

Guide to Environmental Restorative Justice

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Authors

The team at INSTA Environmental Legal Services.

External review

Tésera Mediación.

Vicenç Rul-Ian (Member of the Asociación de Justicia y Práctica Restaurativa de las Islas Baleares).

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Introduction to the guide

1.

1. Introduction to the guide

Current environmental challenges (climate change, the energy transition, water management and so on) are causing serious public concern. It appears that existing tools to cope with them are not sufficient, and new approaches and tools are needed.

Legal procedure to protect the environment is also evolving, opening up new ways to find alternative solutions focused on repairing the damage.

The human connection is also affected when there is an environmental problem or damage, for example an excess of visitors to natural areas or when there is a fire there. And just as the environment needs to be protected, it is also essential to “restore” the human connections that have been affected. A failure to take this aspect into account can create the risk of generating tensions or uncontrolled emotions, and impeding dialogue and the implementation of solutions; such a failure may therefore be an obstacle to environmental improvement in a region. Thus, we consider that caring for human relations is also a way of protecting the environment.

In this guide we propose the alternative path of restorative justice, which means models of justice that recognise the importance of taking into account the parties involved in the facts; seeking an alternative solution to punishment. However, it does not aim to exclude a role for the state, or to ignore the existing legal system, but to include the affected parties directly in legal proceedings in order to empower them: the author of the action(s) (providing they have first recognised their offence), those directly affected by their actions and also the community affected by the offence.

As we will see in this guide, the benefits of restorative justice are the humanisation of the legal system, the consideration of all the parties involved in the offence so that they can feel listened to and to attach value to the social connection. This process can open up spaces for forgiveness and reconciliation, even though these may not necessarily come about.

At INSTA we want to play our part in this change of perspective and to promote environmental restorative justice. To do this, we have prepared this guide as part of the project “Environmental Dialogue for Everybody’s Future”¹.

We have structured this guide in conceptual and practical parts to aid understanding: a part devoted to restorative justice and its application in Catalonia (principles, legal framework, challenges and so on); another part on its practical application on the basis of restorative practices; and a third part dealing with environmental justice through specific cases in Catalonia.

¹ Project funded under the call for Distinctive projects for inter-cooperation within the cooperative movement, setting up cooperatives and projects to support cooperatives and organisations in the social and solidarity-based economy, governed by Order EMT/167/2021 of 2nd August 2021, funded by the Catalan government department of Business and Work

Aims of the guide

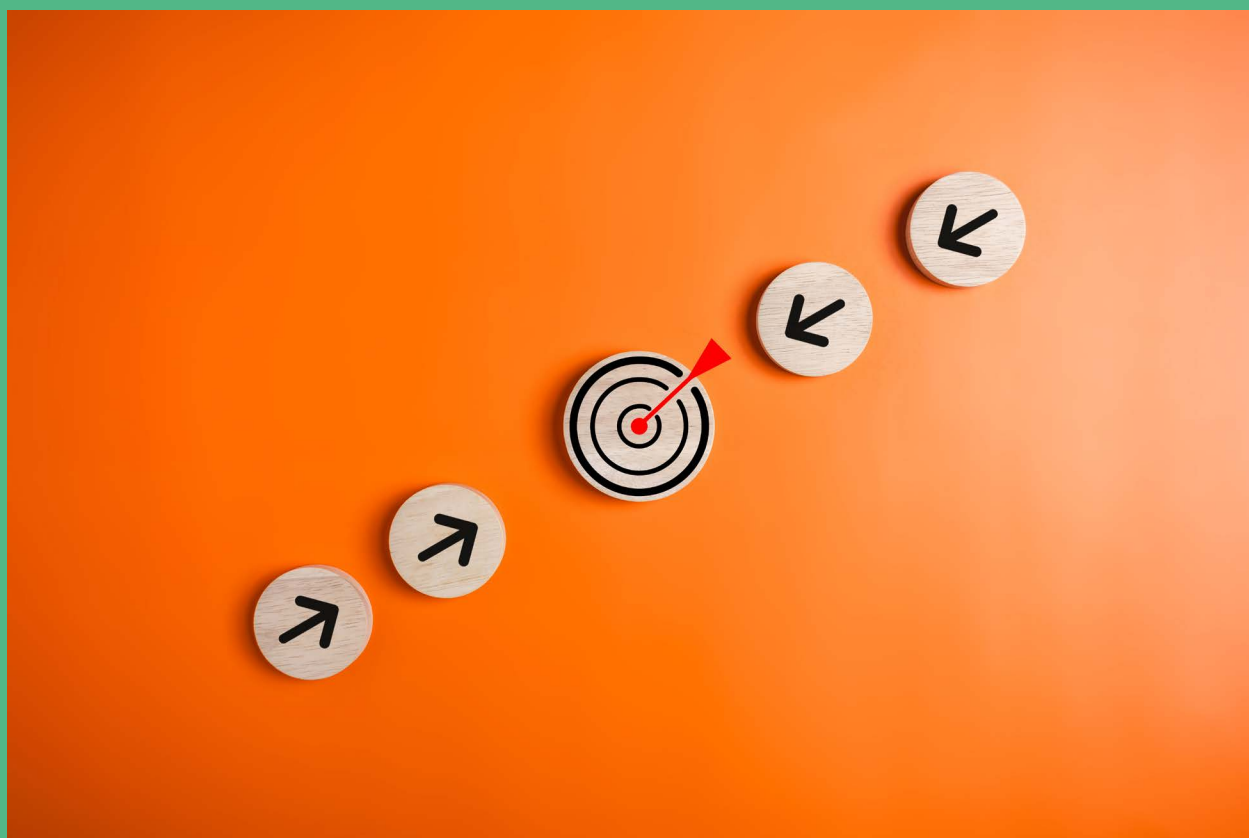
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2. Aims of the guide

The primary goal of this guide is to present the concept of Environmental Restorative Justice (ERJ), and identify the procedures and tools for applying it in Catalonia.

To achieve this primary goal, the following specific aims are set:

- To define the features and legal framework of restorative justice and ERJ in Catalonia.
- To present the tools and techniques to apply ERJ: restorative practices.
- To outline practical applications of ERJ in criminal and administrative law in Catalonia.



Restorative Justice

3.

3. Restorative Justice

3.1 What is Restorative Justice?

The ordinary legal system currently operates on the supposition that damage is an offence against the state. This model, known as retributive justice, centres legal action on the author of the action(s) and on the conflict their behaviour has caused for law and order. However, it does not consider another dimension of criminal behaviour: the harm done to the person and/or community affected.

In general terms, restorative justice² proposes a different way of seeing and dealing with crimes, offences and other harmful conduct, and of responding to them. The United Nations Restorative Justice Programme defines restorative justice as an evolved response to crime that respects the dignity and equity of every person; develops understanding; and promotes social harmony through remedies/reparations for the affected party or parties, the people causing the damage and communities (United Nations, 2006).

The restorative justice paradigm does not aim to replace the traditional justice paradigm, which moreover includes due recognition of the person's fundamental rights and guarantees before the state, but to complete this intervention of justice and cater for the needs of those actually living with the conflict underlying the damage caused and its consequences: the affected party or parties and their surroundings. Thus, on the basis of identifying the damage suffered and the needs of those suffering it, restorative justice emphasises repairing the damage by involving not only the state or the author of the action(s) (who must take responsibility for their criminal behaviour), but also the party affected and other members of the community in order to achieve reconciliation (Zehr, 2007).

Restorative justice is a process in which the parties involved in an action that has caused damage decide together how to deal with the consequences of the action and its repercussions in the future.

This concept aims to provide a new view of damage, rather than simply the strict view of infringement of a regulation, and take into account the consequences of the damage done, but also relations between people and the community affected.

For restorative justice, a fair response must set out to repair this damage as a who-

² It should be pointed out that no consensus exists on the definition of restorative justice, as different interpretations of it have arisen in different countries, also marked by language differences. Moreover, different terms have been used to describe the restorative justice movement, such as "community justice", "positive justice", "reparatory justice" and "restoring justice", among others (United Nations, 2006).

le. In this respect it offers new techniques, such as proposing a process of dialogue to the affected party or parties, in order to deal with the damage done and make joint proposals to arrive at solutions. On occasions such meetings may have a transformational effect on the lives of those taking part, thanks to the curative power of dialogue, which goes beyond reparation of the damage caused by the action.

3.1.1. Precedents

Restorative justice is rooted in practices common among the first peoples to inhabit several continents. The numerous examples include the circles among the first nations of Canada, Samoan circles in the Samoa Islands and the practices of the Kom people in modern-day Uganda (Hamilton, 2021).

