among other issues, is signed by participants prior to commencement of the restorative justice process.
- In view of the fact that participation may be driven by various reasons, concerns about participation may be addressed through the explanation of what confidentiality entails and its exercise. This is likely to result in a higher rate of participation as well as positively affect satisfaction of participants with the restorative justice process.
- Through the guarantee of confidentiality, the perpetrator feels free to express remorse and repair the harm caused through his/her illegitimate acts, since this is likely not to have negative consequences in the criminal justice process. A safe environment is likely to encourage the expression of emotions and narrative through dialogue. This will develop awareness and responsibility for committed actions, as well as a relationship between the perpetrator and the victim.
- Through confidentiality, stigmatisation of participating parties is avoided. Both the perpetrator and the victim(s) are likely to experience stigma in different ways, as a consequence of the commission of the illegitimate act.
- Where the possibility of imminent serious crimes or other harms is disclosed during any restorative justice process, the facilitator must to convey the information to appropriate authorities and/or to the persons concerned.

- Parties should be aware of the contents of the written agreement resulting from the restorative process. Agreements are signed by parties involved certifying that it is accurate and they understand the conditions of confidentiality.

Challenges and risks affecting the quality

- Lack of appropriate training on confidentiality.
- The principle of confidentiality and its limitations are not explained accurately to all participating parties.
- The principle of confidentiality is not safeguarded by the legal framework.



Conclusion and recommendations

As indicated in the introduction already, this Manual on Restorative Justice Standards and Values for Practitioners is a guiding instrument for practitioners in their day-to-day practice striving for quality restorative justice processes. It should therefore not be regarded as a prescription for the single only good practice.

In addition to this publication, the EFRJ will plan follow-up materials that will further assist practitioners, policy makers and service agents to fine tune their work. First of all, a quality review tool for restorative justice services is being developed, based on the building blocks of this manual. Secondly, a case study guide for practitioners will be prepared as a practical addendum to this manual. Further guides are planned on training and continuous development of facilitators, organisational aspects of restorative justice services, management of such services and on ethical issues.

Developing this manual within the framework of a standing committee of the EFRJ, followed by an elaborate and critical review process with experts in the field was an educational experience. Discussion on good practices in the field of restorative justice will always remain an endeavour, knowing that we do not wish to compromise our core values. At the same time we want to remain respectful of different interpretations about how restorative justice principles can be affected by the given circumstances or the (country) specific contexts. The ideas outlined in this manual are not intended to be definitive statements and consequently can and will change and grow through open dialogue with the evidence of research and with our colleagues throughout Europe and beyond. We recommend, therefore – in the philosophy of the EFRJ – to engage in an open dialogue with others across the boundaries of your country or your own profession. Dialogue is likely to lead to better solutions.

In the spirit of the above, please contact the EFRJ with questions, feedback, and/or suggestions on this manual at info@euforumrj.org



EUROPEAN **FORUM**
FOR RESTORATIVE JUSTICE