

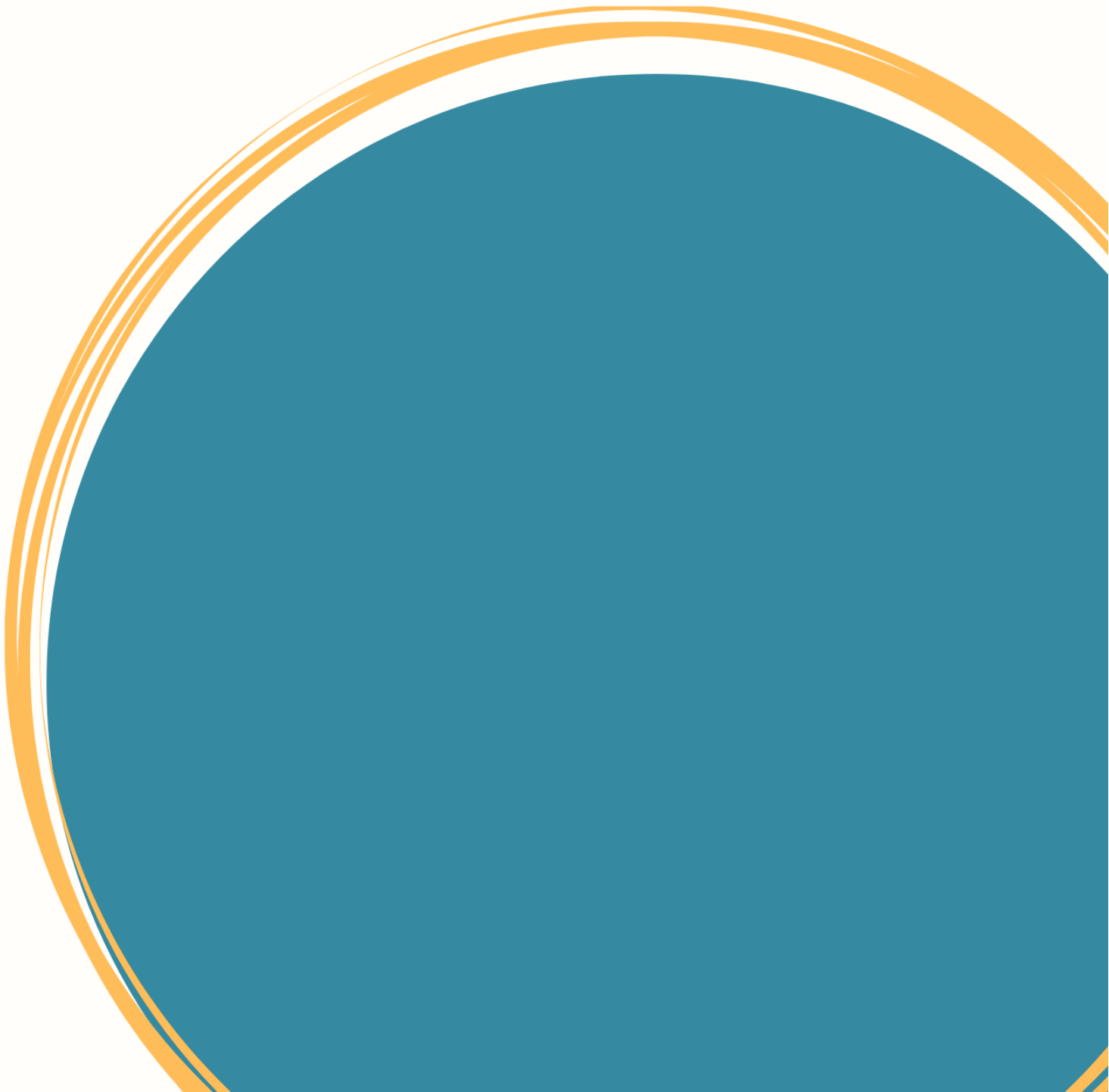


RE-JUSTICE

Judicial Training in  
Restorative Justice

## Annex 5

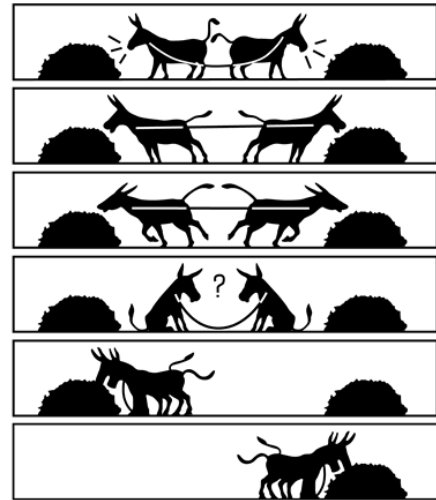
# Handout 5: Restorative Justice Programmes



## What is conflict? Ways of responding to conflict

### NEGOTIATION

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### ARBITRATION

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

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

## ALTERNATIVE DISPUTE RESOLUTION (ADR) – CONCILIATION AND MEDIATION

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### CONCILIATION

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

### MEDIATION

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

The mediator supports the parties to find their own solutions.

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

## RESTORATIVE JUSTICE

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Council of Europe's 2018 definition of Restorative Justice :

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