These cultures have in common a set of techniques aimed at taking collective decisions and collective conflict resolution based on the principles of inclusion for those taking part, active listening and being driven by a concern to care for the community in general.

In the modern context, the theory of restorative justice was originally developed out of pilot experiments and initiatives carried out in several communities in the United States and Canada in the 70s. On the basis of these experiments, community reconciliation schemes were proposed, which then became examples or models for setting up other similar programmes in the 80s and 90s in North America and Europe (Wachtel, 2013).

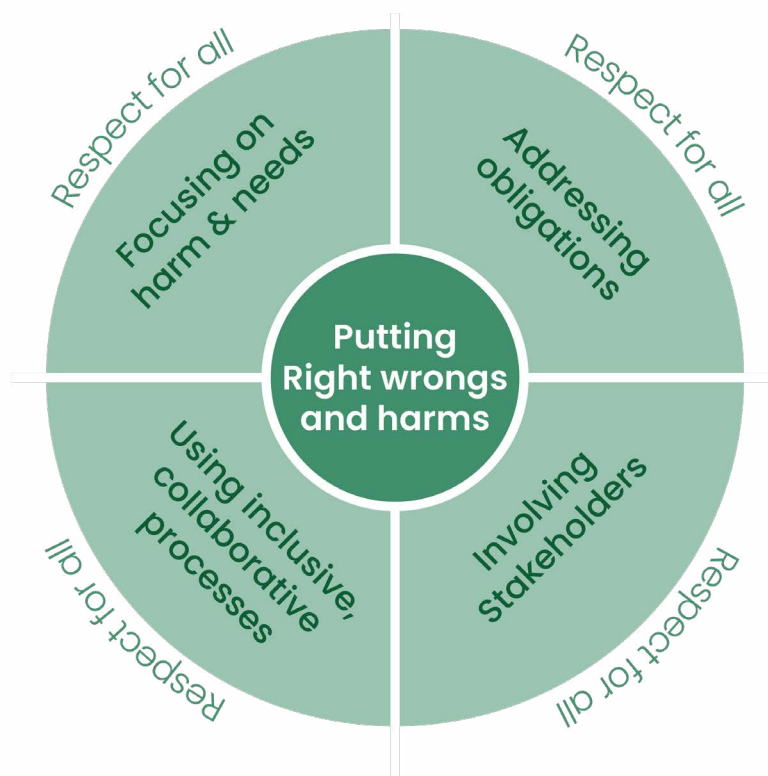
3.1.2. Principles and goals of Restorative Justice

The restorative paradigm has five key **principles** (Zehr, 2007):

- Concentrating on the **damage** and on the **needs** of the person affected by the action, as well as on the author of the action(s) and the community.
- Fulfilling the **obligations** arising from this damage, both by the author of the action(s) and society.
- As far as possible, using **inclusive, collaborative processes**.
- **Involving all the people or parties** with a legitimate interest in the situation; including the affected party, the author of the action(s), members of the community and of society itself.
- Trying to make **amends** for the offences and damage caused.

These principles are based on **respect** for all parties involved, which must guide and shape their application (Zehr, 2007).

Figure 1: "Restorative Principles"



Source: Zehr (2007), p. 41

3.1.3. The need for a change of paradigm

The very evolution of society has led to a search for an alternative to the current model, founded on a new "restorative" paradigm, characterised by (Rul-Ian Castañer, 2011):

- **De-judicialising relations** between people and inviting them to involve themselves personally in settling their conflicts.
- **By considerably reducing the number of cases to settle**, allowing ordinary justice to concentrate on those conflicts that, for the moment, escape restorative justice.
- **Empowering those involved in the conflict**, making it easier for them to settle future conflicts peacefully.
- **Increasing the likelihood of meeting the needs** of the people principally affected, as well as the rest of those involved in a conflict.
- **Helping to re-integrate the author of the action(s)**, at the same time supporting them so that they can take responsibility for the consequences of their actions and remedy the harm caused.

- **Helping the community to live in a culture of peace** in which conflicts, while inevitable, are not seen as an aggression that necessarily calls for the intervention of outside agents (the police and judiciary) to find a solution.

This new paradigm is developed on the basis of new questions (see Table 1) addressed to the parties involved in the situation.

Table 1. Differences between the questions behind the approach of retributive justice and restorative justice.

Retributive Justice (Conventional judicial system)	Restorative Justice (New paradigm)
What rule has been broken?	Who has been harmed?
Who did it?	What are their needs?
What punishment do the authors of the action(s) deserve?	Who has the obligation or the responsibility to respond to these needs?

Source: Zehr (2007), p. 41

3.1.4. Areas of application of Restorative Justice

The restorative paradigm or approach originated primarily in the sphere of the criminal justice system. However, restorative justice seeks to involve anyone with an interest in dealing with an offence; a situation of difficulty, tension or conflict that might not be categorised as crimes, but cause harm.

Thus, the principles of restorative justice have gone beyond the criminal legal system to spread into other areas where conflict might also arise; such as the family, business, employment, educational or environmental spheres, among others, so broadening their scope and impact (Wachtel, 2013). As we discuss later on, the restorative approach has also begun to be applied in administrative justice.

3.2. Restorative Justice in Catalonia

In Catalonia, restorative justice has been developed in order to provide a more comprehensive response to criminal conflicts, focusing its attention on the needs of the parties affected and on the re-insertion of the author of the action(s) into society (Generalitat de Catalunya, 2024a).

Catalonia has pioneered the implementation of this model in Spain, starting with pilot projects in the 1990s which have been consolidated over the years. In this respect, the Catalan government department of justice, through its general directorate for criminal enforcement in the community and juvenile justice, has set up a “Restorative Justice Programme”³, covering both minors and adults, offering a free, voluntary service that prioritises reparation of damage and restoration of the social relations affected.

This programme, which has become a consolidated, essential service, is free and voluntary, which means that anybody involved in a criminal conflict can access these mechanisms without any financial barriers. A lot of work has also been done to make this service accessible to and known to the whole of the Catalan population, with a particular emphasis on regional and social equality.

3.2.1. The legal framework in Catalonia

The legal framework sustaining restorative justice in Catalonia is based on European and Spanish legislation, adapted to the Catalan context:

- Catalonia is governed by Directive 2012/29/EU of the European Parliament, which establishes minimum rules on the rights of victims of crime, including access to criminal mediation and other restorative services. Moreover, Recommendation CM/Rec (2018)8 of the Council of Europe fosters the implementation of restorative justice in criminal processes, encouraging member states to develop this focus within their justice systems.
- In Spain, while there is as yet no specific legislation for adults in the area of restorative justice, Law 4/2015 of 27th April 2015, governing the Statute of the Victim of Crime, specifically mentions the right of affected parties to have access to restorative justice services (articles 3, 5, 15 and 29). Also, Organic Law 1/2015, reviewing and updating the Penal Code of 1995, introduced the possibility of suspending execution of the penalty if agreements can be reached through mediation, which has allowed an expansion of the use of restorative practices in the sphere of adults.

3 For further information, see: <https://justicia.gencat.cat/ca/ambits/mediacio/justicia-restaurativa/programa/>

3.2.2. Forms of restorative intervention

In Catalonia, different forms of restorative intervention have been developed, described in the Catalan government document “Framework Programme for Restorative Justice” (2024b), through its general directorate for criminal enforcement in the community and juvenile justice; each form is tailored to the particular circumstances of each specific case:

- **Criminal mediation:** this is the most common form in Catalonia, where a mediator facilitates dialogue between the affected party and the author of the action(s). This process allows the parties to discuss the damage caused and explore forms of reparation that could range from apologies to financial agreements. Mediation may be direct, where the parties meet face to face, or indirect, where the mediator acts as go-between without the parties meeting physically.
- **Restorative circles:** this approach involves the community in the restorative process, allowing not just the affected party and the author of the action(s) to take part in resolving the conflict, but also other people affected. This method is particularly useful in cases where the crime affected a larger group of people, as in the case of community or environmental conflicts.
- **Restorative interviews:** these are held when the affected party does not wish to meet the author of the action(s), but needs to express their feelings and get emotional support. These interviews allow the affected party to talk about the impact of the crime, which helps to relieve the emotional burden and to clarify their expectations with regard to the judicial process.

3.2.3. Implementation of and challenges to the Restorative Justice model in Catalonia

The Restorative Justice programme in Catalonia has evolved since its beginnings. According to the 2023 Programme Report (Generalitat de Catalunya, 2023), in that year 2,246 restorative processes were completed, with 63.5% of them viable to execute a complete process. The most-used forms were indirect mediation⁴ (52.9%), joint mediation⁵ (18.3%) and restorative interviews⁶ (24.89%). The types of crime most commonly dealt with in these programmes were those against liberty (37.47%), assault

⁴ Indirect mediation is a process whereby the parties involved in a conflict do not meet face to face, but the mediator acts as a go-between, passing on messages and proposals between them.

⁵ Joint mediation involves the parties meeting in a common session to discuss and resolve the conflict together.

⁶ Reparatory interviews are meetings focused on reconciliation and repairing the damage caused, often used in the context of restorative justice.

(32.13%) and crimes against property (21.90%). In 48.67% of the restorative processes completed, the parties arrived at one or more agreements.

According to this Report, a significant aspect of the Programme has been its ability to adapt to the needs of affected parties and authors of the action(s), providing a safe, confidential space in which to deal with the effects of the crime. Over the years, taking into account the data shown in the report, the Programme has proven its effectiveness, not just in terms of settling conflicts, but also in boosting the satisfaction of affected parties and in reducing repeat offences by the authors of the action(s).

However, despite its achievements, restorative justice in Catalonia faces several major challenges:

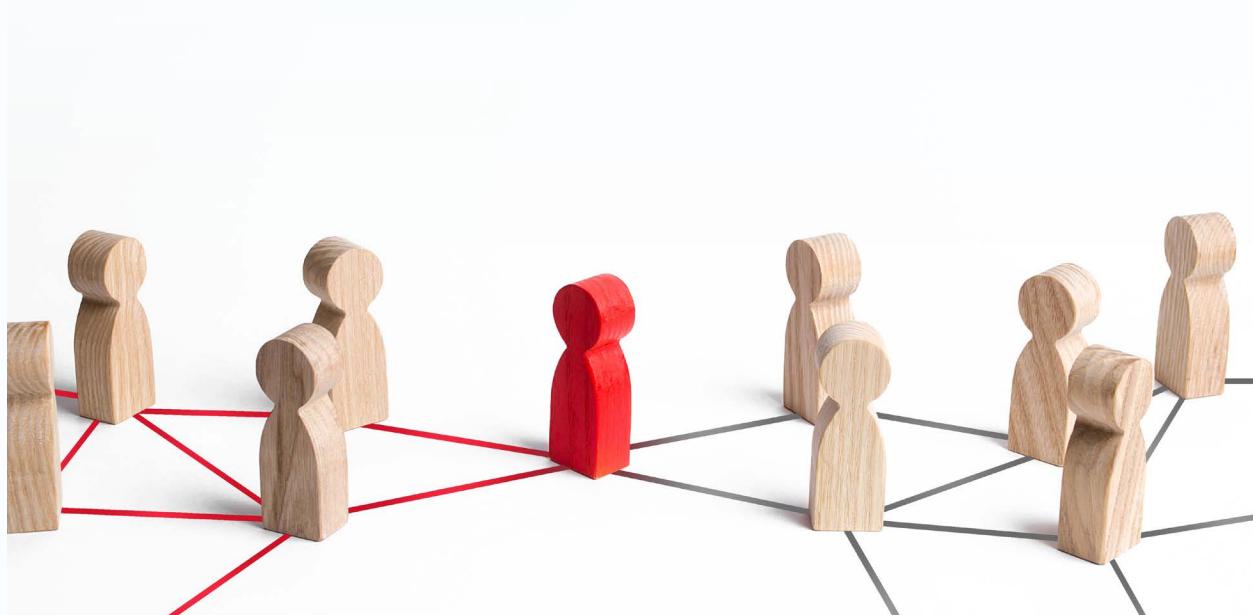
- **Regional coverage:** A key challenge is to ensure that restorative justice services are accessible throughout Catalan territory. This means not only a better distribution of resources, but also making sure the services are known and used by everybody, regardless of their geographical locations.
- **Continuing training:** Training for the facilitators and other professionals involved is crucial to the success of restorative processes. Continuing training needs to be expanded and improved, with a particular focus on handling complex cases and on making those in the judicial system aware of the benefits and challenges of restorative justice.
- **Fostering restorative culture:** It is essential to foster a restorative culture among both the public and those in the judicial system. This includes awareness-raising campaigns, training in the rights of the affected party or parties and in the role of restorative justice, as well as simplification of redirection processes. The perception of restorative justice as an accessible, effective right needs strengthening to cement its position.
- **Expansion of legislation:** While important progress has been achieved, there is a need for more specific regulatory development to support and structure the implementation of restorative justice in the adult sphere, complementing existing legislation covering minors. This legislative development could provide greater clarity and coherence in the application of these approaches.
- **Agility in conflict resolution:** One of the strengths of the Catalan programme is the speed of resolution of restorative processes. Maintaining this agility is crucial to strengthening the perception of efficiency and satisfaction among the parties involved, in comparison with the traditional judicial system.

The “Restorative Justice strategy 2030” of the Catalan government (Generalitat de Catalunya, 2024a) is pursued in a context of consolidation and generalisation of restorative justice services in Catalonia. This strategy, established by the Department of

Justice, Rights and Memory, sets out to turn a pioneering service into a public right. Restorative justice, which already has a significant basis in Catalonia, is approached as an essential tool for a more humane, less punitive justice, centred on repairing harm and restoring coexistence.

The reasons for carrying out this strategy are based on the need to expand and improve access to restorative justice for all those concerned, regardless of the type of crime or stage in the criminal process. It also seeks to reduce the punitive tendency in conflict resolution, to promote social cohesion and to strengthen the culture of peace. This strategy responds to a framework of international regulations and recommendations, such as the directives of the United Nations and the Council of Europe, which call for restorative justice to be incorporated into criminal systems. The strategy is also aligned with the 2030 Agenda and Sustainable Development Goal 16, which promotes peaceful, inclusive societies.

Therefore, different political, judicial and social actors have worked together to reach agreement to drive a strategy with the aim of making restorative justice a habitual response to crime in Catalonia, ensuring its accessibility, equity and quality.



Restorative Justice and Restorative Practices

4.

4. Restorative Justice and Restorative Practices

4.1. The restorative view

The restorative view is based on the belief that conflicts are inevitable in human relations, but that if they are dealt with properly, they can be opportunities for growth and change; avoiding harm to the territory and to the environment.

Adopting this approach not only helps to repair the harm, but also to build more resilient, environmentally-aware communities. In this guide we propose to set it down in five principles on which to base interactions in any institution or organisation that has adopted this way of working (Hopkins, 2019):

- 1** Everybody has a unique point of view and a valuable contribution to make.
- 2** Our thoughts influence our emotions and both of these influence what we do and say.
- 3** Our actions have an impact on those around us
- 4** Our actions are strategies to meet our needs.
- 5** The people affected by a situation are the best ones to settle it.

The intervention by the restorative facilitators will focus on applying these principles, taking into account the following premises:

- **Responsibility and reparation:** the people responsible for the damage must take responsibility and contribute to repairing the harm caused, taking into account the needs of the people affected.
- **Inclusive dialogue:** All the people affected by the damage must take the chance to participate in the process of dialogue and decision-making.
- **Restoring relations:** The aim is to restore, if possible, damaged relations and foster reconciliation.
- **Empowering the community:** The process must help to give a role to people and the community in managing their conflicts, and to foster social justice and peace.
- **Transforming the context:** Not only does it seek to repair the damage, but also to deal with the underlying causes that contributed to the conflict or damage.

4.2. Restorative techniques and methodology

Restorative practices are rooted in restorative justice, allowing its principles to be applied in situations between authors of the action(s) and affected parties to foster coexistence. It can boost awareness of protecting the environment and repairing harm where possible.

Restorative facilitators use a range of techniques according to the point in the restorative process. These techniques can be divided into two broad groups: basic restorative tools and circles.

4.2.1. Basic restorative techniques

Empathic listening

This means listening without interrupting, showing one is present and paraphrasing the most important of what is heard, concentrating on the speaker's feelings and needs rather than on judgements.

Authentic expression

This consists of the free expression of judgements, focusing the discourse on one's own experience (what I have experienced on the basis of identifying my needs, i.e. what really matters to me).

Restorative dialogue or conversation

When dialogue is based on empathic listening and authentic expression, a real restorative dialogue can then be generated as it cares for the relationship and connection between the parties. This process guarantees that the parties feel their needs are listened to.

4.2.2. Circles

The circle is the quintessential tool offered by the restorative approach: it is the space we organise to encourage dialogue, the expression of people's own experiences; the needs of the people affected are identified, and through the responsibility of the authors of the action(s) and of the agents involved, actions are proposed.

There are several types of circle methodologies developed by different facilitators,

including: Terry O’Connell⁷, Key Pranis⁸, Héctor Valle⁹, Dominic Barter¹⁰, Duke Duscherer¹¹, Belinda Hopkins¹² and Jean Schmitz¹³.