Nils Christie – “conflicts as property” (1977)

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

Zehr (1990 & revised 2015)

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



## WHAT ARE THE DIFFERENCES BETWEEN MEDIATION AND RESTORATIVE JUSTICE?

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

## DIRECT AND INDIRECT RESTORATIVE JUSTICE

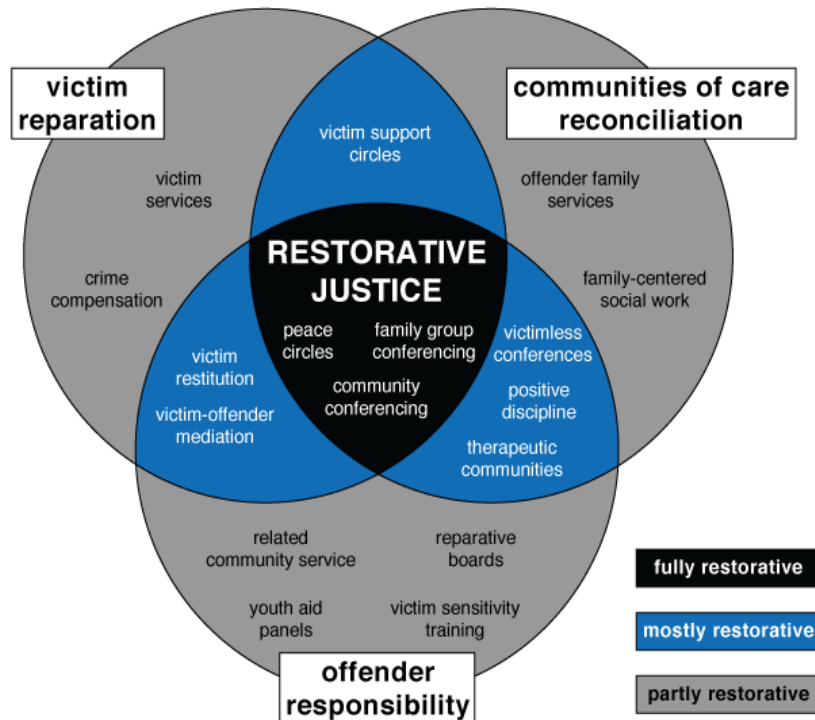
RJ meetings can be direct, where parties meet face to face. RJ can be indirect where parties dialogue through a facilitator, shuttle mediation, or some other means (letters, videos).

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

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

## TYPES OF RESTORATIVE JUSTICE PRACTICES

### Types and Degrees of Restorative Justice Practice



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

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

## STAGES OF RESTORATIVE JUSTICE PROCESSES

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

## References

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