On the basis of our own experience, we propose to group circles into two broad methodological models:

- **Dialogue circles (for prevention)**. In this case, there do not need to be any conflicts or disagreements to engage in such dialogues.
- **Restorative circles (for conflict management)**. These are used when there are disagreements, open conflicts and/or damaged relations:
In view of the topic of this guide, we will concentrate on describing the restorative circle model, as we have already described the dialogue circle model in the guide “Diálogo ambiental” [Environmental Dialogue] (INSTA, 2024).

4.2.2.1 Restorative circles

This is a restorative practice that consists of a structured meeting to discuss more complex matters, to which the participants may be highly sensitive.

Three phases: the pre-circle, the circle and the post-circle

Restorative circles are characterised by the following phases:

a) The pre-circle

When a person in the community experiences a situation of difficult relations, or feels that harm has been done to them, they can ask for a circle. It can also arise that an individual, an environmental NGO or some other agent identifies significant environmental damage that affects their own community.

The facilitator will conduct a prior interview with the parties affected, focusing on listening to their needs; and, if, they agree, they will contact the other people involved, to listen to their needs too. They will encourage dialogue with questions in order to talk about what has happened, how they feel and what their needs are.

This prior interview will allow the facilitator to confirm whether the parties affected want to take part in the circle (consent and free will), and to explain how the organisation works and its framework.

7 For further information: O’Connell, Wachtel, & Wachtel (2013)

8 For further information: Pranis, Stuart, & Wedge (2003).

9 For further information: <https://colectivodialogos.com/proyectos/dialogos-restaurativos#:~:text=Los%20E2%80%9Cdi%C3%A1logos%20restaurativos%E2%80%9D%20surgen%20para%20desarrollar%20y>

10 For further information: <https://www.restorativecircles.org/>

11 For further information: <https://togetherwethrive.world/>

12 For further information: <https://transformingconflict.org/teachers/belinda-hopkins/>

13 For further information: Schmitz (2018).

b) The circle

The people who are involved in the situation and have expressed a wish to take part on a voluntary basis will attend. It must be attended by at least the affected parties, the author of the action(s) and the facilitator or facilitators. In the case of the affected parties, it also includes the community indirectly affected by the damage.

In the circle, each person can express themselves and feel listened to in the course of the different rounds:

- **A round for each party to explain how they experienced the situation:** at this stage, each actor listens and feels their experience is listened to, opening the door to mutual understanding and helping to re-establish connections between the parties, and to repair the damage caused.
- **A round of taking responsibility:** the participants state what needs led to their action, what their thoughts were when they acted. The aim is to escape from the “image of the enemy” and accept that we all have human needs, even if our strategies to satisfy them are different.
- **A round of decisions:** an opportunity is provided for each actor to propose steps to improve the situation they have experienced. As the proposals are made, they are voted on and a plan of action is agreed.
- **A closing round:** before leaving, the participants are invited to say how they experienced the circle or what they are taking away from this experience, and they say goodbye respectfully.

c) The post-circle

Some time after the circle takes place, the participants and the facilitator meet again to review the plan of action. They assess compliance with the agreements, and also their emotional position regarding the facts and the process.

At each stage, the facilitator encourages the process with restorative questions (see Annex).

4.2.3 Benefits of this methodology

In the environmental sphere, circles can serve to bring together the different actors involved (local communities, company representatives, environmental activists, etc.) to share points of view, experiences and seek solutions together.

- **Strengthening community cohesion:** by working together to settle environmental conflicts, communities can strengthen their bonds and boost their abili-

ty to question future problems, including environmental ones.

- **More sustainable and inclusive solutions:** by including all the parties involved, the solutions adopted are more likely to be sustainable in the long term and accepted by the community.
- **Turning the conflict into an opportunity:** environmental conflicts can be seen as an opportunity to bring about positive change, constructing more resilient, environmentally responsible communities.

In short, restorative practices provide valuable tools for conflict resolution and reparation of damage in the environmental sphere, fostering responsibility, community participation and sustainability.

4.2.4 The role of the facilitator

The facilitator in restorative practices plays a key part in ensuring that the process is safe, effective and affective. It is essential that facilitators are well-trained in these techniques and are able to adapt them to different cultural contexts and specific situations. Their functions include:

- Protecting the integrity of the process (by recalling values, commitments, etc.), and setting the pace and pattern of the process.
- Creating an environment of trust in which all parties feel comfortable in sharing their experiences.
- Supporting the communication process, by ensuring that everybody has the chance to speak and be heard.
- Ensuring impartiality/multipartiality¹⁴ and fairness in participation in the dialogue, without taking sides.
- Helping to explore the parties' needs in order to reach a mutual agreement that is acceptable and beneficial to those taking part.

¹⁴ Definition of impartiality, multipartiality and neutrality: while we often talk colloquially about “being neutral” in our position with regard to a conflict of interests, the fact is that BEING neutral as such is not possible. We can act in a fair, balanced way that supports all parties, but all of us have thoughts, emotions or feelings towards certain positions, even if we have absolutely no interest in the matter under discussion. We naturally make mental connections with what we are listening to or considering, and somehow interiorise this somewhere within ourselves. This does not mean that we cannot act appropriately in mediation, but we like to make a distinction between three different words: neutrality, impartiality and multipartiality, identifying how to act in order to comply with each of them and opting for the word “multipartiality” to describe the characteristic we seek in alliance with all parties to advance in the process,” (Alonso Leal et al., 2021, p.37).

The restorative
view in the
environmental
sphere:
Environmental
Restorative
Justice

5.

5. The restorative view in the environmental sphere: Environmental Restorative Justice

5.1 What is Environmental Restorative Justice?

Environmental Restorative Justice (ERJ) is a form of restorative justice that focuses on repairing damage caused to the environment, either as a consequence of a crime or because of some other harmful behaviour or omission.

It should be borne in mind that environmental damage is not the same as common or traditional damage, and it can lead to lasting consequences over a wide area (Castellón del Valle, 2006), for example in the case of the widespread contamination of aquifers by pesticides (Recordà Cos, 2019).

The ERJ framework deals with the difficulties in determining and assessing environmental damage, not only on the basis of objective, material and financial parameters and indicators, but taking into account the consequences, emotional impact and needs of the people directly or indirectly affected, as well as the consequences for future generations. This opens up the possibility that the damage done to ecosystems can be repaired on the basis of steps that can be rejected, altered or co-designed by the affected parties and therefore binding on all those involved (European Forum for Restorative Justice, 2022; Forsyth et al., 2021). These actions might include apologies and agreements, and commitments to restore and prevent a recurrence: for example, by restoring the damaged environment, financing organisations that carry out restoration projects, providing a compensatory habitat elsewhere if the ecosystem affected cannot be repaired, work for the benefit of the community¹⁵, environmental training or education for the employees or subcontractors of the author of the action(s), among others (Preston, 2011).

Thus, ERJ can be described as presenting “an opportunity to remedy current ineffective environmental responses and concentrate on the pressing need to correct current harmful practices and prevent future environmental damage,” (European Forum for Restorative Justice, 2020, p. 1). However, ERJ does not seek to add new practices to supplement or replace existing punitive processes, but rather to incorporate the restorative approach in a holistic way into regulatory environmental practice

15 For further information, consult: https://cdn.forestresearch.gov.uk/2022/02/perpetrators_and_nature_report.pdf

(Forsyth et al., 2021). While the restorative approach cannot expect to be used in all or in many cases of environmental crime, “The way restorative justice fosters responding to environmental crime may be used for all environmental crimes that cause damage,” (Preston, 2011, p. 25).

5.2 Participantes en el proceso restaurativo

Different ways of referring to the parties involved in a conflict situation can be found in the literature. For example, victims, criminals and aggressors, among others.

In this guide we have chosen to refer to the parties involved in the following way, with an essentialist approach in mind:

- **Affected parties:** to refer to the individuals and the community that feel affected by the situation, either directly or indirectly.
- **Author(s) of the action(s):** to refer to the individual or group that took the action seen as harmful by the affected parties.

The essentialist approach and restorative justice

In the essentialist approach (adapted from Winslade & Monk 2000), negative behaviour or crime, or wrongful actions, are considered an intrinsic part of a person’s identity. For example, if someone has committed a crime, this focus would lead this person to be labelled a “criminal” without taking into account the context of the possibility that they might change.

On the contrary, restorative justice rejects this essentialist view. Instead of identifying the person with their actions, it separates the behaviour from the individual. This means that the crime or the problem is seen as something that can be remedied, and the person has the ability to learn, change and improve. They are not defined by their past actions, but given the chance to take responsibility and change.

This approach helps people to see themselves as capable of repairing the damage and making a positive contribution, instead of remaining trapped in a negative identity.

5.2.1 The author of the action(s)

By the author of the action(s) we mean a person, company or organisation that has done harm to the environment. This term refers to those responsible for breaking environmental law or for harmful practices that cause damage to ecosystems, biodiversity or public health.

In restorative justice, attention centres on repairing the damage caused. Here the restorative process can help the author of the action(s) to recognise their actions,

take steps to remedy the damage caused and take part in a process of reparation of the damage and reconstruction of relationships, if possible. The aim is to encourage active responsibility, and to restore the ecological and social harmony instead of concentrating entirely on punitive sanctions.

In some cases, environmental damage may be caused by big companies or multinational organisations. In these cases, the imbalances of power or the difficulty of securing the participation of a company that can take advantage of different legal systems to avoid its responsibility are aspects that need to be taken into account.

5.2.2 The affected party or parties

Those affected by environmental damage may be specific people whose quality of life, health or property are directly impacted, but may also be members of the community who are affected indirectly, or future generations or the environment, its natural elements and other-than-human beings (Preston, 2011).

Considering future generations and the environment as affected parties means realising that the environmental damage caused by the commission of an offence may not only lead to the loss of natural elements that are irreplaceable. It may also be “chronic, deferred or cumulative, and therefore suffered by future generations,” and may “require remedying over generations,” meaning the burden and cost thereof is transferred to future generations. It also means understanding that human beings are not the only ones harmed by environmental damage, but the environment and its natural elements can also be affected, as they possess an intrinsic value regardless of the utilitarian value attached to them by humans. Damage assessment need not therefore be solely anthropocentric (Preston, 2011).

Identifying the affected parties is an important, complex phase in restorative justice (Hamilton, 2021), and depends on a range of factors, including: the ability of the team facilitating the process to carry it forward, as well as agreeing on the process with the participants and their willingness to take part, among others.

If an individual is the party affected by an environmental crime, they can take part personally or be accompanied and supported by other people such as family, friends, legal advisers and other support professionals. In the event that there is no affected individual (a natural person), the restorative approach envisages the possibility of a “representative” taking part.

5.3 Practical application of Environmental Restorative Justice in Catalonia

In Catalonia, ERJ began to be applied under the Catalan government document “Framework Programme for Restorative Justice” (2024b). The Programme allows for the implementation of restorative processes at any stage in the criminal process; during the preliminary investigation, during the trial or during execution of the judge’s decision. It uses an approach applicable to all crimes, including those related to the environment, which have historically been less common in this sphere.

The “Restorative Justice strategy 2030” of the Catalan government (2024a) mentions how the Restorative Justice Programme was introduced in Catalonia. It explains that pilot trials had existed in the 1990s, centring on juvenile justice. These early attempts sought alternatives to the traditional criminal justice system, showing promising results that laid down the basis for a more structured approach. In the 2000s, restorative justice began to expand into the adult sphere, though it was still an emerging approach. At this time, awareness-raising and training of people in the legal system were prioritised, preparing the way for a broader roll-out of these practices.

Nevertheless, the decisive impetus for ERJ came with the Restorative Justice Programme, coordinated by the Catalan government department of justice. This programme consolidated and expanded on previous efforts, providing a structured framework for the application of restorative justice for all crimes, including environmental ones, and at all stages in criminal procedure. Therefore, while Restorative Justice already existed, it is from this time that the restorative approach began to be used for environmental matters (Fernández Ferran, Ferré Giró & Raga Marimon, 2024).

5.3.1 Criminal law

The Spanish criminal justice system includes the figure of “conformidad” or acceptance (articles 655 and 784 of the Royal Decree of 14th September 1982 approving the Criminal Procedure Act, known by its acronym of “LECrim”); a mechanism whereby the accused can accept the facts before the judge prior to sentencing, which generally leads to a reduction in the sentence. This mechanism works without the need for a restorative process and does not necessarily involve the participation of the affected parties, as its main aim is to reduce the punishment of the accused.

Restorative justice, on the other hand, offers a different approach, as it seeks to involve all the affected parties, included both affected people and community, in a process that can lead not only to a reduction in the sentence, but also to reparation

of the damage caused. This difference is crucial, as the figure of “conformidad” is not linked to the restorative paradigm, while restorative justice centres on reparation and re-integration, taking into account the needs of all parties involved.

In cases of environmental crime, where the environment is the affected party and no humans are directly affected, including the community, represented by environmentalist groups, may be fundamental. These bodies can act as representatives of the environment in restorative processes, by taking part in the dialogue circles and making sure the need for reparation and prevention of future damage is dealt with (Generalitat de Catalunya, 2024b).

5.3.1.1 Procedure and methodology¹⁶

In cases related to environmental crime, ERJ can be initiated at the request of a party or ex officio, either in the trial period or on execution of the sentence. The reasons for which the parties, depending on what point they are at in the proceedings, decide to initiate a restorative process under criminal law, may vary depending on the point in the proceedings, though restoration of damage and participation by the affected parties will always be prioritised. When the petition for intervention is received, either ex officio or from a party, the Restorative Justice Programme begins with individual sessions or interviews with the parties involved – author of the action(s), (directly) affected party or parties, (indirectly) affected community or bodies – in order to determine the aims of the intervention.

After this preparatory phase, specific methodologies such as restorative circles are used, to allow all parties to have their say. The number of circle or conference sessions will be determined in the light of the parties’ needs, with the agreement of the facilitator.

In the context of environmental crime, where the affected parties may not be clearly defined, the community is often considered the principal affected party. One of the difficulties identified in the application of ERJ in the Spanish criminal law system is the lack of a clear definition of “community” within the criminal law framework. However, the restorative process in Catalonia attempts to deal with this issue by involving the Community as far as possible.

In this respect, the role of the facilitator is crucial. On the basis of an exhaustive diagnosis, they identify the parties involved. This process must be run in consensus with the parties directly involved, to agree together which group or collective makes up the affected community, including those who might be indirectly affected by the situation. This is particularly important with environmental crime, where the damage

¹⁶ The information in this section is based on an interview conducted with Albert Rodríguez Rodríguez (facilitator of restorative processes, Fundación AGI), on 2nd August 2024.

might be widespread and affect a large group of people rather than specific individuals.

Finally, the process may come to an end for two reasons: because the parties have arrived at an agreement or because they decide to end it. In any case, the conclusions and agreements from the process will be passed on to the judicial body, which may or may not take them into account.

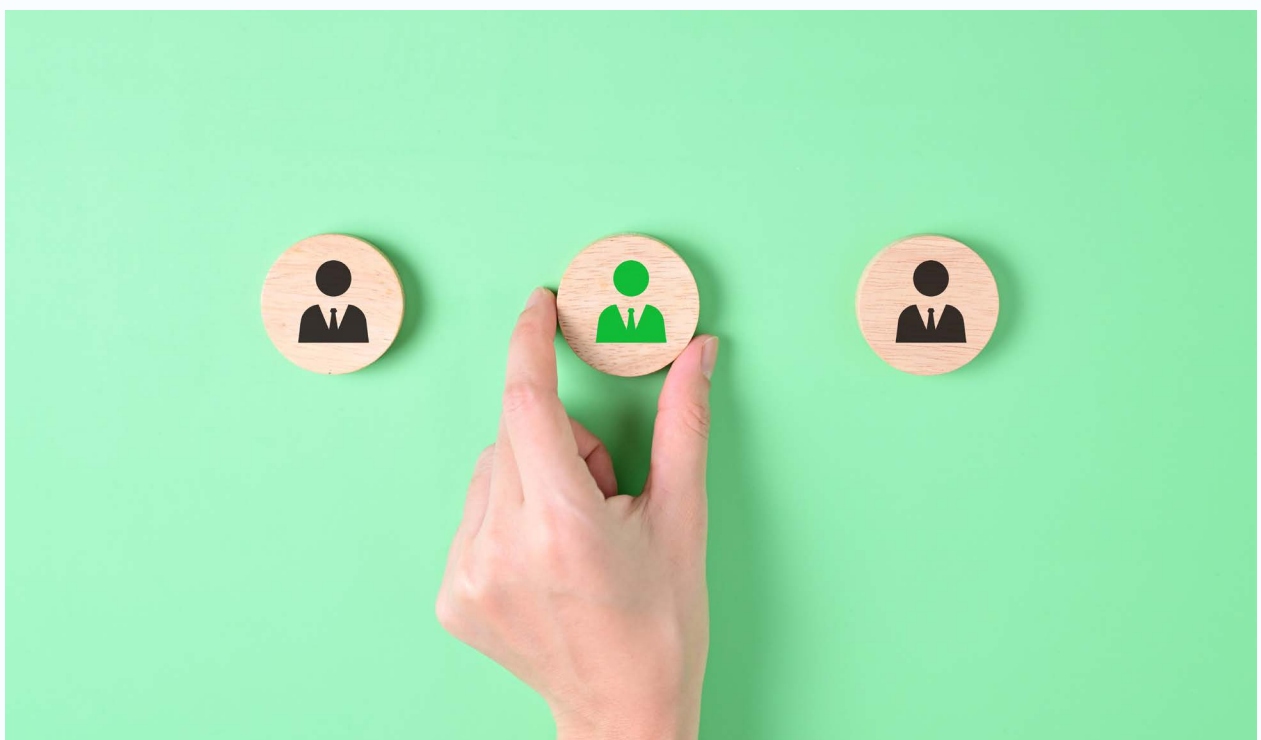
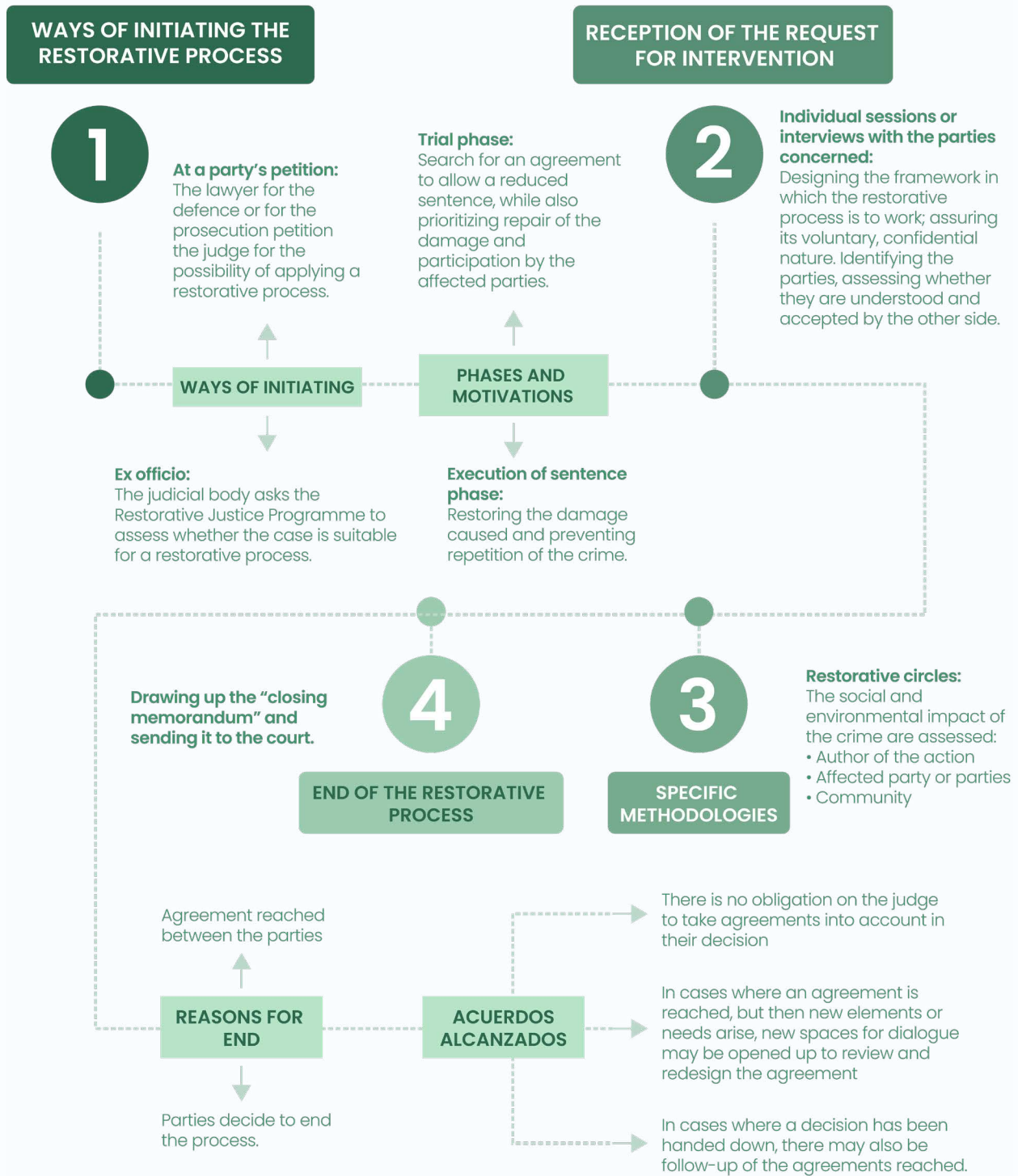


Figure 2: ERJ procedure in criminal law

PROCEDURE FOR ENVIRONMENTAL RESTORATIVE JUSTICE IN CRIMINAL LAW



Source: The authors

5.3.1.2 Practical cases

In an interview with Albert Rodríguez Rodríguez, facilitator of restorative processes with the Fundación AGI¹⁷, two experiences of applying ERJ in Catalonia were discussed: one related to trafficking in species and the other to poaching. In both cases, the environment was identified as the principal affected party, as no humans were directly affected. The following table shows the most important elements in each case.

Table 2. Practical application of ERJ in the criminal law system.

PRACTICAL APPLICATION OF ENVIRONMENTAL RESTORATIVE JUSTICE IN THE CRIMINAL LAW SYSTEM
<p>1. Context of the case</p> <ul style="list-style-type: none"> • Type of offence: Trafficking in species and poaching. • Affected party: The environment.
<p>2. Request for intervention</p> <ul style="list-style-type: none"> • Initiative: Counsel for the complainant • Action: Petition to the judge to have recourse to the Restorative Justice Programme. • Phase in the process: Before formal trial.
<p>3. Beginning of restorative process</p> <ul style="list-style-type: none"> • Reception of the application: The judge received the petition. • Preparatory sessions: At these sessions the working framework of the restorative process was designed, identifying the needs of the parties involved.
<p>4. Application of restorative methodologies</p> <ul style="list-style-type: none"> • Participation in circles <ul style="list-style-type: none"> – The author of the action(s). – Representatives of the community/bodies affected. • Approach: discussion of the social and environmental impact of the offence.
<p>5. Conclusión del proceso restaurativo</p> <ul style="list-style-type: none"> • Memorandum and close: Sent to the court with the agreements reached.

Source: The authors

¹⁷ Interview held on 2nd August 2024-

In her book “Justicia Restaurativa medioambiental y animal” [Environmental and Animal Restorative Justice] (2024), Varona Martínez explores the application of environmental justice in cases involving mistreatment of animals as the environmental damage, underlining its potential for dealing with conflicts in a reparatory way. The book describes different cases and how they might hypothetically be approached through the practical application of restorative justice. A couple of these can be cited as examples, including the episode of gender violence resulting from the death of two dogs (pp. 45–53) and the episode of the illegal killing of an Iberian wolf (pp. 55–63).

In both cases, preparation was an essential phase in the restorative process. The facilitators conducted a series of preliminary interviews and meetings with all the parts involved. This process included:

- **Diagnosis of the conflict:** The facilitators conducted an exhaustive diagnosis of the conflict, identifying the key damage that needed to be dealt with. This diagnosis centred not only on the legal aspects, but also on the emotional, social and symbolic dimensions of the conflict.
- **Individual and small-group meetings:** Before beginning the restorative circles, meetings were held to prepare those taking part. During these sessions, the nature of the restorative process was explained, together with its goals and what was expected from each participant. Stress was laid on the importance of its voluntary nature and confidentiality, ensuring that all those involved would feel secure and respected.

The restorative process focused on holding restorative circles, which were structured in the following way:

- **Responsibility circle:** The first restorative circle focused on discussing the responsibility of the author of the action(s) and exploring forms of reparation. The participants assessed the consequences of their actions and sought agreements that included not just monetary compensation, but also symbolic and educational measures that could help to remedy the damage.
- **Community circle:** In the case of the wolf, a second circle was held to include the wider community, discussing the environmental and social implications of the conflict. While in the case of gender violence this circle was smaller and centred on the prison environment, both circles shared the aim of involving the community (in a broad sense) in thinking about the conflict, as well as in seeking solutions that went beyond the immediate participants.

The restorative circles concluded with the signing of reparation agreements. These agreements included not only financial compensation, but also taking part in educational activities and community projects to deal with the underlying causes of the

conflict. Also established was follow-up of these agreements to ensure they were adhered to and to assess their long-term impact.

While the general methodology was similar in both cases, there were differences in how it was applied because of the peculiarities of each conflict. In the case concerning the poaching of an Iberian wolf, the process involved a wider group than the community, including hunters, environmental activists and other stakeholders in the rural environment. This community approach was less prominent in the case concerning gender violence resulting in the death of the dogs, where the process centred more on interaction between the affected party or parties and the facilitators within the prison setting.

Furthermore, in the case of the Iberian wolf, greater stress was laid on symbolic reparation and environmental education, with initiative that included setting up projects for raising awareness and encouraging more sustainable hunting practices. In the case of the gender violence leading to the death of two dogs, while there was also an element of symbolic reparation, the process was more oriented towards emotional reparation for the affected party and thinking about the links between interpersonal violence and mistreatment of animals.

5.3.2 Administrative law

Mediation in the administrative sphere, as described in “Informe 2: La Mediación en vía administrativa: Realidades y perspectivas” [Report 2: Mediation in Administrative Law: Realities and Perspectives] from the MEDAM project (URV), is a key tool for settling conflicts without recourse to traditional court proceedings. This approach is particularly relevant in the environmental sphere, where mediation can facilitate dialogue between the parties involved, allowing solutions that are better-adapted to the specific needs of environmental conflicts, where interests are often complex and multi-dimensional.¹⁸

5.3.2.1 Procedure and methodology¹⁹

While administrative law does not describe the application of restorative justice processes in detail, nor does it prohibit them, leaving open the possibility of using them in specific cases. For example, the Catalan Síndic de Greuges or ombudsman (hereinafter the “Ombudsman”)²⁰ has a regulatory framework which does authorise their action, allowing them to intervene more directly in facilitating restorative

¹⁸ Available at: <https://www.dret-public.urv.cat/es/grupos-investigacion/territorio-ciudadania-sostenibilidad/proyecto-el-nuevo-rol-de-la-ciudadania-ante-la-justicia-administrativa/informes/>

¹⁹ The information in this section is based on an interview conducted with Clara Casado Coronas and Jordi Palou Loverdos, advisers in the Catalan ombudsman’s justice department, on 2nd August 2024.

²⁰ Further information at: <https://www.sindic.cat>

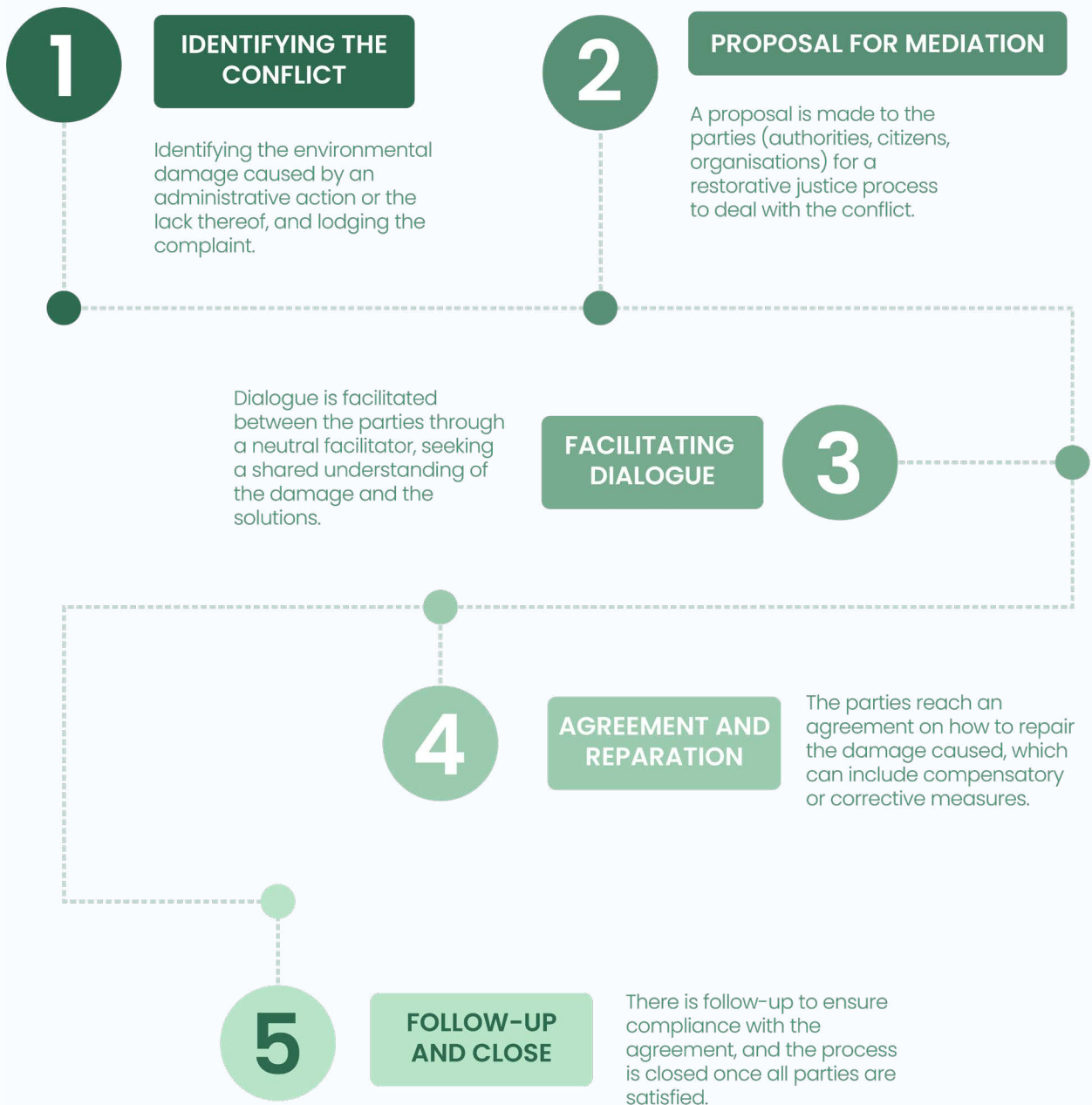
processes; hearing complaints in administrative proceedings, though they do not intervene in complaints that have been subject to court rulings or that are currently subject to court proceedings, in order to preserve the independence of the judicial power (Catalan Ombudsman Act, Law 24/2009 of 23rd December 2009).

Instead of limiting themselves to traditional procedures for processing complaints, the Ombudsman may intervene by proposing alternative ways of settling disputes, such as mediation, to the parties involved. These methods allow a space for direct dialogue between the citizen and the authorities. If they consider that the conflict will not be settled through the traditional complaint process, they can propose that a space be created for mediation or restorative practices, to seek to remedy the damage. After hearing the citizen's complaint, they can make recommendations including recognition of the harm done and measures to make sure it does not happen again (Catalan Ombudsman, 2024).

The "Guia pràctica de mediació administrativa" [Practical Guide to Administrative Mediation] (Fernández Ferran et al. 2024) explains in detail the possibilities for applying restorative practices in both the criminal and administrative spheres. It also underlines the importance of both the public and organisations and the authorities using and encouraging the application of these alternative mechanisms. It is essential that the parties involved, including judges and officials, consider mediation and other restorative figures as viable options for settling conflicts from the initial stages of the procedure.

Figure 3. ERJ procedure in administrative law

PROCEDURE FOR ENVIRONMENTAL RESTORATIVE JUSTICE IN ADMINISTRATIVE LAW



Source: The authors

5.3.2.2 Practical cases

For practical purposes, Elisenda Padrós, adviser to the Ombudsman, described to us²¹ an experience of restorative justice in the administrative law system, concerning a conflict in the municipality of Mataró (Barcelona province). The main elements of the case are shown in the following table.

Table 3. Practical application of ERJ in the administrative law system.

PRACTICAL APPLICATION OF ENVIRONMENTAL RESTORATIVE JUSTICE IN THE ADMINISTRATIVE LAW SYSTEM (“MATARÓ CASE”)

1. Identification of the conflict

The owners of two bars in Mataró (Barcelona province) lodged a complaint concerning the withdrawal of the licence for one of their terraces, which was revoked together with closure of one of the establishments. It was also ordered that the second terrace be closed, causing concern over the financial viability of the business.

The complaint was received and the authorities pointed out prior infringements, including too many tables and chairs and annoyance to neighbours in the form of noise.

2. Mediation proposal

It was proposed that a process of dialogue be initiated between the owners of the bars and the local authority to find an agreement that would allow the terrace to continue to exist legally.

The proposal included the possibility of limiting or reducing the number of tables, altering opening and closing times by seasons (summer and winter) and taking into account the opinion of the local residents affected.

The proposal for dialogue was accepted with the aim of reconciling the interests of the owners and of the neighbours, while complying with regulations and without infringing the rights of any of the parties.

3. Facilitating the dialogue

The authorities began a dialogue with the owners of the establishments to seek a solution. The owners were told about the importance of removing the terrace in accordance with the municipal order, and of cooperating with the process in order to facilitate a new authorisation.

The dialogue assisted by the mediator allowed a preliminary approach between the owners of the establishments and the community of neighbours affected.

4. Agreement and reparation

The parties agreed on the possibility of applying for a new authorisation for the terrace, in accordance with regulations and with the interests of the neighbours and of the bars' business.

An agreement was reached to process authorisation for the terrace in a legalised way, reducing the number of tables and the opening hours, so ensuring the viability of the business and peace and quiet for the local community.

5. Follow-up and close

It was agreed to follow up the new authorisation to make sure the conditions of the agreement were being met. Relations with the neighbours were also monitored to avoid future conflicts.

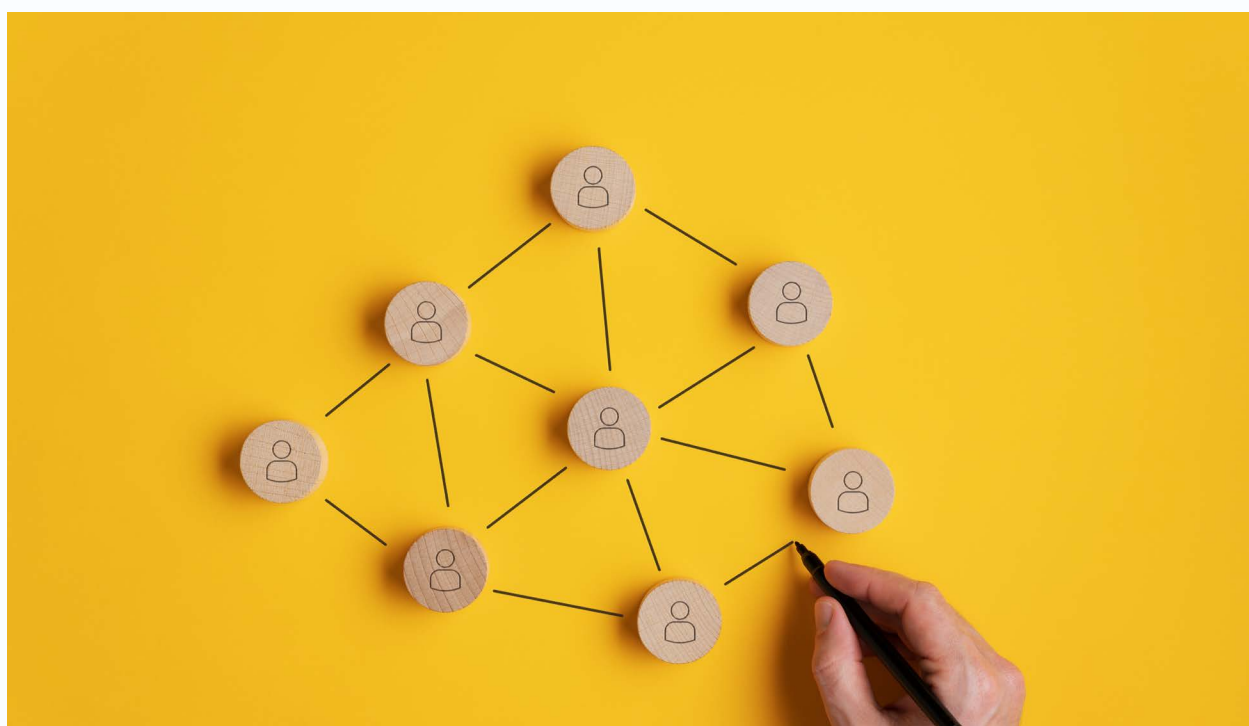
The process ended in a satisfactory way with the grant of a new licence for the terrace, while ensuring the neighbours' rights were respected.

21 Conversación realizada el 9 de septiembre de 2024.

Another landmark case of the use of mediation in the administrative sphere is that of the “Green Axes” in Barcelona. In this case, a judge, applying contentious administrative law, declared certain procedures related to the project null and void, ordering that the previous situation be restored and calling on the parties to comply with the decision through a process of dialogue (Judicial Authority, 2024). This case shows how, even in complex administrative proceedings, mediation can be an effective tool to achieve a fair, collaborative solution.

Because there is no single, predefined criterion to determine where and when to use restorative practices in the administrative sphere. The decision depends on the needs of the people affected, on the authority involved and on the particular circumstances. The viability of the process of dialogue is assessed case by case, and the position and willingness of the institution to take part in these processes is essential.

The Ombudsman, for example, can act as a facilitator in these processes and, in some cases, has travelled to specific localities to carry out mediation. While the Ombudsman can lead these processes, it is also possible for the authorities to request their intervention to facilitate dialogue and settle a conflict.



Conclusions and recommendations

6.

6. Conclusions and recommendations

This guide has presented the main theoretical concepts, but also practical tools and specific cases in both the criminal and administrative spheres.

There remains a long way to go in the application of ERJ, and for this reason we wish to finish by offering some recommendations to continue to progress in this direction.

- **Including the community in restorative processes:** one of the challenges in environmental crime is to include the “community” as an affected party in restorative processes. While the criminal law framework does not define it specifically, the community is often the party most affected by harm to the environment. It would be beneficial for judges to foster restorative processes that include the community or organisations defending the environment as key actors.
- **The need for multi-disciplinary teams:** the complexity of environmental crime suggests the need for multi-disciplinary teams in restorative processes. Professional experts in the environment, environmental law, sociology and psychology can contribute highly valuable viewpoints, supporting the Restorative Justice Programme in assessing the damage and in proposing more comprehensive solutions for restoring the environment.
- **A preventive approach:** ERJ has potential not only for repairing damage, but also for reinforcing community resilience, by boosting collective handling of disagreements and seeing them as an opportunity to strengthen interpersonal relations. However, existing legislation in Spain presents limitations that impede the creation of spaces for preventive dialogue. ERJ could be used to involve the community in managing and protecting natural areas, fostering cooperation before problems escalate into conflicts.
- **Including restorative agreements in judicial decisions:** another challenge is that there is no obligation to consider restorative agreements in court decisions. Including such agreements in decisions would facilitate compliance with them by turning them into legal obligations. Fostering this practice among judges would boost the effectiveness of ERJ, ensuring that the agreements reached have a tangible impact.

- **Awareness and training:** it is essential to train people in the legal system and raise their awareness of ERJ. While the 2015 Victim's Statute creates the obligation to report on the possibility of accessing ERJ, its implementation has been slow. Fostering training and raising awareness among judges, prosecutors and lawyers is crucial to effectively incorporating these processes into the criminal justice system.

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Annex

Restorative Questions²²

1st Round: expressing the experience

The restorative questions to be put to the author of the action(s) are:

- What happened, and what was your part in it?
- What were you thinking of at the time?
- What would you have liked to explain, and who to, at the time when you did what you did?
- What have you thought about since the incident?
- Who do you think has or have been affected by your actions?
- How do you think they have been affected?
- How do you feel about this situation?
- What would you like to say today, at that time, to the participants in the circle?

Restorative questions for the people affected:

- What happened?
- What was your reaction at the time of the incident?
- How do you feel about what happened?
- How has this situation affected you, and what consequences has it had for you? Who else was affected, and how?
- What was the most difficult part for you?
- How did your friends, family, etc. react to this situation?
- What would you like the result of this meeting to be?

Depending on the situation, a more concise version of the questions can be chosen for members of the community:

- What happened?
- How do you feel about what happened?
- What was the most difficult part for you?

²² Model restorative questions supplied by the French group DIALOG. To find out more, consult: <https://restaurerlelien.fr/>

2nd Round: understanding of the experience

The facilitator addresses the author of the action(s) again, asking them:

- What have you heard of what has been said to you?
- How do you feel now?
- Would you like to say anything else?
- What would you like to happen from now?

Next, the facilitator addresses the person (or group) affected by the situation:

- What have you heard of what has been said to you?
- How do you feel now?
- Would you like to say anything else?
- What result would you like this circle to have?

Finally, they address the members of the community, asking:

- How do you feel now?
- Would you like to say anything else?

3rd Round: repairing the damage experienced

The facilitator opens up the possibility of repairing the damage, addressing questions to:

- The author of the action(s): What proposals would you like to make to repair the damage?
- The effected parties: What should happen to repair the damage caused, at least a little?



